

Submission – Climate-related financial disclosure: exposure draft legislation

9 February 2024

Overview

The Responsible Investment Association Australasia (RIAA) thanks the Commonwealth Treasury for the opportunity to comment on the exposure draft of the legislation to enact mandatory climate-related financial disclosures (Consultation), which includes the following:

- 1) [Exposure draft of the legislation \(Exposure Draft Legislation\)](#);
- 2) [Exposure draft of the explanatory memorandum \(Draft EM\)](#);
- 3) [Policy Impact Analysis](#); and
- 4) [Policy Statement](#).

RIAA has long campaigned for a mandatory climate-related disclosure regime in Australia. We support the significant step forward in the policy settings of sustainable finance represented by the release of the Exposure Draft Legislation. Existing and potential investors, lenders and other creditors need high-quality, comprehensive, comparable information about companies to make decisions about where to direct capital to align with both financial and sustainability objectives. Internationally, company sustainability reporting is developing rapidly.

Mandatory climate disclosures, provided they are harmonised with leading global developments and cover an appropriate range of entities, will play a key part in supporting Australian markets in the transition to a net-zero economy. They will send a strong signal that Australia is one of a growing number of countries that acknowledge the significance of accurate and useable sustainability information in markets through the climate transition. This will in turn attract capital to Australia. This disclosure regime is critical for the competitiveness of key Australian industries into the future.

The Government has asked whether the Exposure Draft Legislation and Draft EM appropriately reflect and give effect to the policy intent outlined in the Policy Statement.

RIAA notes that the Exposure Draft Legislation is being consulted alongside the Exposure Draft of the Australian Sustainability Reporting Standards (ASRS Exposure Draft) by the Australian Accounting Standards Board (AASB). Overall, while a vehement supporter of a mandatory climate-related disclosure regime, when read together with the ASRS Exposure Draft, RIAA is concerned that the Exposure Draft Legislation may not be sufficient to give effect to the intent of the policy; in particular, it does not go far enough to “improve the quality of climate-related financial disclosures and align Australia’s approach with global practices, which will allow the market to operate more efficiently.”¹ Further, RIAA has made selected comments on the ASRS Exposure Draft under this consultation to support its overall submission – RIAA will be providing a separate submission under the ASRS Exposure Draft consultation.

For the avoidance of doubt, RIAA is not recommending that the suggested amendments to the Exposure Draft Legislation or the ASRS Exposure Draft (under a different consultation process) hold up the commencement of the legislation. It is vitally important the Exposure Draft Legislation is

In preparing this submission, RIAA has been informed by its previous submissions to:

- the [first Treasury consultation](#) on mandating climate-related disclosures (February 2023);
- the [second Treasury consultation](#) on mandating climate-related disclosures (July 2023); and
- the [Sustainable Finance Strategy](#) (December 2023).

¹ Page 11, *Policy Impact Analysis Climate-related financial disclosures*: [*c2024-466491-pia.pdf \(treasury.gov.au\)](#)

About RIAA

The Responsible Investment Association Australasia champions responsible investing and a sustainable financial system in Australia and Aotearoa New Zealand. It is dedicated to ensuring capital is aligned with achieving a healthy society, environment and economy.

RIAA has more than 500 members and represents US\$29 trillion in assets under management (AUM) globally, making it by far the largest and most active network of people and organisations engaged in responsible, ethical and impact investing across Australia and New Zealand. Our membership includes super funds, KiwiSaver providers, fund managers, banks, consultants, researchers, brokers, impact investors, property managers, trusts, foundations, faith-based groups, financial advisers and individuals. RIAA's membership makes up 75% of all managed funds in Australia.

RIAA achieves its mission through:

- a) providing a strong voice for responsible investors in the region, including influencing policy and regulation to support long-term responsible investment and sustainable capital markets;
- b) delivering tools for investors and consumers to better understand and navigate responsible investment products and advice, including running the world's first and longest-running fund certification program and the online consumer tool Responsible Returns;
- c) supporting continuous improvement in responsible investment practice among members and the broader industry through education, benchmarking and promotion of best practice and innovation;
- d) acting as a hub for our members, the industry and stakeholders to build capacity, knowledge and collective impact; and
- e) being a trusted source of information about responsible investment.

Summary of recommendations

- 1) Reporting entities and Phasing:
 - Provide further clarification regarding whether the assets under management (AUM) threshold applies to asset managers.
 - Consider a longer time-lag for asset owners including superannuation funds who will be dependent on disclosure from both asset managers and investee companies.
 - Make necessary modifications to the ASRS Exposure Draft for entities outside the scope of the International Sustainability Standards Board's (ISSB) mandate, including unlisted superannuation funds.
 - The threshold for Group 1 should be expanded to capture a sufficient number of companies to make the phased reporting meaningful, including bringing all National Greenhouse and Energy Reporting Scheme (NGERS) reporters into Group 1.
- 2) Reporting content:
 - Include 3 future states for scenario analysis which includes at least one other defined scenario that accounts for a much bigger temperature increase, such as a 3°C or higher.
 - Modify the ASRS Exposure Draft to ensure international alignment and interoperability as well building a reporting regime which is sufficiently flexible to include non-climate sustainability factors in the future.
- 3) Reporting framework:
 - Modify the ASRS Exposure Draft to require an index table to aid navigation.
 - Ensure the framework is able to accommodate broader sustainability disclosure requirements from the outset.
- 4) Assurance requirements:
 - Review draft provisions related to AUASB to enhance clarity.
- 5) Liability frameworks:
 - Make necessary amendments to ensure that the temporary liability settings are not extended beyond three years.

6) Other comments:

- Improve the consistency and accuracy within and across regimes to ensure that reporting entities are clear on their obligations, the degree to which they must comply and when and how it may relate to existing obligations.
- Increase the useability of the disclosure, including through the mandated use of an index table (currently removed under the ASRS Exposure Draft) and consistent and clear definitions which clearly place the new obligations within the existing reporting landscape.
- The proposed review of the climate-related financial disclosure requirements in 2028-29 should include whether the sustainability-aligned and net-zero-transition specific objectives of the regime were progressed.
- Prioritise the development of supportive guidance with the involvement of industry.

Detailed Submissions

Reporting entities and Phasing

RIAA welcomes the inclusion of Scope 3 reporting in the Exposure Draft Legislation, demonstrating the Government's ambition to ensure that Australia remains competitive in both a fast-changing global regulatory landscape for sustainable finance as well as increased competition for global capital. RIAA has long supported international progress towards mandatory scope 1, 2 and 3 emissions disclosure. Transparency across the value chain is critical for investors to effectively gauge the climate risks and impacts of companies. Further, the significance of scope 1, 2 and 3 emissions varies significantly depending on sector, and mandating disclosure across industries allows for proper transparency for the market. As research by the Australian Council for Superannuation Investors (ACSI) for found in 2023, Scope 3 reporting was already evident in more than half of the ASX200 (110 companies).² In this context, the Government's decision to include Scope 3 reporting in the Exposure Draft is both practical and necessary.

RIAA supports the recognition in the Exposure Draft Legislation of the unique position of asset owners in the proposed phasing-in of the regime. However, we suggest:

- clarifying whether asset managers are included under the AUM threshold, noting that (similar to asset owners) asset managers will be required to report on their portfolio emissions which will necessarily use information prepared and provided by their investees or the funds they manage under the reporting standards;
- considering a longer time-lag for asset owners, including superannuation funds, who are likely to be dependent on information sourced from asset managers, who will in turn be waiting on information from investees, or from entities not covered by this reporting regime; and
- necessary modifications in the sustainability standards for entities which are outside the range of entities originally intended by the ISSB's mandate, such as unlisted superannuation funds, to ensure these entities can effectively adhere to the reporting requirements. In addition, as it is expected that guidance prepared by ISSB is unlikely to encompass asset owners (such as superannuation funds or pension funds), developing Australian specific guidance to support this sector of industry will be important.

RIAA reiterates points made in its previous submissions that, in circumstances where the climate crisis continues to intensify and the need for information to inform emission-reduction decisions, the timeframe for full implementation at the end of FY 2027-28 is too long. We further submit that Group 1 as defined in the Exposure Draft Legislation does not capture a sufficient number of companies of the size, scale and climate impact that would make the phased reporting meaningful to investors. In addition, it's unclear why all NGERS reporters are not included in Group 1, acknowledging that that the reporting threshold for NGERS was established to include those who are already considered to be significant emitters.

RIAA notes that the Government is considering extending the commencement date for Group 1 entities to 1 January 2025. With regards to the concerns with the ASRS Exposure Draft, as well as the additional clarification required under this Exposure Draft Legislation, RIAA supports this extension, provided that:

- the Government prioritises addressing feedback from this consultation and progresses the legislation through the parliamentary process without delay;

² [Promises-Pathways-Performance-Climate-reporting-in-the-ASX200-August-2023.pdf \(acsi.org.au\)](https://www.acsi.org.au/Promises-Pathways-Performance-Climate-reporting-in-the-ASX200-August-2023.pdf)

- further guidance to support reporting entities, auditors and assurance providers is developed in the intervening period; and
- to the extent possible, further delay to commencement of these obligations is removed as a possibility. RIAA notes that a lack of perfect data, or gaps in data, should not prevent companies from providing disclosures as it is expected that disclosures which are qualified, and incomplete, are likely in the early periods of reporting.

Reporting content

RIAA has been a strong advocate of international alignment through the adoption of the global baseline framework established by the ISSB. RIAA applauds the Government's:

- continued endorsement of the full adoption of the ISSB's IFRS S2 Climate-related Disclosures standard, with modifications limited to those necessary to ensure standards are fit for purpose for Australia; and
- its support of the adoption of ISSB's IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information, where required to give effect to climate disclosure standards.

Additionally, RIAA was pleased to see the more ambitious 1.5°C scenario legislated as one of the mandated future states for scenario analysis. However, RIAA reiterates its previous submission³ to that there should be at least one other defined scenario that will account for a much bigger temperature increase, drawn from and based on international efforts. In this regard, RIAA agrees with the Investor group on Climate Change's (IGCC) submission to this consultation and recommends that the provisions for scenario analysis are extended to include three future states, adding a 3°C or higher scenario. This would allow reporting entities to disclose against an ambitious best-case scenario, a hot-house scenario⁴ as well as one which is most relevant to the individual business. Providing the additional future state would also bring Australia's provisions on use of scenario analysis in line with New Zealand.⁵

RIAA has significant concerns in relation to the ASRS Exposure Draft and the compromise to international alignment as a result of the changes. The changes made to the ISSB standards are beyond what is "limited those necessary to ensure standards are fit for purpose for Australia".⁶ Briefly and by way of example, the ASRS Exposure Draft:

- limits application to climate-related financial information, rather than the sustainability-related financial information proposed by ISSB. While the Government has sought to enact regulation for climate-related information in the first instance, the frameworks established should be sufficiently flexible to allow for other sustainability factors to be included in the future. Globally, markets are incorporating and building out issues beyond climate. Domestically, Australia already has mandatory reporting on non-climate sustainability factors – e.g. the *Modern Slavery Act 2015* and *Workplace Gender Equality Act 2012*. For investors, norms-based screening⁷ of investments grew 85% from \$138 billion in 2021 to \$255 billion in 2022.⁸

³ RIAA Submission to the second Treasury consultation on mandating climate-related disclosures (July 2023): [20230719-RIAA-submission-Climate-Disclosures-2.pdf \(responsibleinvestment.org\)](https://responsibleinvestment.org/20230719-RIAA-submission-Climate-Disclosures-2.pdf)

⁴ "Hot house" world scenarios assume that some climate policies are implemented in some jurisdictions, but global efforts are insufficient to halt significant global warming. Critical temperature thresholds are exceeded, leading to severe physical risks and irreversible impacts like sea-level rise: [NGFS Scenarios Portal](https://www.ngfs.net/en/scenarios)

⁵ The Aotearoa New Zealand Climate Standard 1 *Climate-related Disclosures (NZ CS 1)* requires a reporting entity to describe the scenario analysis under, at a minimum, a 1.5°C, a 3°C or greater climate-related scenario, and a third climate-related scenario (paragraph 13). This requirement avoids entities not exploring challenging physical risk scenarios, and to improve scenario diversity (BC38): [4770 \(xrb.govt.nz\)](https://www.xrb.govt.nz/4770)

⁶ Page 3, *Policy position statement*: [c2024-466491-policy-state.pdf \(treasury.gov.au\)](https://treasury.gov.au/2024-466491-policy-state.pdf)

⁷ *Norms-based screening* is defined as the screening of investments based on minimum standards relevant to business practices. Standards applied are based on international norms and conventions, such as those defined by the United Nations (UN). In practice, norms-based screening may exclude companies that contravene standards such as the UN Convention on Cluster Munitions. It may also include positive screening, based on ESG criteria developed through international bodies such as the United Nations Global Compact, International Labour Organization, the United Nations Children's Fund and the UN Human Rights Council.

⁸ [RIAA benchmark report australia 2023 v09.pdf \(responsibleinvestment.org\)](https://responsibleinvestment.org/riaa-benchmark-report-australia-2023-v09.pdf)

- restricts the measure of greenhouse gas emissions to the use of specific domestic legislation (i.e. NGERs) without allowing for other commonly accepted measures, such as the GHG Protocol Standards. There are also limitations to the application of NGERs, such as:
 - it does not include Scope 3 emissions;
 - it may not capture entities which would otherwise be required to report (e.g. Australian entities with overseas emissions); and
 - entities reporting under NGERs are only mandated to look at operational and activity-based controls which doesn't benefit businesses to which financial control or equity-based emissions calculation are more appropriate; and
- only allows the use of the Australian and New Zealand Standard Industrial Classification (ANZSIC) for industry-based metrics and guidance. ANZSIC is an industry classification system primarily for use in the compilation and analysis of industry statistics and does not include any sustainability considerations. The inability to consider equivalent, well-understood standards (including but not limited to Sustainability Accounting Standards Board standards), is detrimental to international interoperability. This restriction is contrary to the Government's policy position on industry-based metrics.⁹

Importantly, the Exposure Draft Legislation requires directors to make a declaration that, among other things: *if the entity has included in the notes to the climate statements, in compliance with the sustainability standards, an explicit and unreserved statement of compliance with international sustainability reporting standards—that this statement has been included in the notes to the climate statements.*

At present, compliance with the contents of the ASRS Exposure Draft would not be in compliance with international sustainability reporting standards due to the degree to which the ASRS Exposure Draft depart from the ISSB standards.

Reporting framework

RIAA agrees that the existing annual financial reporting obligations are the most suitable structure within which to mandate climate-related reporting. RIAA further agrees with the Government that, considering this will then be the fourth report required under these obligations and within an entity's annual report, an index table should be required to enable users to easily navigate the climate disclosures.¹⁰ Navigation and ease of use will be important to investors as they navigate both their investment decision-making as well as to inform their own reporting under this regime.

As mentioned above, RIAA submits that the regulatory framework for mandatory climate-related financial disclosure should be flexible, consistent, appropriately resourced, and supported by guidance. In addition, as previously submitted, the framework should be created to accommodate broader sustainability disclosure requirements from the outset. This is in line with the direction of the ISSB, international markets and investor and community expectations.

Assurance requirements

RIAA highlights its previous submission to Treasury that minimum assurance requirements for sustainability disclosures be equivalent to audit requirements for financial statements, subject to targeted transitional arrangements. Given the reliance investors will place on the accuracy of the disclosures in making investment decisions, as they currently do in relation to financial information, assurance of sustainability disclosures will need to be equivalent to the requirements for financial statements.

RIAA appreciates, however, the requirement to uplift capability. RIAA looks forward to engaging in consultations on Australia's climate-related disclosures assurance requirements once the International Auditing and Assurance Standards Board (IAASB) assurance on sustainability reporting project is complete.

In this regard, RIAA recommends reviewing the draft provisions in relation to the role of AUASB to enhance clarity. We understand that the IAASB sustainability assurance project is due for final approval in [September 2024](#). However, while the Policy Statement clearly states that the intention is for the "Australian Auditing and

⁹ Page 13, *Policy Impact Analysis Climate-related financial disclosures*: [*c2024-466491-pia.pdf \(treasury.gov.au\)](#)

¹⁰ RIAA notes that the current exposure draft of the ASRS is not proposing to require an index table. RIAA will respond to this separately under the AASB's consultation process.

Assurance Board (AUASB) will develop assurance standards in line with the International Auditing and Assurance Standards Board's (IAASB) final standard" (p4):

- the Exposure Draft Legislation requires the AUASB to make auditing standards for review of climate statements before 1 July 2024: s1705D; while
- the Draft EM requires the AUASB to make auditing standards for review of climate statements before 1 July 2024 for (and presumably only for) companies limited by guarantee: [1.123].

Liability framework

While RIAA was pleased to see a safe harbour was not provided for in the Exposure Draft Legislation, we caution the Government against using legislation to address circumstances which could be addressed through guidance. Industry will require supportive guidance in relation to the regulatory framework, including understanding what may constitute reasonable grounds for forward looking statements in climate and broader sustainability disclosures – providing a limited liability framework to support industry does not remove the need for guidance to ensure the success of the regime. The development of best practice guidance and tools for climate disclosures by companies, investors and regulators would best be done collaboratively in order to ensure it is practical, realistic and is adopted by industry from day 1.

Noting the Government's intention to only depart from the ISSB Standards to the extent necessary, RIAA draws the Government's attention to the [legal opinion](#) commissioned by RIAA, IGCC and ACSI which found that:

- **The draft ISSB requirements are consistent with existing directors duties:** The ISSB draft standards require disclosures which are more numerous and specific than, but broadly consistent with, existing requirements for listed companies. Company directors should already be considering these things in the proper discharge of their directors duties. It follows that 'for diligent company directors properly supported by competent management, the ISSB Draft Standards should not increase directors' exposure' (para 6).
- **The 'reasonable basis' requirements acknowledge uncertainty:** The requirement to have a 'reasonable grounds' for making forward-looking statements is 'capable of being sensitive to the inherent uncertainties in the scope, distribution, impacts and timing of the impacts of climate change'. The Corporations Act requires genuine assessment of the appropriateness of forward-looking statements when they are made, but directors will not be liable solely because an assessment is later found to be incorrect (para 6).
- **A safe harbour is not required:** A safe harbour for climate and/or sustainability-related disclosures is not necessary or desirable (Section D.2). 'Investors and courts do not expect companies to predict the unpredictable, but instead to make sensible disclosures on a reasonable basis, and to update earlier disclosures if they become misleading by reason of later events' (para 59). For example, for scope 3 emissions disclosures, using a supplier's scope 1 and 2 emissions data would likely form a 'reasonable basis', provided there was not a reason to mistrust that data, and that it included disclaimers about the reliability of the data (para 60).
- **ISSB standards may assist directors and companies to manage liability:** The draft ISSB standards have a 'significant capacity to assist company directors' by clarifying the things that may already be required under existing directors duties and company reporting requirements. The draft ISSB standards may also help directors to ensure management is doing what is required to minimise liability risks (para 33).

RIAA submits that it is crucial that if the proposed temporary liability settings are accepted, the legislation includes that these do not extend beyond the stipulated three years. Investors rely on climate disclosures, including forward looking statements, to inform significant decision-making. They must be able to have confidence in the information on which they are basing decisions, and climate-related risks and opportunities are highly relevant to company valuation and performance. In this context, companies and directors should be legally required to make forward looking statements about climate risks and opportunities on a reasonable basis. Investors recognise that uncertainty and assumptions are inherent in some types of disclosures. However, reduced liability for disclosures risks diluting the value of the regime.

Other comments

Consistency and accuracy within and across regimes must be improved to ensure that reporting entities are clear on their obligations, the degree to which they must comply and when and how it may relate to other obligations already in place. In addition to the examples already outlined in this submission:

- under the Policy Statement, Group 3 reporting entities only need to state that they do not have material risks or opportunities. However, the ASRS Exposure Draft requires a Group 3 entity to also disclose how it came to that conclusion. RIAA submits that the preferred position is that of the ASRS Exposure Draft;

where a reporting entity states that it does not have materials risks, the expectation would be that this conclusion was thoroughly considered and the reasons should be reported; and

- the Exposure Draft Legislation makes no amendment to s342 of the Corporations Act to reflect the sustainability report, even though requirement to have the sustainability report audited and to obtain auditor's report is able to be exempted by ASIC on the criteria in s342.

Increase the useability of the disclosure, including through the mandated use of an index table (currently removed under the ASRS Exposure Draft) and consistent and clear definitions which clearly places the new obligations within the existing reporting landscape, for example minimise duplication in the Exposure Draft Legislation by referring (accurately) to the ASRS – the standards should contain the detail of the disclosure requirements with the regulatory mechanics outlined in the legislation.

The proposed review of the climate-related financial disclosure requirements to be undertaken in 2028-29 should include whether the sustainability-aligned and net-zero-transition specific objectives of the regime were progressed as a result of the enactment of the regime (e.g. whether there was an improvement in transparency and consistency of information and/or uptick in the flow of capital).

Prioritise the development of supportive guidance to support the management of climate risk and proper disclosure. RIAA supports ASFI's submission to this consultation on the key areas for guidance including in relation to:

- a 'financed emissions' methodology. This guidance should be developed in consultation with industry stakeholders and aligned with international standards such as those developed through the [Partnership for Carbon Accounting Financials](#);
- asset owners (as noted above, the ISSB's guidance is for asset managers, banks and insurers but not for asset owners);
- estimation and reporting of land use, land use change and forestry emissions;
- materiality, boundaries for estimation, and changes in methodologies and assumptions;
- data – for example, expectations regarding assurance of third-party data, and disclosure of data gaps;
- scenario analysis including how to produce scenarios and how to report scenario analysis (including explaining assumptions and limitations) to promote clarity, transparency and comparability. This may include the development and publication by Government of a default set of scenarios that entities can elect to use should they choose not to develop bespoke scenarios; and
- corporate transition plans.