Mandatory climate-related financial disclosures

Submission

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I am a consultant with a background in climate science.

This brief submission provides feedback on the **Climate-related financial disclosure: exposure draft legislation consultation**, including an examination of the *Exposure Draft – legislation*, *Exposure Draft – Explanatory Memorandum*, *Policy Impact Analysis* and *Policy Statement* documents.

Context: Climate greenwashing in Australia's fossil fuel industry

The fossil fuel industry became aware of global warming and its likely impacts as early as 1977. For decades their approach has been to refuse to publicly acknowledge climate change, promote climate misinformation, and engage in "greenwashing".

The term "greenwashing" was coined in 1986. Since the early 1990s, greenwashing has become a strategy commonly adopted by corporations, including the fossil fuel industry. It enables companies to deliberately deceive the public and their shareholders into believing that their products, aims, and policies are environmentally friendly.

As an example, **in 2023 a major Australian integrated electricity generator, and electricity and natural gas retailer**, undertook a social media advertising campaign which proclaimed their intention to roll out green gas, and that this demonstrated their deep, ongoing commitment to tackling climate change. Upon closer examination, **the "product" they were selling neither existed nor was remotely green** – it comprises 90% natural gas. The corporation intends to sell natural gas indefinitely, perhaps diluting it via 10% hydrogen by 2050, totally contradicting the spin in their promotion. This is misleading and deceptive conduct.

Climate greenwashing behaviour is rife in Australia's fossil fuel industry. It's not a bug, it's a feature.

Phasing

The **phasing of the reporting regime is not in line with the required urgency of action to address financial system risks associated with climate change**, nor does it consider the existing mature climate reporting capabilities of many Australian corporations. Specifically, **Group 1 entities have the resources and experience to comply with all end-goal reporting requirements within one financial year, including Scope 3 emissions reporting**. Should a Group 1 entity lack sufficient domestic expertise in assessing Scope 3 emissions, they can leverage their pool of global resources and/or consultants.

For the same reasons, Group 1 entities should produce qualitative **and** quantitative scenario analysis in their first reporting cycle.

The reforms would benefit from a **more nuanced approach to Group categorisation** that prioritises high greenhouse gas emitters (covering Scope 1, 2 and 3) as first adopters of the regime.

It should be noted that **the fossil fuel industry**, as mentioned above, has had at least a **30-year lead-time to adopt global climate reporting standards and assess their Scope 3 emissions**. **This is not new or unexpected.**

Disclosure against industry-based metrics

The paragraph on industry-based metrics in the *Policy Statement* includes: "Entities should **only** be required to disclose against well-established and understood industry-based metrics **from 1 July 2030 onwards**" (p.3). Justification for this date is unclear. There appears to be no discussion in the *Policy Impact Analysis* or *Policy Draft – Explanatory Memorandum*.

Reporting Content – Climate Resilience Assessments

The section in the *Policy Statement* titled "Reporting Content" (subsection "Climate resilience assessments, dot point 2, p.3) states that "entities should use at least two possible future scenarios and one of these scenarios must align with [...] limiting global warming to 1.5 degrees".

In the past 6 months, the climate science literature indicates that **the goal of 1.5ºC is lost**, and that **key indicators show a further acceleration of climate change** beyond the conservative modelling of the most recent IPCC AR6 publication[1]. The science suggests that **2ºC of warming is already locked in** to the climate system and is likely to

[1] For example, Hansen J *et al*. Global Warming in the Pipeline. *Oxf Open Clim Change* 2023;3

be reached by the mid- to late-2030s. Thus, the 1.5ºC scenario is already obsolete and must be replaced, regardless of current government preferences.

From a financial risk perspective, best practice is to include an assessment of worst-case outcomes. It is essential to align the assessment scenarios with scientific and accounting reality – specifically, to **mandate two realistic scenarios**: i) **2ºC minimum**, and ii) a maximum based on **Representative Concentration Pathway 8.5 (RCP8.5)**. The mandating of two assessment scenarios provides government, regulators, industry, and the public with a common framework to more easily analyse, compare, track, review, and audit corporate climate reports.

The scenarios should be reviewed and adjusted based on real-world scientific measurements and modelling – not arbitrary political targets or industry pressure.

Should the **superseded 1.5ºC assessment scenario be retained** as part of the reporting regime, the Government will be **handing corporations a free pass to continue their misleading and deceptive greenwashing**.

Liability Framework

The *Policy Statement* outlines a key goal of the draft legislation: "Improving climate disclosures will support regulators to assess and manage systemic risks to the financial system as a result of climate change and efforts taken to mitigate its effects." (p.1)

The burden of accurate financial disclosure lies with corporations, not with Government regulators such as ASIC.

The *Policy Impact Analysis* indicates very clearly that climate greenwashing is a major problem in Australia. The section "Option Selection" (p.36) states that the proposed climate-related financial disclosure regime will provide regulators with new tools for tackling this problem: "Regulators will have the certainty to enforce compliance against misleading claims and greenwashing".

The *Policy Statement* (p.4) says: "Entities will be provided relief for a fixed three-year period for disclosures relating to Scope 3 emissions [, scenario analysis] and certain climate-related forward-looking statements. For reports issued between 1 July 2025 and 30 June 2028, only the regulator [ASIC] will be able to bring action relating to breaches of relevant provisions made in disclosures of scope 3 emissions and climate-related forward-looking statements, and the remedies available to the regulator will be limited to injunctions and declarations."

This is reflected in the *Exposure Draft – legislation*: "1.116 No action, suit or proceeding (collectively 'legal action') is able to be brought against a person or entity in relation to statements about scope 3 emissions or scenario analysis made in those sustainability reports. However, this does not prevent criminal proceedings. 1.117 The most common legal actions likely to be affected are proceedings for misleading or deceptive conduct.

For example, proceedings under sections 1041E or 1041H. Alleged breaches of directors' duties are also protected (for example, actions under section 344). 1.118 The protection applies generally and extends to other forms of alleged misconduct in making climate-related disclosures related to scenario analysis or scope 3 emissions including actions such as negligent misstatement, breach of statutory duty and breach of fiduciary duties."

The *Policy Impact Analysis* (p.29) provided insight into industry stakeholder consultations: "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**. Other submissions commented that **concerns about forward looking statements were overstated** and that the reasonable grounds threshold was sufficiently flexible to account for the inherent uncertainty surrounding forward looking statements. As such, **directors would be unlikely to be exposed to successful litigation and that modification of liability settings was unnecessary and undesirable**."

Absent in this consultation process is mention of the **positive, essential role that public, professional and shareholder groups perform** in holding corporations to account for their systemic, on-going greenwashing and financial misreporting. Recent examples include actions against Santos and Woodside related to climate change reporting, public statements, advertising, and other greenwashing activity. **It is questionable whether ASIC is sufficiently resourced**, motivated, or capable of pursuing these types of third-party actions.

The climate crisis requires **everyone** to take credible action. The misleading behaviour of these corporations **adds risk** to the financial system.

As it stands, the *Exposure Draft – legislation* rewards Australia's biggest fossil fuel polluters with a three year "pass" for business-as-usual operations: misleading, deceiving, exaggerating, undermining the Government's climate goals – and undermining core goals of this legislation.

Further, it **punishes ordinary Australians** by restricting access to justice[2] and to a **fair financial playing field**. **At a minimum, the public is entitled to seek justice by applying for an injunction or a declaration to put a stop to greenwashing**.

Sincerely

Richard Weatherley

[2] The New South Wales Bar Association is concerned such a temporary ban would restrict access to justice and undermine Australia's goal to reduce emissions to 43 per cent of 2005 levels by 2030.