Environmental Defenders Office

9 February 2021

Legal Opinion: Woodside's disclosure of climate-related risks

Introduction

1. The Conservation Council of Western Australia has instructed us to provide a legal opinion on the extent to which Woodside Petroleum Ltd's (ACN 004 898 962) (**Woodside**) disclosure of its climate-related risks complies with the recommendations of the Task Force for Climate-related Financial Disclosures (**TCFD**), as well as disclosure requirements in the *Corporations Act 2001* (Cth) (**Act**) and related guidance.[1]

2. Where Woodside's climate-related disclosure is possibly insufficient, this opinion details how this insufficiency could be rectified and provides good practice examples.

Summary of opinion

3. Woodside is exposed to a number of climate-related risks that, in our view, are not disclosed in accordance with the TCFD. Expert evidence could be obtained to ascertain whether Woodside's climate-related disclosure is sufficient to comply with the disclosure requirements of the Act.

4. Woodside's climate-related risks include the risk the "Burrup Hub" projects become stranded, carbon-intensive assets as countries strive to achieve the Paris Agreement's goal of limiting global average temperature increase to 1.5°C or well below 2°C above pre-industrial levels.[2] Gas production levels need to decrease annually by 3% between 2020 and 2030 in order to limit global temperature increase to 1.5°C,[3] or start declining around 2030 to be consistent with a 2°C pathway.[4] Existing global fossil fuel infrastructure is already more than sufficient to push the world past 1.5°C above pre-industrial levels.[5] If the Paris Agreement aims were implemented, demand for gas in the power sector in Asia, a major source of demand for gas produced by the "Burrup Hub" projects, would likely peak around 2030 and decline close to zero between 2050 and 2060.[6] The World Economic Forum's Global Risks Report 2020 noted action to reduce emissions could turn approximately 50% of gas reserves into stranded assets.[7]

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[1] Unless otherwise specified, references in this opinion to legislative provisions are references to provisions of the Act.
[2] *Paris Agreement* art 1(a) <https://unfccc.int/sites/default/files/english_paris_agreement.pdf>.
[3] Stockholm Environment Institute et al., *The Production Gap: The discrepancy between countries' planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C* (Report, December 2020) 12, 15-16.
[4] Stockholm Environment Institute et al., *The Production Gap: The discrepancy between countries' planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C* (Report, 2019) 17.
[5] Dan Tong et al., 'Committed Emissions from Existing Energy Infrastructure Jeopardize 1.5 °C Climate Target' (2019) 572 *Nature* 373.
[6] Climate Analytics, *Impact of Burrup Hub for Western Australia's Paris Agreement Carbon Budget* (Report, February 2020) 15.
[7] World Economic Forum, *The Global Risks Report 2020* (Report, January 2020) 32.

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5. Indeed, the "Burrup Hub" projects are prime candidates for becoming stranded assets during their expected lifetime (from 2025 to 2070[8]). They are projected to use increasingly carbon-intensive gas resources, doubling the average greenhouse gas (**GHG**) intensity of gas from the North West Shelf plant from close to 0.4 to 0.7t CO2-e,[9] and if operational, would be Australia's largest GHG pollution source.[10] This makes them particularly vulnerable to carbon pricing mechanisms and growing market concern about the sustainability of GHG-intensive processes and products.

6. In our view, Woodside's disclosure of this risk is not specific and complete. We are only aware of Woodside addressing this risk in response to investor concerns during Woodside's Q2 2020 briefing. Woodside's CEO, Peter Coleman, stated the "Burrup Hub" remains "an attractive case"[11] and that the "pricing of carbon does not in a material way affect the economics of the [Burrup Hub] projects".[12]

7. The TCFD was established by the Financial Stability Board (**FSB**) in 2015. The FSB is an international body that monitors and makes recommendations about the global financial system. The TCFD was established to "develop recommendations for more effective climate-related disclosures that could promote more informed investment, credit, and insurance underwriting decisions."[13] To achieve this, the TCFD advances a framework for "consistent climate-related financial disclosures that would be useful to investors, lenders, and insurance underwriters in understanding material risks".[14]

8. In our view, Woodside's climate-related disclosure does not comply with 3 of the 11 disclosures recommended by the TCFD. Our reasons for this are set out at paragraphs [23] to [30] below.

9. Expert evidence could be obtained regarding the materiality of Woodside's climate-related risks, which would inform further consideration as to whether Woodside's climate-related disclosure is sufficient to comply with the disclosure requirements of the Act – including whether:

    a. Woodside complied with s 296 of the Act, specifically whether it complied with the Australian Accounting Standards Board (**AASB**) 101 in its 2019 Financial Report (see paragraphs [33] to [49] below).

    b. Woodside complied with s 297 of the Act, specifically whether the 2019 Financial Report provided material information affecting the useful life and fair value of its assets, and thereby whether the 2019 Financial Report gave a true and fair view of its financial position and performance (see paragraphs [33] to [49] below).

    c. Woodside complied with ss 298(1AA) and 299A(1) of the Act, specifically whether the 2019 Directors' Annual Report included information that Woodside's members would reasonably require to make an informed assessment of: the operations of Woodside;

[8] 'North West Shelf Project Extension', *Woodside* (Web Page, 14 September 2020) <https://www.woodside.com.au/our-business/burrup-hub/north-west-shelf-project-extension>.
[9] Climate Analytics, *Impact of Burrup Hub for Western Australia's Paris Agreement Carbon Budget* (Report, February 2020) 3.
[10] Urgewald, *Five Years Lost: How Finance is Blowing the Paris Carbon Budget* (Report, December 2020) 54.
[11] Woodside, 'Q2 2020 Briefing Transcript and Additional Information' (ASX Announcement, July 2020) 3.
[12] *2020 Annual General Meeting* (Woodside, 2020) 1:23:10.
[13] 'About the TCFD', *TCFD* (Web Page, 8 February 2021) <https://www.fsb-tcfd.org/about/>.
[14] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 14.

the financial position of Woodside; and the business strategies, and prospects for future financial years, of Woodside (see paragraphs [50] to [59] below).

10. Woodside has foreshadowed that its 2020 Annual Report and related financial reporting will contain further disclosure of its climate-related risks in accordance with the TCFD.[15] These financial reports are scheduled to be released on 18 February 2021.[16]

Factual background

Woodside

11. At all material times, Woodside was, and remains:

    a. a public company incorporated under the Act;

    b. a corporation listed on a financial market operated by the Australian Securities Exchange (**ASX**); and

    c. the issuer of ordinary shares which were, and are, traded on the ASX under the designation "WPL".

About the TCFD

12. In June 2017, the TCFD advanced a framework for "consistent climate-related financial disclosures that would be useful to investors, lenders, and insurance underwriters in understanding material risks".[17] Reporting in accordance with the TCFD framework is mandatory for signatories to the Principles for Responsible Investment (**PRI**). PRI signatories comprise investors with over $80 trillion in funds under management.[18]

13. While the TCFD recommendations are voluntary and not legally binding on Australian companies, as noted below, the ASX and the Australian Securities and Investments Commission (**ASIC**) have incorporated the recommendations in their disclosure guidance to listed companies and their directors.

14. The Australian Prudential Regulation Authority (**APRA**) has stated it "expects that disclosure that is specific, comprehensive and considers climate change risks distinctly will progress in the future", noting the TCFD recommendations provide "an established, voluntary framework for this disclosure".[19] APRA also stated it would be "embedding the assessment of climate risk into its ongoing supervisory activities" by "increasing the intensity of its supervisory activities to assess the effectiveness of risk identification, measurement and mitigation strategies adopted by APRA-regulated entities".[20]

Woodside's climate-related risks

15. Climate change is likely to include, or result in, changes including: higher mean and maximum temperatures; higher minimum temperatures; decreases in precipitation; increases in the severity of droughts; decreases in relative humidity; increases in the intensity of rainfall;

[15] Woodside, *Climate Change Risk Management: Next Steps* (Report, April 2020).
[16] 'Investors: Upcoming Events', *Woodside* (Web Page) <https://www.woodside.com.au/investors>.
[17] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 14.
[18] 'TCFD-based reporting to become mandatory for PRI signatories in 2020', *Principles for Responsible Investment* (Web Page, 18 February 2019) <https://www.unpri.org/news-and-press/tcfd-based-reporting-to-become-mandatory-for-pri-signatories-in-2020/4116.article>.
[19] APRA, *Climate change: Awareness to action* (Information Paper, March 2019) 17.
[20] APRA, *Climate change: Awareness to action* (Information Paper, March 2019) 25.

increases in the intensity of cyclones and storms; and increases in the mean sea level (the **Physical Impacts**).

16. Australia and most other nation states aim to strengthen the global response to the threat of climate change by, amongst other things, holding the increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.[21] Those aims have caused, and will increasingly continue to cause, changes to Australian and international policy, laws, legal actions, markets, technology and customer or community perceptions towards companies and investors (the **Transition Impacts**).

17. As detailed above, Woodside's climate-related risks include the risk the "Burrup Hub" projects could become stranded, carbon-intensive assets due to Transition Impacts, and the impact this would have on Woodside's business.

18. The likelihood of this risk eventuating is demonstrated by China recently announcing its target of carbon neutrality by 2060.[22] The impact the target will have on China's demand for imported gas is unclear given the announcement's ambiguity. Nonetheless, analysts predict gas use in China will increase over the next ten years, before decreasing as China effectively goes "ex-growth".[23] Any decrease in demand will have a notable impact on Australian gas exporters, who are the main supplier of liquified natural gas (**LNG**) to China.[24]

19. Woodside's climate-related risks also include risks resulting from Physical Impacts. For example, Woodside's LNG export facilities are located adjacent to the coast where they are vulnerable to storm surges and sea level rise.[25] LNG also requires chilling to less than minus 160℃ to liquify it for efficient transport, which becomes more costly at higher temperatures.[26]

20. The likelihood of Woodside's climate-related risks related to Physical Impacts eventuating is not insignificant. 2020 was the first year the World Economic Forum concluded the top 5 global risks in terms of likelihood were all environmental, including extreme weather (such as drought) and natural disasters.[27]

Compliance with TCFD recommendations

Relevant framework

21. The TCFD published a Final Report in June 2017 containing the following recommended disclosures of climate change risks by companies:[28]

    a. Governance: Disclose the organisation's governance around climate-related risks and opportunities.

[21] *Paris Agreement* art 1(a) <https://unfccc.int/sites/default/files/english_paris_agreement.pdf>.
[22] Xi Jinping, 'Address to Summit on Biodiversity' (Speech, United Nations, September 2020).
[23] Angela Macdonald-Smith, 'China's net-zero goal to send coal, oil demand diving', *Australian Financial Review* (online, 25 September 2020) <https://www.afr.com/companies/energy/china-s-net-zero-goal-to-send-coal-oil-demand-diving-20200924-p55yxf>.
[24] Henning Gloystein and Jessica Jaganathan, 'Having a gas: Australia dominates China's LNG supply', *Reuters* (online, 14 June 2019) <https://www.reuters.com/article/us-australia-china-lng-idUSKCN1TF0GV> .
[25] Dr Michael H Smith, *Assessing Climate Change Risks and Opportunities for Investors: Oil and Gas Sector* (Report, July 2016) 2.
[26] Dr Michael H Smith, *Assessing Climate Change Risks and Opportunities for Investors: Oil and Gas Sector* (Report, July 2016) 2.
[27] World Economic Forum, *The Global Risks Report 2020* (Report, January 2020) Figure 1.
[28] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 14.

i. Describe the board's oversight of climate-related risks and opportunities (**First Governance Limb**).

ii. Describe management's role in assessing and managing climate-related risks and opportunities (**Second Governance Limb**).

(Together, **Governance Limbs**.)

b. Strategy: Disclose the actual and potential impacts of climate-related risks and opportunities on the organisation's businesses, strategy, and financial planning where such information is material.

i. Describe the climate-related risks and opportunities the organisation has identified over the short, medium, and long term (**First Strategy Limb**).

ii. Describe the impact of climate-related risks and opportunities on the organisation's businesses, strategy, and financial planning (**Second Strategy Limb**).

iii. Describe the resilience of the organisation's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario (**Third Strategy Limb**).

(Together, **Strategy Limbs**.)

c. Risk Management: Disclose how the organisation identifies, assesses, and manages climate-related risk.

i. Describe the organisation's processes for identifying and assessing climate-related risks (**First Risk Management Limb**).

ii. Describe the organisation's processes for managing climate-related risks (**Second Risk Management Limb**).

iii. Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organisation's overall risk management (**Third Risk Management Limb**).

(Together, **Risk Management Limbs**.)

d. Metrics and Targets: Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material.

i. Disclose the metrics used by the organisation to assess climate-related risks and opportunities in line with its strategy and risk management process (**First Metrics Limb**).

ii. Disclose Scope 1, Scope 2, and, if appropriate, Scope 3 GHG emissions, and the related risks (**Second Metrics Limb**).

iii. Describe the targets used by the organisation to manage climate-related risks and opportunities and performance against targets (**Third Metrics Limb**).

(Together, **Metrics Limbs**.)

22. The Final Report outlines the following seven principles for effective disclosures (with our emphasis):[29]

    a. disclosures should represent relevant information;

    b. disclosures should be **specific and complete**;

    c. disclosures should be clear, balanced and understandable;

    d. disclosures should be consistent over time;

    e. disclosures should be comparable among companies within a sector, industry or portfolio;

    f. disclosures should be reliable, **verifiable and objective**; and

    g. disclosures should be provided on a timely basis.

Woodside's climate disclosure

23. In the 2019 Annual Report's "Climate change risk management" section, Woodside briefly addresses its approach to each of the TCFD's 11 recommended disclosures, and cross-references further information contained in other portions of the 2019 Annual Report, as well as Woodside's 2019 Corporate Governance Statement and 2019 Sustainable Development Report.[30] Where relevant to Woodside's compliance with the TCFD's recommended disclosures, this opinion also considers Woodside's disclosure of climate-related risks subsequent to its 2019 Annual Report and related financial reporting.

<u>Strategy Limbs</u>

24. In our view, Woodside's disclosure is not likely to be sufficient to comply with the TCFD's three Strategy Limbs.

25. We consider Woodside's disclosure in relation to the First Strategy Limb insufficient because:

    i. contrary to the TCFD's guidance on the First Strategy Limb,[31] it fails to differentiate Woodside's climate-related risks for each time horizon (short, medium and long term); and

    ii. it fails to describe Woodside's climate-related risks in a specific and comprehensive manner. For example, TCFD's guidance on the First Strategy Limb is that organisations should provide "a description of the specific climate-related issues for each time horizon (short, medium, and long term) that could have a material financial impact on the organization".[32] Woodside's vague reference to the "physical impacts of climate change" does not specify Physical Impacts that could have a material financial impact on Woodside, such as those identified at [19] above.

26. We consider Woodside's disclosure in relation to the Second Strategy Limb insufficient because it fails to identify the potential impacts of Woodside's climate-related risks on its business, strategy and financial planning in a specific and comprehensive manner. For

[29] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 18.
[30] Woodside, *2019 Annual Report* (Report, February 2020) 42-43.
[31] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 20.
[32] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 10, 20.

example:

a. Woodside discloses the impacts of carbon, gas and oil (which many of Woodside's gas contracts are pinned to) price changes on its cash flow in a vague manner, if at all. For example, Woodside's statement that "global climate change policy" will potentially "constrain Woodside's ability to create and deliver stakeholder value"[33] can be contrasted with Shell's disclosure that a $10 per barrel change in oil prices would have an approximately $6 billion impact per year on its cash flow from operations, and a $10 per tonne increase in carbon prices would result in a reduction of about $1 billion in its pre-tax cash flows;[34]

b. Woodside's disclosure of the extent to which Transition Impacts such as carbon pricing may result in its assets, including the "Burrup Hub" projects, becoming stranded (see [4]-[5] above) is not specific and complete. Where companies identify policy changes as one of their climate-related risks, as Woodside has, the TCFD provides, as examples of potential financial impacts, write-offs, asset impairment, and the early retirement of existing assets.[35] These examples are provided to assist companies identify climate-related impacts. In response to investor concerns regarding stranded asset risks, CEO Peter Coleman responded in a general manner stating the "Burrup Hub" remains "an attractive case"[36] and that the "pricing of carbon does not in a material way affect the economics of the [Burrup Hub] projects";[37] and

c. Woodside does not disclose the extent to which Physical Impacts could impact its production forecasts (see [19] above). The TCFD identifies increased operating costs due to inadequate water supply for fossil fuel plants as one of the potential financial impacts that companies should consider if changes in precipitation patterns are one of their business risks.[38]

27. We consider Woodside's disclosure in relation to the Third Strategy Limb inadequate because it fails to describe the resilience of its strategic response to different climate-related scenarios in a specific and comprehensive manner, and is not comparable with the scenario analysis undertaken by other oil and gas companies in their Australian financial reporting, such as BHP and Rio Tinto.[39]

28. We note Woodside has indicated it will further articulate its strategic vision for climate change action, continue to explain how Woodside's business is adapting to a lower-carbon future, use scenario analysis its 2020 Annual Report, disclose the impact of Physical Impacts on Woodside's assets and operations its 2020 Annual Report, and enhance disclosure on the methodology used to test portfolio resilience.[40]

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[33] Woodside, *2019 Annual Report* (Report, February 2020) 39.
[34] Shell, *Energy Transition Report* (Report) 36.
[35] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 10.
[36] Woodside, 'Q2 2020 Briefing Transcript and Additional Information' (ASX Announcement, July 2020) 3.
[37] *2020 Annual General Meeting* (Woodside, 2020) 1:23:10.
[38] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 10.
[39] See BHP Billiton Ltd, *2020 Annual Report* (Report, February 2020) 38-39, 65-68; BHP Billiton Ltd, *2020 Climate Change Report* (Report, September 2020) 12-21, 36-39; Rio Tinto Ltd, *Our approach to climate change 2019* (Report, 2019) 6-9.
[40] Woodside, *Climate Change Risk Management: Next Steps* (Report, April 2020) 1-2.

Other Limbs

29. Having regard to the TCFD's guidance,[41] and the World Business Council for Sustainable Development's guidance for oil and gas companies in particular,[42] we consider Woodside's disclosure is likely sufficient to comply with the TCFD's Governance, Risk Management and Metrics Limbs.

30. Woodside has indicated it will provide further disclosure for each of these Limbs its 2020 Annual Report.[43]

Compliance with Part 2M.3 of the Act

31. Part 2M.3 of the Act concerns the preparation and content of financial reports. The requirements in the Part are obligations of the entities to which the Part applies.[44]

32. As a public company,[45] Woodside is required to prepare a financial report and a directors' report for each financial year.[46]

2019 Financial Report

Relevant legal framework

33. Section 295 of the Act sets out the requirements for the content of Woodside's financial reports. In addition to those specific requirements, Woodside is required to prepare its financial reports such that the reports, and the notes to those reports:

    a. comply with the requirements of the accounting standards published by the AASB;[47] and

    b. give a true and fair view of Woodside's financial position and performance.[48] 'True' requires that the facts be correct, and that no material facts are omitted. 'Fair' requires that any opinions expressed are reasonable in the context in which they appear.[49]

34. The version of AASB 101 in force at the time of Woodside's 2019 Financial Report required Woodside disclose information about the assumptions it made about the future, and other major sources of estimation uncertainty at the end of the reporting period, that had a significant risk of resulting in a material adjustment to the carrying amounts of its assets and liabilities within the next financial year. As the number of variables and assumptions affecting the possible future resolution of the uncertainties increases, those judgements become more subjective and complex, and the potential for a consequential material adjustment to the carrying amounts of assets and liabilities normally increases accordingly.[50]

[41] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 19, 21-23.
[42] World Business Council for Sustainable Development, *Climate-related financial disclosure by oil and gas companies: implementing the TCFD recommendations* (Report, 2018) 17-20, 33-39.
[43] Woodside, *Climate Change Risk Management: Next Steps* (Report, April 2020).
[44] *Australian Securities and Investments Commission v Healey* (2011) 196 FCR 291, [126]; *Australian Securities and Investments Commission v Godfrey* (2017) 123 ACSR 478 [23] (Moshinsky J).
[45] Act s 9 (definition "public company").
[46] Act, s 292(1)(b).
[47] Act, ss 296 and 334.
[48] Act, s 297.
[49] *Grant-Taylor v Babcock Brown Ltd (in liq)* (2015) 322 ALR 723, 752 [136].
[50] AASB, *AASB 101: Presentation of Financial Statements* (Compiled AASB Standard, March 2019) 25.

35. AASB 101 defined information to be “material” if:[51]

> *Omissions or misstatements of items are material if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor.*

36. The latest version of AASB 101 provides the following examples of circumstances that may result in material information being obscured:[52]

    a. information regarding a material item, transaction or other event is disclosed in the financial statements but the language used is vague and unclear;

    b. information regarding a material item, transaction or other event is scattered throughout the financial statements;

    c. dissimilar items, transactions or other events are inappropriately aggregated;

    d. similar items, transactions or other events are inappropriate disaggregated; and

    e. the understandability of the financial statements is reduced as a result of material information being hidden by immaterial information to the extent a primary user is unable to determine what information is material.

37. In December 2018, the AASB and the Auditing and Assurance Standards Board issued a joint guidance statement on the relevance of climate-related risks for financial statement account estimates.[53]

38. The guidance confirmed that entities like Woodside should consider how climate risks affect their impairment assessments and other decisions made in relation to the recognition or measurement of items in their financial reports. This includes provision for onerous contracts and fines/penalties, changes in the useful life and fair valuation of assets (due to climate-related risks), and changes in expected credit losses for loans and other financial assets.[54]

<u>Woodside’s climate disclosure</u>

39. The extent to which Woodside’s disclosure of climate-related risks in its 2019 Financial Report complied with AASB 101 depends on:

    a. whether one or more of Woodside’s climate-related risks presents a significant risk of resulting in a material adjustment to the carrying amounts of assets and liabilities within the next financial year; and

    b. if so, whether the 2019 Financial Report omits, misstates, or obscures information about those risks.

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[51] AASB, *AASB 101: Presentation of Financial Statements* (Compiled AASB Standard, March 2019) 7.
[52] AASB, *AASB 101: Presentation of Financial Statements* (Compiled AASB Standard, March 2020) 7.
[53] AASB, *Climate-related and other emerging risks disclosures: assessing financial statement materiality using AASB Practice Statement 2* (December 2018).
[54] AASB, *Climate-related and other emerging risks disclosures: assessing financial statement materiality using AASB Practice Statement 2* (December 2018) 11.

Materiality of Woodside's climate-related risks

40. In our view, there is a possibility that Woodside's climate-related risks could result in an adjustment to the carrying amounts of its assets and liabilities.

41. However, we note that expert evidence would be required to determine the significance of that risk and the materiality of any potential adjustment to the carrying amounts of Woodside's assets and liabilities, and therefore to determine the question of compliance with AASB 101.

42. We consider that a potential risk exists because, for example, as noted at [4] to [5] above, a more rigorous international response to climate change in line with the Paris Agreement poses a risk to the useful life and fair valuation of Woodside's assets, such as the "Burrup Hub" projects. Further, Transition Impacts, such as increasing decarbonisation trends, shareholder activism to divest from oil and gas, the pace of renewable energy growth, and investor behaviour toward gas financing, could affect demand for gas and oil, and, in turn, gas and oil prices.

43. The question is whether the adjustments that could result from Woodside's climate-related risks are "material" for the purposes of AASB 101. This depends on whether omitting or misstating information about them could, individually or collectively, influence the economic decisions that users of Woodside's 2019 Financial Report would make on the basis of the Report.[55]

44. That Woodside's climate-related risks are capable of constituting material information that must be disclosed pursuant to AASB 101, despite being systemic in nature, was confirmed by the joint guidance statement issued by the AASB and the Auditing and Assurance Standards Board in December 2018. In the circumstances outlined at [4] to [5] and [42] above, it would seem the following information *may* influence decisions that primary users of Woodside's 2019 Financial Report would make on the basis of the Report:

    a. information about the average useful life required for the recoverable amount of each asset to exceed book value; and

    b. information about the demand forecasts that underpin Woodside's assumptions about gas and oil prices, and the key climate-related risks to those forecasts.

45. For example, the "Burrup Hub" projects have an expected life of 2025 to 2070.[56] However, pursuing efforts to limit global warming to 2°C above pre-industrial levels would likely require net zero emissions by 2050. Accordingly, information about whether an average useful life of 30 years would be sufficient to make the "Burrup Hub" projects' recoverable amount exceed book value appears capable of influencing decisions of the 2019 Financial Report's users.

46. Finally, it is noted that on 26 January 2021, Standard & Poor's revised its industry risk assessment from intermediate to moderately high risk for oil and gas producers. As a result, it placed warnings on Woodside's credit rating, together with several other oil and gas producers, as it reviews the consequences of higher business risks for these ratings.

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[55] AASB, *AASB 101: Presentation of Financial Statements* (Compiled AASB Standard, March 2019) 7.

[56] 'North West Shelf Project Extension', *Woodside* (Web Page, 14 September 2020) <https://www.woodside.com.au/our-business/burrup-hub/north-west-shelf-project-extension>.

Disclosure of material climate-related risks

47. We consider Woodside's disclosure of its climate-related risks is obscured by the vague language contained in Woodside's 2019 Financial Report. The following are the only references in the 2019 Financial Report to climate-related risks:[57]

> *The FLVCD is classified as Level 3 on the fair value hierarchy and has been determined based on the following key assumptions:*
>
> *…*
>
> *- An evaluation of climate risk impacts.*
>
> *…*
>
> *The present value of future cash flows for each CGU was estimated using the assumptions set out below:*
>
> *…*
>
> *- An evaluation of climate risk impacts.*

48. Therefore, if one or more of Woodside's climate-related risks falls within the definition of "material" in AASB 101, the question arises as to whether those risks were obscured by the generality of the 2019 Financial Report, and whether Woodside complied with AASB 101 (and thereby s 296 of the Act) in its 2019 Financial Report.

49. Although this question can only be answered with refence to expert evidence, the extent to which the 2019 Financial Report obscured material information about Woodside's climate-related risks will affect whether it gave a true and fair view of Woodside's financial position and performance as required by s 297 of the Act. This assessment requires further information that is not currently available to us, including the size and nature of Woodside's climate-related risks.

2019 Directors' Annual Report

<u>Relevant legal framework</u>

50. Woodside's 2019 Directors' Annual Report was required to include, among other things, information that Woodside's members would reasonably require to make an informed assessment of:[58]

    a. the operations of Woodside;

    b. the financial position of Woodside; and

    c. the business strategies, and prospects for future financial years, of Woodside.

    The part of the directors' report containing this information is known as the operating and financial review (**OFR**).

51. ASIC's Regulatory Guide 247 provides that Woodside's OFR does not need to include the scope and depth of information required in a prospectus because, among other things, it is designed to be read in conjunction with the financial report.[59] Nonetheless, ASIC's policy is that

[57] Woodside, *2019 Annual Report* (Report, February 2020) 93-94.
[58] Act, ss 298(1AA) and 299A(1).
[59] ASIC, *Regulatory Guide 247: Effective disclosure in an operating and financial review* (August 2019) 6, 247.14.

information required under s 299A must be included in the body of Woodside's OFR. The OFR cannot incorporate by reference other documents (outside of the financial report) or rely on the fact relevant information may have previously been disclosed to the market to satisfy the requirements of s 299A, although it may be appropriate to cross-refer to more detail in the financial report.[60]

52. Further, Regulatory Guide 247 requires that Woodside should include in its OFR a discussion of environmental, social and governance risks where they could affect the achievement of financial performance or the outcomes disclosed. It identifies climate change as a systemic risk that:[61]

> *… could have a material impact on the future financial position, performance or prospects of entities. Examples of other risks that could have a material impact for particular entities may include digital disruption, new technologies, geopolitical risks and cyber security. Directors may also consider whether it would be worthwhile to disclose additional information that would be relevant under integrated reporting, sustainability reporting or the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), where that information is not already required for the OFR.*

53. Any climate-related risk disclosures in the OFR and any voluntary disclosures (such as those recommended by the TCFD) should not be inconsistent.[62]

54. In Report 593, ASIC emphasised that s 299A(1)(c) of the Act requires listed companies disclose material business risks affecting future prospects in their OFRs, which may include climate change. ASIC also highlighted that specific disclosure is more useful than general disclosure, and that the voluntary TCFD framework may help in considering how to disclose material climate risks and what type of information to disclose. [63]

<u>Woodside's climate disclosure</u>

55. The OFR identifies opportunities that may arise from Transition Impacts, such as the possibility of increased demand for LNG imports in Asian markets.[64] It states that Woodside has tested the robustness of its portfolio against "a range of low-outcome and lower-carbon scenarios", and includes carbon pricing in its economics.[65] However, it does not disclose in a specific manner the impact that climate-related risks, such as carbon pricing, would have on its future financial position, performance, or prospects.

56. The disclosure of climate-related risks in the OFR should be assessed in conjunction with Woodside's 2019 Financial Report.[66] However, this is of limited utility because, as detailed above, the 2019 Financial Report does not disclose Woodside's climate-related risks in a specific or comprehensive manner.

57. Woodside's discussion of prospects for future financial years appears incomplete in that it

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[60] ASIC, *Regulatory Guide 247: Effective disclosure in an operating and financial review* (August 2019) 7, 247.15.
[61] ASIC, *Regulatory Guide 247: Effective disclosure in an operating and financial review* (August 2019) 19-20, 247.64-247.66.
[62] ASIC, *Regulatory Guide 247: Effective disclosure in an operating and financial review* (August 2019) 20, 247.66 note.
[63] ASIC, *Report 593: Climate risk disclosure by Australia's listed companies* (September 2018) 4.
[64] Woodside, *2019 Annual Report* (Report, February 2020) 21.
[65] Woodside, *2019 Annual Report* (Report, February 2020) 19.
[66] ASIC, *Regulatory Guide 247: Effective disclosure in an operating and financial review* (August 2019) 6, 247.14.

does not appear to refer to its climate-related risks.[67]

58. The issue, then, is whether the climate-related risks that are not disclosed in the OFR or the 2019 Financial Report, such as those described at [42] to [45] above, could have a *material impact* on Woodside's future financial position, performance, or prospects. The information we have access to suggests this is possible. Nonetheless, as stated above, a more definitive conclusion requires expert evidence about the materiality of these risks.

59. If one or more of Woodside's climate-related risks could have a material impact on its future financial position, performance or prospects, in our view it is likely that Woodside's members would reasonably require information about those risks to make an informed assessment of Woodside's future financial position, performance or prospects. Accordingly, informed by expert evidence regarding the materiality of Woodside's climate-related risks, further consideration could be given to whether the OFR in Woodside's 2019 Directors' Annual Report complies with s 299A(1) of the Act informed by ASIC's Regulatory Guide 247.

2019 Corporate Governance Statement

60. For the purposes of completeness, we note that, at all material times, ASX Listing Rule 4.10.3 required that Woodside publish an annual corporate governance statement, that disclosed the extent to which Woodside had followed the ASX Governance Council's recommendations.

61. Recommendation 7.4 of the ASX Corporate Governance Council's Fourth Edition of the Corporate Governance Principles and Recommendations provides:[68]

> *A listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks.*

62. The commentary on Recommendation 7.4 provides the following relevant information:[69]

    a. Climate change is one particular source of environmental risk, including:

        i. risks related to the transition to a lower-carbon economy, including policy and legal risks, technology risk, market risk and reputation risk; and

        ii. physical risks, such as change in water availability, sourcing, and quality; food security; and extreme temperature changes affecting an organisation's premises, operations, supply chains, transport needs, and employee safety.

    b. Entities are encouraged to consider whether they have a material exposure to climate change risk by reference to the TCFD and, if they do, to consider making the disclosure recommended by the TCFD.

63. Recommendation 7.4 takes effect for reporting for the first full financial year starting on, or after, 1 January 2020.[70] Accordingly, while Woodside was not required to report against Recommendation 7.4 in its 2019 Corporate Governance Statement, it is required to do so in its 2020 Corporate Governance Statement.

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[67] ASIC, *Regulatory Guide 247: Effective disclosure in an operating and financial review* (August 2019) 19, 247.62.
[68] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (Fourth Edition, February 2019) 27.
[69] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (Fourth Edition, February 2019) 27-28.
[70] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (Fourth Edition, February 2019) 5.

Examples of good practice climate disclosure

64. To address the potential insufficiencies identified above, Woodside's 2020 Annual Report and related financial reporting could draw on the TCFD's examples of climate-related risks and potential financial impacts in Table 1 of its Final Report.[71] The TCFD's Good Practice Handbook provides examples of good practice in relation to climate-related disclosure,[72] and the World Business Council for Sustainable Development provides examples of good practice climate-related disclosure by oil and gas companies like Woodside.[73]

65. Further, Woodside's 2020 Financial Report could improve on the disclosure of climate-related risks in the 2019 Financial Report by considering disclosure analogous to that contained in Yancoal Australia Ltd's 2019 Financial Report. Yancoal identifies coal prices as a key assumption underpinning its assessment of each cash-generating unit's fair value and elaborates on this assumption as follows:[74]

> *The Group's cash flow forecasts are based on estimates of future coal prices, which assume benchmark prices will revert to the group's assessment of the long term real coal prices of US$51 – US$100 per tonne (2018: US$67 – US$104 per tonne) for thermal and US$102 – US$176 per tonne (2018: US$112 – US$217 per tonne) for metallurgical coal.*
>
> *The Group receives long term forecast coal price data from two external sources when determining its benchmark coal price forecasts and then makes adjustments for specific coal qualities.*
>
> *The external sources have determined their benchmark coal price forecasts having regard to the latest International Energy Agency (IEA) New Policy Scenario, the Nationally Determined Contributions submitted in the lead-up to the Paris Agreement in 2015 and National Energy Policies as they are updated. This contemplates the global seaborne demand for thermal coal will remain relatively consistent to showing a decline of 7.4% through to 2040 whilst the global seaborne demand for metallurgical coal will increase up to 2040. Key risks to the outlooks are increasing decarbonisation trends, trade disputes, protectionism, import control policies in China, shareholder activism to divest from coal, the pace of renewable technology advancement and investor behaviour to coal project financing.*
>
> *The Group has considered the impacts of a more rigorous international response to climate change under the Paris Agreement and notes that the average mine life required for the recoverable amount to continue to exceed the book value, holding all inputs constant, including coal prices, is 8, 36 and 5 years for the NSW, Yarrabee and Middlemount CGUs, respectively. The NSW CGU has a 89% exposure to thermal coal and 11% exposure to metallurgical coal whilst Yarrabee and Middlemount are both metallurgical coal mines.*

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[71] TCFD, *Final Report: Recommendation of the Task Force on Climate-related Financial Disclosures* (Report, June 2017) 10.
[72] TCFD, *Good Practice Handbook* (Report, September 2019).
[73] World Business Council for Sustainable Development, *Climate-related financial disclosure by oil and gas companies: implementing the TCFD recommendations* (Report, 2018).
[74] Yancoal Australia Ltd, *2019 Annual Report* (Report, February 2020) 121.

The Group concludes that whilst a more rigorous international response to climate change could reduce the future demand for coal the likely impact of any such actions are not expected to materially impact during the time periods noted above and hence would not result in the recoverable amount falling below book value.

For both thermal and metallurgical coal the Group's forecast coal price is within the range of external price forecasts.

66. The OFR in Woodside's 2020 Directors' Annual Report would need to be read in conjunction with the 2020 Financial Report.[75] Accordingly, specific and comprehensive disclosure of Woodside's climate-related risks in its 2020 Financial Report would go some way toward addressing any possible insufficiencies regarding the disclosure of climate-related risks in the OFR in Woodside's 2019 Directors' Annual Report.

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[75] ASIC, *Regulatory Guide 247: Effective disclosure in an operating and financial review* (August 2019) 6, 247.14.