BCA
Business Council of Australia

Climate-related financial disclosure: exposure draft legislation

BCA Submission

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Contents

Overview 2
Main points 2

Overview

The Business Council of Australia welcomes the opportunity to provide views on the climate related financial disclosure exposure draft legislation and accompanying explanatory materials.

Our members support continuous improvement in the quality of climate related financial disclosures to facilitate investment decision making that has due regard for climate related risks and opportunities.

It is the BCA's strong contention that the primary purpose of these new requirements should be to help investors form the most rigorous view possible of climate risks and opportunities as they pertain to investments in corporations.

We also believe that an appropriately calibrated 'training wheels' approach is critical to ensuring a successful implementation of the new requirements that serves both users and preparers of disclosures. There is nothing to be gained for users or preparers of disclosures if the new requirements are poorly implemented in Australia.

Imposing obligations and creating legal exposures under the Corporations Act requires certainty about the detailed standards that will apply, sufficient time for investment in systems and auditing capabilities to develop and appropriate liability safe harbours and transitions periods.

Main points

With a successful implementation in mind, we make the following key comments in relation to the exposure draft legislation and accompanying explanatory materials.

- Close alignment of the Australian Accounting Standards Board (AASB) standards with the International Sustainability Standards Board (ISSB) standards is critical so that i) users can make valid comparisons across different corporations in different jurisdictions, and ii) compliance costs are minimised for covered entities.
  - AASB standards are currently in the process of being consulted upon and are therefore unlikely to be finalised before March/April this year, creating uncertainty with regard to how closely aligned they will be with the ISSB Standards.
  - There is a risk that the AASB standards and Treasury's assumptions about the final form of these standards (embedded in the Position Policy Statement) diverge as the standards are finalised.
  - The AASB standards should also align with the Greenhouse Gas Protocol and the National Greenhouse and Energy Reporting (NGER) Scheme in allowing an entity to use either the equity share or the control approach when measuring its emissions.
- There should be a 'subsidiary exemption' available to entities with parent corporations that report climate related financial disclosures at an aggregated level in jurisdictions aligned to the ISSB standards.
- Where Australian subsidiaries of parent corporations are obliged to provide a report under the new requirements, we request the following.
  - Allow these entities to refer to (or reproduce) their parent corporation's reported information in relation to governance, strategy, risk management and metrics and targets — some of these factors are often managed at a group level and parent level reporting can provide a more comprehensive view across subsidiary entities.
  - Provide for interoperability between Australia's reporting requirements and other ISSB consistent jurisdictions via the use of attestation or mutual recognition of compliant reporting in other jurisdictions (for the purpose of complying with the new requirements in Australia).

- Clarify the extent to which entities in a consolidated group with separate reporting obligations under the Corporations Act must also prepare standalone sustainability reporting under the new requirements, and the degree to which they may choose to report at the group level.

- The commencement date should allow a minimum of 12 months from the date legislation is proclaimed or AASB standards are published (whichever is later) before compliance is required — which is necessary to ensure there is sufficient time to develop internal capabilities and capacity to meet the new requirements.
  - This time is also important as it will also provide audit professionals a window to develop necessary new skills and significantly increase their capacity to meet the demands of covered entities when they start reporting under the proposed legislation.
- The reporting of emissions information under the new requirements needs to allow for the fact that reporting under the NGER scheme is due by 31 October each year, which means some entities may not be in a position to provide this data by 1 July each year (without having to create two sets of data).
  - For some transition period, there should be an option for NGER data from the previous year to be submitted by 1 July in the current reporting year, if an entity chooses — so that only one set of emissions data has to be prepared each year.
  - Without such as option, some entities may be forced to create a second set of data, which could create extra compliance costs for preparers and the potential for confusion for users under the new requirements.
- All entities, whether reporting under NGER or not should be able to use the emissions measurement frameworks that are best adapted to their situation and that promote international comparability.
- We seek clarification for unlisted entities and entities not obliged to report under the NGER scheme, about how they should be reporting with regard to the appropriate reporting period and the emissions measurement frameworks they should be adopting.
- The development of climate disclosure standards should protect covered entities from having to divulge 'commercially' sensitive information, 'privacy' sensitive information or 'security' sensitive information when making disclosures — for example, the location of data centres in industries related to national security and fuel use and related performance data in defence contracts.
  - With regard to 'security' sensitive information, we understand that the Department of Finance is in the process of establishing a framework for public owned and operated entities but there are private entities covered by the new requirements that interact with these public entities that need this clarity before the commencement of the new requirements.
- The proposed legislation defines the report containing mandatory climate related financial disclosures as a 'sustainability report'. However, many entities already prepare a sustainability report which includes content relevant to ethical sourcing, safety performance, indigenous employment, diversity, community contributions, product safety and the environment, for example.
- The draft legislation should define the report containing mandatory climate related financial disclosures as a 'mandatory climate report' (for example) so as to be distinct from the more general form of sustainability reporting.
  - When preparing and presenting 'climate statements' and 'notes to the statement' covered entities would benefit from as much flexibility as is practicable with regards to where in an entity's annual report this information sits and how it is cross referenced to other reports etc.
  - We seek clarification about how the 'mandatory climate report' and its preparation and presentation will interact with AASB 1060 Simplified Disclosures.

- A modified liability approach is supported however the immunity provided to entities and their directors during the transition period must align with the introduction of full audit requirements (up to 1 July 2030), extend to all forward looking statements, as well as scope 3 emissions and scenario analysis, and include a high bar for civil actions.
  - The transition period should be extended to 2030 so that it aligns with the phased introduction of assurance requirements — this will also allow medium sized enterprises to benefit from the immunity, which presently expires before they are required to start reporting and would also align the modified liability period appropriately with the phase in period for assurance requirements, which ends 1 July 2030.
  - A review of the transition period and scope of the immunity should be conducted in year three to assess development of the Government's Sustainable Finance Strategy, the extent of remaining capability and data gaps, the development of guidance and other supporting information provided by government.
  - Over the transition period civil actions should only be possible for gross negligence or wilful misconduct.
  - It should apply to all forward looking disclosures in addition to scenario analysis and transition plans, which all suffer from a high degree of measurement and outcome uncertainty.
  - Protection should also be extended to cover any legally required updates to material contained in the 'mandatory climate report', for example by virtue of continuous disclosure laws, possibly by way of a supplement to the 'mandatory climate report' (rather than having to republish the entire report).
  - The draft legislation requires directors to provide declarations that 'mandatory climate reports' are compliant in the absence of a full audit, which imposes significant risk and exposure to personal liability for directors during a period when there is no requirement that 'mandatory climate reports' are expertly or independently reviewed.
  - Director declarations should not be required until 1 July 2030 when reasonable assurance over all disclosures is required.
- We request that clear guidance be provided by Treasury and the Australian Securities and Investment Commission regarding the approach to enforcement and compliance under the new requirements, including during the modified liability period.
- The draft legislation gives the Minister explicit power to require statements about any "matters concerning environmental sustainability" without providing a justification for such broad powers.
  - At the very least the final legislation should limit these powers to "matters" relevant to mandatory climate related financial disclosures, so there is clarity for all on the potential scope of the power capable of being exercised.
  - The final legislation should explicitly identify the relevant standard (once it is finalised) because the draft legislation requires compliance with sustainability standards that presently do not exist.

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