The changing risk landscape

Corporate resilience for climate change
Physical and transitional risks

Stephanie de Groot | MinterEllisonRuddWatts

Stephanie is a Senior Associate in the Environment Team at MinterEllisonRuddWatts. Stephanie specialises in providing advice on all aspects of environmental and resource management law. She advises both private and public sector clients including property developers, infrastructure providers and operators in the primary and energy sectors. She has particular interest in the regulatory response to climate change and advises a range of clients on climate change policy development and compliance with the New Zealand Emissions Trading Scheme.
Our climate is changing

Climate change presents a range of risks to business

**Physical risks**
- Damage to assets and infrastructure
- Changes to viable land and resource uses
- Increased risk of exotic pests
- Change to tourism patterns

**Transition risks**
- Government action and regulation
- Investor and consumer reaction
- Stranded assets and changing business models

**Liability risks**
- Activist litigation
- Director liability
- Regulatory non-compliance
- Judicial review
Businesses should prepare for significant government intervention and regulatory change

**Preliminary regulatory response is in place**
- Crown Minerals (Petroleum) Amendment Act 2018
- Climate Change Response (Zero Carbon) Amendment Act 2019
- Climate Change Response (Emissions Trading Reform) Amendment Act 2020
- Resource Management Amendment Act 2020

**Significant change to the government’s regulatory response have been foreshadowed**
- Climate Change Commission’s Draft Advice for Consultation
- New climate-related financial disclosure regime
- Resource Management system reform

**Expect the regulatory response to ramp up in the next five years**
- Implementation of emissions budgets and emissions reduction plan
- Review of NZ’s Nationally Determined Contribution may require a more intensive response
- Climate Change Commission will monitor and review government’s progress
Company and Director liability risks

Andrew Horne | MinterEllisonRuddWatts

Andrew co-heads MinterEllisonRuddWatts’ national dispute resolution practice and he also leads the firm’s insurance practice. He specialises in commercial litigation with particular experience in insurance disputes, corporate and regulatory issues, financial services and technology. He regularly represents clients in mediation and at all levels of the New Zealand courts. Andrew represents a party in *Smith v Fonterra*, the first court proceeding in a Commonwealth country against private companies in respect of alleged loss and damage claimed to be caused by their direct and indirect greenhouse gas emissions.
Climate change litigation against companies

*Smith v Fonterra & Others*

- The case
- The legal issues
- Supreme Court Judges’ article
Climate change litigation against directors

- Directors’ duties
- How companies might suffer loss
- Legal challenges for claims
- Shareholder claims
- Investor claims
- Regulatory risks
Stephen Kane | Aon

Stephen is a General Manager in the Aon Corporate team with 30 years of insurance broking experience for large corporate clients in public and private sectors encompassing retail, health, property, energy and local government plus major construction such as the current Central Interceptor and City Rail Link projects.

How the insurance market is responding
Insurance industry focus on climate

▪ What the pandemic and climate change have in common is that they are both global systemic risks. However, compared to Covid-19, climate change is a catastrophe in slow motion with many causes and effects. Allianz Risk Barometer 2021

▪ ‘Through decisive action, insurance companies can facilitate the transition a low-carbon economy that is resilient to a changing climate.’ United Nations Sustainable Insurance Forum

▪ Insurers are uniquely positioned to manage and mitigate the potentially catastrophic effects of climate change on the economy and society, Deloitte. (2020, December)
Climate Related Insured Events for 2020 and 20 years accumulated

2020

**Economic Loss**

**USD268 billion**

10% above 21st Century Average

**Insured Loss**

**USD97 billion**

40% above 21st Century Average

Per NOAA: 2020 was the second-warmest year on record dating to 1880 for land and ocean temperatures at +0.98°C (+1.76°F) above the 20th Century Average.

**Economic Loss Events**

53 individual billion-dollar events
Second highest on record

**Insured Loss Events**

28 individual billion-dollar events
Highest on record

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Data: Aon (Catastrophe Insight)
Reinvention for a new era of risk

- Insurance will always adapt to new risks.
- Reshaping of the insurance industry.
  - New products and underwriting processes incorporating climate risk
  - Commitment to reducing exposure to carbon-intensive industries.
  - This change will accelerate, not much movement yet but signalled as a top priority.
- Shifting industry regulation
- Liability for climate risks
Cindy Moxley | Aon

Cindy Moxley is the Financial Products Manager at Aon. She has over 27 years of insurance broking experience and handles the placement of NZX listed entities Directors & Officers Liability insurance programmes. In addition, she is Aon NZ’s national specialist liability resource on Directors & Officers Liability insurance.
Directors & Officers Liability Insurance

Designed to provide protection to directors and officers for their personal liability resulting from claims made against them in the discharge of their duties on behalf of the Company.

- Hard insurance market
  - Reduction of capacity – insurers and Limits
  - Significant premium increases

- Temperature is rising – “event driven” D&O claims
  - COVID-19
  - ESG (Environment, Sustainability and Governance)
  - #metoo movement
  - Modern Slavery Act / Fair Labor Act
Directors & Officers Liability Insurance

- Continuous Disclosure
  - Disclose material climate-related financial information in Annual Report
  - Mandatory climate-related financial disclosure regime 2022/23 (TCFD)
  - FMA responsible for monitoring / reporting / enforcement

- Directors & Officers Liability Insurance
  - Climate change claims - not excluded
  - Civil Fines & Penalties usually covered provided legally insurable
  - Public Relation Costs Extensions, prevent or limit adverse effects or negative publicity in respect of a Wrongful Act

"Ignoring foreseeable climate-related risks could lead to a breach of directors’ duties"

"Cost and availability of capital linked to a companies decarbonisation strategy"
What would tips for what you can do now?

- Directors & Officers Liability insurance proposal forms do not contain climate change questions

"Insurers err on the side of caution and fill any uncertainty with $$premium"

- Remove Uncertainty
  - Climate change commentary in addition to the Proposal Form
    - ESG section from Annual Report; or
    - Sustainability Report, if available

**better data = better results**
Sam has been working with both public and private sector clients locally and overseas on ways to better understand and mitigate risks.
An example of success is the development of a risk transfer solution for local government infrastructure, exposed to natural disaster risks including flooding, which is currently used by 67 local authorities in NZ (out of 78).
The innovative approaches he has helped develop through collaboration and partnerships are regarded as market leading.
Top tips to consider now

1. The climate is changing and action is needed now
   Treating climate change as a distant risk puts you at a competitive disadvantage

- 1 degree Celsius change has already occurred
- The rate of change is not linear
- Changes in strategy can take time
- Regulators and capital markets are moving quickly
Top tips to consider now

2 Data and analytics are critical for decision making
Multiple views of climate risk are needed

Short-Term
Current Climate risk
Insurance Analytics & Solutions

Long-Term
Climate Models and Future risk
Climate Resilient Strategies
Top tips to consider now

3 Insights from data enable agile and flexible decision making

Insurance is a tool in a bigger climate resilience tool kit
Top tips to consider now

Climate change is a financial risk
Balance sheet impact must be understood
Top tips to consider now

5. Access to capital is highly competitive
   The most agile and climate resilient will have preferential access

Risk Mitigation
   Agile and Dynamic
   Climate Resilient Strategies

Your story

Risk Understanding
   Quantification
   Insight

Impact from a changing climate
Contribution to a changing climate
Top tips to consider now

**Bonus**

For every risk there is an opportunity

Risk managers play a critical role in enabling organisational opportunities
Contact details

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Thank you