

09/02/2024

Submission to the consultation on climate-related financial disclosure - exposure draft legislation

The Australian Conservation Foundation (ACF) welcomes the opportunity to provide a submission to the Treasury's consultation on the *Treasury Laws Amendment Bill 2024: Climate-related financial disclosure*. ACF is Australia's national environment organisation. We are over half a million people who speak out for the air we breathe, the water we drink, and the places and wildlife we love. We are proudly independent, non-partisan and funded by donations from our community.

ACF commends Treasury on the substantive body of work that has gone into the design of the requirement for climate-related financial disclosures, which will help to align Australia with comparable international jurisdictions, attract investment from the substantial and growing share of global capital seeking out zero-emission investment opportunities, and assist in prioritising corporate engagement to maximise emission reductions. The Government's proposed legislation is part of a set of policies required to achieve domestic emission reductions consistent with Australia's obligations under the Paris Agreement.

While we do not intend to comment on all of the questions raised in consultation, this submission focuses on a few key areas that we see as vital to ensuring that the scheme is rigorous, effective and scientifically based. We also refer to our submissions to the prior phases of consultation.

Summary of Key Recommendations

- 1. Commencement of the scheme:** Phase one of the scheme should commence on July 1, 2024.
- 2. Use of NGERs methodologies:** Treasury should advocate for the urgent adoption of the Climate Change Authority's recommended reforms to the NGERs scheme, to improve the scientific robustness of that scheme and to safeguard the integrity of the incoming climate-related financial disclosures regime. Nothing in the scheme should prohibit a company from reporting emissions based on other methods such as direct measurement or satellite verification in addition to reporting based on NGERs methodologies.
- 3. Modified liability:** The modified liability for false and misleading statements should not extend further than statements regarding Scope 3 emissions and scenario analysis, and for no longer than three years.



Date of commencement of the scheme

ACF strongly supports Treasury's proposal that the first phase of the scheme commence on July 1, 2024. We agree with the observation by Treasury and many stakeholders that many large companies are already reporting against voluntary frameworks such as ISSB or TCFD, and that a commencement date for the largest companies in 2024 would therefore not create much additional regulatory burden for these entities. There is a substantial number of expert consultancies that are available to assist companies that do not have relevant in-house expertise. We would note that businesses have been expecting governments to mandate climate-related financial disclosures now for several years, and it was possible to anticipate this as of the entry into force of the Paris Agreement in 2015.

Given the urgent need to attract investment to support Australia's pathway to decarbonisation and the narrowing time period in which Australia and the world must make deep emission reductions prior to 2030 to keep the Paris Agreement goals within reach, retaining the July 1, 2024 commencement date for the first phase is the appropriate decision.

Recommendation 1: Phase one of the scheme should commence on July 1, 2024.

Use of NGERs methodology

ACF understands Treasury's desire to avoid unnecessary duplication of work by requiring entities to use the NGERs methodologies to report their financed emissions. While out of scope of this consultation, we believe that the reliance on the NGER Scheme adds additional urgency to the current review of that Scheme.

A range of sources, from both independent satellite-based research papers and the CSIRO¹, have identified that the NGER scheme is outdated, leading to an incomplete and inaccurate emissions inventory. For example, the International Energy Agency has found that Australia's methane emissions are likely underreported by at least 60%. This is due to the NGERs scheme relying upon emissions factor-based reporting for a range of sources of emissions, despite the availability of technology to support direct measurement. This is particularly prevalent in the oil, coal and gas sectors, increasing the risks of inaccurate and incomplete emissions inventories from those operators. The NGER scheme also substantially underreports land use change emissions, which is evident in that there are higher rates of land use change reported in state-based schemes that use a finer spatial resolution.

¹ Saghafi, A (2013), *Estimation of fugitive emissions from open cut coal mining and measurable gas content*, CSIRO Energy Technology, viewed online at <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=2129&context=coal>



In late 2023, the Climate Change Authority (CCA) concluded its five yearly statutory review of the NGERs scheme and recommended several substantial changes to strengthen Australia's methane monitoring, reporting, and verification (MRV) capabilities and improve the integrity of emissions reporting. The review also made important transparency recommendations, including for the publication of time-series greenhouse gas emissions data and what NGERs method was used to calculate emissions at a facility.

ACF notes the consultation paper's identification that unlike the proposed scheme, the ISSB requires using a multiplier for methane averaged over a twenty year period rather than a hundred year period, which reflects the far stronger near-term impact of methane, and the benefits of short term methane emission reductions. Australia has signed up to the Global Methane Pledge which will require separate methane reduction targets. Given that different greenhouse gases have different half-lives and different effects on the climate system, and the fact that NGERs already requires greenhouse gases to be reported separately to allow Australia to more easily report to the UNFCCC, we would encourage the Government to require greenhouse gases to be disclosed separately for the purposes of climate-related financial disclosures to provide greater transparency while avoiding any duplication.

It is important that Australia's climate-related financial disclosures do not inadvertently exacerbate the significant under-reporting of emissions by Australian companies. This would risk misallocation of investment needed to meet our climate targets, and raise concerns about interoperability between different reporting frameworks.

With this in mind, we would encourage Treasury to advocate for the NGERs reforms to happen as soon as practicable and for those reforms to comprehensively adopt the recommendations of the CCA in its 2023 review of the NGERs scheme, thus ensuring that company emissions reporting is robust, scientifically valid, and useful for climate-related financial disclosures.

Recommendation 2: Treasury should advocate for the urgent adoption of the Climate Change Authority's recommended reforms to the NGERs scheme, to improve the scientific robustness of that scheme and to safeguard the integrity of the incoming climate-related financial disclosures regime. Nothing in the scheme should prohibit a company from reporting emissions based on other methods such as direct measurement or satellite verification in addition to reporting based on NGERs methodologies.

Compliance

ACF acknowledges that Treasury has recognised that there is no need for an open-ended "safe harbour" in the regulations, and has instead included a three year modified liability period, during which only the regulator may take civil action in relation to false and misleading statements relating to Scope 3 emissions or scenario analysis, and that civil compliance action by the regulator would be limited to declarations and injunctions.

We appreciate that Treasury has confined the limitations on enforceability provisions only in relation to civil proceedings and only in relation to Scope 3 emissions and scenario analysis, in order to respond to those reporting entities that are still unprepared, because those were the two types of disclosures that some companies had identified as requiring analysis that they would find challenging. Nevertheless, we would note that climate-related financial



disclosures have been common for some time now due in part to the fact that mandatory disclosures were broadly anticipated, and there is a large climate change consulting industry available to assist companies who are starting late.

We commend Treasury for not keeping the modified liability broad and open-ended, as enforceability is key to avoiding greenwashing. Given the large and growing interest in sustainability-themed investing and corporate engagement as climate-related financial risks become apparent, there is a clear and potentially lucrative incentive for companies to engage in false and misleading conduct, and it is therefore appropriate that Treasury has proposed to limit the modified liability only to those two matters in civil proceedings brought by the regulator.

It is notable that the modified liability proposed would be the only provision in the *Corporations Act* that partly shields companies from actions relating to false and misleading conduct regarding material issues. ASIC applies an enforcement hierarchy to triage its compliance activities, and we would therefore expect that criminal proceedings or civil court proceedings would only hypothetically arise due to the most egregious examples of false and misleading conduct. Companies would also be protected from legal liability if statements are made on a reasonable basis, as is already the case for other forward-looking statements under the *Corporations Act*.

Recommendation 3: The modified liability for false and misleading statements should not extend further than statements regarding Scope 3 emissions and scenario analysis, and for no longer than three years.

