Submission

Climate-related financial disclosure: exposure draft legislation

9 February 2023

CPRC

The Consumer Policy Research Centre (CPRC) is an independent, not-for-profit, consumer think-tank. CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates.

SCA

Super Consumers Australia (SCA) is the people's advocate in the superannuation sector, advancing and protecting the interests of people on low and middle incomes in Australia's superannuation system.

Contacts for Submission:

CPRC contact

Sarah Panckridge
Senior Research and Policy Advisor, CPRC
sarah.panckridge@cprc.org.au

SCA contact

Susan Quinn
Consultant, SCA
squinn@superconsumers.com.au

Statement of Recognition

CPRC and SCA acknowledge the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to land and the ongoing living cultures of Aboriginal and Torres Strait Islander Peoples across Australia.

CPRC.org.au

superconsumers.com.au

Climate-related financial disclosure obligations need to be strengthened

Climate-related financial disclosures are essential to understand how businesses are managing climate risk and to compare efforts across entities. These new obligations should be broadened to apply to more businesses and capture more reporting requirements in time.

Consumer Policy Research Centre (CPRC) and Super Consumers Australia (SCA) welcome the Government's intention to improve the quality of climate-related financial disclosures. However, legislation should be expanded to cover a larger scope of businesses, including more superannuation funds, than is currently proposed. Exempting smaller and medium entities from the provisions will reduce the intended impact of the legislation.

While climate-related financial disclosures will initially be used in corporate documents, like annual reports, they ultimately will form the basis of environmental claims used in marketing or in third-party comparisons of business activities. This is why it is essential that the disclosure obligations apply as widely as possible. Without a broader disclosure regime, Australians will be unequipped to reliably compare how businesses are managing their sustainability risks and impacts. These issues inform consumer choice, as people continue to select products and services based on their climate-related features and actions.

CPRC and SCA make the following recommendations to the Federal Government:

- Broaden the climate-related disclosure requirements outlined in the *Treasury Laws Amendment Bill 2024: Climate-Related Financial Disclosure* to mirror the European Union's Corporate Sustainability Reporting Directive and Sustainability Reporting Standards. This includes expanding the scope beyond climate-related disclosures to factors such as sustainability across its supply chain, their impact on biodiversity, approach or consideration of human rights and how they manage ethical governance. This could be achieved by the Australian Government either:
    - Introducing expanded reporting requirements as soon as possible, following the example set by the EU.
    - At minimum, implementing the ISSB standards when available.

- Expand the scope of entities so all registrable superannuation entities (RSEs) with superannuation products on public offer have to comply with the new sustainability disclosure obligations, irrespective of fund size. Where an RSE has multiple funds, reports should be made at the fund level, rather than aggregated RSE level. Alternatively, if the Government does not adopt this recommendation, all funds making 'green' claims should be required to comply with the disclosure obligations.

Broaden mandatory disclosure powers

We are concerned that only very large entities will be required to make disclosures under the proposed reform. Addressing misleading green claims that omit certain information requires a sector-wide approach that ensures accountability across all businesses and entities.

Past CPRC research into green claims reveals that green claims are everywhere.

In 2022, CPRC conducted a 'day-in-the-life' scan of green claims over a 24-hour period. CPRC found 122 green claims (online and offline) across 17 sectors, including banking and superannuation, of which only 39 had any supporting evidence or verification to give people confidence that the claim was accurate or meaningful.[1] Many claims were unhelpful, confusing, or potentially misleading.

Further research by CPRC and ADM+S of 20,000 impressions of over 8,000 Facebook ads has revealed that businesses across all sectors, large and small, including the financial sector, are making vague and unhelpful green claims via social media.[2] Many of these claims have no common meanings, making it difficult for people to determine the accuracy of the claim. It is essential that businesses such as super funds substantiate any green claims that they make to consumers.

Beyond emissions – consumers need the full picture to effectively compare

One objective of the legislation is to make it easier for information about an entity's climate-related actions, strategies and plans to be more comparable. However, limiting the scope of reporting to climate-related risks only will provide an incomplete picture, making it less useful for Australian consumers to meaningfully compare businesses.

Other international regimes already require some businesses to report on their broader environmental and social impacts. For example, the EU Corporate Sustainability Reporting Directive and the Sustainability Reporting Standards are much broader. By mid-2024, all EU countries will need to integrate the Directive into their laws, to require large companies to report on a more extensive range of environmental, social and governance factors, including:

- Pollution
- Impact on biodiversity and ecosystems
- Resource use and the circular economy
- Social impact including impact on workers, affected communities, consumers and end users
- Governance arrangements in place to achieve ESG goals.[3]

The EU is ahead of the International Sustainability Standards Board (ISSB), which has flagged that its sustainability reporting standards (the basis for the Australian reporting standard) will

---

[1] CPRC, *The consumer experience of green claims in Australia*, December 2022, https://cprc.org.au/green-claims/.

[2] CPRC and ADM+S, Seeing green – Prevalence of environmental claims on social media, December 2023, https://cprc.org.au/seeing-green/.

[3] European Commission (2023), "Corporate Sustainability Reporting" accessed 7 February 2024 https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en

next expand beyond climate into biodiversity, ecosystems, and ecosystem services; human capital; and human rights.[4]

The Australian Government should commit to promptly expanding the scope of sustainability-related disclosures and require businesses to report on other factors in addition to climate-related financial risks, such as sustainability across their supply chains, impacts of businesses on biodiversity, approach or consideration of animal rights and ethical governance.

The Government should issue a timeframe for expanding reporting requirements to align with the EU approach. This would signal to businesses and asset owners that they should prepare to report on a much broader range of sustainability issues. This is timely, given a recent review of Australia's modern slavery reporting requirements recommended that businesses have expanded responsibilities to report on the risks of modern slavery in their operations.[5] This is one example of why sustainability-related reporting obligations in Australia should be aligned through the sustainability reporting regime, rather than as a patchwork of laws.

Australians are bombarded with claims about environmental and sustainable features of products and services. Marketers and businesses are trying to tap into a growing desire of many Australians to actively make environmentally conscious choices. Yet the nature of many green claims means that consumers cannot verify them. People are left hoping that businesses are doing the right thing and following through on their sustainable promises.[6]

With increased propensity of businesses transitioning to advertising with green claims, it's clear that adequate guardrails are needed to ensure that consumer choice towards environmental options is meaningful and informed.[7] This is imperative, as products and services claiming better environmental outcomes are often more expensive than those that are not.[8]

Consumers cannot compare the merits of a product's sustainability features without having the necessary information at hand to make such an assessment.

In its Policy Impact Analysis, the Government rightfully acknowledges that the current use of mixed voluntary and mandatory frameworks and reporting formats that do not account for quality makes it difficult to assess information relating to sustainability. We agree that this is both an unfair system and is inefficient for markets.

While disclosure is not the sole antidote to 'greenwashing', it is essential that businesses can substantiate and clearly describe the impacts their products have on sustainability issues and how. Without consistent information substantiating sustainability claims, consumers cannot accurately compare the impacts of a product or service, and ultimately make an informed choice.

---

[4] Deloitte AISPlus, *ISSB Consultation on Agenda Priorities*, November 2023, https://www.iasplus.com/en/meeting-notes/issb/2023/november/agenda-priorities.

[5] Attorney General's Department, *Report of the statutory review of the Modern Slavery Act 2018 (Cth),* May 2023, https://www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth.

[6] CPRC, *Submission to the Senate Inquiry into Greenwashing*, June 2023, CPRC-Submission-Senate-inquiry-into-Greenwashing-June-2023.pdf.

[7] CPRC and ADM+S, *Seeing Green*, November 2023, https://cprc.org.au/seeing-green/.

[8] Gary Mortimer, 'Climate explained: are consumers willing to pay more for climate-friendly products', September 2020, *The Conversation*, https://theconversation.com/climate-explained-are-consumers-willing-to-pay-more-for-climate-friendly-products-146757.

Addressing gaps in the reporting threshold for superannuation fund asset owners

Registrable superannuation entities (RSEs) hold almost $2.5 trillion in Australians' retirement savings.[9] They are the link between major Australian companies – some with significant climate and other sustainability impacts and risks – and the shareholders in those companies (superannuation fund members). The Treasury's Policy Statement notes the significance of these entities in Australia's financial system.[10]

We welcome more transparency from Australia's major superannuation funds about their climate strategies, governance, targets, and greenhouse gas emissions. While some funds already report this information voluntarily, mandatory reporting will set the benchmark and make climate information more comparable, transparent, and detailed.

Many superannuation funds claim that their assets and investment strategies are 'sustainable', 'responsible', 'ethical' and/or consider 'environmental, social and governance (ESG)' issues. ASIC has ongoing concerns that some of these claims are 'greenwashing', and that people are being misled by superannuation funds.[11]

The Exposure Draft Bill requires asset owners, including RSEs with $5 billion or more in assets under management (AUM) to make sustainability disclosure reports and keep related records from July 2026, as 'Group 2' entities.[12]

The proposed climate (and eventually, broader sustainability) reporting requirements, along with ASIC's focus on greenwashing by superannuation funds as an enforcement priority, could help to prevent superannuation funds from misleading people about where their money is invested.

However, there appear to be significant gaps and risks in the $5 billion threshold, based on our analysis of the latest APRA data:[13]

- **RSEs with less than $5 billion in AUM:** More than 20 RSEs have less than $5 billion in AUM and based on the current proposed draft legislation, will not have to report on their climate risks at all. This may include one RSE which has $4.99 billion in AUM across several funds.
- **Small super funds administered by one RSE:** Because the mandatory climate disclosure obligations sit with the RSE, more than 25 individual funds will not be required to comply with the proposed regime.[14]

---

[9] APRA, *Media release: APRA releases annual superannuation bulletin for 2022/23 financial year and quarterly superannuation statistics*, 31 January 2024, https://www.apra.gov.au/news-and-publications/apra-releases-annual-superannuation-bulletin-for-202223-financial-year-and.

[10] Australian Treasury, Climate-related financial disclosure: exposure draft legislation, January 2024, Climate-related financial disclosure: exposure draft legislation | Treasury.gov.au.

[11] See for example ASIC Deputy Chair Sarah Court, *Keynote address: ASIC's 2024 enforcement priorities in the superannuation sector*, Connexus Super Chair Forum, 1 February 2024, https://asic.gov.au/about-asic/news-centre/speeches/asic-s-2024-enforcement-priorities-in-the-superannuation-sector#!page=1&type=speeches.

[12] *Treasury Laws Amendment Bill 2024: Climate-related financial disclosure*, Schedule # clause 15 (new section 286A *Australian Securities and Investments Commission Act 2001*) and clause 22 (new section 292A *Corporations Act 2001*).

[13] APRA, *Annual fund-level superannuation statistics*, as at June 2023, https://www.apra.gov.au/annual-fund-level-superannuation-statistics.

[14] According to the latest APRA data.

As the $5 billion threshold does not consider if funds have a high number of members with low balances, some funds with growing numbers of members with small balances - including younger people and/or people on low-incomes – will not need to individually report. This includes funds that have made promotional claims such as '*invest for a fossil fuel free future*' and '*Our members are thinkers. Our members are change makers*'. The current proposal would mean that some funds who are actively targeting people who are climate-conscious will not be required to report.

Example: Super funds targeted by ASIC for greenwashing

In 2023, ASIC issued infringement notices to both Future Super (Future Super Investment Services Pty Ltd) and Cruelty Free Super (Diversa Trustees Ltd) for greenwashing. Both funds have less than $5 billion in AUM.

Diversa is the RSE for Cruelty Free Super, and was the RSE for Future Super at the time it was fined. Equity Trustees is now the RSE for Future Super. Diversa and Equity Trustees are also the RSEs for a number of other funds, and both have more than $5 billion in total AUM.

Under the current proposal, Diversa and Equity Trustees would make climate disclosure reports at the corporate level, aggregating information about all funds under their umbrellas. There would be no climate reports for individual funds with less than $5 billion in AUM.

This means that two funds targeted by ASIC for greenwashing will not have to substantiate their green claims in future by individually complying with the climate reporting regime.

To address this regulatory gap in climate reports being a preventative measure for greenwashing, we recommend that the proposal be changed to require all funds on public offer, irrespective of size, to report under the new obligations

If the Government decides to retain an AUM reporting threshold, an alternative minimal approach would be to target funds where there is a greater risk of greenwashing.

This could be by requiring all funds with superannuation products on public offer to make reports if they make any form of 'green' claims. This would include, but not be limited to, representations that their organisation, assets or strategies are sustainable, responsible, ethical and/or consider ESG issues, or use other words to that effect, such as 'green', 'fossil fuel free' or 'cruelty free'. This should apply where the claims are about any superannuation products, or about the organisation itself.

This less-impactful change to the proposal would at least be a uniform approach to requiring substantiation of green claims across the superannuation industry. It could be a stepping stone towards improving green claims and potentially broadening the scope in future. It would also help bolster consumer confidence in the credentials of funds which promote themselves as sustainable.

GET IN TOUCH
+61 3 9607 7101
office@cprc.org.au
www.cprc.org.au

Fairer markets for Australians

Level 6,
179 Queen Street
Melbourne VIC 3000, Australia