

CPD roundtable shows business and legal responses on climate accelerating as Australia shifts gears towards a net zero world

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A special roundtable convened by the Centre for Policy Development found that proactive and engaged governance of climate-related risks is even more important as businesses and investors swing behind a more ambitious net zero agenda.

The December 2020 roundtable included leaders from Australia's legal profession, business sector and superannuation industry. They considered legal and practical scenarios for companies and investors grappling with climate-related risks. The discussion was informed by the influential 2016 and 2019 legal opinions by Noel Hutley SC and Sebastian Hartford Davis on company directors' duties to consider and manage climate-related risks. It took stock of those opinions in the wake of COVID-19, the 2019-2020 bushfires, and new domestic and international commitments on climate change.

CPD is now releasing a statement of roundtable conclusions, a list of participants, the hypothetical scenarios considered by the group, and a new supplementary legal opinion with further analysis on 'greenwashing'.

CPD CEO Travers McLeod said the roundtable discussion and new set of materials reinforce how fast the bar is rising on climate risks and the need to match rising ambition on climate and net zero with concrete action and oversight.

"The duty of care for directors on climate risks is now clear," Mr McLeod said. "The conversation has shifted emphatically to the rising standard of care directors are required to discharge with respect to climate change. The focus is now on the gap between what needs to happen, or what is being promised, and what is being done."

"Many Australian firms have been stepping up their climate-related governance, disclosure and capabilities to meet this head on" he said. "But it is clear more is needed to keep pace, as surging momentum on net zero reshapes global markets and regulators, shareholders, customers and policymakers step up their scrutiny of corporate responses."

The roundtable discussed three scenarios designed to tease out key flashpoints and challenges in managing climate risks. These related to 'greenwashing' and inaccurate climate disclosures, climate risk governance for super fund trustees, and how industry-level collaborations to address climate can manage competition law concerns. The new supplementary legal opinion from Noel Hutley SC and Sebastian Hartford Davis, finalised last week, suggests the risk of misleading and deceptive conduct claims for 'greenwashing' "may not be adequately appreciated within corporate Australia".

"Wrestling with net zero is non-negotiable", Mr McLeod said in respect of the new legal opinion. "Inevitably, this is becoming an irreducible focus for boards and directors, especially in large firms that are most exposed to risks and opportunities stemming from global decarbonisation. Directors must ensure net zero commitments are underpinned by proper information, governance processes, strategy and action."

Roundtable participants said the roundtable discussion highlighted that collaboration and capacity-building can support a more far-reaching business agenda on climate risks and net zero.

Sam Mostyn, Deputy Chair of CPD and President of Chief Executive Women, said the shift in momentum was palpable. "This discussion was a clear reminder of what boards need to do to manage climate risks" she said. "We are at a critical moment on climate and the broader task of rebuilding from COVID. These challenges go hand in hand, and strong action from business – to support better risk management, better industry-wide responses and better policy – will be essential."

Business Council of Australia President Tim Reed noted "This is a pivotal moment for shaping Australia's response to climate change and a net zero agenda. Board-level duties are well understood, climate-related capabilities are growing and proactive business leadership will be essential." He added "Ultimately, climate risk is an economic risk and requires a whole-of-economy response. To keep pace globally, Australia needs business, investors, communities and all levels of government to drive this agenda and ambition together."

Angus Armour, Australian Institute of Company Directors (AICD) Managing Director and CEO, said: "The Hutley opinions underscore the need for directors to consider how climate change may impact their organisation. Directors across Australia are grappling with how they can provide effective oversight of this complex area of risk." He added "There is clear momentum in the corporate sector towards more concrete climate commitments, with the topic now a mainstream item on boardroom agendas. The AICD looks forward to publishing guidance to assist directors in the middle of this year."

The roundtable materials, additional comments from participants, and the new legal opinion are available here:
<http://cpd.org.au/2021/04/directors-duties-2021/>

Travers McLeod is available for interview.

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