

Sustainable Finance		
September 2022		
Contact	Senior Executive Leader	Executive Director
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### Key Messages

Sustainable finance (including greenwashing) is one of ASIC's four external strategic priorities for 2022 to 2026, as set out in ASIC's Corporate Plan (released on 22 August 2022). Under this priority, ASIC will work to ensure that we take the necessary regulatory action to prevent investor harms arising from greenwashing, and to support effective climate and sustainability-related governance and disclosure.

On greenwashing:

- firstly, ASIC is prioritising its work in this space to ensure issuers provide clear and effective disclosures when offering and promoting their sustainability-related financial products;
- secondly, ASIC has taken its first enforcement action for greenwashing, issuing 4 infringement notices to Tlou Energy Ltd, a company listed on the ASX. Tlou is currently developing power gas, solar and hydrogen projects in Botswana. Tlou has paid a total of \$53,280 in relation to representations it had made in ASX Announcements that the electricity produced through its gas-to-power project would be carbon neutral and 'low emissions' and that Tlou had environmental approval and capability to generate certain quantities of electricity from solar power and was involved in the production of "clean energy" when its primary focus is the development of its gas-to-power project. ASIC had concerns that Tlou either did not have a reasonable basis to make the representations, or that the representations were factually incorrect. Tlou paid those infringement notices in full in October (noting that payment of an infringement notice is not an admission of guilt or liability).
- And finally, ASIC is continuing to monitor the market for misleading claims by entities about their 'green' credentials or sustainability-related features, and we will take the regulatory action necessary to prevent investor harms arising from egregious greenwashing conduct (including enforcement action) - we currently have active investigations and ongoing inquiries underway into suspected greenwashing misconduct by a range of entities.

On climate-related disclosure and governance:

- firstly, we are continuing our focus on ensuring that climate-related disclosures by listed companies comply with the law, are decision-useful for investors and support our objective of fair and efficient markets overall, consistent with our mandate; and
- secondly, we have expressed our broad support for the work of the International Sustainability Standards Board (ISSB) and its draft global baseline sustainability disclosure standards (released in March of this year) and we continue to work alongside our peer regulators, both internationally and domestically, as these standards develop.
- This work aligns with the government's commitment in its May update to Australia's nationally determined contribution under the Paris Agreement, which included a reference to the application of new standardised and internationally-aligned reporting requirements for climate risks and opportunities for large businesses.

**Background**

Sustainable finance (in particular, considerations relating to the impact of climate change) is a rapidly evolving phenomenon in both domestic and global capital markets. Sustainable finance-related factors are expected to become increasingly material considerations for ASIC and its regulated population from now and into the long-term. ASIC's priority is to support market integrity through proactive supervision and enforcement of governance, transparency and disclosure standards in relation to sustainable finance.

**Greenwashing**

There has been a global trend for capital markets to align with sustainability goals. According to Bloomberg, global ESG assets are projected to exceed US\$53 trillion by 2025, representing more than a third of the US\$140.5 trillion in projected total assets under management. In Australia, we've seen a renewed focus on sustainability due to our recent change of Government. However, with this rapidly growing investor demand for, and the availability of, sustainability-related financial products in the Australian market comes an increased risk of greenwashing.

In June 2022, ASIC published Information Sheet 271 'How to avoid greenwashing when offering or promoting sustainability-related products' (INFO 271), following our review of a sample of superannuation and investment products. This review identified certain areas for improvement within the industry. To address this, INFO 271 lists nine questions product issuers should ask themselves when preparing promotional materials and PDS disclosures, including:

- Whether their sustainability-related financial product is true to label?
- Have they defined sustainability terminology used in their offer documents and promotional material?
- Have they clearly explained how sustainability-related considerations are factored into their investment strategy and decisions?
- Are their sustainability-related targets supported by a reasonable basis (such as a detailed time-based action plan to achieve a certain forward-looking 'net zero' emissions target)?

Since releasing INFO 271, ASIC has been engaging with various industry stakeholders regarding greenwashing. Through these engagements, we have communicated to industry that:

- INFO 271 is relevant for all entities offering or promoting financial products that take into account sustainability-related considerations in their investment strategies and decision-making (such as listed companies or entities issuing green bonds) – INFO 271 aims to lift disclosure standards in the market to ensure investors are provided with adequate clear and transparent information in order to make informed investment decisions;
- INFO 271 does not create new disclosure obligations – given the current lack of disclosure standards and accepted sustainable definitions in Australia, INFO 271 helps issuers navigate their existing disclosure obligations (including the prohibitions on misleading or deceptive conduct set out in the Corporations Act 2001 (Cth) and Australian Securities and Investments Commission Act 2001 (Cth)) against the growing and evolving sustainable finance landscape; and
- Companies (particularly listed companies) need to develop appropriate governance structures and build relevant skill sets within their organisations in relation to sustainable finance – we consider that better governance supports better disclosures.

There must be a reasonable basis for making sustainability and climate-related claims to the market and it is ASIC's role to interrogate these when they are made - to ensure that the entity has the relevant evidence, practices, systems and procedures to actually achieve these goals.

**Periodic reporting of climate and sustainability information**

Climate and sustainability-related disclosures, and the integrity of those disclosures, are key to minimising instances of greenwashing. In addition, there is strong investor demand for adequate climate-related disclosures to assist investors in making informed capital allocation decisions.

**Developing standards**

In March this year, the ISSB published two exposure drafts for consultation (i.e. IFRS S1 'General Requirements for Disclosure of Sustainability-related Financial Information' and IFRS S2 'Climate-related Disclosures'). ASIC has been engaging with Australian stakeholders on these exposure drafts. There has been support across industry for the objectives of the ISSB, with 20 of Australia's peak industry and investment bodies expressing their support in a joint submission on the exposure drafts.

Minister Bowen has commented publicly that the Government is considering mandating international disclosures for larger listed companies and financial institutions subject to consultation.

ASIC provided feedback to the ISSB on the exposure drafts through ASIC's membership of the International Organisation of Securities Commissions' (IOSCO) Sustainability Technical Review Coordination Group (TRC), as well as through a joint submission with other regulators through the Council of Financial Regulators' (CFR) Climate Working Group (comprising of ASIC, APRA, the RBA and Treasury). As part of this feedback, ASIC expressed its broad support for:

- the ISSB's objectives and its work to date (including its 'climate-first' approach to setting disclosure standards); and
- the adoption of ISSB's draft reporting standards in Australia (subject to their final form), noting that the introduction of any new reporting regime here is ultimately a matter for the Australian Government (not ASIC).

ASIC also noted some areas for consideration by the ISSB to improve the proposed standards. These largely align with the key issues that are emerging globally, including:

- The availability of data for requirements like scope 3 and financed emissions disclosure
- To whom would the standards apply and whether there is any kind of size or other threshold that is imposed
- The 'phasing-in' challenge and what appropriate transitional arrangements might be
- The upskilling requirement and how corporates will be able to bring in the necessary skills to report in a robust way

These are issues that policymakers will need to consider as these standards develop.

The ISSB is developing a work plan for the development of future sustainability standards which might cover areas such as biodiversity and human capital. ASIC will continue to contribute to the development of the ISSB standards through its membership of IOSCO's TRC. IOSCO will consider endorsing the final ISSB standards to encourage adoption globally. There is concern about possible fragmentation of requirements internationally with the development of other climate reporting frameworks in Europe and elsewhere.

ASIC is providing feedback to the ISSB on a taxonomy for digital reporting of climate and sustainability information through the TRC and the IFRS Foundation International Taxonomy Consultation Group.

ASIC is also part of the IOSCO Sustainability Assurance Work Stream (AWS) which has been reaching out to stakeholders and international standard setters on approaches to independent assurance over climate and sustainability information. ASIC is also discussing assurance with

international standards setters through the Standards Coordination Working Group of the International Forum of Independent Audit Regulators.

**Current reporting framework**

Pending the adoption of any ISSB climate standard, ASIC encourages directors and senior management of listed companies to continue reporting voluntarily under the Taskforce of Climate-related Financial Disclosures (TCFD) framework.

ASIC recently concluded another surveillance exercise on the TCFD climate-related disclosures by larger listed companies. While we observed continued improvement in the standard of governance and disclosure, we continue to see:

- a lack of consistency, comparability and structure when looking across the market as a whole;
- some selective adoption of the TCFD recommendations; and
- a lack of consistency in the scenarios applied and timescales adopted in relation to climate resilience or scenario analysis disclosure.

All of this impedes the utility of information for investors.

It is critical that directors and corporate advisors engage with sustainability and climate-related risks in a proactive manner. We have observed many large, listed entities fully or partially report (or prepare to report) under the TCFD recommendations or disclose climate-related risks and opportunities in their Operating and Financial Review under the Corporations Act. However, many small and medium-sized listed entities are still not making any such disclosures. Therefore, ASIC continues to publicly encourage directors and advisors of listed companies to:

- consider climate risks and opportunities (directors and management of listed companies should understand and continually reassess existing and emerging risks, including climate risk);
- develop and maintain strong and effective corporate governance (strong corporate governance facilitates identifying and managing material risks (including non-financial risks));
- comply with the law (directors should consider disclosing material risks affecting their business' future prospects as part of their Operating and Financial Review); and
- disclose useful information to investors (for example, where climate risks are material, these should be disclosed in line with the TCFD framework).

**Carbon Markets**

ASIC's role in relation to carbon markets is limited to the licensing and supervision of trading and market operators where the carbon unit being traded meets the definition of a financial product under the Corporations Act.

The Australian Government has commissioned an independent enquiry into Australia's carbon credits to be led by former Chief Scientist, Professor Ian Chubb. ASIC will consider the findings to determine their relevance, if any, for our regulatory activities.

In relation to listed companies, ASIC's current focus is on transparency through disclosure, which allows the market to understand the use of offsets by listed companies in reaching their emissions reduction targets. It is noted that the proposed ISSB standard requires disclosure on:

- the extent to which the targets rely on the use of carbon offsets;
- whether the offsets will be subject to a third-party offset verification or certification scheme
- the type of carbon offset, including whether the offset will be nature-based or based on technological carbon removals and whether the amount intended to be achieved is through carbon removal or emission avoidance

- any other significant factors necessary for users to understand the credibility and integrity of offsets intended to be used by the entity

### **ASIC Action**

As part of ASIC's work on sustainable finance, our actions will include:

- Conducting disclosure and governance surveillance activities (both proactive and reactive surveillances) over sustainability-related disclosure and governance practices of listed companies, managed funds, superannuation funds and issuers of green bonds to ensure compliance with existing laws/policies and the principles in INFO 271.
- Taking enforcement action against misconduct, including misleading marketing and greenwashing by entities.
  - Currently, ASIC's Office of Enforcement has a number of greenwashing investigations on foot, involving potential misleading or deceptive conduct breaches by various listed entities, super fund trustees and a managed fund responsible entity (most of these investigations are at an early stage). These investigations concern suspected misleading statements made about:
    - an entity's 'net zero' emissions / carbon neutrality / emissions reduction strategy; and
    - investment exclusions or screening processes applicable to sustainability-related financial products.

These statements were identified through ASIC's own surveillance and monitoring activities, breach reports made to ASIC by regulated entities, as well as complaints received by ASIC.

- We are also engaging with other relevant regulators in relation to greenwashing enforcement action (such as the ACCC).
- ASIC is monitoring the greenwashing case brought by the Australasian Centre for Corporate Responsibility (ACCR) against Santos Limited (Santos) regarding representations that Santos' natural gas product is "clean fuel" and that Santos has a credible and clear plan to reach net zero emissions by 2040. s 37(2)(b), s 47C, s 47E (d)

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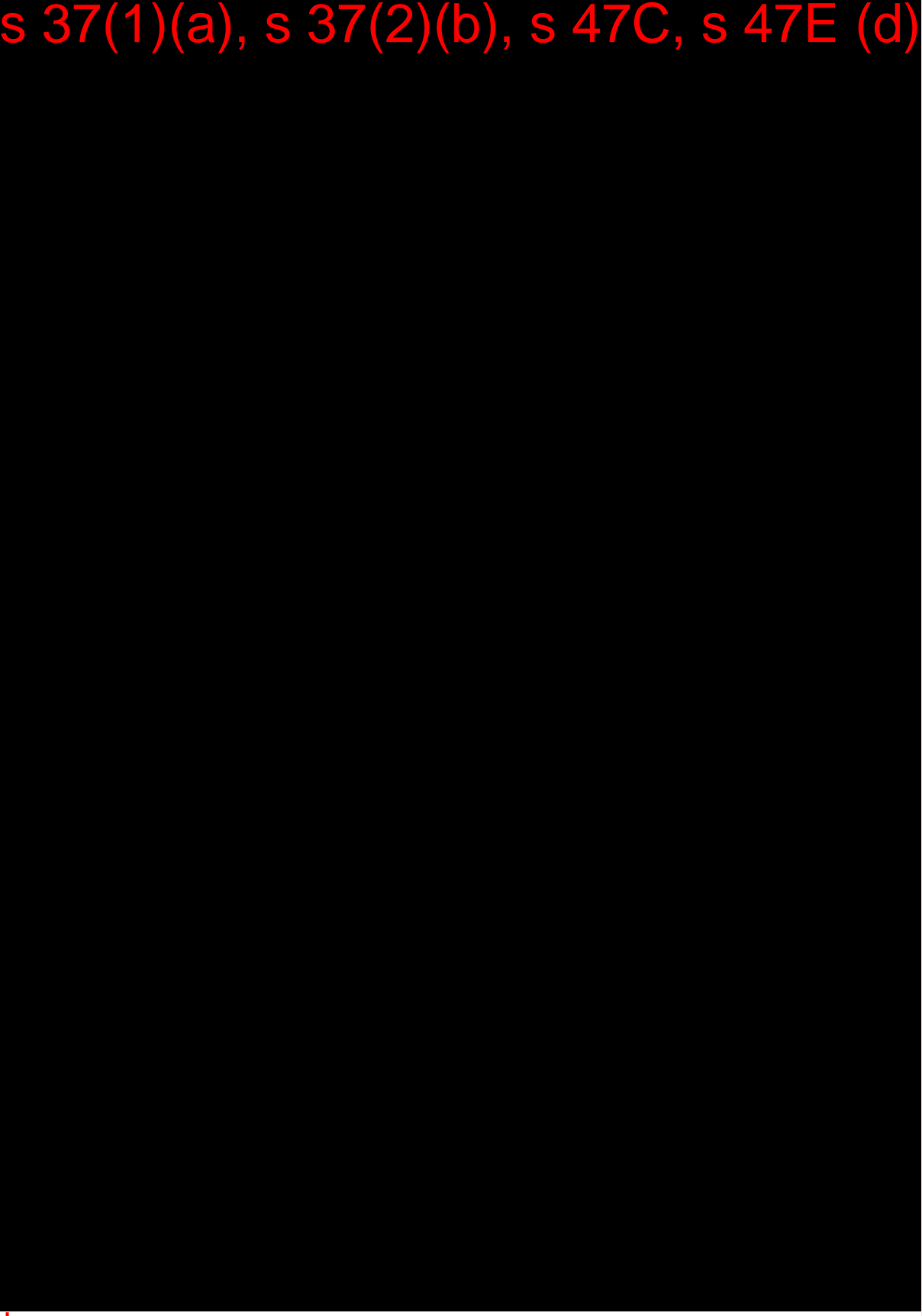
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- Engaging with peer domestic and international regulators on sustainable finance developments (including the Council of Financial Regulators Climate Working Group, the IOSCO Sustainable Finance Task Force, and the newly formed ACCC-ASIC-Clean Energy Regulator Carbon Markets Integrity Collaboration Working Group).
- Providing public messaging to support strong and effective climate and sustainability governance and disclosure.
  - Following the release of INFO 271, ASIC has already engaged with various industry bodies, including Responsible Investment Association Australasia (RIAA), Australian Council of Superannuation Investors (ACSI), Australian Institute of Company Directors (AICD) and Insurance Council of Australia
- Reviewing the licensing and supervision of carbon and related markets.
- Implementing a new Memorandum of Understanding (MOU) with the Australian Energy Regulator to address misconduct in gas and electricity markets.



**CONFIDENTIAL**

s 37(1)(a), s 37(2)(b), s 47C, s 47E (d)





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s 37(1)(a), s 37(2)(b), s 47E (d), s 47C

