



# MINERALS COUNCIL OF AUSTRALIA

CLIMATE-RELATED FINANCIAL DISCLOSURE:  
EXPOSURE DRAFT LEGISLATION

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8 FEBRUARY 2024

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## OVERVIEW

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In response to Treasury's Exposure Draft (ED) consultation on Climate-related Financial Disclosures (CRFD), the MCA supports an Australian disclosure reporting framework that:

- Aligns closely with International Sustainability Standards Board (ISSB) standards
- Mitigates regulatory burden for companies by leveraging off existing reporting requirements including Australia's transparent and high integrity National Greenhouse and Energy Reporting (NGER) scheme
- Ensures efficiency by minimising duplication and overlap of national and state and territory-based climate-related reporting requirements
- Recognises the challenges involved in implementation by providing realistic implementation time frames appropriate for Australian companies, and
- Assists companies with the complexity and variability of estimating Scope 3 emissions that are outside of Australia's Nationally Determined Contribution by providing staggered implementation timeframes.

The MCA acknowledges the ED is generally limited to the implementation of impending Australian Sustainability Reporting Standards (ASRS) rather than building ASRS into this legislation. MCA notes that detailed sustainability and assurance standards will be made and maintained by the Australian Accounting Standards Board (AASB) and the Australian Auditing and Assurance Standards Board (AUASB).

Among the three options examined in the Policy Impact Analysis for Climate-related Financial Disclosures to help meet the Government's legislated commitment to reduce emissions, the MCA agrees that Option 1b should be recommended to Government.<sup>1</sup>

This option 'is a variation on Option 1a and amends the assurance framework, not mandating a roadmap for the phasing in and scaling up of assurance requirements over time. Under this option, all disclosures in reports issued after 1 July 2030 must be assured with a flexible pathway to achieve this being set by the AUASB.'<sup>2</sup>

However, some concerns raised by the MCA remain unaddressed in the ED. These issues and appropriate remedies are restated in this submission. The original submissions are available on the Treasury website.<sup>3 4</sup>

## REPORTING CRITERIA

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The MCA does not support the proposed thresholds for reporting. Mining is a capital-intensive industry, and the current thresholds could inadvertently include entities with small workforces that are operating projects with unusually high-value gross assets.

In February 2023 and July 2023 submissions, the MCA proposed CRFD Group 1 reporting for companies that meet two of the following criteria:

- Companies that have more than 500 employees and have either transferable security admitted to trading on the Australian Stock Exchange and a turnover of more than A\$1 billion

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<sup>1</sup> [Climate-related financial disclosures - Policy Impact Analysis \(treasury.gov.au\)](#), viewed 13 January 2024

<sup>2</sup> [Climate-related financial disclosures - Policy Impact Analysis \(treasury.gov.au\)](#), viewed 13 January 2024.

<sup>3</sup> [Climate-related financial disclosure | Treasury.gov.au](#), Submission from Minerals Council of Australia, 24 February 2023.

<sup>4</sup> [Climate-related financial disclosure: Second consultation | Treasury.gov.au](#), Submission from Minerals Council of Australia, 28 July 2023.

- Registered companies not included in the category above, which have more than 500 employees and a turnover of more than A\$1 billion
- Proprietary limited companies, which are not traded or banking entities, and have more than 500 employees and a turnover of more than A\$1 billion.

These initial Group 1 criteria are consistent with models in New Zealand and the UK, where most entities captured are in the financial industry, and improves international alignment.

This alignment is also important for MCA members with operations or headquarters in jurisdictions that require climate-related financial disclosures according to the TCFD framework.

The MCA notes that the ED's proposed Group 3 criteria would likely capture all companies currently participating in the NGER scheme – an appropriate threshold given their contribution to the national emissions inventory.

**Recommendation:** Treasury should adjust current reporting criteria for Group 1 companies to acknowledge mining is a capital-intensive industry with small workforces that are operating projects with unusually high-value gross assets.

## POLICY DEVELOPMENT AND INDUSTRY RESOURCING

The MCA, through its submissions to this consultation, has repeatedly raised concerns about the speed and scope of the policy's implementation. A rushed process presents risks to the integrity of the scheme designed to provide assurance for investors and maintain capital inflows to Australia.

Australia should ensure that mandatory CRFDs are carefully developed and implemented to maintain investor confidence. This will reinforce Australia's reputation as a modern, appropriately regulated jurisdiction that can meet the expectations of investors.

The proposed two-year gap between Group 1 and Group 2, starting from 2024-25, allows Group 1 entities to test the framework and implement industry-leading methodologies. These processes can be adjusted and refined as needed throughout 2025-26.

During the implementation phase, industry peak bodies can collaborate with their Group 1 members to provide guidance and support to Group 2 entities. This collaboration has the potential to reduce costs and regulatory burden while ensuring the integrity of reporting mechanisms.

This time gap should be replicated for Group 3 entities, allowing them to benefit from a delayed timeline so they can learn from the experiences of Group 2.

The MCA notes potential to amend legislation to delay commencement to 1 January 2025 for Group 1 entities.<sup>5</sup> MCA members support this delay, noting concerns raised in repeated submissions that a) thresholds for reporting should be amended, and b) there should be two years between commencement for Group 2 and 3.

**Recommendations:** Similar to the two-year gap between commencement of reporting for Group 1 and 2 entities, there should be a two-year gap between Group 2 and 3 commencing their reporting for processes to be effectively adapted and adjusted for smaller entities.

For an effective implementation, Group 1 entities commence reporting on 1 January 2025.

<sup>5</sup> [Mandatory climate-related financial disclosures - Policy position statement \(treasury.gov.au\)](#), p.2 – viewed 15 January 2024

## DOCUMENTATION FOR CRFD

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The ED's Explanatory Statement notes that the sustainability report needs to include 'any statements required (by) a legislative instrument by the Minister relating to matters concerning environmental sustainability' and 'the Minister may make rules to require other statements relating to environmental sustainability-related financial matters to be included as part of the sustainability report.'<sup>6</sup>

The MCA expects that any legislated requirement for additional disclosures would be subject to public consultation to ensure it delivers value for CRFD reporting and does not result in policy uncertainty that creates undue risk for investment in Australia.

**Recommendation:** Any legislated requirement for additional disclosures must be subject to public consultation.

## MODIFIED LIABILITY FRAMEWORK

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There is concern that the ED's regulator-only enforcement period fails to cover transition plans.<sup>7</sup>

Failing to do so may result in litigation from activist groups that has unintentional outcomes (such as delaying the process of disclosure and impacting efforts towards greater transparency through legal risk).

The MCA recommends the legislation provides equivalent coverage to transition plans and other forward-looking statements for a three-year period.

**Recommendation:** Ensure final legislation extends regulator-only enforcement to transition plans and other forward-looking statements for a three-year period.

## REPORTING FOR SUBSIDIARIES AND DUAL-LISTED COMPANIES

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Some entities are part of multinational enterprises that already prepare mandatory CRFD based on TCFD (e.g. in the United Kingdom, Singapore and Switzerland). Treasury should provide more clarity on how consolidation across jurisdictions with differing reporting requirements will be managed. The ED is also unclear on how the legislation will manage the risk duplication of greenhouse gas reporting - specifically for NGERs corporations.

The MCA maintains Australian entities that are part of multinational enterprises (whether subsidiaries or dual-listed companies) should be afforded the flexibility to satisfy Australian CRFD requirements by relying on TCFD- or ISSB-aligned CRFD of parent companies in other jurisdictions. Should Government opt for a more granular process that involves multiple frameworks, it is essential for Treasury to undertake an impact assessment that examines the risks and consequences of international misalignment.

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<sup>6</sup> [Treasury Laws Amendment Bill 2024: Climate-Related Financial Disclosure - Exposure Draft Explanatory Materials](#), p.13

<sup>7</sup> [Mandatory climate disclosure: how gaps in proposed legislation leave corporates exposed to activist legal action \(afr.com\)](#), viewed 30 January 2024

Doing so will alert reporting bodies of potential risks and resourcing needs for transparent and informative reporting, while highlighting areas of inconsistency that may be resolved via adjustment of the [draft] Australian Sustainability Reporting Standards.

While our members are supportive of CRFD, Government should at all stages avoid subjecting entities to unnecessary resourcing and cost burdens.

**Recommendation:** Treasury should undertake an impact assessment that examines the risks and consequences of international misalignment for CRFD reporting.

## SCOPE 3 EMISSIONS

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As noted earlier in this submission, the MCA supports Treasury recommending Implementation Option 1b to Government.

This option recognises the challenges associated with forward-looking statements, scenario analyses, and estimations for Scope 3 emissions, considering their complexity, uncertainty, and resource requirements.

While MCA members largely support the move towards reasonable assurance reporting for Scope 1 and 2 emissions, there isn't the same level of consensus when it comes to Scope 3 emissions.

The lack of specificity and detailed guidance regarding Scope 3 emissions can raise concerns about the decision usefulness of reporting if it relies heavily on models or estimations. Treasury should reconsider this: the requirement for limited assurance of all climate disclosures may not be possible (or useful), particularly regarding transition risk analysis.

This transition should be approached with the expectation of providing 'reasonable and supportable information available to the entity at the reporting date without undue effort or cost.'<sup>8</sup> It is important for entities to report in a manner that is valuable to investors and feasible as a business.

**Recommendations:** Treasury should recommend *Implementation Option 1b* to Government.

Treasury should re-assess the value of reasonable assurance for Scope 3 emissions, with a view to disclosure of reasonable and supportable information available to the entity at the reporting date without undue effort or cost.

## RESOLUTION OF OUTSTANDING ISSUES

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Given Treasury wishes to quickly introduce amendments to Parliament, the MCA is readily available to directly discuss the issues raised in this submission.

However, should Treasury recommend a commencement date of 1 January 2025 for CRFD reporting, the department should look to engage more thoroughly on this ED and ensure the legislation takes every opportunity to support Australia's reputation as a modern, appropriately regulated jurisdiction that can meet the expectations of investors.

(end)

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<sup>8</sup> [AASB Australian Sustainability Reporting Standards - Disclosure of Climate-related Financial Information \(Oct 2023\)](#), p.63 viewed 15 January 2024