

WIN In-House Counsel Week 2025

Using 'S' to drive your ESG Strategy and practices

Presenters: Natalie Caton, Jessie Buchan, Chris Simpson, Rick Catanzariti

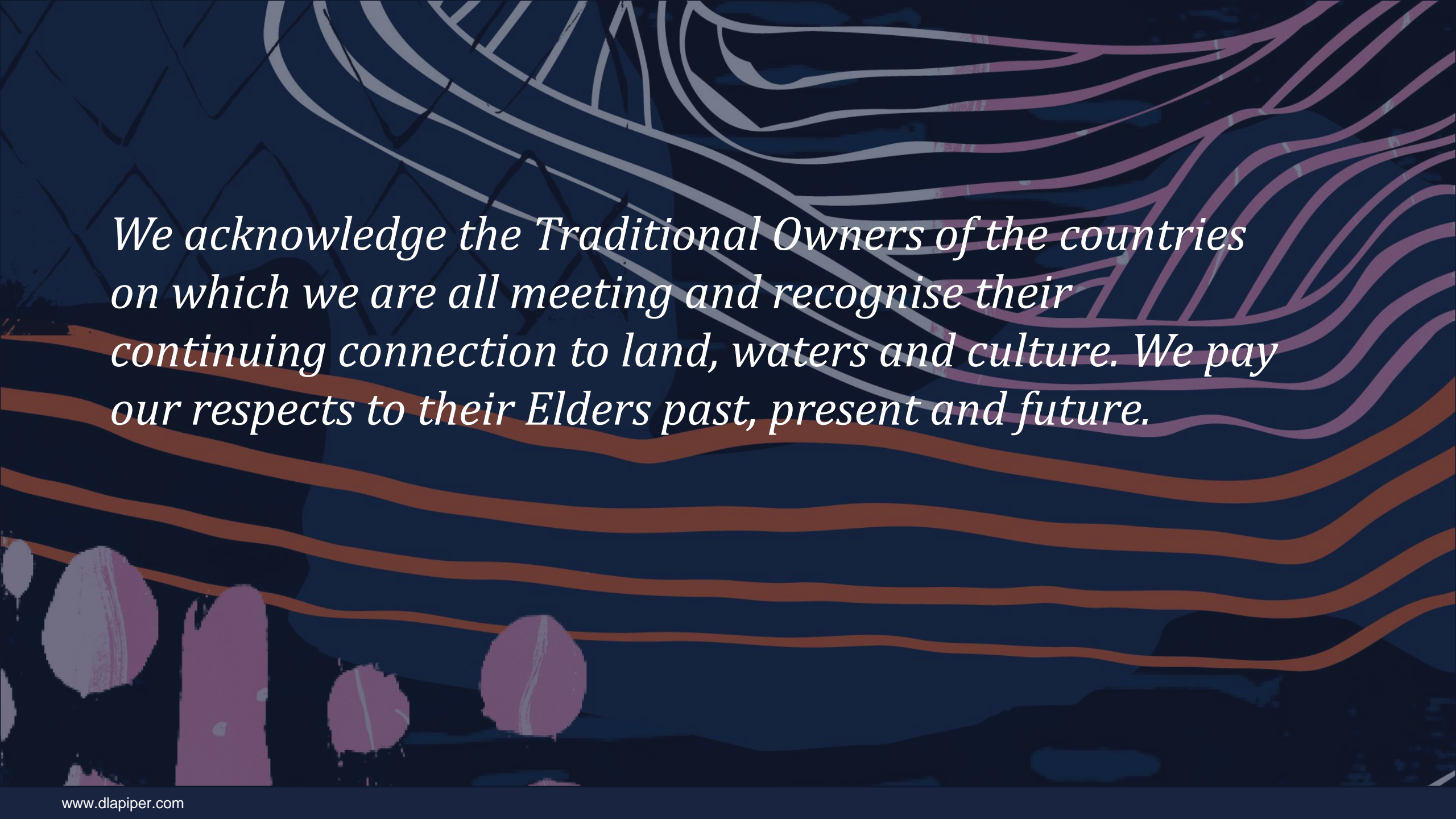
Thursday, 27 February 2025

10:00 - 11:00 (AWST)

12:00 - 13:00 (AEST)

13:00 - 14:00 (AEDT)





We acknowledge the Traditional Owners of the countries on which we are all meeting and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders past, present and future.



Introduction slide



What will be discussed in the session.....

1. Advertising – Jessie Buchan
2. DEI and Employment – Rick Catanzariti
3. Other Recent Social Responsibility Legal Developments – Natalie Caton
4. Corporate Strategy – Chris Simpson

Advertising – Greenwashing risk

Key Drivers

Public concerns on climate change and environmental issues



Regulatory compliance – part of compliance and enforcement priorities

Regulator's concerns about the impact of ESG claims on consumers' decisions

Increased consumer, investor, and employee attention on corporate ESG performance



Sustainability and social issues – at the forefront of public consciousness

Australia: The Landscape

Statutory Regulation



- Environmental and sustainability claims remain a **top compliance and enforcement priority for 2024-25**
- The ACCC's internet sweep uncovered that **57%** of the 247 business were making misleading sustainability claims

Rules & Guidance

- *Australian Consumer Law*
- *ACCC Environmental and Sustainability Claims Guidance*
 - *8 Key principles*

Self-Regulation



Rules & Guidance

- *Environmental Claims Code 2024*
- *Practice Note & Determination Summary*

Overseas: The Landscape

The UK



- The CMA Green Claims Code – applies to advertising and any product or service, by any commercial entity, aimed at/supplied to a UK consumer, including by a non-UK business, a distributor or an online platform.
- Digital Markets, Competition and Consumers Act – emboldens the CMA with even broader powers to regulate and impose significant fines for violations.

The US



The Federal Trade Commission (FTC)

- The FTC first introduced the *Green Guides* back in 1992 (with three revisions to date).
- In 2023, the FTC considered implementing major changes to the *Green Guides*. An updated guide was scheduled for release in 2024 but remains pending.
- Lawsuits are costly (e.g. US **\$10 million class-action** settlement in 2022 in relation to a misleading claim that coffee pods are recyclable)

Environmental and sustainable advertising claims

- *ACCC Environmental and Sustainability Claims Guidance* (published in December 2023)

- Eight (8) Principles for Trustworthy Claims

1. Make accurate and truthful claims	5. Avoid broad and unqualified claims
2. Have evidence to back up claims	6. Use clear and easy to understand language
3. Don't hide or omit important information	7. Visual elements should not be misleading
4. Conditions and qualifications of claims to be explained prominently	8. Be direct and open about sustainability transition

*** Environmental claims remain one of the ACCC's enforcement priorities in 2024-25**

Advertising and social issues

- Role of advertising codes is to set standards that reflect community standards and encourage brands to exceed these to create positive change
- Australians care that ads are held to high standards
- E.g. Ad Standards **kinder conditions* campaign
 - Advocating for positive social messaging in advertising
 - Challenging stereotypes and clichés to recognise more socially progressive marketing communications across a range of social issues
 - Aiming to challenge community and business sectors as well as perceptions – shift to socially progressing advertising
- Increase in number of consumer complaints – reflects an increase in community awareness
 - Top of the list are concerns about gambling advertising and misleading/deceptive advertising
 - Concerns regarding content that might be seen to normalise or condone behaviours/attitudes which are less socially acceptable

**This ad is
for white
people only.***

**If you're
a woman,
don't
bother
reading
this ad.***

Ad Standards **kinder conditions*
campaign

DEI and Employment

The legal framework

Federal - Age Discrimination Act 2004

Federal - Australian Human Rights Commission Act 1986

Federal - Disability Discrimination Act 1992

Federal - Racial Discrimination Act 1975

Federal - Sex Discrimination Act 1984

Australian Capital Territory – Discrimination Act 1991

New South Wales – Anti-Discrimination Act 1977

Northern Territory – Anti-Discrimination Act 1992

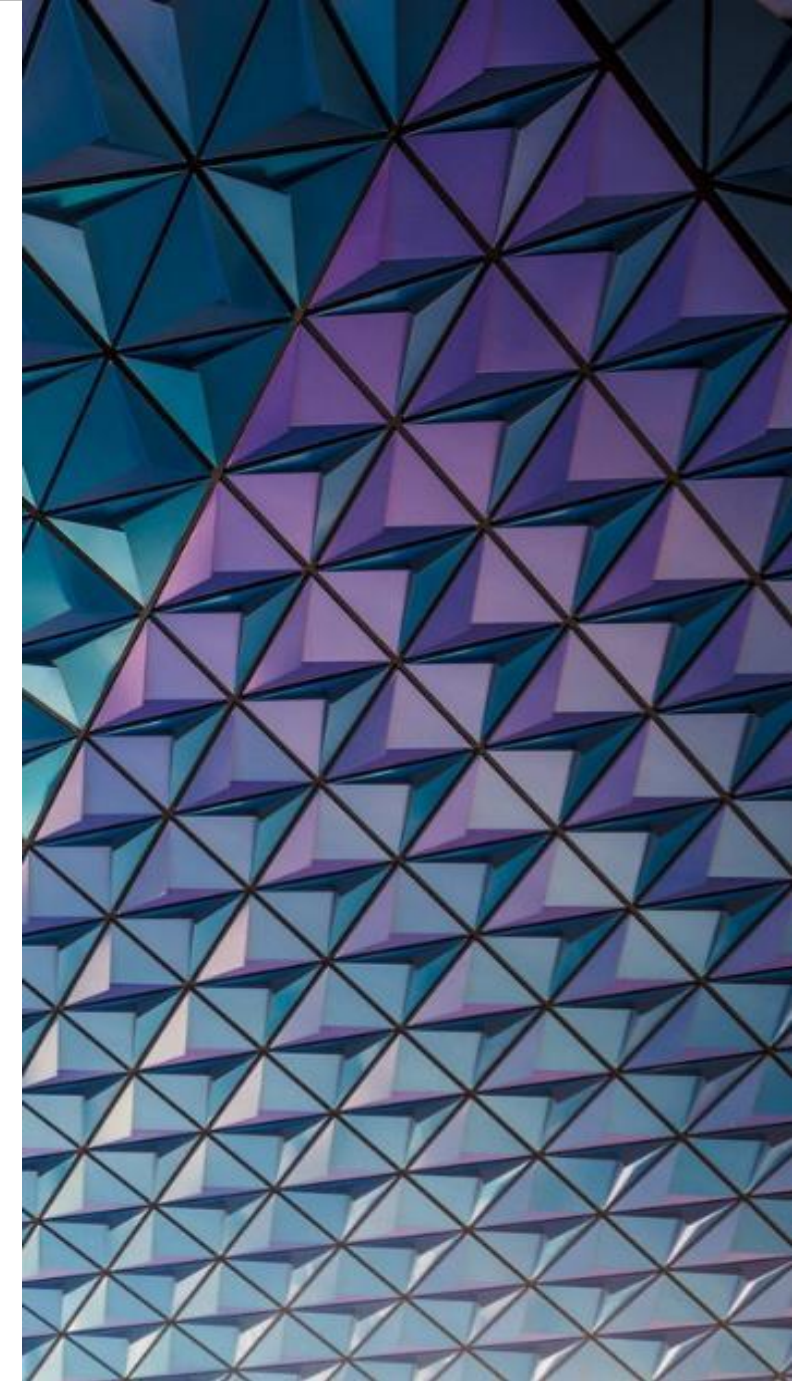
Queensland – Anti-Discrimination Act 1991

South Australia – Equal Opportunity Act 1984

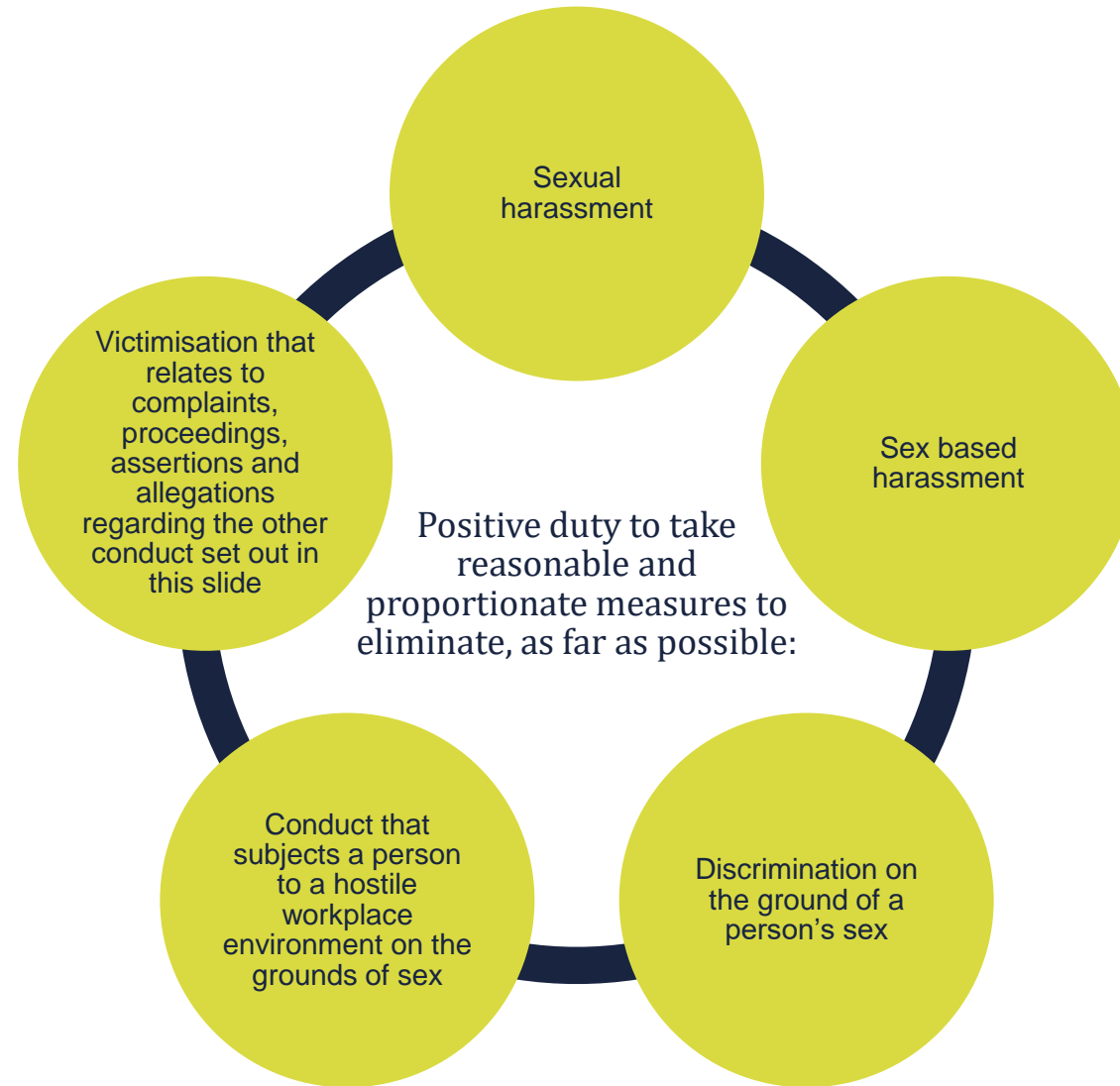
Tasmania – Anti-Discrimination Act 1998

Victoria – Equal Opportunity Act 2010

Western Australia – Equal Opportunity Act 1984



Positive duty



Gender reporting

What will WGEA publish?

WGEA's release of 2023-24 employer gender pay gaps includes more information than the 2022-23 release.

On March 4, 2025, WGEA will publish:

- **average total remuneration employer gender pay gaps (new)**
- **average base salary employer gender pay gaps (new)**
- median total remuneration employer gender pay gaps
- median base salary employer gender pay gaps
- gender composition by pay quartile
- **average remuneration by pay quartile (new)**
- links to voluntary [Employer Statements](#) which provide context for their results and explain the actions employers plan to take to address the gender pay gap.

Workplace Gender Equality Agency scorecard shows women in the public service are paid 13.5pc less than men, but the gap is even bigger in the private sector

By Peter Jean  By Emmy Groves [Work](#)




Thu 20 Jun

They claim to empower women, but these fashion brands have some of the biggest gender pay gaps



Rachel Clun

February 27, 2024 – 8.00pm

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Several major clothing and jewellery brands that claim to empower and inspire women have some of the worst gender pay gaps in favour of men among large Australian companies.

Nationally, the [median base salary pay gap](#) is 14.5 per cent, but when all payments including bonuses and superannuation are included, the pay gap grows to 19 per cent.

Analysis

The companies that take lots of money from women, but don't give so much back

By business reporter Daniel Ziffer

Gender Equality

Tue 27 Feb 2024

Other Recent Social Responsibility Legal Developments



Australian Governments Response to Review of the *Modern Slavery Act 2018 (Cth)*

Review Recommendation	Government Response
Lowering reporting threshold to \$50 million in annual consolidated revenue	The threshold will remain at \$100 million.
Expanding mandatory reporting criteria	Commitment to consult with stakeholders.
Introduce a due diligence obligation	Commitment to consult with stakeholders to identify how enhanced due diligence requirements could be incorporated into the Act.
Establishing the role of an Anti-Slavery Commissioner	This recommendation has been actioned, and Mr Chris Evans was appointed on 2 December 2024.
Imposing Penalties for Non-Compliance	Commitment to consult with stakeholders on the introduction of civil penalties for: <ol style="list-style-type: none">1. Failing to file a modern slavery statement;2. Failing to implement any request for specified remedial action; and3. Providing false information in a modern slavery statement.

Australia's Updated Anti-Bribery Regime

New Absolute Liability Offence for Companies of Failing to Prevent Bribery

- If an associate commits an offence of bribing a foreign public official for profit of the company, the company may face conviction, even in circumstances where the associate has not been convicted.
- Scope of who is considered an associate includes, among others:
 - officers, employees, agents or contractors of the company;
 - subsidiaries and controlled companies;
 - individuals who perform services for or behalf of the company.
- Adequate procedures defence – which company must prove

Australia's National Anti-Corruption Commission



- Commenced operations on 1 July 2023 in response to global criticism of Australia's lack of enforcement action with corruption.
- Independent government agency where their purpose is to detect, investigate and report on serious or systemic corrupt conduct in the **Australian Government Public Sector**.
- Corrupt conduct is any conduct of a:
 - person (whether or not a public official) that adversely affects the honest or impartial exercise of any public official's powers, functions or duties as a public official;
 - public official that constitutes a breach of public trust;
 - public official that constitutes abuse of the person's office as a public official; and
 - public official, or former public official, that constitutes misuse of information or documents acquired in the person's capacity as a public official.
- **Contractors of Commonwealth agencies, Commonwealth companies and their subsidiaries** are all considered public officials under the NACC Act and therefore within reach of the NACC.

First, some observations



The pendulum is swinging back – on some topics in some places



A lot of the 'S' is good business irrespective of politics



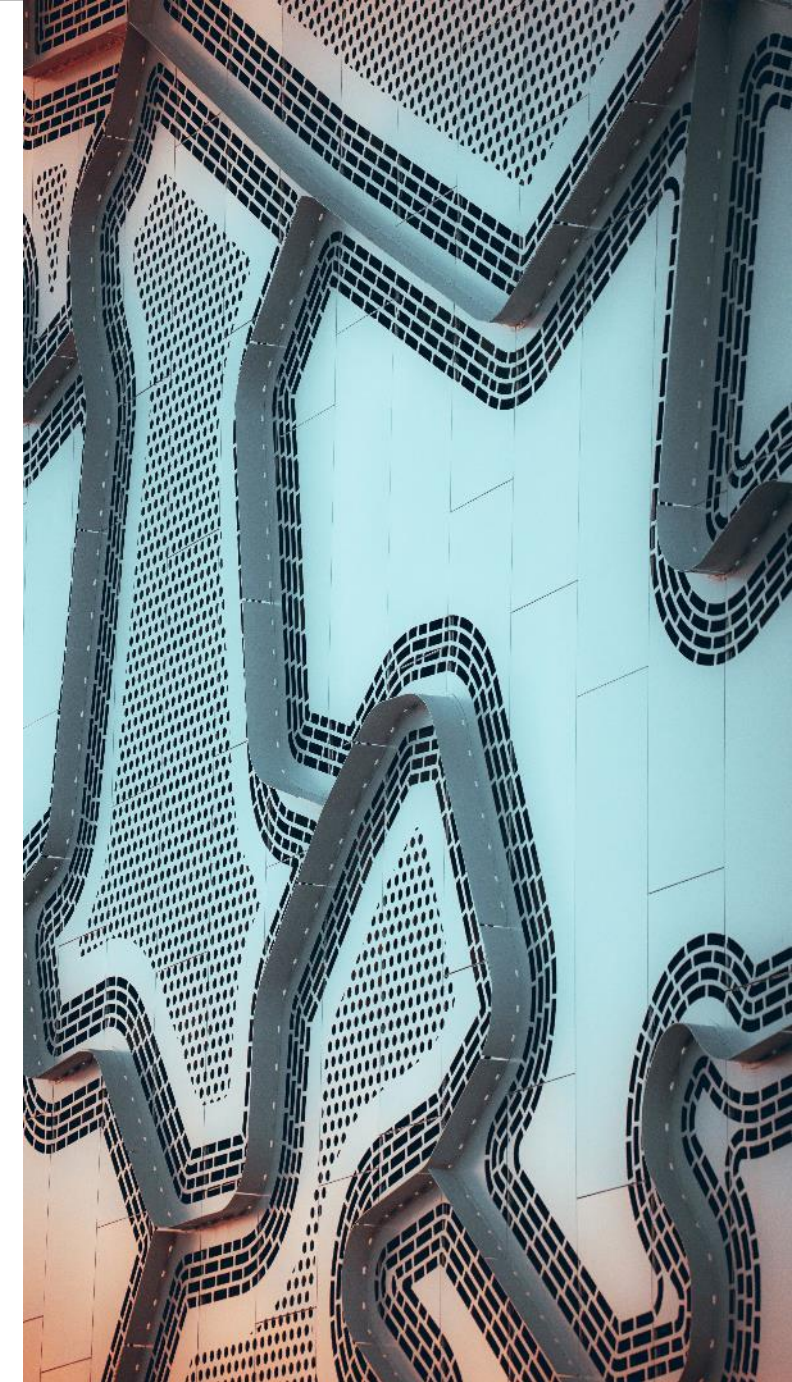
Australia is not America



Companies backtracking on 'commitments' probably weren't very committed in the first place



Authenticity should be more apparent



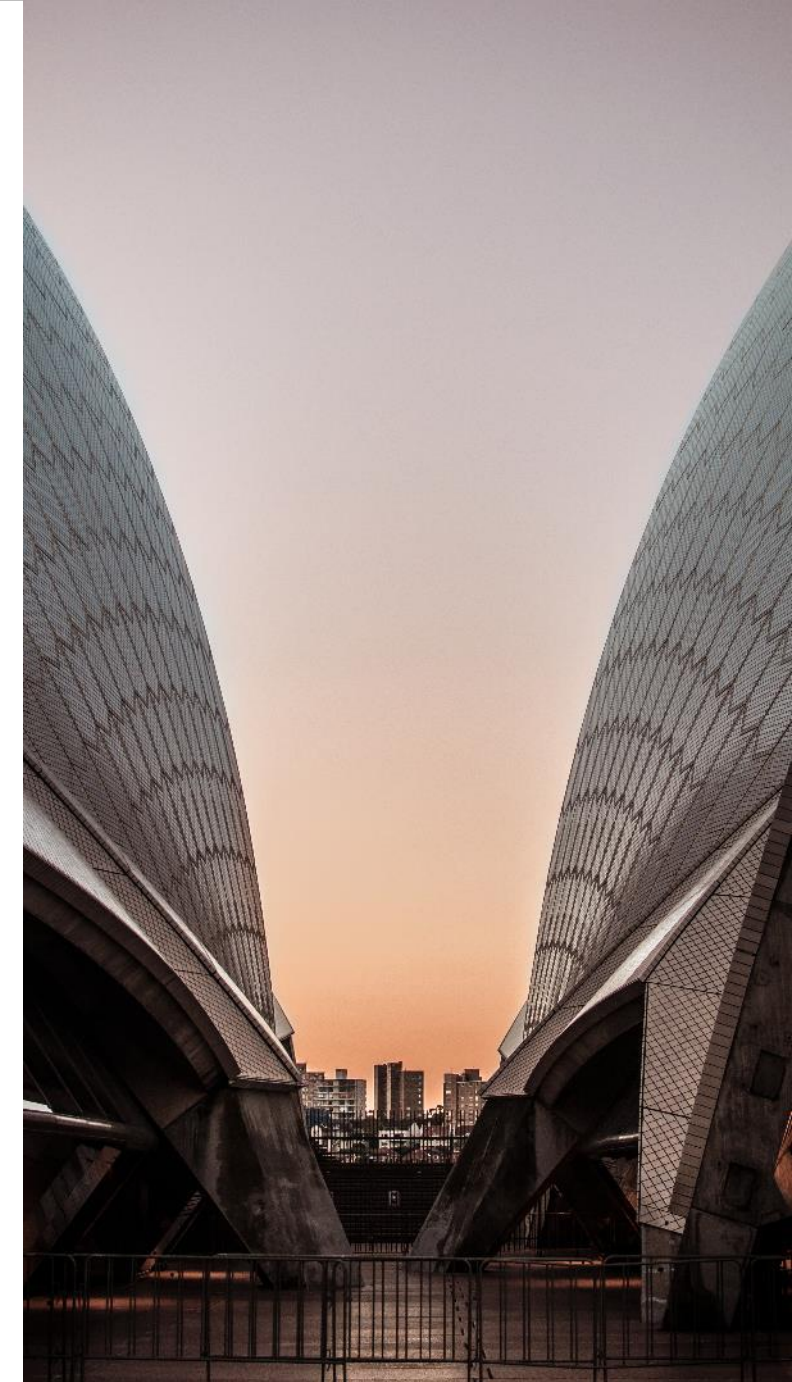
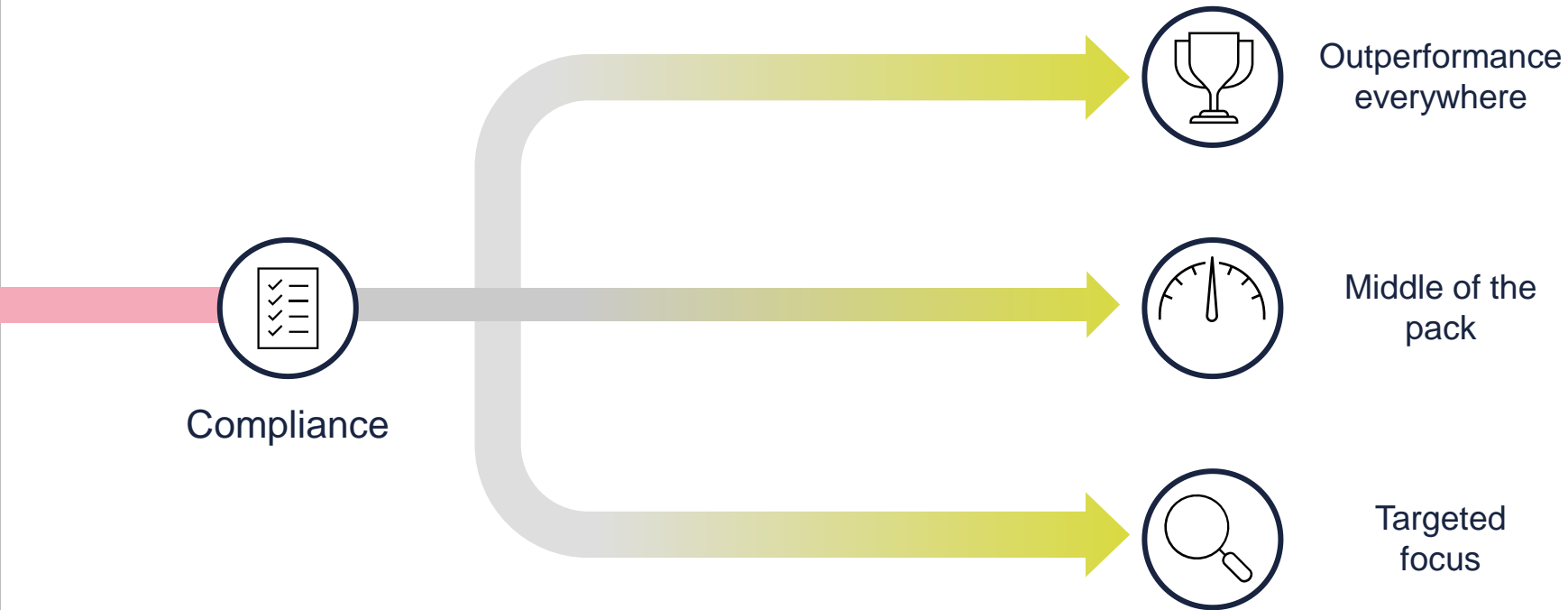
Embedding 'S' into corporate strategy

First, what is a corporate strategy, and what makes a good one?

A good strategy...	A bad strategy...
Makes real decisions to address trade offs	Makes broad or ambiguous statements
With sensible ambitions	With vague or unrealistic ambitions
And a realistic plan to achieve them	And an underwhelming plan (or no plan at all)
Developed through a robust process	Created in a vacuum – or worse – by consultants
Is as simple as possible, but no simpler	Attempts to be all things to all people

Why does this matter for you?

Choosing where to set your ambition as a business



Factors to consider

What's the right ambition for our business?



Who will care if we set our standard higher?



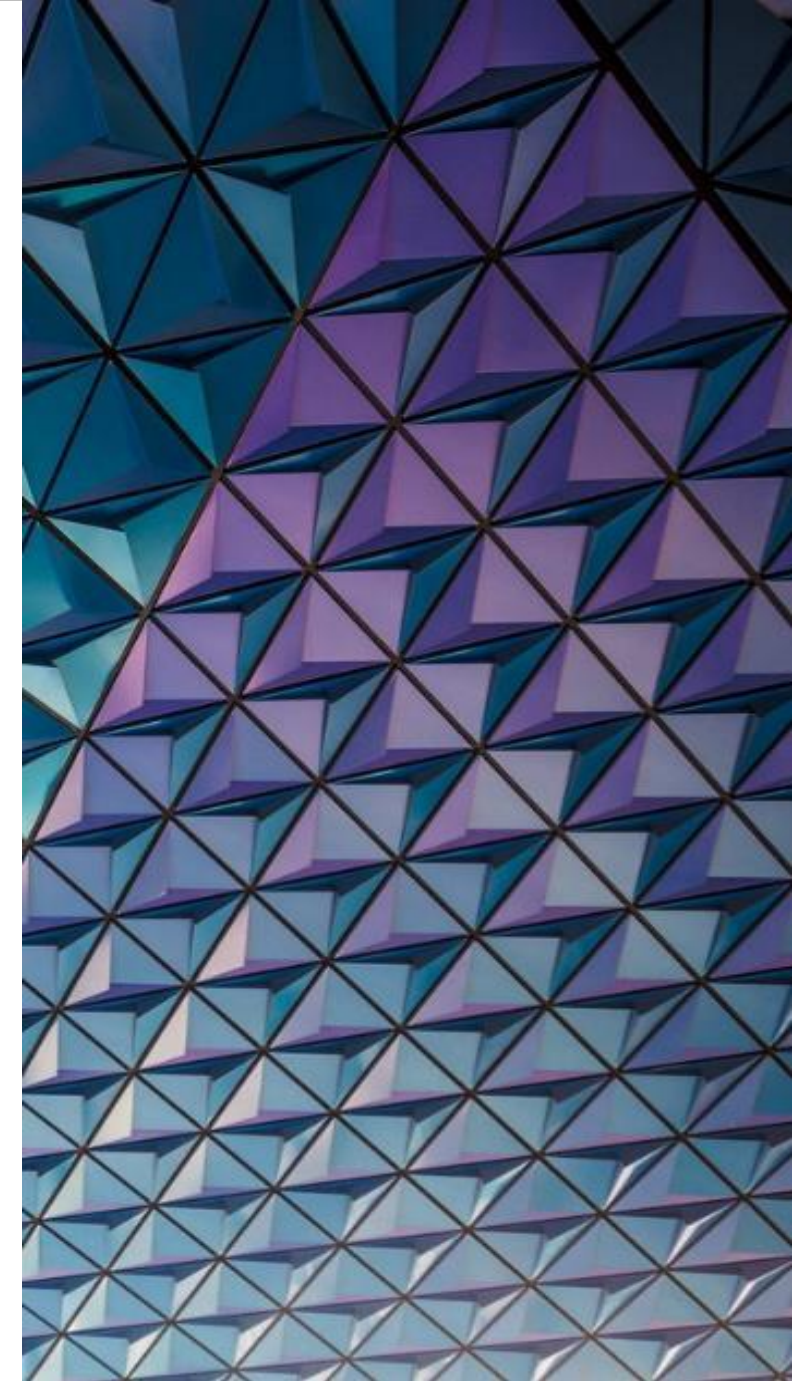
What is the value of that 'care'?



What is the cost of getting there?



What do we have to do today?



WIN In-House Counsel Week

Thank you for joining our webinar:
Using 'S' to drive your ESG Strategy
and practices

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