

# Scott Donald

Director – Fiduciary  
Research

Russell Investments

## The story so far:

Environment, Social and Governance concerns are real, and relevant to prudent administration of trust assets

Investment strategies that have regard to ESG factors that are appropriately motivated, defined, justified and implemented are probably ok under both SIS and general trust law.

## So what's the problem?

## Trustees have a variety of courses of action open to them

1. Ignore ESG altogether → Risk challenge on grounds that didn't have prudent regard for risk (s52(2))
2. Consider ESG, but reject and do nothing → Probably OK
3. Consider ESG, announce intention to do nothing, but do something anyway → breach s1013DA *Corps Act*?

## Courses of action ...

4. Consider ESG, announce intention to do something but do nothing → Breach *Corps Act* and s52(2) *SIS Act*
5. Consider ESG, announce intention to do something and do it incompletely → Breach of s52(2) *SIS Act*?
6. Consider ESG, announce intention to do something and do it properly → OK

Fund	Disclosure of UN PRI Signature in PDS	Disclosure of UN PRI Signature on website	RI Option available	RI applied to whole portfolio
1	No	Yes	Yes	Yes
2	Yes	Yes	Yes	No
3	No	No	Yes	Yes
4	No	No	No	Yes
5	No	Yes	No	No
6	No	No	Yes	Yes
7	Yes	Yes	No	Yes
8	No	No	Yes	No
9	No	No	Yes	No
10	Yes	Yes	No	Yes
11	Yes	No	No	Yes
12	?	Yes	Yes	Yes
13	Yes	Yes	Yes	No
14	No	Yes	Yes	No
15	No	No	Yes	No
16	No	Yes	Yes	No
17	Yes	Yes	Yes	No
18	Yes	No	No	Yes
19	Yes	Yes	Yes	Yes
What you would expect?	Yes	Yes	?	Yes

## Other issues

None of the funds disclosed ESG risks in the Risk Statement in their PDS

Signing the UNPRI may not be binding, but that does not mean it does not have legal force

Trustees cannot spend trust assets on 'advocacy'

It is time to get specific

## Conclusion

Trustees must engage with ESG issues

but

Irrespective of whether they choose to incorporate  
ESG considerations or not

Their actions must match their  
words