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Advancing together

RULE OF LAW UPDATES AND PERSPECTIVES

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Advancing together

RULE OF LAW UPDATES AND PERSPECTIVES

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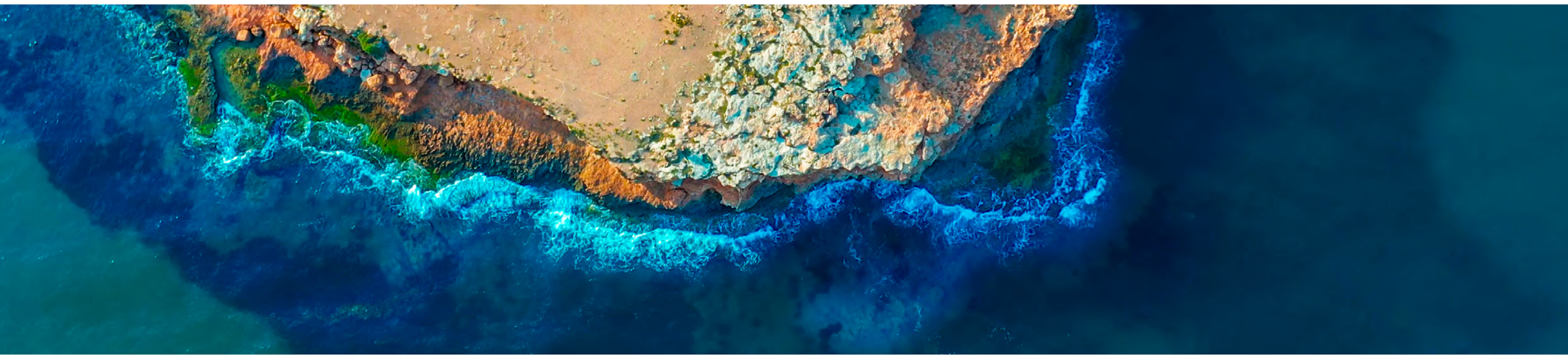

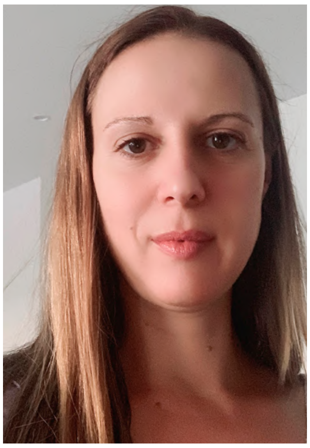

ANTOANETA DIMITROVA
HEAD OF CURRENT AWARENESS
LexisNexis Pacific

A message from Antoaneta

Hello, and I am thrilled to welcome you to the first edition of Advancing Together this year. Six months in, already I can see 2022 will not be short of change, disruption, innovation or stimulating debate when it comes to the Rule of Law.

In this edition we explore the recent surge of Environmental, Social, Governance (ESG) focus in the corporate responsibility arena, as stakeholders including employees, customers, shareholders, third party suppliers and the community place growing expectations on corporations to be ever more transparent about their operations that go way beyond climate change and conservation.

Not entirely new as a concept, ESG has picked up pace dramatically, globally and locally, as it embraces all that is typically not captured in mandates for financial or commercial reporting. This new focus has also captivated Australia, as business and different industries try to anticipate regulation likely to emerge as priority for Governments everywhere.

This edition is full of insight and commentary on the current state of play, likely challenges, and the impact ESG may already be having on business in our region. From articles exploring the future of ESG compliance and reporting, as well as the drivers behind compliance through to unpacking food waste solutions and the circular economy this issue will provide some much needed food for thought as the debate around ESG ramps up.

I also invite you to read through the innovative solutions LexisNexis is coming up with to support the effort of staying abreast ESG developments this year, as the shift in expectations from corporate responsibility isn't going away any time soon. Just looking at climate change for example, Australia's newly minted Government indicated legislation to enact new emissions targets would be first cab off the rank for the 47th Parliament, when it returned in July. This is to align with Governments across the globe setting aggressive emissions reduction targets. Emissions target disclosure is something regulators are increasingly looking at in addition to rising class action litigation holding fossil fuel business, or public service figures approving new projects to account. The strongest indication this trend isn't going away comes from the London School of Economics listing Australia second only to the US for climate change litigation in their 2021 Global Trends in Climate Change Litigation Policy Report published by the LSE Grantham Research Institute on Climate Change and the Environment.

So, I hope you enjoy reading through this issue of Advancing Together, as I look forward to a continuing partnership with the astute thought leaders and contributors to our publication who work tirelessly to advance their industry, protect the rule of law and the transparency it naturally shines on complex but important issues. Bringing their insight to light here is always immensely satisfying.

Antoaneta

The future of ESG reporting and compliance

Patrick Breen
LexisNexis General Manager
Product & Content - Pacific

Over the past couple of years there has been a significant increase in focus on Environmental, Social, Governance (ESG), particularly for major corporations. PwC found that 87% of ASX200 companies publish substantive level ESG information in 2021 vs. 58% in 2020[1].

To some extent, this is not a new field, with most corporations providing standalone Corporate Social Responsibility (CSR) reports for many years. For the top 10 ASX companies, the first report you can find online is from 2001, with the average start point of 2010.

The key difference between CSR and ESG reporting is that the latter is focused on reportable outcomes, rather than the framework and models to drive accountability. This subtle distinction has a significant impact in how corporations drive performance. Within a corporation, once something is measurable (a metric), it is the focus for driving performance and constant improvements, doubly so when it is an externally reported metric.

With mandatory ESG reporting laws increasingly coming in around the world such as the Task Force on Climate-Related Financial Disclosures (TCFD) reporting for the more than 1,300 UK companies as of 2022, it may seem like we are entering a new age of corporate focus and performance on non-financial, societal metrics. This may, however, not be the case in reality. We still see financial decisions driving corporate agendas and decision making, typically harming society, the Rule of Law, and behavioral norms.

1 https://www.pwc.com.au/assurance/esg-reporting-australia-2021.pdf

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Examples of these include the P&O Ferry sackings in the UK, and the destruction of the rock shelters at Juunkan Gorge by Rio Tinto. In the latter case, the outcry has driven the resignations of the Chairman, CEO, and two other executives. These high-profile events also damage the reputations of the companies involved significantly, similar in many respects to other negative compliance events (bribery scandals).

This then asks what the potential evolutionary pathways for corporate ESG regulations are, and will we ever get away from lip service and greenwashing. Many existing compliance regimes, such as the Modern Slavery Act 2018, and the UK's Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, are based on key strands of how we view ESG today. Looking at the roll-out, evolution, and impact of different compliance regimes enables us to better understand what might happen, both within a country, and globally as ESG becomes increasingly mandated and regulated.

Starting within a country, once mandatory reporting is put in place for the largest companies, we should expect that this will gradually cascade through smaller companies as the regime matures and becomes simpler to administer. The metrics being covered by this mandatory regime would be likely to expand over time as well. This is like other reporting and compliance rollouts we observe (e.g., single use plastic bans).

Once we have significant coverage the natural next step for governments wishing to drive the ESG agenda (a potential vote winner) will be targets and compliance regimes. This has already happened to a limited extent with carbon emissions and the associated trading regimes (e.g., European Union Emissions Trading Scheme (EU ETS)). While the success of these regimes can be debated, it is when they start to have significant teeth and ratchet mechanisms that they drive the greatest behavioral changes. One only has to look at the impact of the EU's General Data Protection Regulation (GDPR) on data privacy standards globally to see the effect that high impact compliance regimes have. This will likely be an intense area of corporate lobbying to drive lower impact compliance regimes or to create lower impact mechanisms (e.g., poorly designed trading regimes).

Given that some governments are likely to drag their feet and try not to drive mandatory ESG reporting or compliance regimes, it is important to look globally as to how ESG will spread. This is likely to be a more gradual process, being driven by trailblazing governments and supra-national bodies impacting corporations globally. This global spread may evolve in several different ways, which is likely to depend on the regime set-up and related risk levels. Through the use of other compliance regimes we have seen three architypes occur:

- Extraterritorial provisions: Examples here include the US Foreign Corrupt Practices Act (FCPA) and UK Modern Slavery regime, where all companies with any operations in these jurisdictions need to comply with these laws globally. This will drive the fastest spread of ESG compliance globally;

- Operational overheads: Examples here include GDPR and California Consumer Privacy Act (CCPA), where it is easier for many companies to use the strictest requirements to streamline their global operations due to the cost of compliance and non-compliance. While not strictly extraterritorial, these regulations also trailblaze in showing other governments what is possible, driving new regimes;

- Low cost / reporting only: Examples here unfortunately include gender pay gap reporting and other lower-touch compliance regimes that are focused on a single country. Even within multinational companies they may ignore these regulations outside of the countries they take effect in, potentially due to perceived risks or costs of compliance. This architype has the lowest global spread velocity, however by showing what is possible it can drive the next wave of shareholder and investment focus for ESG.

The big question is, what's next for Australia? The incoming Labor Government has indicated that it wished to introduce mandatory ESG reporting frameworks that align with international standards. While there are limited details on this at this stage it is likely to take the form of the TCFD or International Sustainability Standards Board (ISSB) sustainability and compliance disclosures. With other ESG legislation and regulation also likely coming into force locally (e.g., Modern Slavery, Gender Pay Equity), we may be about to experience a new focus on ESG within Australia, which will help to drive impacts globally.

Drivers of ESG compliance

Dr Rachel Baird
Director IcebergSRC,
GAICD, FGIA*

Environmental, Social and Governance (ESG) is firmly on corporate agendas in 2022. A combination of forces has placed it there, with economic and social factors currently proving more effective than regulatory measures at influencing corporate behaviour. This is because a patchwork of laws regulates specific activities that would fall within an ESG framework (e.g. pollution and employee conditions) and there is no mandatory ESG reporting obligation in Australia. ESG compliance has therefore been difficult to pin down (in large part because the term is so nebulous) and stakeholders have pursued novel claims in the absence of government regulation. Despite the regulatory gap, businesses which approach ESG with a strict rule of law mindset, will be exposed to increasing risk.

The regulatory landscape

ESG is an umbrella term for many concepts and has been appropriated to support a broad range of causes from sustainable investment to risk management to corporate social responsibility. Obligations which fall under this umbrella cut across domestic and international laws which increases compliance complexity. Understanding varying obligations covering disparate issues from worker benefits to waste management, and the extent to which they are applicable to operational activities, can be an expensive and time-consuming undertaking. Organisations seeking to work out which matters require individual legal compliance (pollution, land use, biodiversity, worker safety, wages and benefits) and which are currently optional (ESG reporting, community programs) need to seek expert advice.

Further, fines for regulatory non-compliance have long been viewed by many organisations as a 'cost of doing business'. This is a process whereby the cost of compliance or lost revenue due to production shutdowns has been weighed against the possibility of prosecution and penalties. While fines have increased over the past two decades, the balance has not tilted, and the mindset has

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stubbornly prevailed. It is not so much a case of being above the rule of law, rather having a disregard for the rule of law.

There is increasing pressure on governments to regulate more directly on ESG. New Zealand and the UK have moved to mandate climate risk reporting for banks, asset managers and insurers. In this way elements of ESG must be incorporated into business strategy and operations to comply with disclosure obligations. In Australia the picture is less clear. With a change in government there may be increased regulation addressing matters such as emissions limits or transition plans for heavy polluters, tougher approval thresholds on new coal or gas projects and investment in green technology. The regulators are definitely taking interest. For example, ASIC has just published an Information Sheet to guide superannuation and investment product offerors on how to avoid greenwashing when offering sustainability related products.[1] However, for now the regulatory environment still permits corporate fence sitting.

The business landscape

Within the context of environmental and social impacts, the disregard for the rule of law has been evidenced by actions such as the destruction of the Juukan Gorge caves in 2020 and underpayment of staff by several major companies. There are other factors now driving corporate behaviour including reputational risk, litigation, finance challenges and stakeholder pressure. These factors have been successful levers in holding corporates to account as evidenced by the recent Federal Court claims filed against Santos and the Commonwealth Bank by investors alleging greenwashing and seeking to verify the accuracy of ESG related claims.[2] In January 2022, the Environment Centre (NT) made a greenwashing claim in relation to Santos' Barossa gas project plans[3] calling for a full environmental impact assessment to assess emissions in relation to company commitments to net zero targets. This litigation risk also extends to financers and business associates and it has not been limited to corporates, with the Commonwealth Government drawn into a novel duty of care claim which was ultimately rejected by the full Federal Court.[4]

It is not just litigation which increases ESG risk for corporates. Institutional investment associations such as the Australian Council of Superannuation Investors, release annual reports assessing the quality of ESG reporting by the ASX200 companies. For those businesses seeking to stay ahead of bare compliance with the law, the risk of greenwashing claims and resultant reputational damage, is a live risk. As the ASIC guide notes, care will be required to ensure all ESG statements are accurate, clear and verifiable.

The way forward

Risk and compliance programs must include a multitude of ESG factors. Compliance with the law will be a minimum requirement, with the option of paying the fine rather than observing the rule of law, off the table. Shareholder capitalism which drives companies to focus on short term gains is making way to stakeholder capitalism. The longer-term focus of stakeholder capitalism enables companies to make strategic decisions that relate to purpose and outcomes. This draws environmental and social considerations into corporate strategy with an increasing focus on social impact. When governments do act to regulate ESG compliance[5] more directly, businesses will need to be compliant ready.

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1 ASIC, INFO271. This sheet refers to the Financial Stability Board's Taskforce on Climate-related Financial Disclosures (TCFD) and the proposed standards published by the International Sustainability Standards Board on climate-related and general sustainability disclosures.

2 *Abrahams v Commonwealth Bank of Australia* [2021] FCA and Australasian Centre for Corporate Responsibility v Santos Ltd. NSD 858/2021.

3 MEDIA RELEASE: Santos attempt to greenwash the Barossa project, says environment group - Environment Centre NT (ecnt.org.au)

4 *Minister for the Environment v Sharma* [2022] FCAFC 35.

5 ASIC INFO 271 encourages voluntary disclosures in accordance with the TCFD framework.

Unpacking food waste solutions: Exploring innovative policy options to accelerate the transition towards the circular economy

Matthew Kronborg
Grainstone
Founder & CEO*

Around 40% of all food produced is wasted each year, representing about 1.3 billion tonnes of unwanted nutritional biomass and associated emissions. Up to half of this impact is from the byproduct streams of food and beverage manufacturing.

Most manufacturing companies that create these food waste streams cannot do anything more valuable with it, without diverging their focus from their core business processes. They can and often pursue core process efficiency to minimise byproduct volumes, but there are diminishing returns and engineering limits to what can be done. Most do not have the strategic appetite or high-risk financial capacity to do deep innovation working up all new solutions for their byproducts. Nor do they individually have the feedstock volumes to justify investment in this and subsequent large scale processing lines. As a result, it is easier just to keep sending byproduct to waste.

Over the past few years foodtech startups are popping up around the world to help solve this problem. With exciting innovative technologies, they can better valorize byproduct streams and step them up the food recovery hierarchy. In doing so, providing higher economic, social, and environmental benefit from each tonne. These startups are best positioned to work quickly and nimbly, amortize the R&D costs from entire feedstock streams across geographic regions, and enable needed commercial collaborations that could not otherwise occur. Consequently, by the time they are ready for major capital investment and supply agreements from the larger value chain partners, the risk has been reduced to levels acceptable to corporations. So far so good.

But behind this lays a challenge – it is difficult, slow, and complex to revolutionise global systems, particularly when there is capital infrastructure intensity. Solar and wind have disrupted fossil electricity production, and Elon Musk has disrupted the internal

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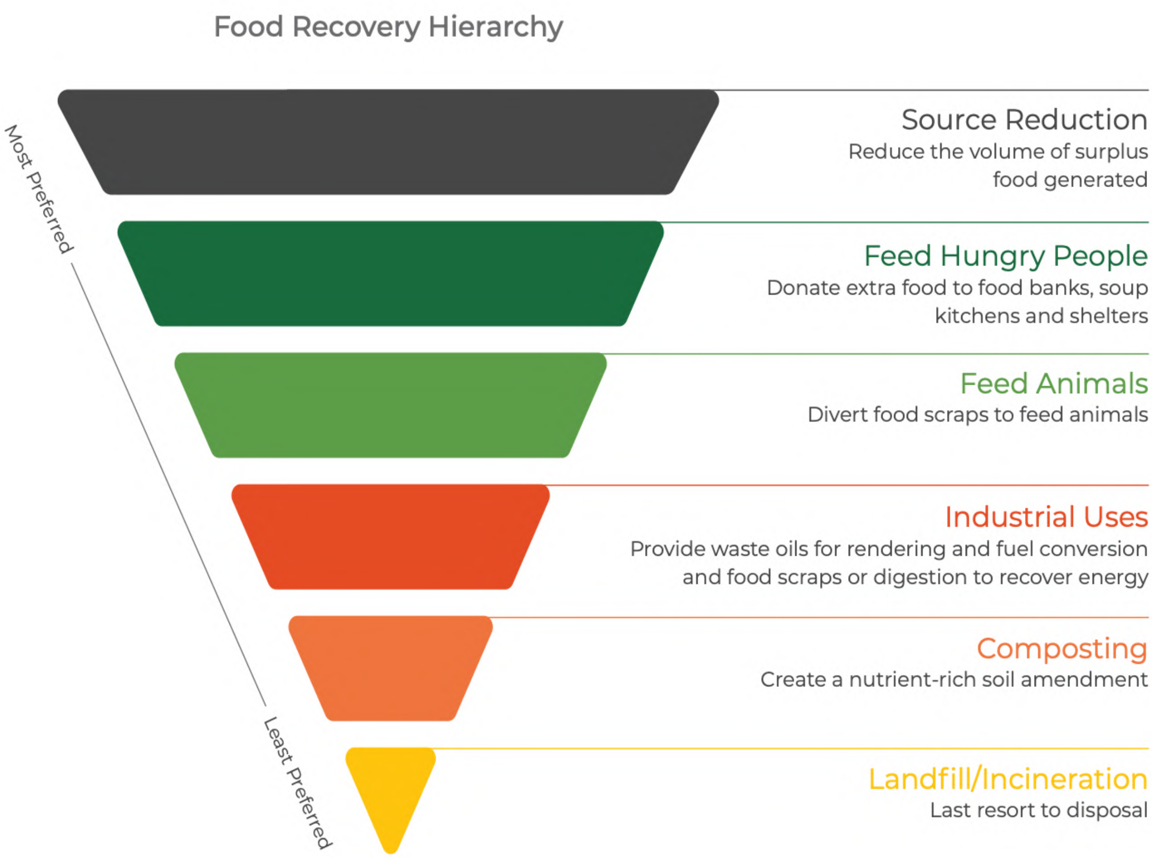

combustion engine, but it has taken decades and needed major support from government.

The UN Sustainable Development Goal 12.3, which virtually every nation has signed, targets halving of global food waste by 2030 – less than eight years from now. The Paris Agreement's target to curb global warming to 2 degrees will require zero net emissions by mid-2038 according to Oxford University – about 15 years from now. Compounding this in the nearer term, rapidly rising commodity food prices risk pushing millions back into famine according to the World Food Programme.

We live in a historic period of human evolution as we face the sustainability grand challenge, where failure is not an option. To enable and accelerate the step changes needed to fundamentally cut global food system inefficiency, governments must temporarily and carefully intervene. This focus should be on co-supporting the deployment of major advanced food manufacturing infrastructure that closes the loop towards the circular economy. Once deployed, the free market will be able to prosper at a much higher level of efficiency and interventions can be withdrawn.

Some innovative policy options available to governments to accelerate step change efficiency improvement in the global food system include:

1. Support system level research into food waste – Conduct a mass resource baseline of the domestic food system and its waste streams. Publish this research and high-level options analysis to guide government and investor support towards where it can have the most value and systemic impact towards switching to an efficient circular economy. Update the numbers annually. Consider the food recovery hierarchy (diagram above) to help this policy development.

2. Require food waste transparency – Companies generally do not like to talk about their waste and negative impact, unless pushed by regulators or investors. Compel companies to accurately disclose their byproduct streams annually. For companies that refuse or claim that disclosing their waste streams risks forcing them to disclose competitive insights, this would be a good market signal to investors that they are uncompetitive. When the information is disclosed, market forces can start providing solutions and efficiency. What gets measured gets done.

3. Use it or lose it – Lessons can be drawn from how the minerals sector handles mining tenement exploration and development rights; if they don't use it, they lose it. Companies could be given a fixed period to develop and implement circular economy solutions for the upcycling of their byproduct streams. This will encourage them to fix the issues themselves or at least openly tender for solutions. If companies are still not motivated to act

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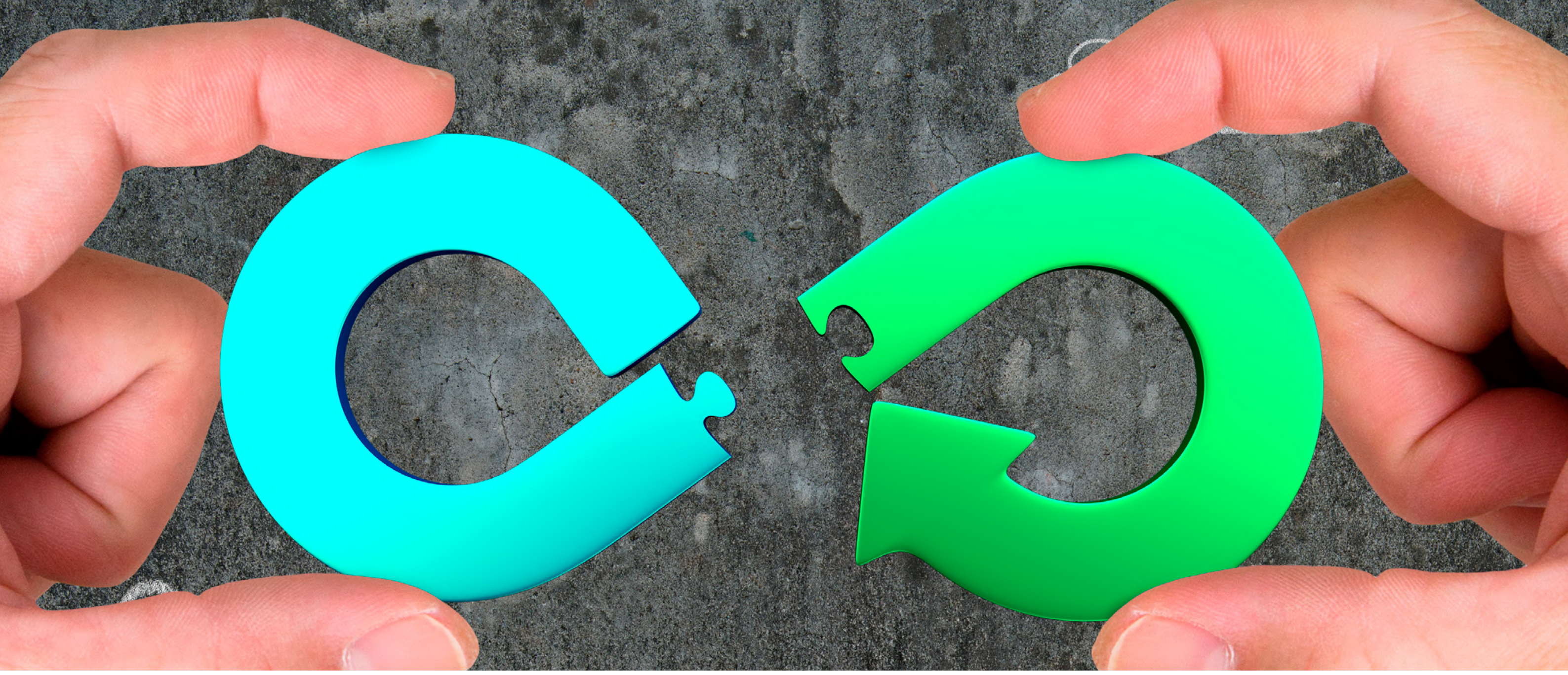

and an associated mass reduction target is not met, their waste streams could be auctioned to the highest bidder for a given timeframe with the proceeds to be split between government and the wasteful company. Meanwhile, if the byproduct buyer has not met sufficient thresholds demonstrating movement towards its solution in a given timeframe it loses the right, pays a penalty and the auction is conducted again.

4. Zero price fossil byproduct streams – There are some industrial outputs, where creating a market for the sale of the byproduct streams has negative unintended consequences accelerating releases into the environment. For example, fossil-based flue gas streams, flare gas or fossil-based chemical byproducts. Supporting the sale of these props up the extraction of fossil fuels that should be kept in the ground. While implementing mechanisms to get fossil greenhouse gas emitters to pay carbon taxes has eluded most policy makers, an easier option would be to not allow them to create new profit streams from their byproducts. Governments could even auction these fossil byproduct streams and hypothecate funds raised towards circular economy efforts, in doing so maximising the efficient use of fossil byproducts without incentivising them.

5. Encourage cooperation to establish new food waste value chains – Anti-competition regulation is very important but at times it chills players from collaborating to solve their industry sector byproducts. Some of the most promising step change solutions are simply not commercially viable until feedstocks in geographic areas are merged from multiple competitors and sufficient scales of economy are reached. Consider policy adjustment and guidance to accommodate this dilemma. Run local industry sector roundtables to help break the ice.

6. Support piloting regional food waste processing hubs – Moving tonnes of low value wet nutritional biomass from multiple point sources is expensive and complex. Waste disposal transport logistics is inefficient in most systems – this creates costs that can limit the commercial viability of upcycling solutions. Aggregated feedstocks create new value chain options. Farmers discovered this long ago leading to district livestock saleyards and central graineries, where the pricing is public and auctions are efficient, this needs to happen with industrial byproduct streams. Automated electric heavy trucking is expected to be commonplace within a decade which will further improve the commercial viability of such facilities.

7. Co-invest in food upcycling production sovereign capacity – The scale of food upcycling manufacturing infrastructure needed to compete on price with incumbent products is beyond the capacity of most private investors. Deep government co-funding will incentivise and accelerate deployment of solution infrastructure. Consider both grant and equity investment options given the national benefits that can be derived.

8. Sustainable procurement – Use the buying power of government to support the future we want. Encourage food and beverage procurement teams in departments such as Defense and Health to closely explore opportunities in this area.

The way forward

We need to accelerate market-based industrial symbiosis to reach a perpetual circular economy within urgent time frames. This will require deep integration of industry-led technological revolution with creative transformative public sector policy to overcome the current challenges. Around the world foodtech startups, such as Grainstone, look at every food processing byproduct stream as an underutilised resource to create a hopeful, sustainable and prosperous future. How governments step up globally to manage this problem now is key to securing this positive way forward for current and future generations.

*Grainstone is known for making the world's most healthy, delicious, and sustainable.

Four key factors impacting your ESG score

Real-time coverage

Many of the top ESG rating firms factor media coverage into their scores, which means staying on top of your company or brand's ESG-related coverage is extremely important. The Nexis ESG tracker includes a simple search bar that allows you to access ESG-related news featuring your company—or your competitors—with the click of a button. This information is pulled in real-time from the Newsdesk platform, which taps into nearly 100K news sources from around the globe, written in over 100 languages.

The top 15 stories offered for free via the tracker are just a small sampling of the data Newsdesk has to offer, but they will allow you to see how quickly and efficiently you can measure the impact of your ESG efforts via the full service.

Real-time ESG trends

Newsdesk's tracker also allows you to literally see ESG-related trends developing in real-time. The word cloud below highlights how wages & salaries have been a predominant focus for recent stories about executive compensation. Given this trend, it's likely important for your company or brand's messaging to include points that address the company's executive pay structure ASAP—especially if there are any existing disparities to balance. Newsdesk can also be used to dive deeper into specific ESG topics.

The "Top Stories on Equal Pay" section of the tracker highlights this well, identifying the six top stories driving the conversation around the pay gap—a topic at the forefront of most brands' ESG strategies. Women's sports have been a major theme in the past month, with three of the top six stories focusing on the U.S. Women's National Soccer Team and the Women's World Boxing Championships.

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Inspiration for improvement

Newsdesk not only allows you to research which companies are receiving the most favorable ESG-focused coverage but instantaneously visualizes the data for quick and easy comprehension. As the chart below shows, major brands such as Bloomberg, Deloitte and Capital One have all shared a significant slice of positive diversity and inclusion coverage in recent weeks.

Understanding which companies are securing positive coverage for their sustainability efforts can be extremely valuable. Positive coverage for other brands—especially if they're in a similar industry—can inspire potential tactics to deploy within your own organization, as well as offer best practices for telling the story in the press.

Safer investments

Attracting new investors and keeping existing ones happy is a huge part of most PR and comms professionals' work. Today, many of those investors want to know that the companies they're investing in are not only successful but sustainable. As a result, ESG has become an important factor for evaluating the health of companies—with many investment firms assigning companies with ESG scores that allow them to compare potential partners. As we mentioned above,

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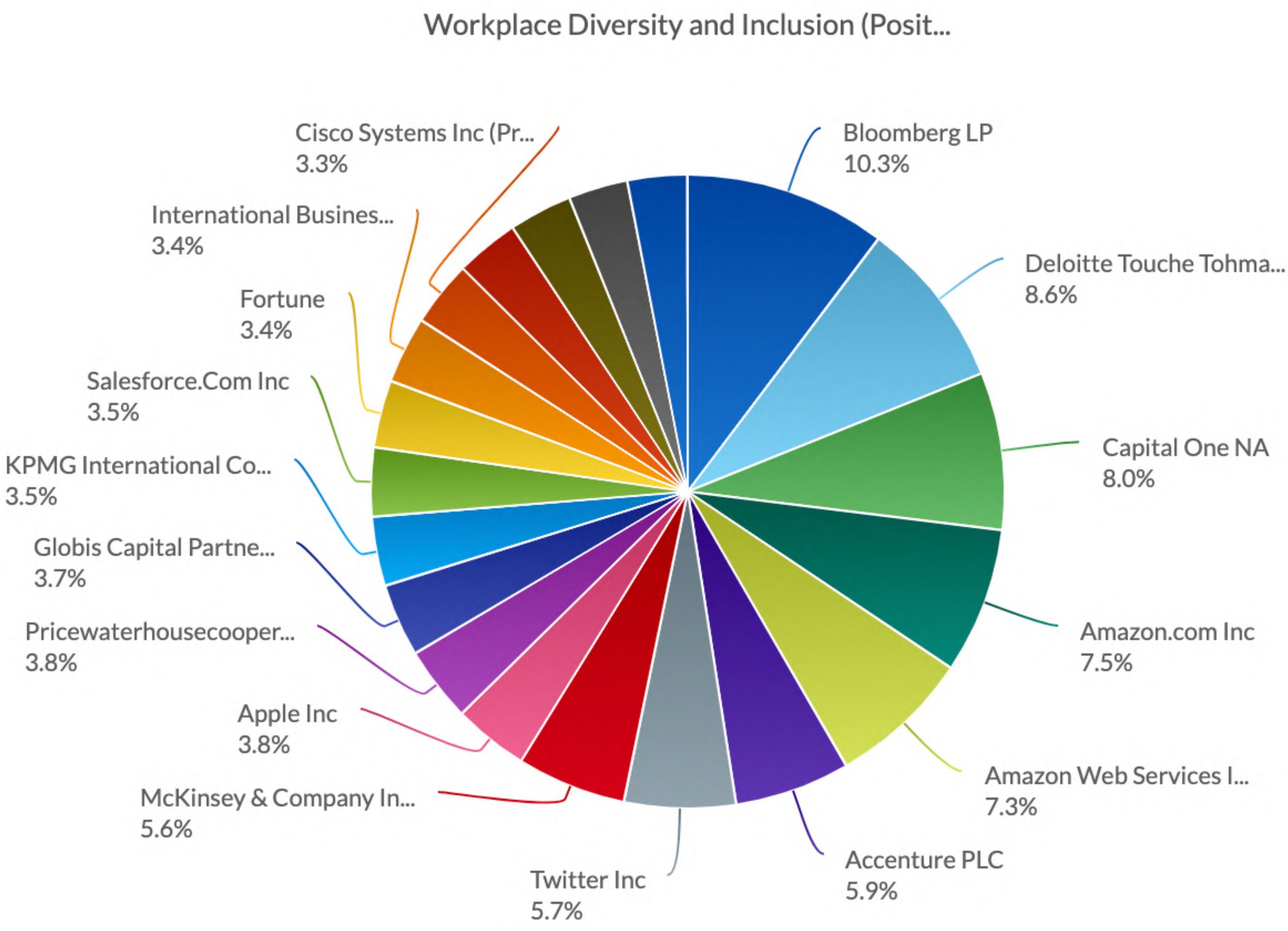
Newsdesk can help with this, allowing you to dive deep into the most-covered ESG-related topics and how specific companies factor into that coverage.

Interested in how your company's ESG efforts stack up against the competition? Try out the LexisNexis Global Media and News ESG tracker or sign up for a free Newsdesk demo today!

Top Companies with Positive Workplace Diversity and Inclusion

Discover which organizations are mentioned the most favorably in terms of diversity and inclusion (DNI) in the workplace.



ESG, political and environmental hostage

Steven Cole
Llb (Hons) FAICD,
Peakstone Global
Specialist Advisor*

Environment, social, governance (ESG), when appropriately applied, is a philosophy which seeks to better manage the tension between unbridled corporate financial endeavour and an organisation's 'corporate citizenship' responsibilities, sometimes also described as its 'social licence to operate'.

Its influence has fundamentally changed society's outlook to the future, impacting political, economic, environmental, and social agendas, especially as 'players' in our global order (politicians, businesspeople, environmentalists, human rights and welfare NGOs, and other special interest groups) seek to leverage the acronym and the power of the philosophy for their own ends.

Notwithstanding the breadth of issues covered by the philosophy, climate and environmental issues are currently dominating the ESG agenda, perhaps not unreasonably so given the science evidencing global warming and the existential risks to the world, as we now know it, posed thereby.

The recent Australian Federal Election included a heavy political focus on climate risks, including with the rise of the TEALS. Globally, governments are committing to constrained emission targets. Regulators such as ASIC are focusing on 'green-washing' by corporates and the reasonableness of underlying emission target disclosures. Class action litigation is emerging against fossil fuel operators and developers as well as government ministers approving such developments. Our social media and news outlets proliferate with renewable energy and 'saving the planet' orientated headlines and exhortations. Business associations are supporting international sustainability and climate standards against which corporates are to report and disclose their carbon related emissions.

Without denigrating the importance of this current focus on climate risks, the broader aspects of ESG and the principled rationale for the philosophy, mentioned in the opening paragraph

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of this article, must not be lost in translation. That is, to find appropriate balance between economic, environmental, and social endeavour within a governance framework that assures integrity, accountability, and transparency to deliver sustainable outcomes for the benefit of the world and its inhabitants generally.

Perhaps it is worthwhile to reflect upon the broad scope of relevant issues included within the ESG philosophy and its corporate economic interface:

Economic

The provision of infrastructure, goods and services of utility to society; the creation of employment and payment of wages to sustain and hopefully improve standards of living; the payment of taxes to support public and social infrastructure; the payment of dividends from profits (largely to superannuation and pension funds for the benefit of the general population); the spreading of prosperity amongst the community as a consequence of the foregoing including through economic multiplier effects.

Environment

Especially in the context of sustainability and climate risks: natural resource management; bio-diversity loss; emission/pollution controls; water and energy management; circular economy practices; sustainability generally.

Social

Fundamental human rights; workforce relations (including fair employment terms, wages and training and development); health, welfare, and safety (in the workplace and community); equal opportunity, diversity, and non-discriminatory practices; consumer protection from unfair trade practices; community contribution; ethical conduct generally.

Governance

Especially in the context of corporate and organisational accountability, disclosure and ethical values and conduct: governance and management structure and accountability; transparent reporting and disclosure; risk management; appropriate remuneration practices; corporate values and culture generally. A strong governance framework can guide an organisation in drilling down under each of these elements encouraging initiatives towards their satisfaction as well as measuring, monitoring, and reporting against their performance outcomes.

These elements also align well with the 17 United Nations Sustainability Development Goals set up in 2015 by the UN General Assembly as 'a blueprint to achieve a better and more sustainable future for all people and the world by 2030'. These 17 goals include: no poverty, no hunger, good health, quality education, gender equality, clean water and sanitation, renewable energy, good jobs and economic growth,

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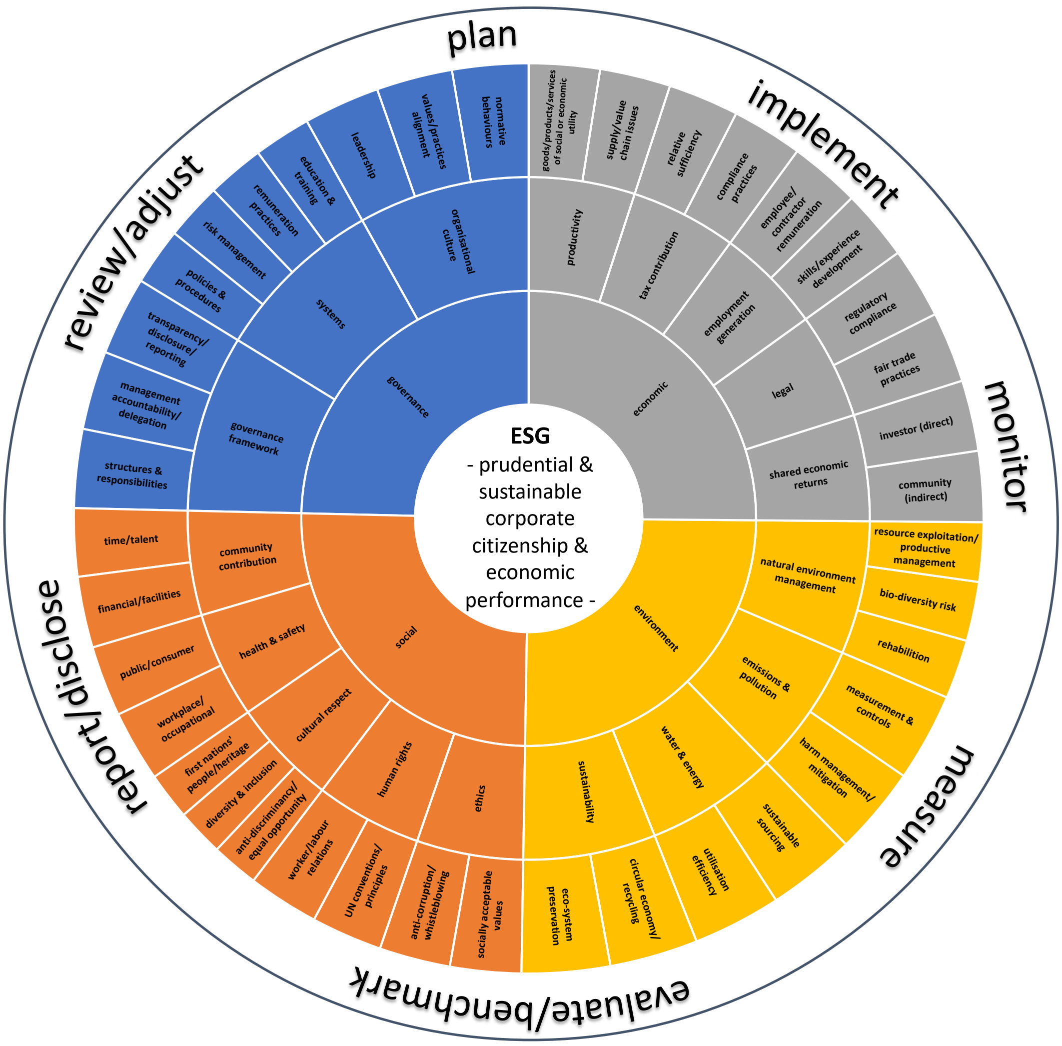
innovation and infrastructure, sustainable cities and communities, responsible consumption, climate action, life below water, life on the land, peace and justice, and partnership for the goals.

Just as economic and financial outcomes must not be the sole raison d'etre of a commercial corporation's existence and deliverables, so must not climate and environmental risks be the sole focus for an organisation's ESG commitment, but rather an holistic approach respecting the 17 United Nations Sustainability Development Goals under the umbrella of a sound and disciplined governance framework to better assure overall outcomes.

It is to be hoped that political parties, commercial entities, community and business organisations and the media (social and traditional) do not selectively 'game' the ESG brand for ulterior purposes and questionable motives that may not be consistent with ESG's underlying laudable philosophical base. The presence of sound and transparent governance frameworks within our political, commercial, and social institutions and organisations can be the binding presence to help in coalescing and assuring respect for the broad array of elements within the ESG philosophical spectrum.

In essence, the 'G' in ESG must not be underplayed. Good governance is too important a matter to be left to chance when it comes to assuring ESG principles and outcomes.

*Peakstone Global is an Australian based specialist governance and board service firm also servicing the Asia Pacific region - www.peakstoneglobal.com. Steven Cole has over 40 years of professional, corporate, and business experience through senior legal and organisational governance consultancy, as well as a range of executive management and non-executive board appointments.



Legal talk, human rights and technology

Antoaneta Dimitrova speaks to Myfanwy Wallwork, LexisNexis Executive General Manager Regulatory Compliance Global, about LN Podcast Series *Human Rights and Technology: Leading Organisational Change*

In 2021, the Australian Human Rights Commission (AHRC) published the Human Rights and Technology Project Final Report which was the culmination of a three-year national investigation into human rights risks posed by new and emerging technologies. LexisNexis was one of four major partners for the AHRC-led Human Rights & Technology Project which set out to explore ways in which technology could both promote and inhibit human rights, and how responsible innovation methods could be deployed to achieve positive outcomes.

Earlier this year, Myfanwy Wallwork, launched a new podcast series, *Human Rights and Technology: Leading Organisational Change* to engage with thought leaders and delve deeper into the report findings as well as identify how recommendations made, can apply to different role types across all industries.

Since the launch on March 11, when Ms Wallwork (also Executive Sponsor for Rule of Law Initiatives at LexisNexis) spoke to digital accessibility expert Sean Murphy, there have been eight episodes where guests are invited to share their practical tips on how to make the report's recommendations a reality.

"My working theory on this is that organisations that adhere to human rights frameworks will see positive benefits across a wide range of KPIs including employee, customer, shareholder and financial outcomes," Ms Wallwork said.

In summary, the report looks at how organisations develop and / or use technologies such as AI with a particular focus on recommendations for government decision-making and accessibility.

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"I found the project fascinating and look forward to continuing to work with people from different organisations across government, the private sector, academia, and civil society to come up with some practical ways the recommendations can be implemented," Ms Wallwork said while highlighting her interest in how the recommendations could apply to different role types, such as Board Members, Human Resources and Talent Acquisition specialists, Product Managers and Procurement functions.

Real life experience has been the driving force behind the podcast, where the aim is to tie multi-faceted issues back to what it all means for a compliance professional, or anyone responsible for ensuring that regulatory and legislative frameworks are documented and actioned with the appropriate controls within organisations.

There is no doubt that technology has a profound impact on all of our everyday lives, so the question at the heart of the 300-page report must be to understand how do we ensure the growth of new technologies also promotes and protects our human rights?

The answer to this and all the episodes of the *Human Rights and Technology: Leading Organisational Change podcast* can be accessed on the Legal Talk page.

Meanwhile, here is a summary of content and practical suggestions podcast guests have already made.

Denise Tung, Executive Head of Experience Commerce, Optus
• Make inclusive design and how it contributes to customer value part of your Definition of Done.
• By incorporating it at the beginning of the process, development of products and services will be cheaper, faster, and more efficiently. For example, if an issue is detected post launch, other initiatives to may have to be paused to address accessibility.

Emili Budell-Rhodes, Lead Evangelist, Engineering Culture, LexisNexis
• Build human rights by design into your culture, which will translate into individual mindsets.
• Do not reinvent the wheel - get to know how things are done across the organisation first.

Wayne Hawkins, Director of Inclusion, Australian Communications Consumer Action Network
• Create awareness for yourself. For example, in the recruitment process, think about how candidates might enter the building (are there steps, do the lifts have braille signage).
• Employ experts.

Dr Paul Harpur, Associate Professor, TC Beirne School of Law, the University of Queensland
• Focus on accessible information; communication styles like easy English can be useful for all abilities.
• Think about who your user is. For instance, it might be a lawyer but what other needs might they have? How can these be met?

Sean Murphy, Digital Accessibility Expert
• Accessibility must be present in policies, especially procurement, as issues can be hard to rectify once decision has been made. Suppliers must demonstrate that technology is accessible or provide roadmaps with specific goals as part of decision-making process.
• There is huge commercial value in being able to access a 1.9 trillion-dollar market, which includes people with disabilities and their family and friends.

Greg Adamson, Principal with Digital Risk Innovation Group
• Address human rights risks in a structured way; for example, by utilising the organisation's existing risk framework.

Meg Dalling, Customer Vulnerability and Accessibility Lead ANZ
• Create an accessibility plan; AHRC website has a lot of guidance e.g. https://humanrights.gov.au/our-work/disability-rights/publications/disability-action-plan-guide-2021. Consider the human rights aspects of decisions so that the organisation goes beyond "how many people will benefit" to ensuring every individual's human rights are met.
• Consider what the organisation is doing now and pull together passionate advocates.

Denise North, Non-executive Director
• Consider both the business case and social justice and fairness argument for diversity and inclusion.
• Find ways to educate your board and employ experts.

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The ESG risk series: Why ESG risk should be top of your due diligence agenda

Regulators increasingly require corporates and financial services firms to incorporate Environmental, Social and Governance (ESG) risks into their due diligence and reputational risk management processes. ESG also brings opportunity: asset managers and investment banks have enjoyed significant returns by moving assets into sustainable funds, while companies who are transparent about their ESG commitments have been profitable. But ESG is often poorly defined and acquiring the right data to uncover these risks is difficult.

Expanding regulations mean ESG compliance is no longer optional

Until a few years ago, ESG was recognised as a worthy aspiration for companies but rarely prioritised at the expense of profit. Today, mandatory human rights and environmental due diligence has become a regulatory expectation for financial services companies and other firms. It is no longer enough for them to limit their monitoring of third parties to long-standing risks like creditworthiness or exposure to money laundering.

Numerous jurisdictions have brought in – or are planning – legislation requiring companies to demonstrate that they are carrying out due diligence on the ESG record of suppliers, agents and joint venture partners. For example:

• **European Union:** The European Commission recently published its draft Corporate Sustainability Due Diligence Directive, which sets out mandatory human rights and environmental due diligence obligations for companies and a new enforcement regime. It would likely be adopted and implemented into member states' laws from 2027.

• **Netherlands:** The Child Labour Due Diligence Act 2019 mandates all companies that sell or supply goods and services to Dutch consumers to investigate whether these have been produced using child labour. It comes into effect later this year.

• **Germany:** The Supply Chain Due Diligence Act, which comes into force in January 2023, requires large companies to carry out risk management to ensure there are no human rights violations in their supply chains.

• **France:** The Corporate Duty of Vigilance Act 2017 requires large French companies to publish and implement a plan to identify, and prevent and mitigate human rights and environmental violations, among other issues.

Another important development is the EU Sustainable Finance Disclosure Regulation, which has been introduced to improve transparency around sustainable investment products. It requires asset managers across EU member states to disclose whether they have considered ESG factors in their company's portfolio and their own funds.

ESG brings reputational risk and financial opportunity

Failure to properly consider and manage ESG risks poses a reputational risk to companies. Activist investors are moving money away from firms with poor records, while consumer campaigns boycott products with unethical sourcing in their supply chains. ESG failures put companies and their third parties in the spotlight with negative press and social media commentary, leading to a loss of consumer confidence and revenue.

Carrying out ESG due diligence is not simply about managing risk, but also a financial opportunity. Reuters reported that a record $649 billion was invested in ESG-focused funds in 2021, meaning they now account for 10% of worldwide assets. These investments have generally outperformed the market averages. For example, the MSCI World Index gained 15% last year, while its equivalent for companies with high sustainability ratings rose 21%.

Companies that demonstrate a positive ESG commitment are also enjoying more sustainable profits setting them up for long-term success. Customers, investors and employees increasingly want to buy from, invest in and work for firms that can demonstrate a positive ESG impact. Increasingly, businesses are recognising the concept of a "double bottom line"–that their performance should be measured in terms of positive social impact as well as profit.

How should financial institutions and other companies respond?

Companies of all stripes can mitigate the reputational, regulatory, financial and strategic risks posed by ESG–and exploit its opportunities–by taking the following steps:

• Incorporate ESG risk assessment into their due diligence reporting, including mandatory human rights due diligence.

• Examine suppliers, agents and joint venture partners for potential ESG risks, preferably using reliable sources that don't require costly questionnaires or in-person audits of every company.

• Ensure assets under management that claim to be sustainable genuinely meet ESG criteria.

• Share insights around ESG risk with other stakeholders in the

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company to enable data-driven decisions that make ethical profit possible.

• Invest time and resources into accessing to high-quality data covering different aspects of ESG risk, including news sources, company data, PEPs and sanctions lists, and more. Data analytics technologies can be applied to this data to find relevant insights.

• Set expectations with third parties, customers and employees that trust and transparency over ESG is required for an ongoing business or employment relationship.

Compliance teams face challenges to understanding ESG claims

It is undeniably important for companies to monitor for ESG, but it is not a straightforward task. Challenges include:

• **Greenwashing:** Many investment funds and companies have been accused of exaggerating their ESG performance. In a recent survey of around 1,500 US executives, 58% admitted their company has "overstated" their sustainability efforts, while only 36% said their company has the tools to quantify their efforts to improve sustainability. This should concern asset managers who are deploying huge sums into funds branded as ESG compliant.

• **Legacy processes of due diligence and reputational risk management:** Financial services firms are used to screening third parties using traditional credit risk assessments. But they now need to monitor for all aspects of ESG, which involves subscribing to multiple solutions. This leads to more costs and inefficiency in their processes.

• **Defining ESG**: ESG is an extremely broad term covering a wide range of activities, which leads differing and often conflicting assessments of ESG compliance. In the remainder of this series, we will release three blogs which dive into each area of E, S and G in turn.

Nexis Solutions: cutting through the noise to surface ESG risks and insights

Nexis Solutions helps firms to tackle the challenge of assessing ESG risk head on and surface insights related to ESG risks across our broad range of data, from our news archive to company data to PEPs and sanctions lists. This supports companies' reputational risk management, due diligence, and data-driven investment decisions.

In addition to our existing data, we have recently added ESG content to Nexis Diligence™ that enables users to confidently incorporate an ESG risk assessment into their due diligence research and reporting workflow, within a single interface of content chosen specifically for fast, cost-effective, and comprehensive due diligence:

• **ESG Ratings** is a new content type in Nexis Diligence, which displays an at-a-glance view of a company's ESG profile. These ratings, provided by CSRHub, help customers understand a company's reputational or ethical business risk. The ESG Ratings break down ratings for each ESG category into further sub-categories, as well as providing an overall rating for the company.

• **ESG Custom** News delivers users a set of predefined search terms, enabling them to carry out ESG research within our extensive set of news sources, customized to their preferences.

• **ESG Factors Power** topics allow users to post-filter all their news results using ESG specific topical indexing.

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