Russell McVeagh

ESG
2024 round-up & outlook for 2025

Welcome to our 2024 ESG round-up and outlook for 2025, where we summarise trends in Environmental, Social and Governance (**ESG**) law and policy in New Zealand. There is lots going on, and the Russell McVeagh team is here to help. Get in touch if you would like to discuss further.

Climate-related disclosures to mature

This year saw the release of the first reports under New Zealand's mandatory climate-related disclosures regime, with plenty of challenges along the way. Year two will see a maturing of approaches, as reporting entities learn from each other and take on board regulatory feedback.

Earlier this month, the External Reporting Board (**XRB**) confirmed that climate-reporting entities may (if they choose) delay disclosures related to anticipated financial impacts, and scope 3 emissions, and also scope 3 emissions assurance until year three (see our earlier update here). However, the XRB has decided not to extend the timeframe for transition planning disclosures, citing strong user demand for this information. Accordingly, 2025 will be a pivotal year for transition planning as organisations grapple with this requirement.

Internationally, sustainability frameworks and guidance also continue to evolve, with key developments in 2024 including Australia finalising its mandatory regime and the Transition Planning Taskforce publishing comprehensive guidance on transition planning.

Key developments to watch:

- Further guidance is expected from the XRB over the next 12 months, including in relation to transition planning, greenhouse gas disclosures, anticipated financial impacts and assurance.
- The FMA is due to release its first monitoring report imminently, which is expected to include aggregated feedback on year one disclosures.
- The XRB will commence its post-implementation review of the regime by the end of 2025.
- It is possible that the current approach to director liability under the regime (where directors are liable where the reporting entity is in breach of disclosure requirements, subject to defences) will be reconsidered as part of proposed reforms to the Companies Act and other corporate governance reforms. It is currently uncertain whether this will form part of the review.

Government steams ahead with new emissions reduction plan

Following the 2023 General Election, the National-led Coalition Government has moved swiftly in 2024 to implement a revised approach to emissions reduction in New Zealand. The approach has pivoted away from direct interventions such as the Clean Car Discount and Government Investment in Decarbonising Industry Fund, to emphasise areas such as mobilisation of private finance, research and development, and forestry. The Emissions Trading Scheme (**ETS**) is viewed as the primary tool for emissions reduction, and the Government has also prioritised removal of regulatory barriers to support the energy transition. The prior Government's ban on new oil and gas exploration is being repealed and resource management reform has been largely unwound.

Key development to watch:

- The Government is due to deliver the final version of the second emissions reduction plan (**ERP2**) by the end of this year (see our update here). While some tweaks to the plan are expected, the underlying philosophy of the plan is likely to be consistent with the earlier draft.
- The Government is required to submit New Zealand's second nationally determined contribution under the Paris Agreement by February 2025 at the latest, to cover the period starting from 2031. This follows a period of increased political debate about New Zealand's first nationally determined contribution and the role of international offsets in achieving it.

A busy 2024 for the Climate Change Commission

2024 has been a busy year for the Climate Change Commission (**Commission**), with several important reports published (see here) and public consultations run throughout the year.

Key developments to watch:

- Three significant pieces of advice are due to be delivered by December, including advice on the preparation of the fourth emissions budget, a review of whether emissions from international shipping and aviation should be included in New Zealand's 2050 emissions target, and a review of the 2050 emissions target.
- Key deliverables for the Commission in 2025 include advice on the unit limits and price control settings for the ETS due by March, and an annual progress report on climate mitigation by mid-year.

Tweaks to the ETS to come

The Government has largely adopted a "status quo" approach to the ETS, in an attempt to provide market certainty. As a result, the Government halted the previous Government's review into whether to change the ETS to better incentivise gross emissions reductions (see our update here).

The Government is required to review, on an annual basis, the settings relating to the number of New Zealand Units (**NZUs**) in the ETS available at auction, as well as the relevant trigger prices. In 2024, following advice from the Commission, the Government dramatically reduced the number of NZUs available for auction between 2025 and 2029. This has contributed to a rise in NZU prices since the changes were announced in August.

Key developments to watch:

- The removal of agriculture from the ETS. Agricultural emissions are currently reported under the ETS regime but not priced. The Government is amending the legislation to remove agriculture from the ETS entirely, and instead plans to develop a separate pricing system for on-farm emissions by 2030.
- The expansion of the forms of carbon sequestration available under the ETS, including in relation to carbon capture, utilisation and storage (on which decisions are expected next year), and other forms of potential sequestration such as riparian planting.
- Changes to the ETS to make it more difficult for productive farmland to be converted to new exotic forestry. Policy direction is expected by the end of 2024.

Climate adaptation

While some progress was made on climate change adaptation in 2024 as a result of an inquiry undertaken by the Finance and Expenditure Committee (see our update here), there remains a substantial amount of work to do before a comprehensive and equitable adaptation framework is operational. Given the political differences that appear to remain about questions such as "who pays?", we will enter 2025 with more questions than answers, including uncertainty around the timing of any relevant legislation.

Sustainable finance strategy and taxonomy on the horizon

The market for sustainable finance has continued to diversify in 2024, with more focus on small and medium enterprises as providers work towards their sustainable finance goals. The Government is working with the Centre for Sustainable Finance to develop both a national sustainable finance strategy for New Zealand and a sustainable finance taxonomy. The taxonomy is a framework for classifying economic activities according to their sustainability performance, with the aims including promoting investment in green activities and avoiding greenwashing.

Key developments to watch:

- A methodological design features paper for the taxonomy is expected to be published by March 2025, with public consultation to follow. As yet, it is unclear whether the taxonomy will be voluntary or mandatory.
- The Financial Markets Authority (**FMA**) is expected to make decisions about proposed regulatory tweaks to enable greater sustainable bond issuance, following consultation in April 2024.

Potential opportunities for social investment

In relation to the "S" in ESG, 2024 saw a substantial re-think of the way that social investment is approached in New Zealand. The Social Investment Agency was established, with a mandate to support the Government with delivering social services using a data-driven, outcomes-focused "social investment" approach. A Social Investment Fund has also been established to directly commission social services for outcomes and support the devolution of social services to community, NGO and iwi providers. This represents an opportunity for providers who can demonstrate an outcomes-focused approach to the provision of social services. While the initial focus of the Social Investment Agency seems at this stage to be primarily on the delivery of publicly-funded social services, there may be scope for private capital to participate (e.g. through the use of social impact bonds).

Key development to watch:

- Further details of how the social investment approach will operate in practice are expected to be ironed out in 2025, including as part of Budget 2025.

Modern slavery framework stalled

While the previous Government announced plans to establish a legislative regime relating to modern slavery, this has been deprioritised following the 2023 General Election.

Key development to watch:

- Given that many other jurisdictions, including Australia, have modern slavery legislation in place and the United Nations has identified the introduction of such a regime as an area for improvement in New Zealand's human rights record,[1] we expect that we have not seen the end of this issue."

ESG litigation continues to make waves

2024 has been a significant year for New Zealand ESG litigation, with the Supreme Court's decision in February to allow the tort claim in *Smith v Fonterra* to proceed to trial attracting international attention.[2] This decision leaves open the possibility of corporates facing tort-based liability in New Zealand in respect of damage caused by greenhouse gas emissions produced by their activities (see our Insight article here). Several other significant decisions are either before the courts or awaiting judgment.

Internationally, climate-related litigation has continued to gather steam, with a number of significant judgments issued this year that are likely to have implications for the global direction of travel.

These include:

KlimaSeniorinnen v Switzerland:
The European Court of Human Rights ruled that the European Convention on Human Rights imposed positive obligations on Switzerland to protect the claimants from the adverse effects of climate change on human health and life.[3]

Fossielvrij NL v KLM:
The Amsterdam District Court found that KLM's advertising was in breach of consumer law in that it misleadingly suggested that flying can be sustainable. The court also found that claims suggesting purchasing climate offsets reduces or compensates for the climate impact associated with flying are misleading.

Milleudefensie et al v Royal Dutch Shell plc:
Earlier this month, the Hague Court of Appeal overturned the Hague District Court's earlier landmark decision requiring Shell to reduce its global emissions by 45% from 2019 levels by 2030.[4] While the Court of Appeal considered that Shell did have a duty to reduce emissions, it rejected Milleudefensie's position that this required Shell to reduce all emissions (including emissions from the fuel it sells to customers) by 45% or some other percentage.

Key developments to watch:

- In late 2023, the Court of Appeal heard an appeal from the High Court's decision in *Lawyers for Climate Action New Zealand Incorporated v the Climate Change Commission*, which relates to the approach adopted by the Commission in its May 2021 advice to the Government (see our Insight article on the High Court decision here). The decision in relation to the appeal is awaited. If successful, the decision could have potentially significant implications for the approach to climate policy analysis in New Zealand.
- Potential progress on key greenwashing cases filed or progressed in 2024, including the claim lodged by Lawyers for Climate Action New Zealand Incorporated against Z Energy in 2023. 2024 also saw the lodgement of a new greenwashing claim by Greenpeace against Fonterra, in relation to its labelling of butter. A number of international cases are also likely to evolve in 2025.

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1. *Report of the Working Group on the Universal Periodic Review: New Zealand* UN Doc A/HRC/57/4 (11 June 2024).
2. *Smith v Fonterra Co-Operative Group Ltd* [2024] NZSC 5, [2024] 1 NZLR 134.
3. *KlimaSeniorinnen v Switzerland* 53600/20 (Grand Chamber), 9 April 2024.
4. *Shell plc v Milieudefensie* 200.302.332/01 (Court of Appeal The Hague), 12 November 2024.

If you would like more information about how Russell McVeagh can support you with your ESG issues, see our ESG webpage

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