Consultation response to the proposed Australian climate-related financial disclosure framework

Currie Country Social Change Aboriginal Corporation

Dear Treasury Representatives,

We thank you for the opportunity to provide feedback on the proposed Australian climate-related financial disclosure framework reform. The level of guiding information to synthesise the framework and timeframes to provide comments are greatly appreciated and will contribute to a framework that maximises the purposeful impacts of the legislation, international harmonisation, and minimises the adverse outcomes.

Our submission focuses on the potential to include First Nations considerations in climate-related financial reporting in the Australian framework, which the ISSB and TFCD both under-value with respect to the draft standards that have been released for consultation. First Nations considerations, and in particular Indigenous Standpoint Theory, are important considerations in Australia's future context, but can also position Australia as a global leader for First Nations-related considerations in climate-related financial disclosures globally. This desire is in line with UN instruments including the Paris Agreement and position of First Nations First rights internationally and domestically and a vital necessary step in Environmental Sustainability Governance and in particular Corporate reporting and accountability.

We have incorporated First Nations considerations into our responses to the consultation questions.

Question 1: What are the costs and benefits of Australia aligning with international practice on climate-related financial risk disclosure (including mandatory reporting for certain entities)?

There are both costs and benefits to Australia aligning with international practice on climate-related financial risk disclosure, including mandatory reporting for certain entities.

Benefits:

- Improved decision-making: Climate-related financial risk disclosure can help investors and other stakeholders to make more informed decisions about the long-term financial risks and opportunities associated with climate change. It can also encourage companies to take more proactive steps to manage those risks and opportunities.
- Improved transparency and accountability: Mandatory reporting requirements can increase transparency and accountability in the financial sector. This can help to ensure that companies are held accountable for their actions and are more likely to take meaningful action to address climate-related risks.
- Access to capital: Companies that disclose climate-related financial risks may be more attractive to investors who are looking for companies that are taking a proactive approach to managing these risks. This could potentially increase access to capital for those companies.

Costs:

- Compliance costs: Companies may incur additional costs to comply with mandatory reporting requirements. This could include costs associated with data collection and analysis, as well as costs associated with reporting and disclosure.
- Competitive disadvantage: If Australia implements climate-related financial disclosure requirements before other countries, companies in Australia could be at a competitive disadvantage. This could be particularly true if other countries do not adopt similar requirements.
- First Nations perspectives: It is important to consider First Nations perspectives when considering climate-related financial disclosure in Australia. Many First Nations groups are already in land negotiations, land systems and dealing directly with land management as a direct result of climate impact systems without the benefit of have direct reporting from corporations and businesses on climate disclosure.
- Many First Nations peoples are already experiencing the impacts of climate change, including sea level rise, changing weather patterns, and loss of biodiversity, yet do not benefit from direct company reporting so that they may have full oversight in relation to impact and or any indirect offset or benefit that may be accrued on said land and or companies activities.
- It is important to ensure that their voices are heard and that their rights are protected in any climate-related financial disclosure regulations, and this includes having direct reporting to the Traditional Owners and First Nations groups for the purpose of new evaluation frameworks, that measure financial and no financial outcomes.

Question 2: Should Australia adopt a phased approach to climate disclosure, with the first report for initially covered entities being financial year 2024-25?

A phased approach would allow for the gradual adjustment of businesses and investors to the new regulatory environment, as well as giving them time to develop the necessary systems and processes to collect, analyze, and report on climate-related financial risks. This could help to minimize compliance costs and ensure that companies are able to provide accurate and high-quality disclosure.

We recommend businesses that are more readily able to undertake this reporting should be included in the first tranche of mandatory reporters. These businesses include those that:

- Have more exposure and desire to interact with international capital markets, that have either voluntary or mandatory climate-related financial disclosure obligations already (geographic consideration)
- Have resources and systems to integrate climate-related financial disclosures (revenue consideration)
- Make binding, lending and long-term financial decisions based on climate-related financial disclosure information (influence and lending consideration)
- Are either especially impacted or impacting on climate change (impact consideration)

It is also important to consider voluntary or “opt-in” reporting for businesses in the Australian framework, and there is an opportunity to incentivize “piggy-backing” of opt-in businesses with Tranche 1 companies. For example, the Government could provide incentives for impact-consideration focused businesses to consult with and co-develop systems, processes and reports with First Nations-led businesses, Aboriginal Corporations, Native Title Registered Corporations.

In order to ensure that First Nations perspectives are taken into account, it may be necessary to engage in extensive consultation with First Nations communities and to take steps to ensure that their rights and interests are protected. This could include providing support for Indigenous businesses, ensuring that Indigenous knowledge and perspectives are incorporated into decision-making processes, and taking steps to ensure that First Nations peoples have a seat at the table when important decisions are being made.

Question 3: To which entities should mandatory climate disclosures apply initially?

This question is answered in our response to Question 2.

Question 4: Should Australia seek to align our climate reporting requirements with the global baseline envisaged by the International Sustainability Boards?

Aligning with these standards would help to ensure that Australia's climate reporting requirements are consistent with global best practices, which could have several benefits.

Benefits:

- Increased comparability: By aligning with global reporting standards, companies in Australia would be reporting their climate-related financial risks and opportunities in a way that is consistent with other countries, making it easier for investors and other stakeholders to compare performance across different regions.
- Improved transparency and accountability: Adopting global reporting standards would improve transparency and accountability in the financial sector, helping to ensure that companies are held accountable for their actions and that they take meaningful steps to address climate-related risks and opportunities.
- First Nations perspectives: It is important to consider First Nations perspectives when considering climate-related financial disclosure in Australia. Adopting global reporting standards could help ensure that First Nations perspectives are incorporated into the development of climate-related financial disclosure regulations in Australia.

However, it is important to note that the ISB's standards are still in development, and it will likely take some time for them to be fully implemented. As such, there may be some challenges associated with aligning with these standards, including the need to update existing reporting frameworks and the potential for compliance costs.

Further, to date global standards have failed to take into consideration principles of First Nations people globally. To the extent Australia can align with international standards, we should, but where the existing framework fails to account for perspectives including First Nations principles, contemporary climate adaptation considerations (i.e. geoengineering), and other missed views, we should lead the charge.

All development must account for any impact to Indigenous Peoples. Indigenous rights violations present financially material risks to companies and can substantially inform investment decisions and impact a company's bottom line.

As the [material and reputational losses] experienced by the companies behind the Dakota Access Pipeline show, Indigenous human rights violations can be costly to corporations when left unaddressed and more so if shareholders are not made aware or have limited knowledge of the risk companies face as related to development on or near Indigenous territories.

Add Andrew Forest recent judgements and Rio Tinto ***

Additionally, Indigenous Peoples stand to be [significantly impacted] by the [rush to secure the critical minerals] necessary to fuel the transition to a low carbon economy. In light of this global energy transition, organizations across multiple sectors representing multiple industries will encounter Indigenous rights risks at some point in the course of their operations.

If ISSB is to be the global standard for sustainability and climate-related financial reporting, it must consider risks related to Indigenous human rights as codified in UNDRIP. If ISSB omits such considerations, investors will not have the full picture of a corporation's sustainability and climate-related risks.

To ensure that First Nations perspectives are taken into account, it would be important to engage in consultation with First Nations communities and to take steps to ensure that their voices and perspectives are incorporated into the development of any global reporting standards that are adopted in Australia.

It should be the desire of Australia Government to lead in this space and desire to add a specific First Nations accountability within these global standards given the use of raw minerals and land resources on Aboriginal lands.

Question 5: What are the key considerations that should inform the design of a new regulatory framework, in particular when setting overarching climate disclosure obligations (strategy, governance, risk management and targets)?

Designing a new regulatory framework for climate disclosure in Australia requires careful consideration of a wide range of factors, including strategy, governance, risk management, and targets. It is important to also consider First Nations perspectives when designing this framework.

Here are some key considerations that should inform the design of a new regulatory framework for climate disclosure:

- Scope: The framework should cover a broad range of entities, including large companies, financial institutions, and potentially other types of organizations that have a significant impact on climate change.
- Materiality: The framework should ensure that entities report on the material climate-related risks and opportunities that are relevant to their operations, rather than requiring them to report on all possible risks and opportunities.
- Clarity: The framework should be clear and concise, providing guidance on what should be disclosed, how it should be disclosed, and when it should be disclosed.
- Consistency: The framework should align with other existing reporting frameworks to ensure consistency and comparability across different sectors and geographies.
- First Nations perspectives: The framework should consider the perspectives and interests of First Nations peoples, particularly those that are disproportionately impacted by climate change. This could include providing support for Indigenous businesses, incorporating Indigenous knowledge and perspectives into decision-making processes, and ensuring that First Nations peoples have a seat at the table when important decisions are being made.
- Transparency: The framework should ensure that disclosure is transparent, providing stakeholders with access to relevant information on climate-related risks and opportunities.
- Accountability: The framework should ensure that entities are held accountable for their actions, by providing stakeholders with the ability to monitor and assess the progress of individual entities.
- Flexibility: The framework should allow for flexibility to ensure that companies can adapt to changing circumstances and respond to emerging risks and opportunities.

Question 6: Where should new climate reporting requirements be situated in relation to other periodic reporting requirements? For instance, should they continue to be included in operating and financial review, or in an alternative separate report included as part of the annual report?

The new climate reporting requirements should be situated in a way that ensures that they are given the appropriate level of prominence and attention. In considering where to place new climate reporting requirements, it is important to also consider First Nations perspectives.

Some factors to consider when deciding where to place new climate reporting requirements:

- Materiality: Climate reporting requirements should be placed in a location that reflects their materiality to a company's operations and financial performance. If climate risks and opportunities are significant enough to warrant separate reporting, they should be included in a standalone report that provides a comprehensive overview of a company's approach to climate risk management, and the impact to First Nations lands, peoples and right.
- Transparency: Climate reporting requirements should be placed in a location that promotes transparency and accessibility. It is important that stakeholders can easily find and understand the information they need to make informed decisions about a company's performance.
- Consistency: Climate reporting requirements should be placed in a location that is consistent with other reporting requirements, to ensure that investors and other stakeholders can compare performance across different entities, including within any ESG plan or measurement.
- First Nations perspectives: The placement of climate reporting requirements should consider the perspectives and interests of First Nations peoples, particularly those that are disproportionately impacted by activities. This could include providing separate reporting on Indigenous businesses or incorporating Indigenous knowledge and perspectives into decision-making processes.
- Integration: Climate reporting requirements should be integrated with other periodic reporting requirements, to avoid duplicative reporting and to ensure that all relevant information is presented in a clear and comprehensive manner.

Question 7: What considerations should apply to materiality judgements when undertaking climate reporting, and what should be the reference point for materiality (for instance, should it align with ISSB guidance on materiality and is enterprise value a useful consideration)?

These are some considerations that should apply to materiality judgments when undertaking climate reporting:

- Significance of climate risks and opportunities: The level of importance of climate risks and opportunities should be assessed in the context of a company's overall operations, strategy, and financial performance. This should take into account the physical, transitional, and liability risks associated with climate change, as well as any opportunities that may arise from shifting to a low-carbon economy.
- Stakeholder expectations: Materiality should also consider the expectations of stakeholders, including investors, customers, employees, and other relevant parties. This should take into account the views and perspectives of First Nations peoples, particularly those that are disproportionately impacted by climate change.
- Long-term impact: Materiality judgments should consider the potential long-term impact of climate risks and opportunities on a company's operations and financial performance.
- Reference point for materiality: The reference point for materiality should align with the guidance provided by relevant frameworks, such as the International Sustainability Standards Board (ISSB), as well as any relevant legislation and regulations. The enterprise value, or market capitalization, can also be a useful consideration when assessing materiality.

- First Nations perspectives: The materiality judgments should also consider the interests of First Nations peoples, particularly those that are directly impacted by activities. This could include incorporating Indigenous knowledge and perspectives, as well as considering the impacts of climate change on Indigenous communities and their traditional lands.
- As the ISSB works to create a system of global uniform reporting standards, Indigenous Peoples and socially responsible investors must participate and advocate for the inclusion of Indigenous Peoples human rights in the forthcoming standards. This is an important and timely mechanism for forwarding Indigenous human rights in the corporate reporting space.
- If Indigenous risk considerations are not present in these standards, this lack of inclusion would hinder ongoing efforts to harmonize emerging sustainability business principles with respect for Indigenous human rights. Moreover, if organizations are not required to report the impact of Indigenous rights violations, or the likelihood of such impacts occurring, investors and markets will continue to be misled as to the presence of material financial risk attached to projects or development that proceed without FPIC and violate Indigenous human rights.

Question 8: What level of assurance should be required for climate disclosures, who should provide assurance (for instance, auditor of the financial report or other expert), and should assurance providers be subject to independence and quality management standards?

As the requirements to disclose climate-related financial information is elevated to law, the requirements for similar reporting requirements should be harmonized. This would mean that accounting businesses would either need to increase their climate-related accounting capability, or work with specialist businesses that can assure climate-related financial disclosures.

Businesses that have a material impact on First Nations people, including people, culture, and traditional land, should require assurance from First Nations peak bodies relevant to their sector and geography, and or First Nations firm specialized in ESG to provide a certificate of assurance sought in consultation with affected Indigenous communities.

Question 9: What considerations should apply to requirements to report emissions (Scope 1, 2 and 3) including use of any relevant Australian emissions reporting frameworks?

Scope 3 emissions: quantifying Scope 3 emissions is onerous and fraught with potential inaccuracy. Instead, the framework should require companies to disclose their up- and down-stream commercial partners to provide interested stakeholders with visibility of practices and behaviours related to vendor sustainability practices (i.e. similar to Modern Slavery disclosure requirements) and provide information on who the company enables with their products/services.

The National Greenhouse & Energy Reporting (NGER) framework or any other Australian framework, should only be considered for this framework once independently and comprehensively reviewed for currency and accuracy of the framework, and to ensure the framework's international reputation serves the purpose of providing assurance for international market players.

Question 10: Should a common baseline of metrics be defined so that there is a degree of consistency between disclosures, including industry-specific metrics?

Yes, in so far as possible without impacting on the efficacy or validity of other metrics and without enabling double-counting of climate-related disclosures.

Question 11: What considerations should apply to ensure covered entities provide transparent information about how they are managing climate related risks, including what transition plans they have in place and any use of greenhouse gas emissions offsets to meet their published targets?

Here are some key considerations that we have identified:

- Risk management: Covered entities should provide transparent information about how they are managing climate-related risks, including the identification, assessment, and management of such risks. This may include disclosing how climate risks are integrated into their overall risk management framework and how they are being monitored and managed.
- Transition plans: Covered entities should also provide transparent information about their transition plans, including their plans for reducing their carbon footprint, adopting low-carbon technologies, and transitioning to a low-carbon economy. This may include disclosing specific targets, timelines, and actions they plan to take to achieve their transition goals.
- Greenhouse gas emissions offsets: Covered entities that use greenhouse gas emissions offsets to meet their published targets should disclose the nature and extent of these offsets, including the type of offsets used, the sources of the offsets, and any associated risks or limitations. They should also disclose how the offsets have been verified and the approach taken to ensure the quality of the offsets.
- Reporting standards: Covered entities should ensure that they are reporting in accordance with established reporting standards and frameworks, such as the Task Force on Climate-related Financial Disclosures (TCFD) or the International Sustainability Standards Board (ISSB), to ensure consistency and comparability across disclosures.
- First Nations perspectives: It is also important to consider First Nations perspectives in ensuring transparent reporting of climate-related risks and transition plans. Covered entities should engage with First Nations communities and take into account their perspectives, knowledge, and rights in managing climate-related risks and transitioning to a low-carbon economy.

Question 12: Should particular disclosure requirements and/or assurance of those requirements commence in different phases, and why?

Disclosure requirements should match international standards and should be varied only to harmonise our system to the internationally recognized standards, or where required to align with Australian law.

Question 13: Are there any specific capability or data challenges in the Australian context that should be considered when implementing new requirements?

Australia does not operate in an isolated economic bubble. We have significant international trade that must be considered in the design of this framework, including consideration for differing legal environments around the world, such as:

- Differing privacy laws and cross-jurisdictional data sharing (EU vs. US vs. UK vs. China vs. others)
- Liability (how can data use/sharing impact Australian businesses abroad?)
- Intellectual property (how can innovation in the Australian environment, and appropriate IP protection that is codified and recognized at law in Australia, be protected if disclosed to Australian and other jurisdiction climate-related financial reporting frameworks?)

Question 14: Regarding any supporting information necessary to meet required disclosures (for instance, climate scenarios), is there a case for a particular entity or entities to provide that information and the governance of such information?

Many sectors are impacted by natural disasters, which are regularly mapped according to severity on a scale of “1 in X years event” (where X represents the number of years, like 50, 100, once in a lifetime). Where a company’s core function(s)/product(s)/service(s) can “reasonably” be affected by natural disasters, climate scenarios and their impact on the business should be reported. This reporting should extend to implications on stakeholders, including suppliers and downstream stakeholders. This is particularly important where a company provides out-sourced or government-supported services to the Australian public.

These scenarios should be made public to enable effective decision-making of other stakeholders in the same geographic regions that cannot afford such studies to improve accessibility of climate-related decision-making. Intergenerational thinking is necessary to plan for risk and reward in any climate impacted activities, and in line with First Nations thinking planning and land management.

Question 15: How suitable are the “reasonable grounds” requirements and disclosures of uncertainties or assumptions in the context of climate reporting/ Are there other tests or measures that could be considered to ensure liability is proportionate to inherent uncertainty within some required climate disclosures?

The "reasonable grounds" requirements and disclosures of uncertainties or assumptions are suitable in the context of climate reporting. Climate-related risks are often associated with uncertainties and assumptions, and it is important that covered entities disclose these uncertainties and assumptions in their reporting. This helps to ensure that the information provided is accurate and reliable, and that stakeholders can make informed decisions based on the information provided.

However, it is important to note that the "reasonable grounds" requirements and disclosures of uncertainties or assumptions may not always be sufficient to ensure liability is proportionate to inherent uncertainty within some required climate disclosures. In some cases, the inherent uncertainty of climate-related risks may be significant, and it may not be possible to provide a precise estimate of the potential impacts or likelihood of occurrence. In these cases, other tests or measures may need to be considered to ensure liability is proportionate to the inherent uncertainty within some required climate disclosures.

One approach that could be considered is to use a range of scenarios or sensitivity analysis to assess the potential impacts of climate-related risks under different assumptions or conditions. This can help to provide a more nuanced understanding of the potential impacts and likelihood of occurrence of climate-related risks, and can help to inform decision-making and risk management strategies.

Another approach that could be considered is to provide additional context or explanation around the uncertainties or assumptions associated with climate-related risks. This can help to ensure that stakeholders understand the limitations of the information provided and can make informed decisions based on the information available.

Question 16: Are there particular considerations for how other reporting obligations (including continuous disclosures and fundraising documents) would interact with new climate reporting requirements and how should these interactions be addressed?

There are particular considerations for how other reporting obligations would interact with new climate reporting requirements. In particular, continuous disclosure requirements and fundraising documents may have important interactions with new climate reporting requirements.

Continuous disclosure requirements, which require listed companies to disclose information that may affect the price or value of their securities, are an important tool for ensuring that investors have access to timely and accurate information about the companies they invest in. As such, it is important to ensure that new climate reporting requirements do not conflict with or duplicate existing continuous disclosure requirements.

To address these interactions, it may be necessary to consider how the new climate reporting requirements can be integrated with existing continuous disclosure requirements. This may involve ensuring that the information required under the new climate reporting requirements is included in regular updates provided to the market under continuous disclosure requirements.

In the case of fundraising documents, such as prospectuses or information memoranda, it is important to ensure that the information provided is accurate, complete and not misleading. This may require additional disclosures about climate-related risks and opportunities, as well as how these risks and opportunities are being managed by the company. It may also require additional disclosures about how the company's operations may be affected by climate-related risks, and how these risks are being factored into the company's financial projections and forecasts.

To address these interactions, it may be necessary to consider how the new climate reporting requirements can be integrated with existing fundraising requirements. This may involve providing additional guidance to companies on how to disclose climate-related risks and opportunities in fundraising documents, as well as ensuring that the information provided is consistent with the information provided under the new climate reporting requirements.

Question 17: While the focus of this report is on climate reporting, how much should flexibility to incorporate the growth of other sustainability reporting be considered in the practical design of these reforms?

While the focus of the report may be on climate reporting, there is a growing recognition that sustainability reporting is becoming increasingly important for investors and other stakeholders.

Sustainability reporting can provide valuable information about a company's social and environmental performance, including issues such as human rights, labor practices, and environmental impact. This information can be useful for investors who are looking to assess the long-term sustainability of a company's operations and its ability to manage risks and opportunities related to social and environmental factors.

Therefore, it is important to design climate-related financial disclosure reforms in a way that allows for the flexibility to incorporate other sustainability reporting requirements, where appropriate. This could include providing guidance on how to integrate climate-related disclosures with other sustainability reporting requirements, as well as developing frameworks and standards that can be used for both climate-related and broader sustainability reporting.

At the same time, it is important to ensure that climate-related financial disclosure requirements remain focused and effective in addressing the specific risks and opportunities associated with climate change. This may require setting clear boundaries around the scope of climate-related reporting requirements, and ensuring that they do not become overly complex or burdensome.

Question 18: Should digital reporting be mandated for sustainability risk reporting? What are the barriers and costs for implementing digital reporting?

Mandating digital reporting for sustainability risk reporting could have several benefits, including increased transparency, efficiency, and standardization of reporting. Digital reporting could allow for more accurate and timely reporting, as well as making it easier for investors to compare sustainability risk reporting across different companies.

However, there are also some barriers and costs associated with implementing digital reporting. One of the key barriers is the cost of implementing new reporting systems and technologies. Smaller companies and organizations may not have the resources to invest in the necessary technology and infrastructure to support digital reporting.

Another barrier is the need for standardization and harmonization of reporting requirements. Different reporting frameworks and standards may have different reporting requirements and formats, which could make it difficult to implement a single digital reporting platform that can accommodate all reporting requirements.

There are also concerns around data security and privacy. Digital reporting would require companies to collect and report sensitive information about their operations, which could pose risks to data security and privacy if not properly managed.

In order to address these barriers and costs, it may be necessary to provide resources and support to help companies implement digital reporting systems, and to ensure that reporting requirements are harmonized and standardized across different reporting frameworks and standards. It is also important to ensure that digital reporting systems are secure and comply with data privacy regulations.

Question 19: Which of the potential structures represented (or any other) would best improve the effectiveness and efficiency of the financial reporting system, including to support introduction of climate related risk reporting? Why?

Option 1 is the most appropriate as it leverages the AASB's existing experience to facilitate the implementation of climate-related risk disclosure standards. It would be important that DCCEEW and other Government entities involved in climate-related functions have adequate input into AASB's management of this new function, and regular reviews of its appropriateness be undertaken.

Should you wish to discuss any responses to the consultation questions above, I welcome the opportunity to.

Warm Regards,

[redacted]

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