

**7QW: From Mr Adam Bandt MP**

**Topic: ASIC guidance to companies regarding climate change risks**

**Question:**

Further to the advice from Mr Hutley SC regarding directors' duties and climate change and the statement by Mr Summerhayes of APRA in February 2017, does ASIC issue any guidance either formally or informally to companies under its supervision regarding climate change risks? If so, what is that advice, and if not, why not?

**Answer:**

Reflecting the approach of the Corporations Act, ASIC takes a principles-based approach to guidance on the obligations and duties of company directors, including in relation to climate-related financial disclosures.

Section 292 of the Corporations Act 2001 (**Act**) requires all disclosing entities, public companies, large proprietary companies and registered schemes must prepare annual financial reports and directors' reports. Section 299A(1) further provides that, for listed entities, the directors' report must also contain all information that members would reasonably require to make an informed assessment of:

- (a) the operations of the entity reported on; and
- (b) the financial position of the entity reported on; and
- (c) the business strategies, and prospects for future financial years, of the entity reported on.

ASIC Regulatory Guide 247 *Effective disclosure in an operating and financial review* (**RG 247**) sets out ASIC's guidance for directors on providing useful and meaningful information to shareholders or unit holders when preparing an operating and financial review (OFR) in a directors' report. Having regard to the requirement for listed entities under section 299A of the Act, it notes (at RG 247.63 - RG 247.64):

*An OFR should include a discussion of environmental and other sustainability risks where those risks could affect the entity's achievement of its financial performance or outcomes disclosed, taking into account the nature and business of the entity and its business strategy. For example, environmental risks that may affect an entity's achievement of its financial prospects would be more likely for an industrial entity than for a financial services entity.*

*Each risk that is disclosed should:*

- (a) *be described in its context (e.g. why the risk is important or significant, and its potential impact on the entity's financial prospects);*
- (b) *include any relevant associated analytical comments (e.g. whether the risk is expected to increase or decrease in the foreseeable future); and*
- (c) *where the risk relates to factors within the control of management, specify how these factors will be controlled or managed by the entity.*

This requirement under section 299A should be considered in context with the need to ensure there is a reasonable basis for any prospective financial information disclosed in an OFR.

Apart from this regulatory guidance, ASIC has noted in recent reports and market updates that companies and their boards should proactively consider reporting on climate risk as part of their annual reports, particularly within their OFR: see ASIC Report 539: *ASIC regulation of corporate finance: January to June 2017* at paragraphs 190-192, and ASIC Report 512: *ASIC regulation of corporate finance: July to December 2016* at paragraphs 235-238. These messages were reiterated in stakeholder liaison meetings to discuss the findings of these reports.

Relevantly, the ASX Corporate Governance Council's Principles and Recommendations also provide that listed entities should disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks: see recommendation 7.4. "Material exposure" in this context means a real possibility that the risk in question could substantively impact the listed entity's ability to create or preserve value for security holders over the short, medium or long term.

Beyond ASX recommendations, ASIC notes the existence of industry guidance and reports on these issues including:

- the Australian Council of Superannuation Investors' ('ACSI') guidance series on Corporate Sustainability Reporting;
- ACSI and the Financial Service Council's guidance on Environmental, Social and Governance ('ESG') reporting; and
- the Australian Institute of Company Directors' ('AICD') research series on Climate Change and Good Corporate Governance.

ASIC regularly engages with both ACSI and the AICD on matters of corporate governance.

ASIC also notes that regular guidance is released by the Institutional Investors Group on Climate Change ('IIGCC') to aide investors in understanding and assessing climate risks.

Overall, ASIC is of the view that these materials provide sufficient guidance for the Australian market given existing legal requirements.