



PUBLIC AUTHORITY
DIRECTORS' DUTIES AND
CLIMATE CHANGE

DISCUSSION PAPER

*Managing the latent financial and
governance risks*



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SUMMARY

Key findings

- Public authorities are important institutions for managing Australia's economy, and are both potential contributors to climate change and subject to climate risks.
- Public authority directors likely have duties of care and diligence to consider climate risk in their activities, which are at least as stringent as the duties of private corporation directors (detailed in [Hutley-Hartford-Davis Opinion](#)).
- Despite impediments to enforcement, public sector directors are now increasingly likely to be closely scrutinised and held to account for climate risk management – especially given rising standards demanded of private corporations.

Our recommendations

We suggest four policy proposals that could encourage and assist public authority directors to properly discharge their duties.

1. Create a whole-of-government toolkit and implementation strategy for considering and managing financial risks arising from climate change. This might include specific approaches for training and supporting directors to account for climate risk in decision making.
2. Use existing public authority accountability mechanisms to strengthen management of climate-related financial risks. This might include using institutions such as the public sector or public service commissioners and/or Auditors General to review the extent to which climate risk is accounted for in directors' decision making.
3. Issue formal ministerial statements of expectations to clarify how public authorities and their directors should manage climate-related risks and policy priorities.
4. Consider legislative or regulatory changes to ensure consistent consideration, management and disclosure of climate risk by public sector decision makers.

INTRODUCTION

Climate change poses a significant financial burden on – and on-going risk to – Australia’s economy. In 2018, the Special Report on Global Warming of 1.5°C was approved by the Intergovernmental Panel on Climate Change (IPCC) (the IPCC Report).¹ While much of the public discussion surrounding the report in Australia focussed on the environmental effects of climate change on the Great Barrier Reef, the IPCC Report also summarised existing evidence which shows that global aggregated economic growth will slow due to climate change, compounding further if temperature increases cannot be limited to 1.5°C above pre-industrial averages. The risks that climate change pose to Australia thus extend beyond the environment; they are also financial in nature. These financial risks will acutely impact both the Australian private and public sectors. In this paper, we discuss one part of the financial risk that climate change poses to the public sector.²

Often when Australians think about the role of the public sector in managing climate change, they consider the government as a regulator. They think of the role that the various parliaments of Australia and government departments may play in creating and enforcing laws to motivate or mandate other, *private* actors to change their behaviour to reduce emissions. However, Commonwealth, state and territory governments are themselves important actors within the economy, creating and controlling corporate entities which are significant customers and consumers, financiers, insurers, asset owners and stewards of natural resources.³ Some public authorities contribute to the greenhouse gas emissions which drive climate change; many are likely to be subject to financial risks associated with it, not to mention reputational and other risks should they fail to take appropriate action. In this paper, we consider the obligations of directors of state-owned and managed corporate entities to account for climate risks. We detail what the scope and nature of these duties are, how they might be enforced and why this is an important financial risk and governance issue for Australia.

Public Authorities in Australia

Public authorities play an important role in Australia’s economy and its system of public asset and natural resource governance. According to the Australian Bureau of Statistics, at the end of 2017 there were approximately 400 public sector businesses run as commercial enterprises across the country, where a government is the controlling shareholder.⁴ However, there are many more public authorities which may not be run for commercial purposes.⁵ While not numerous relative to the total number of all Australian corporate entities, these public institutions own and manage significant tracts of land, natural resources and assets from roads, air and sea ports, dams, forests, water reservoirs and housing stock, which are all important to sustaining and growing Australia’s economy. (Appendix 2 provides some examples of these entities at a Commonwealth level, highlighting their diversity and reach).

¹ IPCC, *Special Report on Global Warming of 1.5°C* (October 2018) <<http://www.ipcc.ch/report/sr15/>>.

² There are a number of opportunities which will follow if the government and private and public firms proactively manage climate risks and transitions. These may include financial opportunities which will arise from new environmental or other markets. While we acknowledge such opportunities, in this paper we focus on the risk side of this issue.

³ Recently, economist Mariana Mazzucato has argued that in assessing public value in an economy, it is important to account for the role of public institutions as economic actors and not just as regulators. See e.g., Mariana Mazzucato, *The Value of Everything: Making and Taking in the Global Economy* (Allen Lane, 2018).

⁴ Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits, Jun 2013 to Jun 2017* (Catalogue No 8165.0, 20 February 2018)

<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8165.0Main+Features1Jun%202013%20to%20Jun%202017?OpenDocument>>.

⁵ In Victoria alone, for instance, there are around 200 public authority boards, which include authorities that manage natural resources, schools and other assets: Victorian Public Sector Commission, *State of the Public Sector 2016–2017* (March 2018), chapter 5 <<https://vpssc.vic.gov.au/wp-content/uploads/2018/02/State-of-the-Public-Sector-In-Victoria-2016-2017-Final-Web-version-ISSN-2204-9096.pdf>>.

Importantly, public authorities are engaged in substantial pursuits which contribute to or will be affected by climate change. Among other things, these entities:

- Own or finance assets which contribute to the greenhouse effect. For example, there are a number of government owned and managed superannuation funds, such as QSuper and the Commonwealth Superannuation Corporation, which are established by statute and include portfolios which hold equities in major domestic and international fossil-fuel intensive industries. There are other public authorities which hold greenhouse gas contributing assets, but funds are particularly important given their often-large size.⁶
- Own and manage assets which will be impacted by climate change. For example, Defence Housing Australia, which is a Commonwealth government business enterprise, is one of Australia's largest residential property managers in the country, holding and managing a portfolio of assets across the country. This portfolio likely includes areas which will be subject to increased flooding, drought and storm damage.
- Make substantial procurement decisions in sectors that will be heavily impacted by climate change. For instance, the Victorian Rail Track Corporation (which trades as 'VicTrack'), makes procurement decisions to redevelop and build new rail infrastructure in the state. These decisions could have implications for the resilience of rail infrastructure to climate effects and may have implications for the emissions intensity of rail transport. Additionally, NBN Co Limited, a Commonwealth company designed to deliver a wholesale broadband network to the country, will make decisions about cable infrastructure and data centres – for instance – which may be impacted by climate-induced changes to average temperature and weather patterns.
- Manage natural resources, such as water, marine and terrestrial parks and other areas, which may both contribute to, and be impacted by, climate change. Entities such as the Victorian water corporations (e.g. Yarra Valley Water Corporation) and the alpine boards (e.g. Mount Hotham Alpine Resort Management Board) play a role in managing critical infrastructure and/or assets, such as water or alpine reserves. The climate impacts on the assets that they control are significant. Climate change is likely to affect the availability of these assets – for example through drought – or their accessibility. This will necessitate changes in how they are managed. For instance, alpine areas will receive less snowfall over time and thus the economic activity generated from these areas may need to transition.
- Invest in research and development which could contribute to or help allay climate change impacts. For example, the Commonwealth's Cotton Research and Development Corporation invests in research and development for cotton growers. This and other industries will likely be impacted by climatic variability, and thus research and development spending should be aligned to account for those impacts.
- Have responsibility for community safety and emergency services, a role which will be exacerbated by climate change.

⁶ This is exemplified by the recent lawsuit filed against a superannuation fund in Australia in 2018. See Michael Slezak, 'Super fund REST sued for not having a plan for climate change', *ABC News* (online, 25 June 2018) <<https://www.abc.net.au/news/2018-07-25/super-fund-rest-sued-for-not-doing-enough-on-climate-change/10029744>>.

What is a Climate Risk?

Given the role that public authorities have in activities which are connected to climate change, it is important to understand the extent to which these entities are legally compelled to properly consider and manage 'climate risk'. By 'climate risk', we are referring to both: *physical risks* associated with rising global average temperatures, such as those described earlier; and *transition risks* associated with developments that may (or may not) occur in the process of adjusting towards a lower-carbon economy. These risks could each give rise to related risks for a corporation, such as the risk of litigation for damages arising as a failure of that corporation to account for climate change and its impacts.⁷

The obligation of decision-makers in *private* corporations to consider climate risks has attracted considerable scrutiny in recent years. In 2016, a legal opinion by Noel Hutley SC and Sebastian Hartford-Davis commissioned by CPD (the Hutley-Hartford-Davis Opinion) found that company boards and directors should consider climate risks in order to satisfy their duty of due care and diligence under section 180 of the *Corporations Act 2001 (Cth)* (the *Corporations Act*).⁸ The instructing solicitor for the Hutley-Hartford-Davis Opinion, MinterEllison Special Counsel Sarah Barker, summarised its conclusions as follows:

- *'climate change risks' represent, or are capable of representing, risks of harm to the interests of, and opportunities for, Australian companies and their business models, which would be regarded by a Court as being foreseeable at the present time;*
- *such risks are relevant to a director's duty of due care and diligence, and directors can, and in many cases should, be considering the impacts on their business;*
- *conversely, the law does not prohibit directors from taking climate change and related economic, environmental and social sustainability risks into account where those risks are, or may be, material to the company's interests; and, critically*
- *it is conceivable that directors who fail to consider the impacts of climate change risk for their business, now, could be found liable for breaching their statutory duty of due care and diligence going forwards.*⁹

Australia's corporate regulator, the Australian Securities and Investments Commission (ASIC), has indicated that these findings are consistent with its understanding of the legal position under Australian law, and reiterated the need for directors to take a "probative and proactive approach" to decision making on climate risks.¹⁰ In the sections that follow in this paper, we evaluate the extent to which the duties of directors of public authorities accord with those of private corporations in relation to climate-related risk.

⁷ Stephanie Venuti and Martijn Wilder, 'Obligations on Australian Companies to Address Climate Change' (2018) 92 Australian Law Journal 789 <https://www.westlaw-com-au.ezp.lib.unimelb.edu.au/maf/wlau/app/document?docguid=16e6516d4d90611e8b978b52e7aea20ea&tocDs=AUNZ_AU_JOURNALS_TOC&isToCNav=true&startChunk=1&endChunk=1t>.

⁸ CPD and Future Business Council, *Climate Change and Directors' Duties – Memorandum of Opinion* (7 October 2016) <<https://cpd.org.au/wp-content/uploads/2016/10/Legal-Opinion-on-Climate-Change-and-Directors-Duties.pdf>>.

⁹ Sarah Barker, *Climate Change & Directors' Duties – Legal Opinion* (19 December 2016) <<https://aicd.companydirectors.com.au/advocacy/governance-leadership-centre/external-environment/climate-change-and-directors-duties>>.

¹⁰ John Price, 'Climate Change' (Keynote address at Centre for Policy Development: Financing a Sustainable Economy, Sydney, 18 June 2018), <<https://asic.gov.au/about-asic/news-centre/speeches/climate-change/>>.

Governance of Public Authorities in Australia

Commonwealth, state and territory laws each define public authorities differently. For the purposes of this paper, we are referring to *corporate* entities which are owned (wholly or partially) by an Australian government and/or established under statute. For instance, this would include a company such as Airservices Australia which is a wholly government owned corporation which is responsible for various aspects of Australia's airspace and airport management and service provision. Airservices Australia, like other state-owned corporate entities, is established by statute and has a management team which reports to a board of directors. For the purposes of this paper, we have excluded considering the legal position of actors in *non-corporate* entities, such as government departments and other state-run institutions which do not have governance structures like corporations. While we are not considering the legal obligations that officials in these entities may hold, the discussion about public authority directors' duties is relevant to departmental officials where, for example, they have portfolio oversight of other incorporated public authorities. Additionally, this paper's findings are relevant to officials who advise ministers on their obligations and responsibilities with respect to these public authorities. At a broader level, the discussion is also relevant to the wider duties and responsibilities of departmental secretaries to manage assets and resources in an ethical and efficient manner.

Although similarly structured to private corporations, public authorities are subject to a more complex set of governance arrangements. Public authorities and their boards are often established under statute and are financed in part or in whole through public money, and thus they are subject to a suite of regulatory regimes and other obligations. In addition to their own founding statutes, these organisations are also subject to public sector governance statutes, such as the Commonwealth's *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* or Victoria's *Public Administration Act 2004 (PA Act)*, other regulatory instruments, and non-regulatory ministerial oversight. For instance, in some sectors and in some jurisdictions, directors may have to also consider the terms of ministerial statements of obligation which outline overarching ministerial priorities for a portfolio area in which a public authority sits. Under the *Water Industry Act 1994 (Vic)* for instance, the current Victorian Minister for Water has published a number of such obligations, including on emission reductions.¹¹ The Northern Australia Infrastructure Facility case study, discussed on the next page, outlines how different layers of regulation interact in relation to one Commonwealth public authority which has been closely scrutinised for its approach to climate risk.

The total regulatory environment applicable to each public entity and its board will therefore be the unique, complex sum of all the obligations under their founding statutes, legislation applying to public sector authorities (including general public administration laws such as the *PGPA Act*) and other laws. Thus, the obligations under Acts such as the *PGPA Act* or the *PA Act* form a 'lowest common denominator'; a threshold level of obligation to which additional specific legislation will add, rather than detract. In some cases, this regulatory environment already includes a requirement to account for the impact of climate change. For example, section 1A(a)(l) of the *Alpine Resorts (Management) Act 1997 (Vic)*, compels the Mount Hotham Alpine Resort Management Board to consider climate change in its decision making. Therefore, in the next section we consider the scope of the minimum duties created by the *PGPA Act* and *PA Act* for directors of public authorities to consider climate risk.

¹¹ Minister for Water (Victoria), *Statement of Obligations (Emission Reduction)* (14 March 2018) <https://www.water.vic.gov.au/_data/assets/pdf_file/0017/120671/Statement-of-Obligations-Emission-Reduction.pdf>.

Public Authority Governance Case Study: Northern Australia Infrastructure Facility (NAIF)

The Northern Australia Infrastructure Facility (NAIF) was established in 2016 to provide concessional finance to private investors in projects in Northern Australia. It was established under the provisions of the Northern Australian Infrastructure Facility Act 2016 (Cth) (the NAIF Act), and is regulated under the PGPA Act, which sets out requirements in relation to corporate governance, reporting and accountability, which are additional to those found within the NAIF Act. Ministerial responsibility for the NAIF lies with the Minister for Resources and Northern Australia, who appoints board members and issues the NAIF Investment Mandate. The NAIF Board is responsible for deciding, within the scope of the Investment Mandate, the strategies and policies to be followed by the NAIF. The Board also must consider these strategies and policies in a way that ensures the proper, efficient and effective performance of the NAIF's functions.

In 2016, multinational conglomerate Adani applied for a \$1 billion loan under the NAIF to finance construction of a rail line associated with a new coal mining project in North Queensland's Galilee Basin. In the wake of the Hutley-Hartford-Davis Opinion, the extent to which the NAIF's directors were legally required to consider climate-related financial risks associated with the proposed investment became the subject considerable scrutiny and media interest. Critics of the proposal noted the large risks associated with the project, highlighting long-term scenarios by the International Energy Agency which raise severe doubts about the economic and environmental viability of large greenfield coal projects operating over the next several decades.

In April 2016, a legal opinion commissioned by the Australian Conservation Foundation concluded that, in view of these risks, any decision by NAIF directors to extend finance to the rail project would represent a breach of their duty of due care and diligence under the PGPA Act.¹² These findings drew on the analysis in the Hutley-Hartford-Davis Opinion and on subsequent statements by APRA Executive Board Member Geoff Summerhayes on the foreseeability and materiality of climate-related risks for financial institutions.¹³ In 2017 the Queensland Government said it would veto any NAIF decision to finance the proposed rail line. Adani continues to explore alternatives for advancing the project.

NAIF's June 2018 Environment and Social Review of Transactions Policy, now includes details about how the facility will assess "climate related ESG risks". This includes considering climate risks "related to physical, transitional and liability impacts", and the extent to which these risks will impact the ability of a proposed project to satisfy the NAIF Act and Investment Mandate requirements.¹⁴

¹² Letter from David Barnden (Environmental Justice Australia) to Sharon Warburton and Laurie Walker (NAIF), 11 April 2017, <https://d3n8a8pro7vhmx.cloudfront.net/auscon/pages/1873/attachments/original/1494464732/170411_EJA_ltr_to_NAIF_%28climate_risk%29.pdf?1494464732>. We do not offer any comment on the legal conclusions drawn in the letter, nor do we suggest that the subsequent Queensland Government veto was due to this opinion. Rather, we are highlighting this as the type of legal and activist action which may arise from a failure to consider or account for climate risk issues.

¹³ Geoff Summerhayes, 'Australia's new horizon: Climate change challenges and prudential risk' (Speech at Insurance Council of Australia Annual Forum, Sydney, 17 February 2017) <<https://www.apra.gov.au/media-centre/speeches/australias-new-horizon-climate-change-challenges-and-prudential-risk>>.

¹⁴ NAIF, *Environmental and Social Review of Transactions Policy* (June 2018) <<https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2018/06/NAIF-ESR-Policy-FINAL.pdf>>.

Scope and Nature of Duty on Public Authority Directors to Consider Climate Risk

In this section we consider whether, subject to the establishing legislation and to ministerial directions that may apply to a public authority, directors of public authorities in Australia owe a duty of care which is at least as stringent as that which exists for private corporations. As we discussed earlier, the law governing public authorities differs between jurisdictions. Consequently, the scope and nature of public authority duties will depend on whether the entity is constituted by the Commonwealth or a state or territory government. In this paper we only consider the scope of the duty that applies at the Commonwealth and Victorian level, under the *PGPA Act* and *PA Act* respectively.¹⁵ For further details see Appendix 1.

Scope of duty

Both the Commonwealth and Victorian legislation on public administration outline the standard by which directors of public authorities must exercise their duties. Under the *PGPA Act* this is set out at section 25(1) (emphasis added):

*An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with **the degree of care and diligence that a reasonable person would exercise if the person:***

- (a) **were an official of a Commonwealth entity in the Commonwealth entity's circumstances;***
and
- (b) occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.*

Using a slightly broader formulation, section 79(1) of the Victorian *PA Act* states (emphasis added):

*A **director of a public entity must at all times in the exercise of the functions of his or her office act-***

- (a) honestly; and*
- (b) in good faith in the best interests of the public entity; and*
- (c) with integrity; and*
- (d) in a financially responsible manner; and*
- (e) **with a reasonable degree of care, diligence and skill;** and in compliance with the Act or subordinate instrument or other document under which the public entity is established.*

Under both formulations, directors are asked to act with 'care and diligence' as would be expected of a reasonable person or a reasonable person acting in their role. Whilst the content of the public entity duties will be informed, particularised and supplemented by the entity's constituting legislation (amongst other obligations), at a general level the content of the obligation under the *PGPA Act* and *PA Act* are substantively

¹⁵ It is possible that some public authorities may also be captured by the terms of the *Corporations Act*. Part 2D of the *Corporations Act* excludes from its ambit certain 'exempt public authorities' (defined in sections 9 and 57A of that Act). To the extent that 'public entities' within the meaning of the *PA Act* and 'Commonwealth entities' within the meaning of the *PGPA Act* are also 'exempt public authorities' within the meaning of the *Corporations Act*, the *Corporations Act* will not apply. In other cases, the *Corporations Act* will apply to those public authorities. Regardless, directors of 'public entities' within the meaning of the *PA Act* and 'Commonwealth entities' within the meaning of the *PGPA Act* are subject to core duties under each of those legislative regimes. It is the duties under those two acts which we outline in this section.

comparable to that of private sector corporations under section 180(1) of the *Corporations Act* (our emphasis added):¹⁶

*A director or other officer of a corporation must exercise their powers and discharge their duties **with the degree of care and diligence that a reasonable person would exercise if they:***

- (a) were a director or officer of a corporation in the corporation's circumstances*
- (b) occupied the office held by, and had the same responsibilities within the corporation as the director in question.*

As in relation to private corporations, directors of public authorities will be duty-bound to exercise due care and diligence in relation to foreseeable risks. As the Hutley-Hartford-Davis Opinion has set out in relation to the *Corporations Act* given the increasing accuracy of prediction models of the impact of climate change to human societies, the physical and economic transition risks associated with climate change are reasonably foreseeable today and thus would fall within the scope of the directors' duty of care and diligence.

In fact, the due care and diligence obligations contemplated under the Hutley-Hartford-Davis Opinion may apply to directors of public entities more stringently than to directors of private corporations. Among other reasons, this is due to:

- The overlay of a set of public sector values under the *PA Act* and *PGPA Act*, which outline the broad values under which public entity decision making should occur. These values suggest that public entities have a greater obligation to proactively consider and, as relevant, manage climate risk. For instance, the *Code of Conduct for Directors of Victorian Public Entities 2016*, to which Victorian public entity directors are bound, includes the public sector values outlined in section 7 of the *PA Act*. One such value is for public officials in Victoria to demonstrate "responsiveness" by "identifying and promoting best practice". As we discuss later, there are now several well-used and freely available frameworks for considering and managing climate risk, and the use of such tools may indeed be seen as a best-practice approach. Section 15 of the *PGPA Act* includes a similar set of public sector values.
- The public orientation of the public authority's objectives and functions, as set out in its constituting legislation. Depending on the nature of these objects and functions, they could imply a stronger obligation on the authority to account for future climate risk to better manage public or private resources. This may be particularly relevant in relation to decisions that the public authority must make regarding approvals or licencing, where the authority has some responsibility to account for long term risk issues like climate change. For instance, at the time of writing this paper, there is an ongoing controversy about whether the Murray-Darling Basin Authority took account of climate risk to the full extent required under its founding statute.¹⁷ Regardless of the outcome of this controversy,

¹⁶ The authorities tend to conflate the concepts of 'care and diligence' with 'care and skill' – see for example *Trilogy Funds Management Ltd v Sullivan (No 2)* [2015] FCA 1452 and *Macks v Viscariello* [2017] SASFC 172 at [383]. Accordingly, it is unlikely that the courts would find that the substance of the obligations is materially different.

¹⁷ The Murray Darling Royal Commission Report noted that with respect to climate risk the "senior management and the Board of the MDBA...was negligent... and [that this] mark[s] a shortcoming in reasonable care, skill and diligence" (268-9). Murray-Darling Basin Royal Commission Report (Report, 2019) < <https://www.mdbrc.sa.gov.au/sites/default/files/murray-darling-basin-royal-commission-report.pdf?v=1548898371> >. On the other hand, the Murray-Darling Basin Authority press release of 31 January 2019 states that it is "confident that the Basin Plan has been made lawfully and is based on best available science" and "rejects any assertion by the Commission that it has acted improperly or unlawfully in any way." < <https://www.mdba.gov.au/media/mr/mdba-response-south-australian-royal-commission-final-report> >. CPD makes no comment regarding these legal positions.

this example highlights the level of scrutiny that public authorities now face for their management of climate risk.

- The nature of the public authorities' activities and the magnitude of physical and/or economic transition risks associated with climate change to those activities. As we discussed earlier, public authorities have several connections both to the causes of climate change, and they may be particularly affected by it. For instance, relative to other corporations, public authorities that manage alpine areas or water supply will be particularly impacted by average temperature increases and changing weather patterns, and thus should be particularly mindful of climate risks.
- The absence (in Victoria and at the Commonwealth level) of an equivalent 'business judgment rule' defence as prevails under section 180(2) of the *Corporations Act* to a breach of the duty of due care and diligence. The business judgment rule may offer a defence for a director of a private corporation if they fail to account, or account in an inadequate way for climate risk, provided they were acting in good faith in the discharge of their duties. As this defence is not available under the *PA Act* or *PGPA Act*, it may mean directors of public authorities are subject to an even more stringent requirement to account for such risks.

Discharging directors' duties

To discharge the requisite standard of care, directors must be proactive and inquisitive, and obtain advice from management or experts where required. More particularly, to discharge their duty of care, public entity directors must consider foreseeable risk issues under a proactive and robust process, with their independent judgment brought to bear in a process of critical evaluation of contemporary information, including advice from management and/or independent experts as required. Procuring advice and expertise may be particularly important because, while information on aggregate-level risks on climate change may be publicly available, some more granular asset level analysis will require specialised information and expert input. Directors have a positive obligation to apply an inquiring mind to their role, bringing to bear knowledge that they ought reasonably have known about the corporation and its investment and operational context. The magnitude of the relevant physical and economic transition risks associated with climate change to the relevant authority, and the size and nature of each entity, will have proportionate bearing on the robust nature of the consideration that should be given to governance of the issue.

Enforcement for breach of duty

While the content of the obligations to exercise due care and diligence with respect to climate risk under the *Corporations Act* and the *PA Act* and *PGPA Act* may be substantially similar, the mechanisms for enforcement are very different. In short, the way that public authority directors' duties are established under the current legal framework means that enforcement for a breach of those duties by a member of the public is unlikely in practice.

While considering climate change-related risks may form part of the duty to exercise due care and diligence, at a practical level, directors of public entities may face minimal risk of prosecution for failure to do so. This is primarily because the duties may only be enforced by the public entity itself and/or the responsible minister who appointed the director.¹⁸ We are not aware of any such case ever being litigated against an Australian public entity director. It may be more politically expedient for a minister to remove a director from office than to pursue legal action against them. Legal proceedings may be even less desirable because

¹⁸ In some cases public authority boards are indemnified for the decisions they make.

generally, the government insurer may underwrite claims against public entity directors. Circumstances may arise in which the interests of the public authority and/or community are in fact better served by pursuing a claim against a public entity director. However, this is unlikely to occur in practice.

The low likelihood of a claim being filed for a breach of a public entity's directors' duties does not mean that it is unlikely that those duties will be *enforced*. In particular, the minister responsible for appointing directors is also empowered to suspend or remove the director from office. The prospect of that power being exercised, or the reputational harm that may be caused by a lawsuit, may act as an adequate behavioural incentive for compliance from directors (or deterrent to breach) in practice. However, given the fact that public accountability (at least by means of third-party enforcement) is lower, in the latter part of this paper we focus on how public authorities can best equip their directors to proactively consider climate risk, rather than thinking about how to hold directors to account for a failure to properly discharge their duties.

Conflicting mandates

Finally, as discussed earlier in the NAIF case study and elsewhere, directors need to account for their duties arising under the whole regulatory environment governing their public authority. This includes the duties arising under the *PA Act* and *PGPA Act* frameworks, as well as elsewhere, including from the authority's founding statute, ministerial statements of obligation and ministerial directions. This may create problems for directors in circumstances where ministerial directions or legislative mandates conflict with the duties that they owe under the public accountability law framework. These conflicting mandates may cause confusion for directors as to what standard to follow when they do conflict, and may in turn make it more challenging to hold directors to account for acting in a manner that does not consider climate risk issues.¹⁹

Policy Implications of Failure of Public Authorities to Account for Climate Risk

The extent to which public authorities account for climate risk varies.²⁰ Some public authorities are cognisant of the nature of the risk and are acting to respond to it. For instance, Melbourne Water has sophisticated internal capacity and also works with external bodies to manage its climate risk exposure.²¹ Some of this information is used for its day-to-day operations, and sometimes this analysis is provided to the board to guide its decision making. While we are not commenting on the adequacy of Melbourne Water's approach, we highlight this as a company in which the directors are at least receiving some information about climate risk. Our research suggests that not all public authority boards have adequate awareness of climate risk and in some cases come under implicit and explicit political pressure not to consider it. Accordingly, these entities are not gaining access to information to aid their decision making or developing the capabilities needed to manage climate risk. This has several financial and non-financial implications for Australia.

¹⁹ See John Uhrig, *Review of Corporate Governance of Statutory Authorities and Office Holders* (27 June 2003) <<https://www.finance.gov.au/sites/default/files/Uhrig-Report.pdf>>, where there was some discussion about conflicting director mandates, although at that time this was not in respect of climate risk. We have heard from CPD advisors and affiliates in the public sector that public authority directors may now face this issue in relation to climate risk.

²⁰ This is an area which is ripe for further empirical research. While researchers and policymakers have started analysing the extent to which private sector directors' are managing climate risk, we are not aware of systematic analysis of public sector directors' knowledge of climate risk. Our observations in this section are based on our discussions with public sector directors and their advisors.

²¹ For reasons we discuss below, Melbourne Water, like other Victorian water corporations is legally obligated to consider these issues.

On the financial side, the costs associated with the maintenance and insurance of infrastructure and other public assets may be increased by a failure of public authorities to account for climate risk – both the physical and transition risks discussed earlier.²² The now decade-old Garnaut Review, for instance, suggested that the cost of unmitigated climate change on Australia’s infrastructure would reach 0.5 per cent of GDP (about \$9 billion) in 2020 and 1.2 per cent of GDP (\$40 billion) in 2050. Additionally, public authorities will need to manage increasing insurance premiums, which are growing as a consequence of climate risk.²³

These costs could be reduced by more proactive climate risk management. For instance, a 2014 Committee for Economic Development of Australia (CEDA) report highlights how hundreds of millions of dollars spent on insurance and repair costs as a consequence of extreme flooding in Roma, Queensland, might have been avoided by resilience investments of around \$20 million in 2005.²⁴ Managing these costs and decisions will require public authorities to have sophisticated corporate governance measures in place to consider and account for climate risk.²⁵

Additionally, there may be indirect costs which are imposed on public authorities. These include the ability of the public sector to raise capital for financing infrastructure and carrying out its other activities. Over the last three years, international credit ratings agencies have begun to account for government policy and activity in their decisions on sovereign credit ratings.²⁶ Some forthcoming research suggests that higher climate risk exposure may also be positively correlated with higher sovereign bond issuance costs.²⁷ The effect of both of these developments is that a failure for public authorities to disclose and clearly articulate pathways for managing climate risk may push up the cost of capital for the public sector.

Aside from financial costs, public sector institutions also face reputational costs for failing to account for climate risk. Through its pledge made under the Paris Agreement, the Australian Government has made a political commitment to other nations to reduce its emissions and contribute to the global goal of achieving net-zero emissions by 2050.²⁸ If the stewards of public authorities are failing to account for climate risk in their decision making, this represents a dereliction of the responsibility of these entities to contribute to the broader government promises made internationally. This failure could have implications for Australia’s relationships with other nations.

Further, recent research has shown that climate change contributes to the growing lack of public trust in governments around the world. In part, this is attributable to the failure of governments to adequately

²² The Climate Institute, *Coming Ready or Not: Managing Climate Risks to Australian Infrastructure* (October 2011) <http://www.climateinstitute.org.au/verve/resources/TCL_ComingReadyorNot_ClimateRiskstoInfrastructure_October2012.pdf>.

²³ Banhalmi-Zakar et al, *Mechanisms to Finance Climate Change Adaptation in Australia* (29 April 2016) <https://www.nccarf.edu.au/sites/default/files/tool_downloads/Finance%20Report%20Final.pdf>.

²⁴ Committee for Economic Development of Australia, *The Economics of Climate Change* (June 2014) <<https://www.ceda.com.au/CEDA/media/ResearchCatalogueDocuments/PDFs/22090-Economics-of-Climate-Change.pdf>>.

²⁵ Internationally, there is also increasing discussion about the possibility of commencing litigation against public authorities for failing to account for climate risk. The basis of such claims is often that the authority was negligent in its failure to account for the risk historically. There are a number of legal difficulties with establishing negligence claims under Australian law, including issues related to sovereign immunity and attribution for harm caused. This is another area where further research is needed.

²⁶ See, for example, recent steps taken by credit rating agencies Moody’s and Standard & Poor’s. Moody’s, *Evaluating the Impact of Climate Change on US State and Local Issuers* (28 November 2017) <<http://www.southeastfloridaclimatecompact.org/wp-content/uploads/2017/12/Evaluating-the-impact-of-climate-change-on-US-state-and-local-issuers-11-28-17.pdf>>). Standard & Poor’s, see Joyce Coffee ‘Credit Rating Agencies Assess the Physical Risks of Climate Change’ (online, 22 February 2018) <<https://www.triplepundit.com/2018/02/credit-rating-agencies-assess-physical-risks-climate-change/>>.

²⁷ Marcus Painter, ‘An Inconvenient Cost: The Effects of Climate Change on Municipal Bonds’ (forthcoming) *Journal of Financial Economics* <https://papers.ssrn-com.stanford.idm.oclc.org/sol3/papers.cfm?abstract_id=3167379> (accessed, 5 June 18).

²⁸ *Paris Agreement*, opened for signature on 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016)), art 4.1.

respond to climate change.²⁹ A failure by public authorities to address climate risk issues could contribute to this broader phenomenon. This is particularly the case given that these authorities are often responsible for infrastructure and other assets, managing natural resources and the delivery of public services which are particularly salient to the public (such as water catchments, alpine resorts, public sector super funds and emergency services). For instance, there is increasing evidence showing how climate change affects human health, including impacting the number of heat-related deaths.³⁰ This type of health issue may have implications for an organisation such as Ambulance Victoria or equivalents in other states.

Finally, as recipients of public money and representatives of the state, public authorities should maintain the best standards of corporate governance. This is a view which finds support in the long history of public policy discussion on governance of public authorities in Australia.³¹ The Uhrig Review in 2003, for instance, involved a considerable review of public authorities governance practices at the Commonwealth level for the purposes of determining how to introduce best practices from private sector governance into the public sphere.³² Leading private companies are already moving towards more sophisticated methods to consider and manage climate risks and other sustainability issues. Recent proposed updates to the ASX's Corporate Governance Council's *Principles and Recommendations* call explicitly for listed entities to, for example, review boards' skills matrices and director induction processes to reflect new and emerging issues, including climate risk.³³ The benchmark for directors is already rising. Given the growing consensus on the importance of climate risk, and a suite of increasingly sophisticated tools for managing such risk, it is incumbent on public institutions to be proactive actors on this important corporate governance issue.

Policy Approaches to Encourage Consideration of Climate Risk

Given the importance of climate risk to public authorities, we think that several policy steps could be taken to encourage directors of public authorities to better account for climate risk. Ideally, the approach that Australian governments take in managing climate risk issues within public authorities should be part of more holistic sustainable finance agenda and a broader suite of climate policy reforms.³⁴ However, in this section we only consider the narrower issue of addressing climate risk within public authorities.

²⁹ Katherine Harrison and Lisa Sundstrom, *Global Commons, Domestic Decisions: The Comparative Politics of Climate Change* (MIT Press, 2010). Researchers at MIT are starting to demonstrate the way in which climate change is impacting political and governance systems. For an example see: Nick Obradovich, 'Climate Change may Speed Democratic Turnover (January 2017) *Climatic Change* 140(2) 135, abstract at <<https://www.media.mit.edu/publications/climate-change-may-speed-democratic-turnover/>>.

³⁰ The Australian Academy of Science has useful information on this link: Tony McMichael and Aparna Lal, 'Climate Change and Human Health' (28 July 2015) <<https://www.science.org.au/curious/earth-environment/climate-change-and-human-health>>.

³¹ Meredith Edwards et al, *Public Sector Governance in Australia* (ANU E Press, 2012). <<https://press.anu.edu.au/publications/series/australia-and-new-zealand-school-government-anzsog/public-sector-governance/download>>.

³² John Uhrig, *Review of Corporate Governance of Statutory Authorities and Office Holders* (27 June 2003) <<https://www.finance.gov.au/sites/default/files/Uhrig-Report.pdf>>.

³³ ASX Corporate Governance Council, *Review of the ASX Corporate Governance Council's Principles and Recommendations* (Consultation Paper, 2 May 2018) <<https://www.asx.com.au/documents/asx-compliance/consultation-paper-cgc-4th-edition.pdf>> (the *Consultation Paper*). In addition, the Consultation Paper includes a proposed addition to commentary for principle 3 of the *ASX Council's Corporate Governance Principles and Recommendations* to make it clear "that a listed entity's 'social licence to operate' is one of its most valuable assets and that the licence can be lost or seriously damaged if the entity conducts its business in a way that is not environmentally or socially responsible": 15. Although controversial, these provisions point to the high-standard being contemplated by the ASX Corporate Governance Council with respect to private sector directors.

³⁴ For further analysis on Australia's potential approach to introducing a sustainable finance agenda, see Centre for Policy Development Submission No 129 to, Senate Foreign Affairs, Defence and Trade References Committee, Parliament of Australia, Inquiry into United Nations Sustainable Development Goals (undated) <<https://www.aph.gov.au/DocumentStore.ashx?id=4baca756-bef3-4ed2-abc5-eb0f1156cb41&subId=564752>>.

The following suggestions range from measures that work within current legislative and accountability frameworks through to new legislated requirements for better whole-of-government approaches to climate risk. These recommendations are intended as a starting point for further exploration by governments at the state and Commonwealth level. They raise some possible avenues which are worthy of further exploration, and some of the mechanisms by which reforms on climate risk could be pursued. They range from those which are more easily implementable through to more complex suggestions, with the latter having greater potential staying power over the long term.³⁵ While we have structured these as separate recommendations, they are not mutually exclusive.

1. Create a whole-of-government toolkit and implementation strategy for considering and managing financial risks arising from climate change.

Public sector directors face several competing priorities and obligations. A toolkit for considering and managing climate-related financial risks would help public sector directors across the range of public authorities in Australia to consistently manage these risks among these competing priorities.

Relevant actors:

- **The offices of the public sector or public service commissioner or its equivalent.** These institutions generally have oversight over the behaviour of public sector employees. In Victoria, the *PA Act* gives authority to the Public Sector Commissioner with respect to the behaviour of board members of public authorities.
- **Environmental commissioners** or other environmental policymaking bodies (such as environmental protection agencies or environmental ministries).
- **Ministries** responsible for the management of public authorities (most often, ministries of finance).

Recommendations:

A 'public authorities climate risk toolkit' might be structured around a series of questions to ask about how different climate risks (see Figure 1 on next page) apply to a given organisation, and then some possible resources to consult or decision-making strategies to respond to those risks. The Taskforce on Climate-related Financial Disclosures (TCFD), provides some useful approaches for thinking about the different domains that an organisation, like a public authority, should think about to manage climate risks.

A toolkit of this nature would need to be developed in a coordinated way across various government departments, including environmental ministries who may have expertise on modelling climate impacts, along with finance ministries who may have tools and expertise available to them in relation to board governance. Given the emphasis on improving the effectiveness of the public sector, such coordination may be best carried out by the public sector or public service commissioner.

A toolkit of this nature could take many forms. It may be voluntary or compulsory. As a starting point, we would recommend that the toolkit adapt the TCFD standards (with CPD's suggestions from its 2018 *Climate Horizons* report) as a benchmark.³⁶ The TCFD is a framework which allows organisations to assess and

³⁵ These recommendations are based on CPD's internal research and input from a roundtable on Climate Change Risk and Public Sector Director's Duties co-hosted by CPD on 23 October 2018.

³⁶ Sam Hurley and Kate Mackenzie, *Climate Horizons* (Report, June 2018) <<https://cpd.org.au/wp-content/uploads/2018/06/Climate-Horizons-report-2018.pdf>>. In addition to the TCFD, this toolkit could draw on a number of other emerging frameworks and toolkits that are being developed to assist investors and other private sector actors manage their climate risks. For example, see Investor Group on Climate

disclose potential business, strategic, and financial implications of climate-related risks and opportunities. Since its development, leading financial regulators, institutions and global investors have supported the TCFD recommendations as best practice. In line with the principles that underpin the TCFD framework, the results of assessments carried out using a toolkit of this nature should be disclosed to the public. Also, in line with the TCFD, this toolkit should require public authorities to consider how climate risks could evolve under a range of different climate scenarios, not just a subset of the most likely (or most favourable) outcomes.

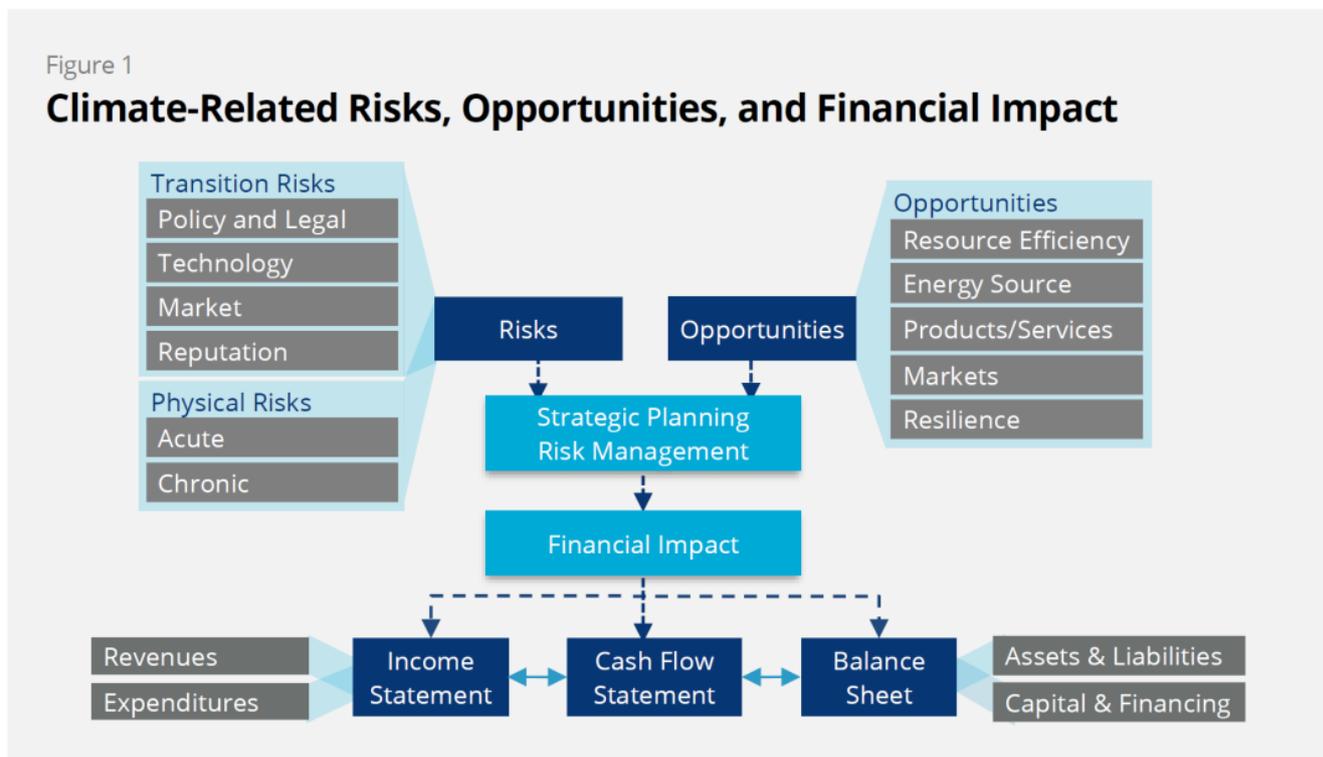


Figure 1: Final Report of the TCFD, page 8.

Effective use of a toolkit of this kind, and better management of climate risk generally, requires capabilities within public authorities and/or their managing departments to carry out sophisticated climate risk analysis. A toolkit could itself help to develop these capabilities over time. For example, a climate risk toolkit could be used as part of formal induction processes for new public sector appointees to ensure better awareness of their duties and frameworks for considering climate risks. It could also inform more rigorous processes and skills matrices for independent public sector board appointments, by highlighting the need to factor climate-related expertise and capability into decisions about recruitment and board composition.³⁷ Given their existing roles in recruitment and training processes for incoming public authority board members, public service or public sector commissioners could have a role to play here (discussed further below).³⁸

Change (2018) *Investing in Resilience: Tools and Frameworks for Managing Physical Climate Risk* (Report, 2018) <https://igcc.org.au/wp-content/uploads/2018/07/IGCC-Investing-in-Resilience-report_FINAL.pdf>.

³⁷ This is also an emerging focus in the private sector. For example, the Bank of England’s Prudential Regulatory Authority recently published a draft supervisory statement calling for banks and insurers to clearly identify specific roles and responsibilities for boards, subcommittees and senior management in managing the financial risks from climate change: Bank of England, *Enhancing Banks’ and Insurers’ Approaches to Managing the Financial Risks from Climate Change* (Consultation Paper 23 of 2018, October 2018) <<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2318.pdf?la=en&hash=8663D2D47A725C395F71FD5688E5667399C48E08>>.

³⁸ For example, see the Victorian Public Service Commissioner’s Recruitment and Appointment toolkit: Victorian Public Service Commissioner, *Recruitment and Appointment to the Board (Toolkit)* (1 March 2015) <<https://vpvc.vic.gov.au/resources/recruitment-and-appointment-to-the-board-toolkit/>>.

Separately, a toolkit would also reinforce the importance of board processes for gathering and considering appropriate information about climate risk, including drawing on departmental officials or external expertise where necessary.

2. Use existing public authority accountability mechanisms to strengthen management of climate-related financial risks.

Government actors and bodies that are charged with monitoring financial management and performance of public authorities should use existing powers and processes to review public authorities' processes and capabilities for managing climate risk. At a minimum, where relevant, departmental heads should ensure that public authorities within their remit are properly managing climate risk as part of their oversight of the efficient and effective management of their departments. Further-reaching reviews should also be considered, particularly for jurisdictions or sectors where climate risks are of particular concern. There are a number of options under existing accountability mechanisms.

Relevant actors:

Public authorities are currently held to account by different public sector bodies, depending on the jurisdiction in which they sit and their establishing statutory framework. There are, however, several government bodies which have some responsibility for overseeing the activity of public authorities across the Commonwealth and Victoria (and potentially other states/territories) regardless of their establishing framework. These bodies include:

- **Heads of government and departments.** The head of government (such as the premier of a state) or heads of the relevant supervising department (such as a departmental secretary) under which the public authority sits.
- **The auditor-general's office.** The auditor-general in each jurisdiction has a role to carry out compliance and performance audits on the activities of government departments and public authorities.
- **Public finance regulatory bodies.** This includes pricing regulators and ministries of finance which manage the budgets of public authorities.

In addition to these government bodies, we think that civil society, media and research organisations also have a role in ensuring that there is greater scrutiny over the activities of public authorities and their climate related decision making.

Recommendations:

Heads of government or department

The public sector management in each jurisdiction often includes general powers which are exercisable by heads of government or departments. Below we outline two such powers under the Victorian *PA Act*.

- Section 13 of the *PA Act* gives responsibilities to the secretaries of departments with respect to the “effective, efficient and economical management” of their departments. Given the financial nature of climate risks, secretaries may be able to take advantage of this power to carry out analysis of public authorities which are under the responsibility of the department. However, this provision

only applies to public authorities which report to the department secretary directly. Many public authorities do not report to department heads, but instead to the responsible minister directly.³⁹

- Section 56 of the *PA Act* creates powers for the Premier to direct the Public Sector Commissioner to carry out a special inquiry into public authorities. The scope of this power is broad and allows the Commissioner to collect evidence from public authorities. Usually these inquiries are used for ex-post analysis of historical events. But the powers as outlined under the *Act* are broad enough to be used for ex-ante analysis of the preparedness of public authorities to manage climate risk.

It is important that policymakers analyse the provisions of the public sector acts within their own jurisdictions as the same rules do not apply universally. For instance, the *PGPA Act* does not give the Commonwealth Public Service Commissioner equivalent powers.

The Public Sector or Public Service Commissioner

In addition to the use of special inquiries, it may also be possible to use existing public sector or public service commissioner structures to help build the capability of public authorities to better account for climate risk. As we discussed above, public sector or public service commissioners might help administer toolkits and deliver training to public authorities on climate risk.

Auditors-General

Auditors-General have powers to carry out compliance audits, through which the Auditor can assess the compliance of public bodies against legislated standards of operation. These audits are usually carried out annually for each organisation. Performance audits, by contrast, are when Auditors-General assess some aspect of performance of a public body. The Auditor has authority to determine on what aspects of performance it will carry out an audit. Such audits are not carried out on a regular basis.

As it stands, compliance audits cannot be used to audit climate risk compliance, because these risks do not always form part of public authorities' legislated standards of operation. As discussed later, we think legislative change to ensure climate risk is properly accounted for in these auditing processes is warranted in order to ensure public sector standards are consistent with emerging best practice on climate and sustainability-related risks in the private sector. However, it may be possible for Auditors-General to take account of climate risk as part of their performance audit function. For example, an Auditor could decide to carry out analysis of the extent to which a select group of important public authorities are considering and managing climate risk, in much the same way as ASIC has done with respect to private sector corporations.⁴⁰ This would provide a useful signal to other public authorities in a jurisdiction that this is an area over which the Auditor will be focussing attention. However, an intervention of this nature ultimately falls to the discretion of the Auditor.

Public sector financial regulators

Public sector financial regulators may also play a useful role in encouraging public authority directors to account for climate risk. As one example, the Essential Services Commission (ESC) in Victoria sets the price boundaries for how much some public authorities can charge for their goods and services, i.e. the ESC sets

³⁹ For instance, section 16 of the *Alpine Resorts (Management) Act 1997* (Vic) establishes that the Alpine Management Board is responsible to the minister directly.

⁴⁰ ASIC, 'Climate Risk Disclosure by Australia's Listed Companies' (Report No 593, September 2018) <<https://download.asic.gov.au/media/4871341/rep593-published-20-september-2018.pdf>>.

the prices that water boards can charge for water. Thus the ESC may play a useful role in encouraging directors to account for climate risk by considering the extent to which they have accounted for such risks in the way they set prices. Ministries of finance, which manage public authority finances, could also play a similar role by asking or requiring public authority directors to explain how they are considering these risks.

Civil society, media and research organisations

As a general matter, public authorities in Australia are among the least transparent – and thus least scrutinised – public sector institutions.⁴¹ This is both because the scope of their activity in the economy and in society in general is not well understood, and because their governance is complicated and difficult to understand. This is an important point because these public authorities' responses to climate risk will be crucial, given their large economic role. In our view there needs to be scrutiny of how well these authorities are performing, commensurate to the level of scrutiny placed on private firms. Although there are some existing accountability mechanisms for these entities (as we have discussed throughout this paper), they are not well targeted to climate risk and there are major gaps in scrutiny and transparency. As such, it is important that Australian civil society, media and research organisations play a close role in scrutinising the way these bodies make decisions on climate risk-related issues. To this end, it may be useful for a civil society or research organisation to develop a centralised source of all information on public entity bodies in Australia which are particularly risk-prone with respect to both physical and transition risk. This may facilitate greater public accountability of decision making of these institutions.

3. Issue ministerial level statements of expectations to clarify how public authorities and their directors should manage climate-related risks and policy priorities.

As discussed earlier, statutory obligations for public sector directors to consider climate-related risks interact with, and to some extent are conditioned by, duties and obligations flowing from other legislation, formal and informal ministerial directions, and climate policy at different levels of government. This can create ambiguity about whether, and how, duties to consider climate risk can be properly discharged by public authorities, especially in cases of real or perceived conflict with other duties or mandates. This recommendation outlines approaches for dealing with such ambiguity.

Relevant actors:

- **Ministers** across the cabinet, who will have some responsibility over the range of public authorities.
- **State and Commonwealth governments.** Clearer and higher expectations for how public authorities respond to climate risk should be one element of more ambitious whole-of-government actions to address climate risk and deliver on wider policy goals such as Australia's emissions reductions targets.

Recommendations:

Governments could issue statements of expectations or intent (at the Commonwealth level) or statements of obligations (in Victoria) which set out how public authorities are expected to discharge and report on their obligations to consider and manage climate related risks and support broader climate-related policy. These could follow the example of the Victorian Government's Statement of Obligations (Emissions Reductions), under the *Water Industry Act 1994* (Vic), which outlines the State's climate policy and commitments, sets

⁴¹ Edwards et al, *Public Sector Governance in Australia* (ANU E Press, 2012) <<https://press.anu.edu.au/publications/series/australia-and-new-zealand-school-government-anzsog/public-sector-governance>>.

emissions reductions targets for each of Victoria's water corporations, and establishes a clear process for reporting, disclosure and rectification of failures to comply with the statement. Statements of these kinds would provide greater clarity, transparency and accountability around the governance of climate-related financial risks by public authorities.

4. Consider legislative or regulatory changes to ensure consistent consideration, management and disclosure of climate risk by public sector decision makers.

As discussed earlier, there are some accountability mechanisms already in place which could be used to better highlight and hold public authority directors to account in relation to addressing climate risk. However, these mechanisms are not an ideal fit for this purpose. Several are mechanisms which are ad-hoc in nature – such as the performance audit power of auditors-general – and rely on decisions taken by, and the priorities perceived by, individuals occupying the offices of minister, auditor-general or public sector or public service commissioner at a given point in time. Other mechanisms that are currently available, such as the special inquiry power under the *PA Act* discussed earlier, are blunt instruments which may not be politically feasible. With this context in mind, policymakers should consider regulatory and legislative changes to create a framework which is more amendable for public authorities to account for climate risk.

Relevant actors:

- **Ministers** across the cabinet, who will have some responsibility over the range of public authorities.
- **State and Commonwealth governments.**

Recommendations:

Any government seeking to introduce **regulatory change** should, as a starting point, consult the relevant public sector accountability framework. These laws already include some legislated powers which could be used to make regulatory (as opposed to legislative) changes to better incorporate climate risk considerations. For instance, sections 102 and 103 of *PGPA Act* allow the Commonwealth Department of Finance to make rules in relation to public authority boards regarding 'risk oversight and management'. The Department may be able to use this existing power to create specific guidelines for how Commonwealth public authority boards manage climate risk.

A sui-generis **legislative regime** on public authority climate risk would allow governments to be more ambitious and wholistic in how they manage this issue. For instance, governments could require boards to follow a project approval processes to assess climate risk exposure for each project that the public entity pursues. Such a process might require entities to consider the implications of the project under different climate change scenarios, including the internationally-agreed goal to limit warming to well below 2°C and 'business as usual' projections of climate change based on the current global emissions trajectory (i.e. warming of 4°C or more). Alternatively, a legislative regime could direct public authorities to make decisions that are consistent with a specified emissions reductions trajectory or target, or to ensure that decision making is done in a way that is consistent with the UN's Sustainable Development Goal framework.

Legislative and regulatory changes would be the most challenging measures to introduce. However, they are useful because, unlike all the previous recommendations in this section, they would provide a systematic, consistent framework for decision making across all relevant public entities that are more likely to withstand changes of government.

Appendix 1: Detailed Legal Analysis of Commonwealth and Victorian Public Authority Directors' Duties

Commonwealth – *Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act)*

Scope of Duty	Subject of Duty	Defences?	Justiciability and consequences
<p>Section 25(1) of the <i>PGPA Act</i> details the duty of Commonwealth officials. This is similarly worded to section 180(1).</p> <p>The section states:</p> <p>An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:</p> <ul style="list-style-type: none"> (a) Were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and (b) Occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official. <p>The accountable authority of a Commonwealth entity is subject to a number of other duties under the <i>PGPA Act</i>. This includes a duty under section 15 of the <i>PGPA Act</i> to govern the entity in a way that promotes:</p> <ul style="list-style-type: none"> - Proper use and management of public resources for which the authority is responsible - Achievement of the purposes of the entity; and - The financial sustainability of the entity. 	<p>Officials (ie. accountable authority, officer, employee or member) of Cth entities (both statutory and <i>Corporations Act</i> corporations – except Cth companies) (sections 5, 10 and 25).</p> <p>Accountable authorities (ie governing body, such as a board or council) (sections 8 and 12).</p>	<p>Section 25(2) states that rules may prescribe situations in which section 25(1) will be satisfied.</p> <p>The <i>PGPA Act</i> Explanatory Memorandum states “[i]t is intended that rules made under subclause 25(2) will deal with the exercise of business judgment and reliance on advice when making decisions” (paragraph 188).</p> <p>To date, no such rules have been made.</p>	<p>Section 30 states that the appointer may terminate the employment of a person (who they have appointed) in a corporate Commonwealth entity in certain circumstances, including where that person has contravened section 25(1).</p> <p><u>Judicial review under Constitutional Writs of appointer's decision to not dismiss</u></p> <p>An application for mandamus will likely be unsuccessful, because there is no apparent duty for the appointer to consider exercising the discretion. A declaration might be possible.</p> <p>However, it is likely that only the corporation (and shareholders), relevant Minister, and officer in question will have standing.</p> <p><u>Judicial review under <i>ADJR Act 1977 (Cth)</i> of appointer's decision to not dismiss</u></p> <p>Assuming that the decision (or failure to decide) falls within the ambit of the <i>Act</i>, standing will likely be difficult to establish, and very similar to the situation under the common law, stated above.</p> <p><u>Declaration of breach of duty by official</u></p> <p>A declaration that an officer has breached a duty may be available. Where an officer's conduct is being examined, it will not merely be a hypothetical or abstract question. It also has foreseeable consequences for the officer; namely, termination. However, it is unlikely that a member of the public will have the requisite 'real interest' in whether the officer has breached their duty. It is also likely that standing would only be available to the corporation (and shareholders), the relevant Minister and officer in question.</p>

Scope of Duty	Subject of Duty	Defences?	Justiciability and consequences
			<p><u>No other liability under PGPA Act</u></p> <p>In relation to corporate Commonwealth entities, there is no civil penalty or criminal liability for breach of statutory duties in the <i>PGPA Act</i>.</p> <p>There was criminal and civil liability for breach of this duty in the <i>Commonwealth Authorities and Companies Act 1997</i> (Cth), although this was omitted from the <i>PGPA Act</i> “to avoid duplication of provisions already existing under other legislation or legal arrangements” (paragraph 65, Replacement Explanatory Memorandum, <i>PGPA Act</i>).</p>

Victoria – Public Administration Act 2004 (Vic) (PA Act)

Scope of Duty	Subject of Duty	Defences?	Justiciability and consequences
<p>Section 79(1) has a broader scope and is less detailed than section 180(1). However, it still requires a reasonable degree of care, diligence and skill. Climate change risk appears to be relevant to this duty.</p> <p>“A director of a public entity must at all times in the exercise of the functions of his or her office act-</p> <ul style="list-style-type: none"> (a) honestly; and (b) in good faith in the best interests of the public entity; and (c) with integrity; and (d) in a financially responsible manner; and (e) with a reasonable degree of care, diligence and skill; and <p>in compliance with the Act or subordinate instrument or other document under which the public entity is established.”</p> <p>It is noted that the additional term 'skill' in the formulation of the PA Act duty is unlikely to render the obligation materially different in substance to that under section 180 of the Corporations Act. Even if that term was held to imply an additional obligation on public entity directors, it would be likely operated to elevate the obligations owed by public entity directors above those in the Corporations Act. Accordingly, the differences in terminology under the two provisions would not operate to <i>derogate</i> from the standard of care owed by public entity directors.</p>	<p>Directors (a member of the board of a public entity – where board means the governing body or, otherwise, the members of the public entity) of a public entity.</p> <p>Public entities are:</p> <ul style="list-style-type: none"> - corporate or unincorporated; and - established by an Act, the Corporations Act, by the Governor in Council or by a Minister; and - if a body corporate, bodies where the right to appoint at least one half of the directors is vested in GoC or Minister; and - Those which have a public function to exercise on behalf of the State or are wholly owned by the State; and - If it does not have a public purpose other than to provide advice, it has <ul style="list-style-type: none"> o Written terms of reference; and o Is required to provide the advice or report to the Minister or Govt; and o Is declared to be a public entity for purposes of this Act by Act/subordinate instrument under which it is established or by an Order under section 5(3). <p>Section 79 (and the rest of part 5) commenced on 1 July 2005.</p>	<p>None.</p>	<p>Section 86 states that the Minister may apply to the Magistrates’ Court for an injunction that would restrain the entity or director from engaging in conduct that:</p> <ul style="list-style-type: none"> - contravenes the Act - is otherwise contrary to law. <p>Section 87 provides that the Minister responsible for the public entity may, in the name of the public entity, recover from the director the debt due in court:</p> <ul style="list-style-type: none"> - an amount equal to the profit if a profit has been made, or - an amount equal to the loss, if a loss has been suffered. <p>An application (or a failure to apply) under section 86 will not constitute a ‘decision’ under the <i>Administrative Law Act 1978</i> (Vic) and will therefore not be reviewable. It is also likely that section 87 will not be a ‘decision’. In any case, standing under the Act will likely be similar to that for constitutional writs, and will therefore be severely restricted.</p>

<p>See also <i>Code of Conduct for Directors of Victorian Public Entities 2016</i> (Code) issued by the Public Sector Commission. Public entity directors are bound by the Code pursuant to sections 40(b), 61 and 62 of the <i>PA Act</i>. The Code '<i>sets the standard of behaviour expected of directors</i>' in a manner that broadly reflects the prevailing interpretation of section 180 of the <i>Corporations Act</i>. The Code relevantly:</p> <ul style="list-style-type: none"> (a) replicates the 'public sector values' set out in section 7 of the <i>PA Act</i>. These include responsiveness (including identifying and promoting best practice) and impartiality (including acting fairly by objectively considering all relevant facts and fair criteria); (b) reiterates and expands upon the duty of care and diligence set out in section 79 of the <i>PA Act</i>, viz: <p>Directors exercise their powers with a reasonable degree of care, diligence and skill. They understand the business of the public entity and the role of the Board. They act responsibly, drawing on any knowledge they possess when considering matters before the Board.</p> <p>Directors seek and consider all relevant information and ignore irrelevant information. They base their decisions on the best information available at the time, seek further information if necessary, and accept responsibility for their actions.</p> <p>Directors ask questions about matters before the Board. They may ask management for detailed briefings on the public entity's business to inform strategic planning and risk minimisation.</p> <p>Directors regularly attend Board meetings, are actively involved in matters before the Board and consider the financial, strategic and other implications of Board decisions.</p>	<p>Division 2 (which contains section 79) only applies to public entities that were established on or after the commencement of the Part, except where an Order is made under section 75(a) stating otherwise. An order is made by the Governor in Council and published in the Government Gazette (section 75).</p>		
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Appendix 2: Examples of public authorities at the Commonwealth level¹

Entity name	Policy portfolio area	Type of public authority	Description	Establishing statute	Created
Aboriginal Hostels Limited	Prime Minister and Cabinet	Commonwealth Company	Aboriginal Hostels Limited (AHL) contributes to Indigenous Australians' quality of life through the delivery of accommodation and support services across its national network of accommodation facilities, enabling access to a broad range of education, employment, health and other services. The company has maintained its commitment to delivering short-term accommodation to Aboriginal and Torres Strait Islander people who must live away from their country to access services and economic opportunity.	<i>Corporations Act</i> company controlled by the Commonwealth	06 Jun 1973
ASC Pty Ltd	Finance	Commonwealth Company	ASC group consists of two main businesses, ASC Pty Ltd, Australia's sovereign submarine company which, as part of the Australian Submarine Enterprise with the Royal Australian Navy and Department of Defence, ensures the sovereign maintenance and capability development of the Collins Class submarine fleet. The second part of the company is ASC Shipbuilding, Australia's only builder of major steel-hulled warships. ASC Shipbuilding is the lead shipbuilder of Australia's most complex major warships, the Air Warfare Destroyers, as part of the AWD Alliance.	Company Limited by Shares	03 Nov 2000
Australian Naval Infrastructure Pty Ltd	Finance	Commonwealth Company	The Australian Naval Infrastructure Pty Ltd (ANI) is a wholly-owned Commonwealth company, bound by the <i>Corporations Act</i> and the <i>PGPA Act</i> , that operates at arms length from Government, and was prescribed as a Government Business Enterprise with effect from 1 July 2017.	Company Limited by Shares	26 Mar 2017
Australian Nuclear Science and Technology Organisation	Industry, Innovation and Science	Corporate Commonwealth Entity	The Australian Nuclear Science and Technology Organisation (ANSTO) is Australia's national nuclear research and development organisation, and the centre of Australian nuclear expertise. Its unique expertise is applied to radiopharmaceutical production, research into areas of national priority including health, materials engineering and water resource management and helping Australian industries solve complex problems. It also provides expert advice to Government on all matters relating to nuclear science, technology	<i>Australian Nuclear Science and Technology Organisation Act 1987</i>	02 Jul 1953

¹ This table provides examples of two types of public authorities (Commonwealth Companies and Corporate Commonwealth Entities) at the Commonwealth level, of which there were 89 in total at September 2018. These entities were chosen because they might be particularly impactful to or impacted by climate risk. It is an extract from the *Australian Government Organisations Register* (September 2018), which is available in full at <<https://www.directory.gov.au/reports/australian-government-organisations-register>>.

			and engineering. ANSTO operates landmark national scientific facilities, including OPAL, Australia's only nuclear research reactor, and more recently the Australian Synchrotron, for the benefit of industry, the Australian research community and all Australians.		
Australian Postal Corporation	Communications and the Arts	Corporate Commonwealth Entity	Australia Post provides postal services within Australia and between Australia and places outside Australia. Australia Post is prescribed as a Government Business Enterprise under the <i>PGPA Act</i> .	<i>Australian Postal Corporation Act 1989</i>	01 Jul 1989
Australian Rail Track Corporation Limited	Infrastructure, Regional Development and Cities	Commonwealth Company	The Australian Rail Track Corporation Limited (ARTC) was created after the Commonwealth and State Governments agreed in 1997 to the formation of a 'one-stop shop" for all rail operators seeking access to the National interstate rail network. ARTC currently has responsibility for the management of over 8,500 route kilometres of standard gauge interstate track in South Australia, Victoria, Western Australia, Queensland and New South Wales. ARTC also manages the Hunter Valley coal rail network, and a range of regional rail links, in various state jurisdictions. Over these corridors, ARTC is responsible for: - selling access to train operators; - the development of new business; - capital investment in the corridors; - management of the network; and - the management of infrastructure maintenance	Commonwealth company under the <i>Corporations Act</i>	25 Feb 1998
Australian Sports Commission	Health	Corporate Commonwealth Entity	The Australian Sports Commission (ASC) is Australia's primary national sports administration and advisory agency. The ASC is focused on getting more Australians participating and excelling in sport by: - delivering key programs in line with the Australian Government's sport policy objectives; - providing financial support and other assistance to national sporting organisations to encourage participation, deliver high performance results, and improve their capability, sustainability and effectiveness; and - building collaboration, alignment, and effectiveness within the Australian sport sector. The ASC is recognised as a world leader in encouraging participation	<i>Australian Sports Commission Act 1989</i>	01 Jun 1985

			<p>in sport, and the development of high performance sports people. Services are provided in a range of fields including:</p> <ul style="list-style-type: none"> - high performance coaching; - sport sciences; - sports information; - sports management; - facility management; - education and resources; - participation development; and - delivery of funding programs to national sporting organisations. <p>The ASC is governed by a board of commissioners appointed by the Australian Government. The board determines the ASC's overall direction, decides on the actual allocation of resources, develops policy for delegated decisions, and is accountable to the Minister of Sport and to Parliament.</p>		
Clean Energy Finance Corporation	Environment and Energy	Corporate Commonwealth Entity	The Clean Energy Finance Corporation (CEFC) mobilises capital investment in renewable energy, low-emission technology and energy efficiency projects in Australia.	<i>Clean Energy Finance Corporation Act 2012</i>	03 Aug 2012
Comcare	Jobs and Small Business	Corporate Commonwealth Entity	<p>Comcare partners with workers, their employers and unions to keep workers healthy and safe, and reduce the incidence and cost of workplace injury and disease. Comcare implements the Australian Government's policies in federal workplaces to drive social inclusion and productivity. The three outcomes that guide Comcare are:</p> <ul style="list-style-type: none"> - the protection of the health, safety and welfare at work of workers covered by the Comcare scheme through education, assurance and enforcement; - an early and safe return to work and access to compensation for injured workers covered by the Comcare scheme by working in partnership with employers to create best practice in rehabilitation and by providing quick and accurate management of workers' compensation claims; and - access to compensation for people with asbestos-related diseases where the Commonwealth has a liability. <p>In addition to the above outcomes Comcare also supports the Seacare Authority in the delivery of its statutory functions.</p>	<i>Safety, Rehabilitation and Compensation Act 1988</i>	22 Jun 1992

Commonwealth Superannuation Corporation	Finance	Corporate Commonwealth Entity	<p>The Commonwealth Superannuation Corporation (CSC) provides superannuation services and products to Australian Government employees, employers and Australian Defence Force members and their families.</p> <p>CSC is trustee of five regulated superannuation schemes:</p> <ul style="list-style-type: none"> - Commonwealth Superannuation Scheme (CSS) - Public Sector Superannuation Scheme (PSS) - Public Sector Superannuation accumulation plan (PSSap) (Commonwealth Superannuation Corporation retirement income (CSCri) is available through the PSSap) - Australian Defence Force Superannuation Scheme (ADF Super), and - Military Superannuation and Benefits Scheme (MilitarySuper) <p>CSC administers six exempt public sector schemes that are not regulated under the <i>Superannuation Industry (Supervision) Act 1993</i>:</p> <ul style="list-style-type: none"> - the Australian Defence Force Cover Scheme (ADF Cover); - Defence Force Retirement and Death Benefits (DFRDB) Scheme; - 1922 Scheme; - the Defence Forces Retirement Benefits (DFRB) Scheme; - Papua New Guinea (PNG) Scheme, and - the Defence Force (Superannuation) (Productivity Benefit) Determination (DFSPB). <p>CSC is supported by an administrator for its accumulation plans, a custodian and other specialist service providers, including leading Australian and international investment managers.</p>	<i>Governance of Australian Government Superannuation Schemes Act 2011</i>	01 Jul 2011
Cotton Research and Development Corporation	Agriculture and Water Resources	Corporate Commonwealth Entity	<p>The Cotton Research and Development Corporation (CRDC) was established by the Australian Government to work with industry to invest in research, development and extension (RD&E) for a more profitable, sustainable and dynamic cotton industry. CRDC is based in Narrabri, the centre of one of Australia's major cotton growing regions and the location of the major cotton research facility, the Australian Cotton Research Institute. The purpose of the CRDC is to support the performance of the cotton industry: helping to increase both productivity and profitability of our growers.</p>	<i>Primary Industries Research and Development Act 1989</i>	01 Oct 1990
Defence Housing Australia	Defence	Corporate Commonwealth Entity	<p>Defence Housing Australia (DHA) provides housing for members of the Australian Defence Force and their families. Formerly known as the Defence Housing Authority (renamed in 2006), DHA reports to the Minister for Defence and the Minister for Finance. DHA is</p>	<i>Defence Housing Australia Act 1987</i>	01 Jan 1988

			prescribed as a Government Business Enterprise under regulation 4 of the <i>Commonwealth Authorities and Companies Regulations 1997</i> .		
Director of National Parks	Environment and Energy	Corporate Commonwealth Entity	<p>The Director of National Parks is a corporation established under the <i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)</i>, the principal Commonwealth legislation for establishing and managing protected areas. The corporation is constituted by the person appointed to the office named the Director of National Parks. Under the <i>EPBC Act</i>, the Director of National Parks' responsibilities include:</p> <ul style="list-style-type: none"> - managing Commonwealth reserves and conservation zones; - protecting biodiversity and heritage in Commonwealth reserves and conservation zones; - carrying out research relevant to Commonwealth reserves; - cooperating with other countries to establish and manage national parks and nature reserves in those countries; and - making recommendations to the Australian Government Minister for the Environment. <p>Commonwealth reserves that are wholly or partly on Indigenous people's land are managed in conjunction with a Board of Management. There are also Advisory Committees which provide advice to the Director on the management of other reserves. These boards and committees play crucial roles in determining the policies and priorities for the management of each protected area.</p>	<i>Environment Protection and Conservation Act 1999</i>	13 Mar 1975
Grains Research and Development Corporation	Agriculture and Water Resources	Corporate Commonwealth Entity	<p>The Grains Research and Development Corporation (GRDC) is one of the world's leading grains research organisations, responsible for planning, investing in and overseeing research development and extension to deliver improvements in production, sustainability and profitability across the Australian grains industry.</p> <p>GRDC is a statutory corporation, established in 1990 under the <i>Primary Industries Research and Development Act 1989</i>. GRDC's primary objective is to drive the discovery, development and delivery of world-class innovation to enhance the productivity, profitability and sustainability of Australian grain growers and benefit the industry and the wider community.</p> <p>GRDC coordinates and funds research and development (R&D) activities, and monitors, evaluates and reports on the impact of R&D</p>	<i>Primary Industries Research and Development Act 1989</i>	01 Oct 1990

			activities on the grains industry and the wider community. GRDC also facilitates the dissemination, adoption and commercialisation of the results of R&D.		
Infrastructure Australia	Infrastructure, Regional Development and Cities	Corporate Commonwealth Entity	<p>On 1 September 2014, amendments to the <i>Infrastructure Australia Act 2008</i> came into effect. The amendments re-established Infrastructure Australia (IA) as a separate entity under the <i>PGPA Act</i>, and provided for an independent governing entity that is both legally and financially separate from the Commonwealth, including a new Board.</p> <p>The amendments specifically created a Chief Executive Officer (CEO) position that reports to a newly created Board, effectively abolishing the existing Infrastructure Coordinator role and the IA Council. In accordance with other Government boards, the CEO position will be responsible for implementing the Board's strategic objectives. It requires IA to:</p> <ul style="list-style-type: none"> - develop a 15 year infrastructure plan for Australia based on national, state and local infrastructure priorities and revised every five years; - undertake new evidence-based audit of Australia's current infrastructure asset base, in collaboration with State and Territory Governments that will be updated every five years and fed into the 15 year plan; - develop top down priority lists at national and state levels; - evaluate both economic and social infrastructure proposals and publish the justification for prioritisation, including benefit costs analysis; - provide a quarterly publication summarising all project proposals evaluated; and - promote public awareness of matters arising from its functions. 	<i>Infrastructure Australia Act 2008</i> , part 2	01 Sep 2014
Moorebank Intermodal Company Limited	Infrastructure, Regional Development and Cities	Commonwealth Company	<p>The Moorebank Intermodal Company Limited (MIC) was established to facilitate the development of an intermodal terminal at Moorebank in Sydney's south-west. MIC is a Government Business Enterprise (GBE), which is incorporated under the <i>Corporations Act</i>, and operates under the <i>PGPA Act</i>. MIC is wholly owned by the Australian Government, which is represented by the Minister for Infrastructure and Transport and the Minister for Finance as MIC's two Shareholder Ministers.</p> <p>MIC will oversee the development of the Moorebank Intermodal</p>	Commonwealth company under the <i>Corporations Act</i>	13 Dec 2012

			<p>Terminal. MIC aims to optimise private sector expertise and investment, through a competitive process, to develop and operate the intermodal terminal and meet the project's objectives.</p> <p>MIC's objectives for the project are to:</p> <ul style="list-style-type: none"> - boost national productivity over the long-term through improved freight network capacity and rail utilisation; - create a flexible and commercially viable common user facility for rail operators and other terminal users; - attract employment and investment to south-western Sydney - achieve sound environmental and social outcomes that are considerate of community views; and - optimise value for money for MIC having regard to the other stated project objectives. 		
Murray-Darling Basin Authority	Agriculture and Water Resources	Corporate Commonwealth Entity	<p>The Murray-Darling Basin is Australia's most iconic and largest river system. It is also one of the largest river systems in the world and one of the driest. It is divided into the northern Basin (Darling system) and the southern Basin (Murray system). The Murray-Darling Basin Authority (MDBA) undertakes activities that support the sustainable and integrated management of the water resources of the Murray-Darling Basin in a way that best meets the social, economic and environmental needs of the Basin and its communities.</p> <p>MDBA leads the planning and management of Basin water resources, and coordinate and maintain collaborative long-term strategic relations with other Australian Government, Basin state government and local agencies; industry groups; scientists and research organisations. The <i>Water Act 2007</i> requires MDBA to undertake a number of functions:</p> <ul style="list-style-type: none"> - advise the Commonwealth Minister for Water on the accreditation of state water resource plans; - develop a water rights information service to facilitate water trading across the Basin; - manage water sharing between the states; - manage all aspects of Basin water resources, including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the Basin's water resources; - measure and monitor water resources in the Basin; 	<i>Water Act 2007</i> , section 171	03 Mar 2008

			<ul style="list-style-type: none"> - gather information and undertake research; and - engage and educate the community in the management of the Basin's resources. 		
NBN Co Limited	Communications and the Arts	Commonwealth Company	<p>"NBN Co Limited (NBN Co) is a wholly-owned Commonwealth company - a Government Business Enterprise - and is represented by Shareholder Ministers - the Minister for Communications and the Minister of Finance.</p> <p>The NBN Co goals are to deliver Australia's first national wholesale-only, open access broadband network to all Australians."</p>	<i>National Broadband Network Companies Act 2011</i>	09 Apr 2009
National Housing Finance and Investment Corporation	Treasury	Corporate Commonwealth Entity	<p>The National Housing Finance and Investment Corporation (NHFIC)'s mission is to improve housing outcomes for all Australian by:</p> <ul style="list-style-type: none"> - strengthening efforts to increase the supply of housing; - encouraging investment in housing (particularly in the affordable housing sector); - providing loans, grants and investments that complement, leverage or support Commonwealth, state or territory activities relating to housing, and - contributing to the development of the scale, efficiency and effectiveness of the community housing sector. <p>The NHFIC has two operations:</p> <ul style="list-style-type: none"> - making loans, investments and grants for enabling infrastructure for housing that supports new housing, particularly affordable housing through the \$1 billion National Housing Infrastructure Facility; and - providing cheaper and longer-term financing to registered community housing providers through Australia's first national Affordable Housing Bond Aggregator. 	<i>National Housing Finance and Investment Corporation Act 2018</i>	30 Jun 2018
National Transport Commission	Infrastructure, Regional Development and Cities	Corporate Commonwealth Entity	<p>The NTC performs the role of an expert adviser to the Transport and Infrastructure Council on national regulatory reform development, implementation and evaluation in the Australian land transport sector, principally in respect of the national regulators for heavy vehicles and rail safety.</p> <p>The Council, a ministerial council formed by the Council of Australian Governments, is responsible for the NTC, as an inter-jurisdictional transport body covered by an Intergovernmental Agreement (IGA). The Commonwealth is the host jurisdiction for the NTC.</p>	<i>National Transport Commission Act 2003</i> , section 5 pursuant to the Intergovernmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport 2003	15 Jan 2004

Northern Australia Infrastructure Facility	Industry, Innovation and Science	Corporate Commonwealth Entity	The Northern Australia Infrastructure Facility (NAIF) offers up to \$5 billion over 5 years in concessional finance to encourage and complement private sector investment in infrastructure that benefits Northern Australia. This may include developments in airports, communications, energy, ports, rail and water.	<i>Northern Australia Infrastructure Facility Act 2016</i>	01 Jul 2016
Regional Investment Corporation	Agriculture and Water Resources	Corporate Commonwealth Entity	The Regional Investment Corporation (RIC) will be the national administrator for farm business concessional loans and the National Water Infrastructure Loan Facility. The RIC will commence delivering its functions from 1 July 2018. The RIC was established and is governed by the <i>Regional Investment Corporation Act 2018</i> , and is a corporate Commonwealth entity within the Agriculture and Water Resources portfolio.	<i>Regional Investment Corporation Act 2018</i>	08 Mar 2018
Sydney Harbour Federation Trust	Environment and Energy	Corporate Commonwealth Entity	The Sydney Harbour Federation Trust is an agency created by the Australian Government responsible for vision planning and management of Sydney Harbour sites including Cockatoo Island and Snapper Island in Sydney Harbour, Woolwich Dock and Parklands in Woolwich, HMAS Platypus in Neutral Bay, Georges Heights, Middle Head and Chowder Bay in Mosman, North Head Sanctuary in Manly, Marine Biological Station in Watsons Bay and Macquarie Lightstation in Vaucluse. The Harbour Trust's vision is to create extraordinary places on the world's best harbour that are inspiring, loved and shared. The Harbour Trust provides a lasting legacy for all Australians through conservation, remediation and the adaptive re-use of places in our care. These public spaces and parklands now offer major events, exhibitions, venue hire, accommodation, tours and business tenancy.	<i>Sydney Harbour Federation Trust Act 2001</i>	20 Sep 2001
Tourism Australia	Foreign Affairs and Trade	Corporate Commonwealth Entity	Tourism Australia is the Australian Government agency responsible for the promotion of Australia as a destination for leisure and business tourism, including for business events. Tourism Australia's marketing, trade and consumer research programs are focused on 17 key international markets with the greatest potential to deliver on the Tourism 2020 policy objective to increase overnight visitor expenditure to between \$115 billion and \$140 billion by 2020.	<i>Tourism Australia Act 2004</i>	01 Jul 2004
WSA Co Limited	Infrastructure, Regional Development and Cities	Commonwealth Company	WSA Co was established by the Australian Government to develop and operate Western Sydney Airport (WSA) at Badgery's Creek. WSA Co is required to execute its responsibilities in accordance with a Project Deed with the Government in order to open the WSA by 2026.	Commonwealth company under the <i>Corporations Act</i>	07 Aug 2017

			<p>In delivering the WSA, WSA Co's objectives are to:</p> <ul style="list-style-type: none">- improve access to aviation services in Western Sydney;- resolve the long-term aviation capacity issue in the Sydney basin;- maximise the value of a WSA as a national asset;- optimise the benefits of WSA for employment and investment in Western Sydney;- effectively integrate with new and existing initiatives in the Western Sydney area; and- operate on commercially sound principles.		
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