



Environmental  
Defenders Office

# Superannuation Funds' Climate Risks

## What You Need to Know

This Fact Sheet is a guide only and is no substitute for legal advice. To request free initial legal advice on these issues, please email us at [inquiries@edo.org.au](mailto:inquiries@edo.org.au) or visit our [website](#). Your request will be allocated to one of our solicitors who will call you back, usually within a few days.

**Last updated 23 November 2020**

### Overview

This fact sheet explains the implications of Mark McVeigh's settlement against REST Super for Australian superannuation funds' climate risk assessments and disclosures. It details how members can request information about their superannuation fund's climate risk assessments, and available options if they are not satisfied.

### What was the REST settlement?

The case started with Mr McVeigh making an enquiry of the trustee of his superannuation fund, REST Super, about how it managed the financial risks associated with climate change. When Mr McVeigh was not satisfied with REST's response, he filed a claim in the Federal Court alleging:

1. REST had failed to provide him with adequate information to make an informed judgement about the management and financial condition of the fund, in contravention of s 1017C of the *Corporations Act 2001* (Cth); and
2. REST had failed to act in the best interests of its members, exercise adequate care, skill and diligence, and exercise due diligence by not disclosing and managing REST's climate change business risks, in contravention of s 52 of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**).

On 2 November 2020, the parties settled the litigation. The terms of the settlement are not publicly available. However, REST's media release acknowledged climate change "is a material, direct and current financial risk to the superannuation fund across many risk categories", and that it was important to identify and manage these risks.<sup>1</sup> REST committed to 9 initiatives:

1. set an objective to achieve a net zero carbon footprint by 2050;

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<sup>1</sup> REST Super, *Rest reaches settlement with Mark McVeigh* (Media Release, 2 November 2020).

2. measure, monitor and report outcomes on its climate-related progress and actions in line with the Taskforce on Climate-Related Financial Disclosures (**TCFD**);
3. encourage its investee companies to disclose in line with the TCFD recommendations;
4. publicly disclose the fund's portfolio holdings;
5. enhance its consideration of climate change risks when setting its investment strategy and asset allocation positions, including by undertaking scenario analysis;
6. actively consider all climate change related shareholder resolutions of investee companies and otherwise continue to engage with investee companies and industry associations to promote business plans and government policies to be effective and reflect the climate goals of the Paris Agreement;
7. conduct due diligence and monitoring of investment managers and their approach to climate risk;
8. continue to develop its management processes and implementing changes to its climate change policy and internal risk framework to reflect the above; and
9. seek to require that its investment managers and advisers comply with the above.

### **What are the implications for superannuation funds and their directors?**

Because the REST case settled before it went to Court, there was no legal ruling that would give funds certainty about their obligations regarding climate change risk disclosure and management. However, the result echoes growing encouragement amongst regulatory bodies for funds to disclose and manage their climate change risks in accordance with the TCFD. Accordingly, funds who fail to do so risk falling short of their legal obligations.

While superannuation fund directors were not the target of Mr McVeigh's case, the duties of directors under s 52A of the SIS Act may extend to the proper management of climate change risks. Directors can mitigate the risk of failing to meet these duties by considering climate risks in their decision making in a way that is more than 'cursory acknowledgement and disclosure',<sup>2</sup> and ensuring their fund is disclosing climate risks in accordance with the TCFD and has robust governance frameworks in place.

### **What can members do about their fund's climate risk assessments?**

Similarly to Mr McVeigh, members can request information about their fund's knowledge and management of its climate change business risks.

If members are not satisfied with the response they receive to this request, they can make a complaint to the Australian Prudential Regulation Authority. We can also provide free initial legal advice on these issues – please see our contact details above.

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<sup>2</sup> Noel Hutley SC, *Supplementary Memorandum of Opinion* (Memorandum, 26 March 2019) [21].