

C L I F F O R D
C H A N C E

SUSTAINABILITY REPORTING ACROSS BORDERS – BEST PRACTICE IN ADDRESSING GLOBAL TRENDS

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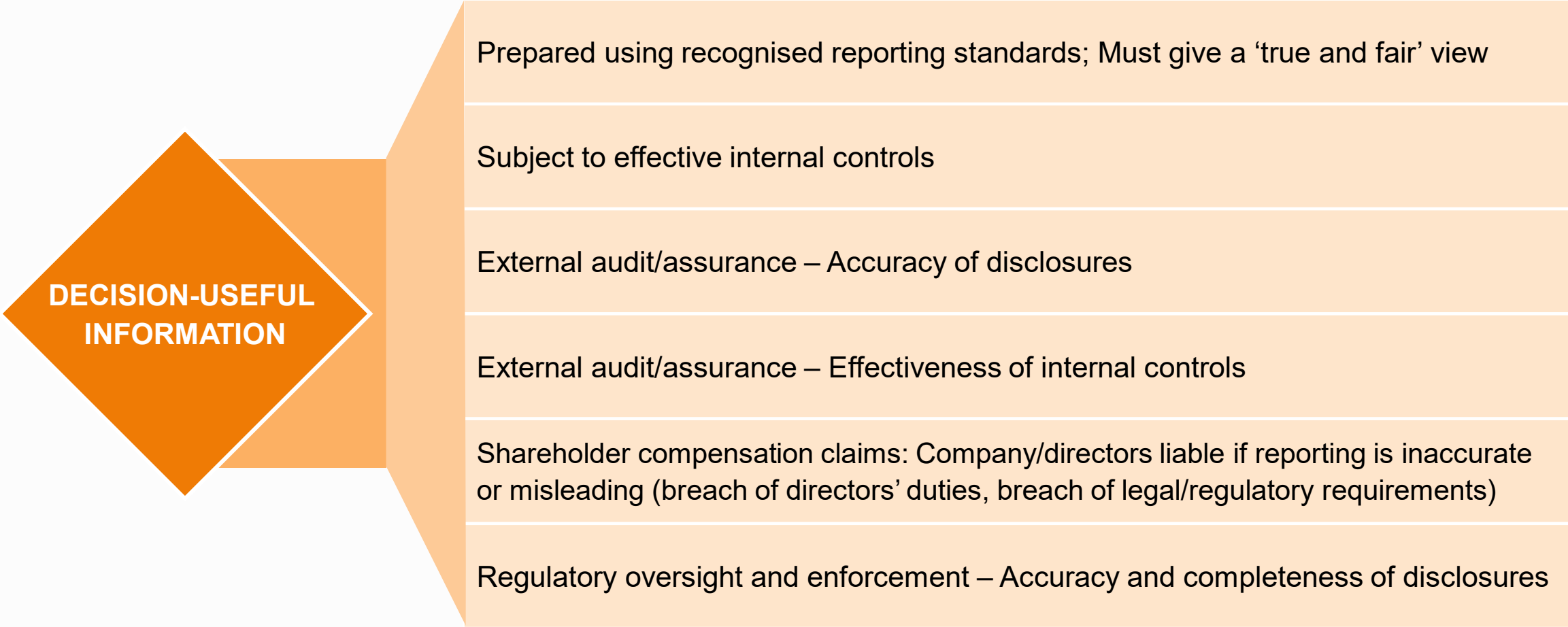
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DEVELOPMENT OF NON-FINANCIAL REPORTING

Voluntary reporting in standalone reports	Mandatory reporting included in annual financial statement
Companies decide what to report and which reporting framework to use	Companies required to report material information in accordance with an international/EU framework
“Alphabet soup” of “E” and “S” reporting frameworks	International Sustainability Disclosure Standards (so far IFRS S1 and S2); EU’s CSRD and ESRS
New systems and controls have to be established	Confirmation of effectiveness of internal controls
Board decides whether information subject to external audit/assurance	Mandatory external audit/assurance
Investors decide whether to use NFR in investment decisions, but limited reporting requirements	New reporting requirements for investors (e.g. EU’s SFDR)
Limited regulatory oversight/enforcement of standalone reports	Full regulatory oversight/enforcement (the same that applies to financial information)
Low risk of liability for inaccurate disclosures in voluntary reporting	Increased risk of liability for inaccurate or inconsistent disclosures

WHERE IS THE FOCUS ON DISCLOSURES?



COMPARING THE UK, EU, US AND AUSTRALIAN APPROACHES

	UK	EU	US (Proposed federal) (State rules also may apply)	Australia
Scope	Premium and standard listed companies and large UK companies	Large EU companies, listed EU SMEs, large non-EU companies may be affected from 2028	SEC registered companies	Large Australian companies
Rules	Climate-related TCFD reporting (current) ISSB reporting (planned) Transition Planning (planned)	CSRD (from FY 2024) much wider than climate – ESG comprehensively Taxonomy Regulation Proposed CSDDD, etc.	SEC proposed Climate Disclosure Rule	AASB consulting on draft Australian climate-related financial disclosure standards based on ISSB standard
Reporting Standards	ISSB disclosure standards (from FY 2025 TBC) Financial materiality approach	European Sustainability Reporting Standards (from FY 2024) Double materiality approach	Aligned with the TCFD framework and GHG Protocol	AASB expected to issue climate-related disclosure standards in Q2 2024 (in force from 1 July 2024 for large companies TBC) ASIC to issue supporting guidance
Liability standard for sustainability information in annual report	Director liable to company for information in strategic/directors' report where fraudulent/reckless Company liable to shareholders (Civil liability regime for directors proposed – TBC)	Members of administrative, management and supervisory bodies shall be liable (towards the company) for (non-) compliance with disclosure obligations	Companies liable for reporting violations Companies liable for material false/misleading statements under the SEC's anti-fraud rules Potential safe harbor for Scope 3	Fixed 3-year period for regulator only enforcement for misleading or deceptive conduct claims for scope 3 & certain forward-looking statements
Effectiveness of internal controls	Annual confirmation by directors (to be strengthened from FY 2025 TBC)	Collective responsibility of administrative, management and supervisory bodies	Sarbanes Oxley – confirmation by CEO and CFO re financial reporting	Disclosures of governance arrangements – separate or integrated
Audit / assurance	Voluntary (must explain approach in audit and assurance policy from FY 2025 TBC)	Mandatory (limited assurance moving to reasonable assurance)	Mandatory third-party attestation for accelerated filers and large accelerated filers, after phase-in	Limited assurance for Scope 1, 2; reasonable assurance for governance disclosures
Regulatory approach	FCA (listing rules – active regulator particularly on greenwashing) FRC (reporting – an “improvement” regulator to be replaced by ARGAs with stronger powers TBC)	At Member State level – very varied	SEC and PCAOB are active regulators, review accounts every 3 years	ASIC (active regulator particularly on greenwashing)
Shareholder claims	Active NGOs and class actions becoming more common	Climate and greenwashing claims on the rise in some Member States (e.g. Netherlands or Germany)	Shareholder class actions, especially following regulatory action	Active NGOs and class actions – product and shareholder claims

COMPARING THE UK, EU, US AND AUSTRALIAN APPROACHES

	EU
Scope	Large EU companies, listed EU SMEs, large non-EU companies (from 2028)
Rules	CSRD (from FY 2024) much wider than climate – ESG comprehensively Taxonomy Regulation Proposed CSDDD, etc.
Reporting Standards	European Sustainability Reporting Standards (from FY 2024) Double materiality approach
Liability standard for sustainability information in annual report	Members of administrative, management and supervisory bodies shall be liable (towards the company) for (non-) compliance with disclosure obligations
Effectiveness of internal controls	Collective responsibility of administrative, management and supervisory bodies
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COMPARING THE UK, EU, US AND AUSTRALIAN APPROACHES

	Australia
Scope	Listed and large Australian companies
Rules	AASB consulting on draft Australian climate-related financial disclosure standards based on ISSB standard
Reporting Standards	AASB expected to issue climate-related disclosure standards in Q2 2024 (in force from 1 July 2024 for large companies TBC) ASIC to issue supporting guidance
Liability standard for sustainability information in annual report	Fixed 3-year period for regulator only enforcement for misleading or deceptive conduct claims for scope 3 & certain forward-looking statements
Effectiveness of internal controls	Disclosure of information about the governance body or bodies with oversight of climate-related risk and opportunities and management's role in the process
Audit / assurance	Limited assurance for Scope 1, 2; reasonable assurance for governance disclosures
Regulatory approach	ASIC (active regulator particularly on greenwashing)
Shareholder claims	Active NGOs and class actions – product and shareholder claims

COMPARING THE UK, EU, US AND AUSTRALIAN APPROACHES

	US (Proposed federal; state rules also may apply)
Scope	SEC registered companies
Rules	SEC proposed Climate Disclosure Rule
Reporting Standards	Aligned with the TCFD framework and GHG Protocol
Liability standard for sustainability information in annual report	Companies liable for reporting violations Companies liable for material false/misleading statements under the SEC's anti-fraud rules Potential safe harbor for Scope 3
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Regulatory approach	SEC and PCAOB active regulators, review accounts every 3 years
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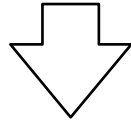
NAVIGATING THE WEB OF REPORTING REQUIREMENTS



Source: Nina I. / LinkedIn

MOVING BEYOND THE “E”

Transition planning



A strategic and rounded approach:

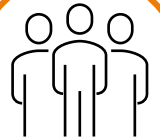
- Decarbonisation of business
- Risks and opportunities for business
- Contributing to economy-wide transition

Nature



- Taskforce for Nature-related Financial Disclosures (TNFD)
- Climate and nature are interdependent
- Taken into account (the impact on nature/biodiversity) in transition planning

Just transition



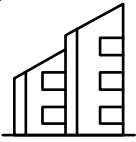
- Mitigates the impact that the transition may have on society
- Taken into account (the impact on employees and communities) in transition planning

DEALING WITH SENSITIVE MATERIAL – ATTORNEY-CLIENT PRIVILEGE

Attorney-Client Privilege	Consultants and Other Non-Lawyers	Practical Guidance
<ul style="list-style-type: none"> • Communications must occur: <ul style="list-style-type: none"> ○ In confidence, ○ Between an attorney and a client, ○ For the purpose (or primary purpose) of obtaining legal advice • Need not be in anticipation of litigation (in the US) • Application to in-house counsel varies by jurisdiction • Merely including lawyers on an email chain is not enough! 	<ul style="list-style-type: none"> • Consultants must be retained to assist attorneys in providing legal advice • Rationale: Specialized expertise may be needed to help lawyers provide effective counsel • Application depends on role <ul style="list-style-type: none"> ○ Merely data gathering? ○ Helping counsel interpret and provide advice based on the data? ○ Seeking legal advice on the presentation of the data? 	<ul style="list-style-type: none"> • Involve counsel at the outset to design the project, establish communications protocols • Document the consultant's role as it relates to the provision of legal advice • Counsel should engage and supervise the consultant • Mark documents and communications as privileged and prepared at the direction of counsel

ENFORCEMENT AND OTHER RISKS

Corporate Governance



- Necessary skills and expertise on the Board
- Directors' duties – making reasonable enquiries and good faith decision making

Data Governance



- Internal communication flows
- Veracity and completeness of data
- Context and detail

Enforcement



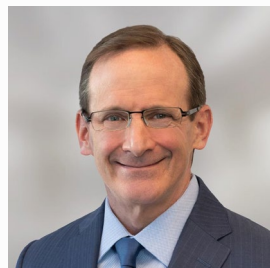
- Risks arising from projects, financing, net zero statements and product disclosures
- B2C initially the focus for some regulators
- Statements impacting investors
- Possibility of sector-based terminology

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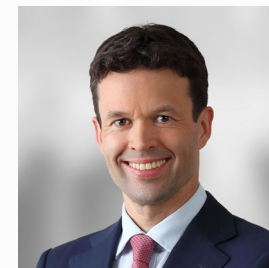
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