



21 July 2023

Climate Disclosure Unit
Market Conduct and Digital Division
The Treasury
Langton Crescent
PARKES ACT 2600

Sent via email: climatereportingconsultation@treasury.gov.au

Climate-related financial disclosure – Consultation Paper June 2023

Thank you for the opportunity to comment on the proposals outlined in the Consultation Paper *Climate-related financial disclosure*.

QBE Insurance Group Limited (QBE) is an Australian-based public company listed on the Australian Securities Exchange. QBE is Australia's largest international insurance and reinsurance company with operations in 27 countries and territories. QBE is also one of the top 25 global insurers and reinsurers as measured by net earned premium.

Since 2018, QBE has voluntarily applied the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) in preparing climate-related disclosures in the Annual Report. We welcome increased disclosure of climate-related financial information within Australia that is consistent with the global baseline being developed by the International Sustainability Standards Board (ISSB) to support international comparability for performance, risks and opportunities.

Overall comments and recommendations

QBE is generally supportive of the proposals in the Consultation Paper.

QBE's main concerns with the proposals include the following.

- It should be clarified that the requirements apply to an Australian consolidated group entity and not subsidiary entities to help ensure the resources devoted to reporting climate-related financial information achieve the most useful outcomes while managing the cost burden to preparers.
- It should be clarified that for Group 1 entities, the reference to '2024-25 onwards' means the requirements first apply for annual reporting periods commencing on or after 1 July 2024, consistent with the way IFRS Accounting Standards are applied and with the way it is proposed ISSB Standards will apply.
- In relation to strategy and scenario analysis:
 - there is a need for further guidance around scenario analysis, including for example on how inherent uncertainties will be accommodated – a government agency could usefully identify and/or endorse acceptable methodologies, including temperature pathways to help facilitate comparability;
 - the timelines for 'end state' and the need to provide quantitative scenario analysis are not clear – they should be linked to the timeframes over which acceptable methodologies are developed/endorsed – 2027 would not be a realistic 'end state' timeline for entities falling within the Group 1 thresholds in all circumstances;
 - assessments against at least two possible future states, including one consistent with the Climate Change Act 2022 global temperature goal are supported – however, further information is needed on the climate resilience assessment required; and

- annual scenario analysis should not necessarily be required when the insights do not change materially – for example, revised scenario analysis should only be required when there are indications of material changes or at least once every three years, whichever is earlier.
- More guidance should be provided to:
 - clarify specifically what is included in scope 3 emissions;
 - identify an indicative timeframe over which entities would be expected to refine their processes in respect of scope 3 emission disclosures; and
 - indicate the ongoing data limitations that are expected to apply to the disclosures to help manage expectations among all stakeholders on the robustness of the information disclosed.
- There should be an element of flexibility to locate information within a suite of annual reporting documents to allow entities to meet the disclosure requirements in a manner that best suits their particular circumstances and the needs of their users, rather than mandating that the disclosures appear in a single stand-alone annual report.
- The speed of progression from limited assurance to reasonable assurance – we strongly recommend a more measured approach that allows for the monitoring of limited assurance and the experiences and capabilities of entities and auditors before committing to reasonable assurance by a specified date.
- Retaining the proposed modified liability approach while experience is gained with the disclosure regime.
- The protections from misleading or deceptive conduct, false or misleading representations, and similar claims in respect of forward-looking statements need to be improved to help encourage useful disclosures.

Attachment A to this letter outlines QBE's responses to the specific proposals in the Consultation Paper. Should Treasury have any questions or wish to meet to discuss QBE's comments further, please contact [REDACTED], Head of Group Statutory Reporting & Accounting Policy at [REDACTED].

Yours sincerely

[REDACTED]

[REDACTED]

Group Chief Financial Officer

Attachment A

Attachment A

Reporting Entities

Proposal: that all entities that meet prescribed size thresholds and that are required to lodge financial reports under Chapter 2M of the Corporations Act 2001 (Cth) (Corporations Act) would be required to make climate-related financial disclosures.

This means entities (including financial institutions) lodging financial reports under Chapter 2M of the Corporations Act that meet two of the following criteria would be covered under climate-related risk disclosures legislation by 2027-28:

- the consolidated revenue for the financial year of the company and any entities it controls is \$50 million or more;
- the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is \$25 million or more;
- the company and any entities it controls have 100 or more employees at the end of the financial year.

QBE supports the use of existing criteria applied in the Corporations Act for the purposes of identifying the entities to which the disclosures would apply. We note the multiple (two out of three) criteria help ensure stability of entities in scope, and that revenue, asset and employee measures are likely to be strongly indicative of an entity's potential exposures to, and impacts on, climate change.

It is not entirely clear from the proposals whether multiple entities within the one consolidated entity that met the disclosure thresholds might be expected to separately present climate-related financial disclosures in their individual annual financial reports.

We recommend that, consistent with the approach adopted by jurisdictions such as the UK and EU, when a parent entity reports climate-related disclosures for a consolidated group, the individual entities within the group should be exempt from the reporting requirements to avoid duplication and cost and ensure prioritisation of disclosures that are most useful to investors. Furthermore, in some cases subsidiary entities are operating in other jurisdictions that require climate-related disclosures for local regulatory reporting and presenting the Australian disclosure would impose an added layer of complexity for users.

We consider that reporting of climate-related financial information at the Australian consolidated group level is the most relevant to key stakeholders and to help avoid duplication of effort and minimise the cost burden to business. When a parent entity presents Australian consolidated climate-related financial information, any separate subsidiary entity that meets the disclosure thresholds should not be mandated to have a separate disclosure and should instead include a reference in its reports to the consolidated climate-related disclosure.

We believe this scope of reporting would be consistent with user information needs under the Reform principles and the Reporting content envisaged in the Consultation Paper, in particular, that the reforms deliver:

- clear improvements in the quantity, quality, and comparability of disclosures, which will help regulators to assess and manage systemic risks and other risks to investors, strengthen transparency and improve the flow of useful information to investors [Consultation Paper, page 4]; and
- disclosures that will:

- enable investors (and future investors) to understand and assess the climate-related financial risks and opportunities faced by reporting entities and how entities are managing, planning for, and adapting to these risks and opportunities; and
- support policy makers and regulators to better understand and assess broader systemic risks to Australia's financial system." [Consultation Paper, page 10].

In particular, we note that this would be consistent with the application of the EU's Corporate Sustainability Reporting Directive (CSRD) requirements under which a subsidiary is exempted if the parent undertaking produces a consolidated sustainability report that conforms with the CSRD. We understand that this EU subsidiary exemption applies to subsidiaries that are public interest entities, unless they are also publicly-listed [Accountancy Europe Fact Sheet, 23 November 2022].

There are precedents in Corporations Law and Australian and International Accounting Standards for providing relief from reporting requirements for entities that are part of the Group that issues financial statements, including:

- in respect of Parent entities, ASIC Class Order 10/654 *Inclusion of parent entity financial statements in financial reports*; and
- in respect of the preparation of consolidated financial information, AASB 10 (IFRS 10) *Consolidated Financial Statements* [paragraph 4] permits a subsidiary that is itself a parent entity to not present consolidated financial statements under relevant circumstances, including that the subsidiary is not itself listed.

QBE agrees with not using materiality as a basis for requiring application of the requirements (such that only entities facing material climate-related risks would report) on the basis that this would add a layer of complexity and result in potentially inconsistent application of the requirements across entities and across time.

Phasing

Proposed roadmap for mandatory disclosure requirements:

Timing	Reporting entities
Group 1 2024-25 onwards	<p>Entities required to report under Chapter 2M of the Corporations Act and that fulfill two of the three thresholds:</p> <ul style="list-style-type: none"> – Has over 500 employees; – The value of consolidated gross assets at the end of the financial year of the company and any entities it controls is \$1 billion or more; – The consolidated revenue for the financial year of the company and any entities it controls is \$500 million or more. <p>AND</p> <p>Entities required to report under Chapter 2M of the Corporations Act that are a 'controlling corporation' under the NGER Act and meet the NGER publication threshold.</p>
Group 2 2026-27 onwards	<p>Entities required to report under Chapter 2M of the Corporations Act and that fulfill two of the three thresholds:</p> <ul style="list-style-type: none"> – Has over 250 employees; – The value of consolidated gross assets at the end of the financial year of the company and any entities it controls is \$500 million or more; – The consolidated revenue for the financial year of the company and any entities it controls is \$200 million or more. <p>AND</p>

	Entities required to report under Chapter 2M of the Corporations Act that are a 'controlling corporation' under the NGER Act and meet the NGER publication threshold.
Group 3 2027-28 onwards	<p>Entities required to report under Chapter 2M of the Corporations Act and that fulfill two of the three thresholds:</p> <ul style="list-style-type: none"> – has over 100 employees; – The value of consolidated gross assets at the end of the financial year of the company and any entities it controls is \$25 million or more; – The consolidated revenue for the financial year of the company and any entities it controls is \$50 million or more. <p>AND</p> <p>Entities required to report under Chapter 2M of the Corporations Act that are a 'controlling corporation' under the NGER Act.</p>

QBE supports the proposed phasing in of the proposals, including the proposed thresholds for each phase, to allow various types of entities to transition over three years.

We consider it is appropriate for entities required to report under Chapter 2M of the Corporations Act that are a 'controlling corporation' under the NGER Act to be in Group 1 on the basis that they would be among the heaviest emitters.

We assume 2024-25 refers to a financial year from 1 July 2024 to 30 June 2025. QBE would welcome clarity around the timing of application of the requirements for entities with reporting periods other than 1 July to 30 June. Based on current industry practice and industry expectations around the new requirements, to-date we have assumed that Group 1 entities are expected to first apply the requirements for the reporting periods commencing on or after 1 July 2024. Accordingly, for QBE 1 January 2025 to 31 December 2025 would be the first period of application, and there is no expectation that six months of information would be prepared for the period from 1 July 2024 to 31 December 2024. This is the manner in which IFRS Accounting Standards are applied and with the manner in which it is proposed ISSB Standards will apply.

QBE considers it will be most cost effective for entities to initially (and subsequently) report climate-related financial information by leveraging their existing systems which are geared to their current financial reporting obligations and entities would provide climate-related disclosure for the same annual periods as their financial statements.

Materiality

Proposal: Principles of financial materiality would apply. Climate-related financial information would be material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general purpose financial reports (existing and potential investors, lenders and other creditors) make on the basis of the reports. This approach to materiality aligns with the anticipated position on materiality from the ISSB and ensures harmonisation with existing definitions of financial materiality in the Australian and international standards to ensure consistency for reporting entities.

QBE supports aligning materiality with the ISSB's position which is based on the existing definition of financial materiality in the Australian and international standards. We consider this will help ensure consistency for reporting entities on the basis that this is a well-established concept in financial reporting, is familiar to key stakeholders (including users), and is supported by various forms of guidance (including Practice Statement 2 *Making Materiality Judgements* issued by the IASB and the AASB). However, additional guidance on materiality will likely be needed to specifically address climate-related disclosures to help ensure consistent reporting. We also consider that the

requirements should not preclude entities from providing additional climate-related disclosures that may be considered relevant, provided that they do not reduce understandability of the overall disclosures by obscuring other material information.

Governance

Proposal: From commencement, companies would be required to disclose information about governance processes, controls and procedures used to monitor and manage climate-related financial risks and opportunities.

QBE supports requiring governance disclosures related to monitoring and managing climate-related risks and opportunities, including:

- identifying which governing bodies are involved in oversight;
- how often climate is considered;
- how it impacts decision making and training of those charged with governance; and
- how climate-related performance is factored into executive remuneration.

Boards are ultimately responsible for this oversight and requiring these disclosures will help meet their accountabilities and help ensure that Boards are documenting climate-related issues on a systematic basis.

Disclosure about controls and procedures goes beyond typical current disclosure. We consider that a governance disclosure framework may be needed to help elicit consistent and useful types of information on controls and procedures.

We note that at least some of the disclosures relevant to governance are likely to be already embedded in an entity's reporting on governance more generally and that there should be a reasonable level of flexibility around the manner in which entities present governance information to help avoid duplication and to enable disclosures to be made in way that suits each entity's circumstances.

Strategy and Scenario analysis

Proposal: From commencement, reporting entities would be required to use qualitative scenario analysis to inform their disclosures, moving to quantitative scenario analysis by end state.

Proposal: From commencement, reporting entities would be required to disclose climate resilience assessments against at least two possible future states, one of which must be consistent with the global temperature goal set out in the Climate Change Act 2022.

QBE supports first requiring the use of qualitative scenario analysis and only subsequently requiring quantitative scenario analysis in view of model data limitations and assumptions with respect to forward-looking information and to allow time for the models to be further developed.

We consider that there is a need for further guidance around scenario analysis, including for example on how inherent uncertainties will be accommodated. We urge that consideration to be given to having the AASB or another government agency identify and/or endorse acceptable methodologies, including temperature pathways for use in scenario analysis to help facilitate comparability.

The timelines for 'end state' and the need to provide quantitative scenario analysis are not clear and we consider that they should be linked to the timeframes over which acceptable methodologies are developed and, where relevant, 'endorsed'. We consider that any timelines currently envisaged for quantitative scenario analysis should be monitored and the relevant industries consulted to ensure

that proper regard is had to the progress being made to resolve uncertainties in the models to be applied.

We note that if, 'end state' for entities falling within the Group 1 thresholds is intended to mean by 2027, we would be concerned that this would not be realistic in all circumstances because progress is dependent on the development of acceptable methodologies.

QBE supports the inclusion of assessments against at least two possible future states to reflect how different climate futures might impact the entity and its businesses. QBE also supports requiring that one future state is consistent with the Climate Change Act 2022 global temperature goal in order to provide for useful comparisons across entities.

However, we note that further information is needed on the climate resilience assessment required, including whether this is the resilience of an entity's physical operations or its business and its strategy. If the intention is to focus on the resilience of an entity's business and its strategy, this would be strongly linked to scenario analysis and should be included as part of the scenario analysis requirements.

QBE notes that annual scenario analysis should not necessarily be required on the basis that, for example, referring to the previous year's qualitative scenario analysis or quantitative scenario analysis would be effective when the insights do not change materially. That is, we envisage circumstances in which a yearly analysis is not warranted based on cost-benefit considerations.

Accordingly, we strongly recommend that a revised scenario analysis only be required when there are indications of material changes or that a revision is conducted at least once every three years, whichever is earlier.

Transition planning and climate-related targets

Proposal: From commencement, transition plans would need to be disclosed, including information about offsets, target setting and mitigation strategies.

Proposal: From commencement, all entities would be required to disclose information about any climate-related targets (if they have them) and progress towards these targets.

QBE supports disclosure of transition plans for transparency purposes, including the entity's pathway to lower-emissions and/or a net-zero impact on the economy. If an entity has no transition plans, this should be disclosed.

We concur with the ISSB approach of focussing on transparency, rather than being prescriptive about the type(s) of transition planning activities entities should undertake or the level of ambition an entity should aspire to.

QBE also supports disclosure of whether an entity's use or planned use of carbon offsets is verified through a recognised standard, rather than being prescriptive about verification. QBE considers this will provide a basis for discouraging the use of unverified (through a recognised standard) offsets which can pose a greenwashing risk, as well as a biodiversity risk (e.g. non-indigenous trees planted in a native environment), and potentially do not represent valid emission mitigation.

QBE further supports the disclosure of any climate-related targets and progress towards those targets for transparency purposes. We consider that an entity which has no targets should be required to make explanatory disclosures about why it has not set climate-related targets.

Risks and Opportunities

Proposal: From commencement, entities would be required to disclose information about material climate-related risks and opportunities to their business, as well as how the entity identifies, assesses and manages risk and opportunities.

QBE supports disclosure of material climate-related risks and opportunities including how these are identified, assessed, and managed, as well as the financial impact these have on investors.

However, we consider there needs to be a recognition of the challenges in this process and there should be an understanding that, initially, the disclosures would be on a 'best endeavours' basis. QBE considers it may be relevant to provide an indicative timeframe over which entities would be expected to refine their processes for identifying and assessing material climate-related risks and opportunities.

QBE also agrees it is important to have disclosure around where climate-related risks and opportunities are concentrated in an entity's supply chain, while also noting the potential data limitations, particularly in the initial years of application.

Metrics & Targets

Greenhouse gas emissions

Proposal: From commencement, scope 1 and 2 emissions for the reporting period would be required to be disclosed.

Proposal: Disclosure of material scope 3 emissions would be required for all reporting entities from their second reporting year onwards. Scope 3 emissions disclosures made could be in relation to any one-year period that ended up to 12 months prior to the current reporting period.

QBE supports disclosure of scope 1 and 2 emissions and observes that many companies already report such disclosures.

In respect of scope 3 emission disclosure, QBE supports the proposed transition relief given the challenges over collecting, measuring and verifying scope 3 emissions.

In addition, QBE considers it would be relevant for Treasury or the AASB to provide more guidance on the following matters.

- Clarification on specifically what is considered to be material scope 3 emissions. We understand that each entity needs to consider its own circumstances and is expected to provide information about how they have determined which scope 3 categories are considered material to their business, upstream and downstream along the value chain. However, it is important to have some guiding principles around the relevant measurement methodologies that are endorsed by Treasury or the AASB and suggested best practices where there is no current methodology.
- Refinement of scope 3 measurement should align to the methodology development and maturity of industry-wide data and sustainability disclosure. The latter is important, particularly for the medium size suppliers that fall within the Group 3 thresholds, where their scope 1 and scope 2 emissions will become data input for another entity's scope 3 emissions. We note that from the proposed assurance roadmap [Consultation Paper, Table 3] it could be inferred that the indicative timeframe for refinement for entities falling within the Group 1 thresholds is by 2027-2028 based on the reference to 'reasonable assurance all climate disclosures' by that year. However, given the interrelationships between one entity's scope 1

and scope 2 emissions and another entity's scope 3 emissions, it would be helpful to explicitly provide an indicative timeframe over which entities would be expected to refine their processes in respect of scope 3 emission disclosures to achieve practical outcomes and encourage continuous improvement.

- Acknowledgment of the ongoing data limitations that are expected to apply to scope 3 emission disclosures to help manage expectations among all stakeholders on the robustness of the information disclosed.
- Having a phased approach on scope 3 emissions disclosures by category, particularly related to supplier emissions and financed and insurance-associated emissions, again to help manage expectations among all stakeholders, including users, on the robustness of the information disclosed.

Industry-based metrics

Proposal: By end state, reporting entities would be required to have regard to disclosing industry-based metrics, where there are well-established and understood metrics available for the reporting entity.

QBE supports requiring industry-based metrics by end state for consistent reporting and comparison across insurance entities. However, please refer to our above comments on the meaning of 'end state'.

We consider that the IFRS S2 Industry Guidance Volume 17-Insurance, which is derived from the Sustainability Accounting Standards Board (SASB) requirements, has recommended some metrics that are relevant to the Australian insurance industry. However, consistent with the ISSB, we consider the IFRS S2 Industry Guidance Volume 17-Insurance should remain regarded as guidance only and not be mandatory disclosure.

We also support these metrics being subject to consultation with members of the sector to help ensure Australian entities have had the opportunity to influence the metrics most relevant to their business model. For example, we note that the metric *FN-IN-410b.2 – Discussion of products or product features that incentivize health safety or environmentally responsible actions or behaviours* in Volume 17 would be challenging to report on because incorporating particular clauses in the insurance policies sold to clients and through the pricing structure of the policies may not necessarily drive or influence environmentally sound actions/behaviours. Additional guidance would be needed to help ensure consistent application of a metric such as this.

QBE considers that Treasury or the AASB should make clear how the consultation will take place with Australian industry and the expected timeframes.

Reporting location, frequency, timing

Proposals:

- Climate disclosures would be required to be published in an entity's annual report
- For listed entities, climate disclosures would be required in the operating and financial review (OFR), within the directors' report.
- Where climate-related risks and opportunities have a material impact on the financial position of an entity, this would be included in the financial report (or the OFR, as appropriate).
- Entities must include an index table within their annual report that displays climate disclosure requirements (i.e., governance, strategy, risk management, metrics and targets) and the correlating disclosure section and page number.
- Listed entities may report the proposed 'metrics and targets' standards in a separate report, provided it is referenced in the directors' report.

Location and timing

QBE is generally supportive of the proposed location and timing in respect of the required disclosures.

However, we support climate disclosure being part of the annual reporting suite of documents to ensure the information is widely available to the public at the same time, rather than necessarily being located in the annual report as a single stand-alone document.

We consider there should be an element of flexibility to locate information within a suite of annual reporting documents to allow entities to meet the disclosure requirements in a manner that best suits their particular circumstances and the needs of their users.

We note that IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* does not prescribe that the required disclosures appear in a particular document, provided they are part of an entity's general purpose financial reporting package released at the same time and on the same terms. We also note that there is equivalent precedent in existing Australian reporting, for example, in respect of the Corporate Governance Statement, an ASX-listed entity is required under listing rule 4.10.3 to either include the Statement in its annual report or include the URL of the page on its website where the Statement is located.

In respect of the reasons in the Consultation Paper in support of Treasury's view, we consider there are alternative ways to overcome Treasury's concerns.

- The Consultation Paper notes that a separate report would not automatically be subject to chapter 2M of the Corporations Act, and would not leverage existing definitions, legislative frameworks, or entities' understanding of current reporting obligations. However, QBE would urge Treasury to consider addressing those concerns through other means. For example:
 - Changes could be made to the legislation, particularly since Chapter 2M of the Corporations Act already needs to be updated to accommodate the requirements for the climate-related financial disclosures themselves.
 - ASIC could issue an Instrument that connects the relevant aspects of chapter 2M to the climate-related financial disclosures and allows them to apply to information presented as part of the suite of annual reporting documents. We note, for example, ASIC has existing Instruments that permit information to be included in accompanying documents – such as ASIC Corporations (Directors' Report Relief) Instrument 2016/188.

- The Consultation Paper notes that a separate report increases the risk that investors receive a disjointed narrative regarding an entity's climate-related risks and opportunities, inhibiting their ability to make accurate and fair assessments. However, QBE considers that this concern could be addressed by requiring that there be clear cross-referencing between the reports in a suite of annual reporting documents. In this context, we note that this would differ only marginally from a situation where different parts of the annual report need to be cross-referenced or where financial statements within an annual report are cross referenced to climate risks and opportunities disclosed in climate reports under the Task Force on Climate-Related Financial Disclosures.

QBE also considers there is a countervailing concern that the resulting volume of information within the annual report may reduce usability and understandability of the document. We consider that providing flexibility to include climate-related financial information within a suite of annual reporting documents offers the opportunity for streamlining the presentation of information for users.

We also consider this flexibility would be consistent with the proposals to permit each entity to choose to present information on metrics and targets separately on the reporting entity's website with a relevant cross-reference from the annual report. In respect of this proposed option, we note that it would be helpful to have clarification on whether it applies to both the metrics and targets themselves or only the more detailed information relating to those metrics and targets.

Frequency

The proposals imply that the climate-related financial disclosures would be required to be made annually and QBE supports this approach. That is, for example, climate-related financial disclosures are not proposed to be mandated for half-year reporting under sections 303 to 306 of the Corporations Act. QBE considers it would be helpful to have explicit clarification that half-year reporting is not currently envisaged in the proposals. We note that disclosure on the progress of managing climate related risk and opportunities including metrics and targets are only likely to be meaningful if they are over period of at least a year.

Assurance

2024-25	2025-26	2026-27	2027-plus
Limited assurance of Scope 1 and 2 emissions Reasonable assurance of governance disclosures	Reasonable assurance scope 1 and 2 emissions Limited assurance of scope 3 emissions, scenario analysis and transition plans (specific requirements – process/methodology/assumption assurance)	Reasonable assurance scope 1 and 2 emissions and other climate disclosures Limited assurance of scope 3 emissions, scenario analysis and transition plans (full quantitative assurance)	Reasonable assurance all climate disclosures

QBE supports a phased approach for assurance. There remain significant challenges in the assurance of scenario models and Scope 3 emissions since there can be voluminous inputs and a high level of estimation and variability in assumptions.

QBE is also concerned with the speed of progression from limited assurance to reasonable assurance. We strongly recommend a more measured approach that allows for the monitoring of limited assurance and the experiences and capabilities of entities and auditors before committing to reasonable assurance by a specified date.

We consider that the feasibility of achieving reasonable assurance has not been established and there may be a lack of evidence to support the reasonable assurance benchmark for some years.

Since each entity's circumstances differ, they could be encouraged but not required to achieve reasonable assurance until it is clear that the reasonable assurance benchmark is achievable for a particular industry or across all the affected entities.

Modified liability approach

Proposal: Climate-related financial disclosure requirements would be drafted as civil penalty provisions in the Corporations Act. The application of misleading and deceptive conduct provisions to scope 3 emissions and forward-looking statements would be limited to regulator-only actions for a fixed period of three years.

QBE supports there being protection from misleading or deceptive conduct, false or misleading representations, and similar claims and notes the proposal for such protection would apply for three years from the commencement of the regime. We consider it would be helpful to know what 'regulator-only action' might involve. For example, whether this might involve entities receiving a warning and/or having a chance to resubmit information. At the very least, we would expect regulator-only action should take into account disclosure in good-faith and allow entities opportunities to improve their data and methodologies and restate prior comparatives.

We also note that, in general, forward-looking disclosure must be made on 'reasonable grounds' to not be misleading under Australian law. In the context of the ISSB Standards the disclosures to be required rely on inherently uncertain matters and there can be differing views on what is 'reasonable'. Accordingly, the 'reasonable grounds' test may not be clear in this context.

We note that the ISSB Standards indicate certain disclosures need only be made on the basis of reasonable and supportable information that is available at the reporting date without undue cost or effort, and it remains unclear how that notion would interact with the reasonable grounds test.

We are concerned that entities bearing the onus of establishing that they have reasonable grounds for the disclosures required in ISSB Standards will act conservatively when applying the Standards, which may curtail the reporting of the most useful information.

Compared with jurisdictions with safe harbour rules for forward-looking information, the reasonable grounds approach may impede Australia's progress in reporting climate-related financial information relative to international peers.

Overall, we consider there is a need for improved safe harbour rules in Australia around forward-looking statements, including disclosure of assumptions because data limitations are expected to persist after the three-year transition period. Those safe harbour rules would help encourage useful disclosures. Otherwise, entities will rationally choose to limit any forward-looking disclosures out of concern for being accused of misrepresentation.

At the very least, QBE considers there would be considerable benefit in retaining the proposed interim protections while experience is gained with the disclosure regime and levels of compliance and having a review of the protections after three years, rather than committing to the three-year timeframe.

Other comments – reform principles

QBE considers that Treasury should add a principle that Australia be a participant in the development of international climate-related disclosure standards to help ensure we have a voice in promulgating the requirements.

We observe that this would be consistent with the AASB's existing role under the *Australian Securities and Investments Commission Act 2001* in respect of accounting standards. (The AASB's

functions under section 227(1)(d) of the Act include: “to participate in and contribute to the development of a single set of accounting standards for world-wide use”.)

We consider that it is important for Australia to be in a position to influence the future direction of the ISSB on a range of topics, including other sustainability topics that are relevant to Australia such as biodiversity, modern slavery and human capital.