



Submission to the consultation on:

Climate-related financial disclosure: exposure draft legislation

WWF-Australia's vision is that, by 2030, Australia is an active leader in the transition to a productive and resilient economy that lives within planetary boundaries and restores both natural and social capital. This requires moving from linear to circular business models that eliminate waste and pollution, keeping materials and products in use for longer, while also regenerating damaged ecosystems and halting species loss. A regenerative economy is climate resilient, electrified, and uses only clean and renewable energy. It is nature positive by design, socially inclusive and enhances well-being.

This legislation is an important step towards achieving this goal by building reporting frameworks and expectations on companies and financial institutions towards decarbonising their business footprint across all their direct and indirect emissions, as well as being better skilled at managing company transition risks. WWF-Australia commends Treasury for developing these regulatory changes for climate-related financial disclosures as a key step to meeting the Government's legislated emissions reductions targets. WWF-Australia especially notes the implication that this legislation will include a provision to allow the Treasurer to make legislative instruments to require certain companies to make statements on their environmental sustainability, i.e. nature-related financial disclosures such as those being advocated by the Taskforce for Nature-Related Financial Disclosures¹.

¹ This is outlined in section 1.39 of the explanatory memorandum to the exposure draft Bill: *any statements required a legislative instrument by the Minister relating to matters concerning environmental sustainability*.

Recommendations

1. Need for greater consideration of metrics: phased implementation recommended, not a delay.

Government feedback has been sought as to whether a delay until 1 January 2025 will improve the quality of reporting in the transitional year, in response to some industry concerns that they need more time to prepare. There is the further issue that in some sectors emissions are modelled rather than directly measured with varying levels of accuracy, and there are capacity gaps with availability of qualified personnel to undertake modelling, such as enteric methane emissions for livestock. While WWF-Australia fully supports the need for robust and transparent climate-related (and nature-related) reporting, if there are issues with accuracy of reporting and availability of experts to undertake the assessments, such reporting will not be meaningful. However, delaying the process by 6 months will not resolve these issues without a proper pathway forward.

WWF-Australia recommends that rather than delay the process by 6 months, that there be a transitional phase:

- 1) The initial reporting on 1 July 2024 could include the reporting to date and options for those reporting to provide feedback on where there are gaps, challenges and issues with metrics. Therefore, the first reporting period could be treated as a baseline of available data to date and a consultation to gather company issues with reporting at a sector level. This provides clarity on issues as well as an opportunity to determine if there are companies that should have reported but have not submitted.
- 2) A way forward could then be determined to resolve sector level challenges and overall reporting issues, with support from the relevant Department responsible for that sector e.g. DAFF for Agriculture along with the Treasury Department.
- 3) Therefore, the next reporting phase would be supported by sector specific guidance developed for reporting metrics and methodologies, and gaps in research or capacity could be supported through targeted funding.

Furthermore, while most major emitters already report on their Scopes 1 and 2 through NGERs reporting many do not yet capture their Scope 3 emissions. There is a need to agree on boundaries regarding Scope 3 reporting. Capacity building, agreeing on the reporting boundaries around Scope 3 and getting the tools in place will take time. A 6-month transition phase (not a delay) should be used to improve reporting frameworks and to develop guidelines for reporting frameworks, particularly around Scope 3.

[The Science Based Targets Initiative](#) (SBTi), established in 2015, is a call to action to reduce climate related risks. It is now mainstreamed amongst major corporations with over 7,400 companies globally signed up to set ambitious science-based targets for their direct and indirect (Scopes 1, 2, and 3) emissions. There are currently 102 Australian companies participating in the program, and over fifteen of those are listed on the ASX top 50. Each of these companies are grappling with the challenges of setting targets, measuring their emissions across all of their scopes and engaging with their supply chain, both upstream and downstream. There are tools available to support participating companies through the [CDP Supply Chain Program](#) and other resources available through the [SBT](#) process and the [WRI](#) website. The SBTi process could be used to inform climate-related financial disclosures reporting.

2. Remove the modified liability regime.

The draft Bill includes a modified liability regime for the first three years of its operation for disclosures relating to Scope 3 emissions and scenario analysis. Under this regime:

- no third party (i.e. other than ASIC) can bring legal action against a company; and
- if ASIC brings civil legal action, it is limited to seeking an injunction or declaration.

The Policy Impact Statement suggests the Government has opted for a modified liability regime because of concerns during consultation about the applicability and operation of the current liability framework to forward looking statements².

The Policy Impact Statement also notes that other submissions considered these concerns were overstated, particularly given several misleading and deceptive conduct provisions already provide that if a representation about a future matter is only misleading if it is not made on “*reasonable grounds*.”³

In WWF-Australia’s view, the “*reasonable grounds*” threshold provides sufficient protection for companies and their directors when making forward-looking statements. Given the urgency of climate change mitigation and growing concerns about greenwashing, WWF-Australia does not see the justification for treating disclosures relating to Scope 3 and scenario analysis any differently to Scope 1 and 2 emissions. These watered-down regulatory powers undermine the progress on climate-related risk and reporting that has been made over many years, despite there being no clear legislative framework. In response to regulator, investor and community concerns, many corporates are already reporting against voluntary frameworks such as ISSB or TCFD, both of which require disclosure of Scope 3 emissions.

Indeed, companies have been on notice about climate-related risk and reporting for several years. The well-known legal opinion by Noel Hutley SC and Sebastian Hartford-Davis on ‘Climate Change and Directors’ Duties’ was written in October 2016 and has been circulated broadly since then, including by the Australian Institute of Company Directors. It articulated the legal case for climate company directors to respond to climate change risks at that time, and supplementary opinions in 2019 and 2021 have documented significant strengthening of the regulatory landscape since then, including the increasing focus of the RBA, ASIC, APRA, ACCC, AASB and ASX on the financial and economic significance of climate risks. The 2021 opinion suggested that even at that time, directors were legally obliged to go beyond simply managing climate risk and take steps to ensure that positive action is being taken to deliver on their company’s public commitments and targets.

² “Reporters and some advisers noted forward-looking statements would require positions to be taken on inherently uncertain matters and thus leave company directors open to liability for misleading and deceptive conduct. Furthermore, concerns were expressed regarding Australia’s class actions regime and the heightened scrutiny around climate and sustainability claims.” - from the Policy Impact Statement

³ See sections 670A(2), 728(2) and 796C of the *Corporations Act 2001* (Cth) and section 12BB(1) of the *Australian Securities and Investments Commission Act 2001* (Cth)

3. Establish a clear timeframe and pathway for implementing nature-related financial disclosures.

WWF-Australia urges Treasury to set firm deadlines for rolling out nature-related disclosure requirements. There is a growing consensus that Net Zero targets cannot be achieved without protecting nature and corporates are under pressure to demonstrate they are taking adequate steps to minimise their exposure to physical, transition and systemic nature-related risks, and to contribute to the systemic changes required to transition to a nature-positive economy by 2030.

Nature-related financial disclosures are urgently needed to support the achievement of the 2030 deadlines agreed in the *Kunming-Montreal Global Biodiversity Framework* (GBF) and the ambition of the Government's 2022 *Nature Positive Plan*. WWF-Australia urges Treasury to adopt the recommendations outlined by the TNFD which align with Target 15 of the Global Biodiversity Framework. Target 15 concerns corporate reporting; calling for assessment and disclosure of nature-related risks, dependencies and impacts. Australia companies and financial institutions should be supported to stay up to date with global trends and take actions to minimise risks from nature loss on their business.

4. Encouragement to move towards double materiality reporting.

WWF-Australia strongly recommends Treasury consider adopting a double materiality disclosure approach for corporate reporting. Only a double materiality approach, which captures social and environmental risks to society and potential impacts on corporate performance, can fully represent investors and other stakeholders' interests.

Double materiality disclosure is better able to highlight the potential systemic risks of climate change and nature loss, which are of growing concern to financial regulators around the world. Adopting double materiality disclosures would also bring Australia in alignment with international standards such as the European Sustainable Reporting Standards (ESRS).

This could be an especially important game changer for global disclosure at a critical time when we are facing both a climate and a biodiversity crisis. If this is not enacted as part of Treasury's program, we may lose another decade of progress.

5. Scenario analysis should be based on best practice science and aligned with a 1.5°C pathway.

Using robust science-based pathways is crucial for standardising disclosures from companies and ensuring robustness of disclosures so Australia can meet its emissions reductions obligations. WWF-Australia strongly urges Treasury to strengthen their requirement around scenario analysis by specifically asking companies to use the IPCC and IEA science-based modelled pathways to limit warming to 1.5°C above pre-industrial levels.

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