

## MEDIA RELEASE

\*\*Embargoed until **00:05am** Monday 31 October\*\*

### **Australian company directors must consider and disclose climate change risks to escape liability for breach of duty**

Over 30 senior business leaders, fund managers, legal experts and regulators met in Melbourne in October to consider a new legal opinion released publicly today on how corporate law requires company directors to consider and respond to climate-related risks to their business.

Mr Noel Hutley SC, who provided the opinion, found that many climate change risks “would be regarded by a Court as being foreseeable at the present time” and that Australian company directors “who fail to consider ‘climate change risks’ now could be found liable for breaching their duty of care and diligence in the future”.

Mr Hutley’s analysis was commissioned by roundtable co-hosts the Centre for Policy Development and the Future Business Council and considered by senior participants from BlackRock, CBA, ANZ, Deutsche Bank, Qantas, ASIC, APRA and several of Australia’s largest super funds. It emphasises that as the economic and environmental implications of climate change intersect, company directors are legally empowered to elevate climate-related risks and opportunities to the forefront of corporate strategy. Directors who do not consider these issues properly, or who overlook climate change altogether, risk personal liability for failing to act in their companies’ best interests.

“It is likely to be only a matter of time before we see litigation against a director who has failed to perceive, disclose or take steps in relation to a foreseeable climate-related risk that can be demonstrated to have caused harm to a company”, Mr Hutley wrote. He added that the law would not protect directors “who are uninformed, who make no conscious decision, or who exercise no judgment.”

“This opinion makes it crystal clear – in a post-Paris world, the legal and financial risks associated with climate change must be a board-level issue” said CPD Policy Director Sam Hurley, who moderated the roundtable with Citigroup Chairwoman Sam Mostyn. “There is major upside for companies that lead from the front, not just on climate but on a range of ‘long-term’ issues impacting company performance here and now.”

“Australian companies are exposed materially to the physical risks of climate change, and the transition risks to a low carbon economy. Directors must proactively address this reality, and regulators need to set clear expectations for management and disclosure of sustainability risks”, said Tom Quinn, CEO of FBC.

“We have shown *why* directors may be personally liable and *what* boards and regulators should do about it to manage the risks and seize the opportunities of a sustainable economy”, said Travers McLeod, CEO of CPD. “The roundtable revealed the hard work has barely begun, but that enlightened directors can champion a constructive policy agenda.”

The legal opinion was co-authored by junior counsel Sebastian Hartford-Davis. Mr Hutley SC and Mr Hartford-Davis were instructed by Sarah Barker and Maged Girgis from Minter Ellison.

**Noel Hutley SC’s opinion is now available on the CPD and FBC websites. An attendance list for the roundtable is attached. For interviews, please contact Sam Hurley on 0405 771 538.**

## Business Roundtable on Directors' Duties, Climate Risk and Sustainability

Centre for Policy Development & Future Business Council

Hosted by Minter Ellison – Melbourne, 21 October 2016

### Speakers

Name	Title and Organisation
Paul Fisher	Former Executive Director for Supervisory Risk and Regulatory Operations, Bank of England
Noel Hutley SC	St James Chambers

### Participants

Name	Title and Organisation
Alison Rowe	Chairwoman, Future Business Council
Angela Emslie	Chair, HESTA
Claire Molinari	Advisor, Reef Trust
Bryan Horrigan	Dean of the Faculty of Law, Monash University
Ed John	Executive Manager, Governance, Engagement and Policy, Australian Council of Superannuation Investors
David Eterovic	Partner, Minter Ellison
Dominik Rohe	Country Head, BlackRock Australia
Garry Weaven	Chairman, IFM Investors
Geoff Summerhayes	Member, Australian Prudential Regulation Authority
Gillian Sparkes	Commissioner for Environmental Sustainability, Victorian Government
Innes Willox	Chief Executive, Australian Industry Group
Jeremy Blackshaw	Managing Partner Melbourne, Minter Ellison
John Macfarlane	Director, ANZ
John Price	Commissioner, Australian Securities & Investment Commission
John Thwaites	Chair, ClimateWorks and Chair, Melbourne Water
John Wiseman	Deputy Director, Melbourne Sustainable Society Institute
Harrison Young	Chairman, Risk Committee, Commonwealth Bank of Australia
The Hon Kenneth Hayne AC QC	Professorial Fellow, University of Melbourne and Former Justice, High Court of Australia
Lisa Nichols	Barrister, Chancery Chambers
Mark Cubit	Managing Trustee, Planet Wheeler Foundation and Monash University Governing Council
The Hon Mark Dreyfus QC	Shadow Attorney-General
Mark Joiner	Director, QBE Australia and former CFO, National Australia Bank and Citigroup
Nick Brodribb	Head of Legal, Qantas
Phil Vernon	Managing Director, Australian Ethical
Ross Freeman	Partner, Head of Commercial Disputes, Minter Ellison
Russell Caplan	Non-Executive Director, Aurizon and Chairman, Olympic Parks Trust
Sarah Barker	Special Counsel, Minter Ellison
Sam Hurley	Policy Director, Centre for Policy Development
Sam Mostyn	Chairwoman, Citibank Australia
Sebastian Hartford-Davis	Barrister, Banco Chambers
Stan Krpan	Chief Executive Officer, Sustainability Victoria
Steven Skala	Vice Chairman Australia and New Zealand, Deutsche Bank
Terence Jeyaretnam	Partner, Climate Change and Sustainability Services and EY Indigenous Reconciliation Leader, Ernst and Young
Tom Quinn	Chief Executive Officer, Future Business Council
Travers McLeod	Chief Executive Officer, Centre for Policy Development