



17 February 2023

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Treasury
Langton Cres
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By Email: climatereportingconsultation@treasury.gov.au

Dear Ms McCallum

Climate-related Financial Disclosures

The Australian Banking Association (**ABA**) welcomes the opportunity to provide a submission to the Treasury consultation paper, *Climate-Related Financial Disclosures*.¹

In August 2022, twenty of Australia's most influential business and finance peak bodies, co-led by the ABA, reached a consensus on the need for sustainability reporting including action on climate risk through a new reporting regime that aims to set a global baseline.² To avoid large-scale financial risks from a disorderly transition to net-zero emissions and the physical impacts of climate change, there must be clear and comparable disclosure of climate-related information.

The ABA therefore supports the introduction of mandatory climate-related financial disclosures aligned with the International Sustainability Standards Board (**ISSB**). This will provide banks and business with the certainty they need to manage their climate risks and to grasp the opportunities from the new green industrial revolution.

This covering letter highlights several of the key challenges we see and provides constructive solutions to these challenges. Detailed responses to individual consultation questions are included in **Annexure 1**.

Opportunities for collaboration on data gaps

Data challenges are globally recognised.³ Bank financing covers activity across the breadth of the Australian economy, and beyond. Reporting on Scope 3 emissions relies on customer and supplier emissions data. Without this data, banks will need to use proxies to achieve a reasonable benchmark. As mandatory reporting requirements are phased in across the economy, the quality and accuracy of bank disclosures will improve.

Alongside data from suppliers and customers, there is a need for common physical and transitional climate risk data, which is a prerequisite for standardised risk reporting. This need will become more acute as climate reporting requirements begin to apply across a greater range of entities and begin to bring smaller companies into scope. Government support, via the provision of existing data or the creation of new data, will be a critical input to managing compliance costs and other risks, improving consistency and ensuring all reporting entities have access to comparable data.

There is a role for centrally-coordinated collection and provision of data by an independent entity. The ABA is currently working with member banks to develop detailed views on data gaps and would welcome the opportunity to work with Government to explore opportunities for collaboration.

¹ https://treasury.gov.au/sites/default/files/2022-12/c2022-314397_0.pdf

² <https://www.ausbanking.org.au/major-consensus-reached-on-australian-climate-risk-reporting/>

³ https://www.ngfs.net/sites/default/files/medias/documents/final_report_on_bridging_data_gaps.pdf



Safe harbour provisions or alternative legal measures

Reporting on climate-related financial risks requires entities to make forward-looking statements, distinct from existing reporting requirements. Quantification of climate-related financial risks is inherently uncertain, requiring not only forecasting of impacts on the physical environment but also future policy settings, technological development, consumer preferences, and so on. Further, as noted in the above section, there is an ongoing need to develop data availability across the economy.

Banks, being in the position of both preparers and users of climate-related financial disclosure statements, accept the urgency for mandatory climate-related financial disclosures. Given the unique features of climate-related financial risk reporting we consider that the current legal requirement that forward-looking statements be based on 'reasonable grounds' is unsuitable for climate disclosures. We are further concerned that, in the absence of appropriate and proportional protections, there is a material risk that disclosers will respond by providing overly cautious disclosures that do not meet the needs of the market or investors.

We would therefore welcome a safe harbour provision or alternative legal measures that strike a balance between incentivising climate-related disclosures and ensuring that the disclosures are reliable and sufficient. As outlined in our response to **Question 15**, this could be via protections for certain categories of statement around Scope 3 emissions, protections for climate-related disclosures that are dependent on forward-looking statements, and enforcement only by public regulatory authorities such as ASIC.

We look forward to working with Treasury to develop these proposals in subsequent rounds of the consultation process.

Phasing

Notwithstanding that disclosures will improve as reporting requirements are phased in across the economy, banks accept that a phased approach is needed to allow capacity to develop (further noting that sourcing appropriate skillsets remains a key challenge in the current labour market).⁴

The ABA therefore supports initial thresholds being set sufficiently high to avoid unnecessarily burdening smaller entities without the systems, processes and resources in place to implement.

With respect to the initial phase, the ABA views that – in addition to financial institutions and publicly-listed companies – comparable sized reporting entities, public authorities and government enterprises should be included. There is no convincing rationale to exempt these entities simply due to their ownership status. In addition, there will be clear value in including entities outside of this scope, such as those subject to National Greenhouse and Energy Reporting (**NGER**) and/or other large entities with a high exposure to climate risk.

We suggest that, in subsequent rounds of consultation, the Treasury may wish to undertake additional testing on potential inclusion frameworks with consideration of multiple triggers including both a measure of GHGs and revenue/turnover. That testing would assist in determining the relative pros and cons of different thresholds and should provide the basis for a more detailed consideration of initial scope, and subsequent phasing.

Next Steps

Finally, the ABA notes the Government's commitment to creating a broader Sustainable Finance Strategy.⁵ We look forward to working with the Treasury during the creation of this strategy and look forward to commenting on more detailed proposals for climate-related financial disclosures when they become available.

Regards

⁴ <https://www.uts.edu.au/isf/explore-research/projects/advancing-climate-skills-australian-financial-system>

⁵ <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/more-transparency-and-more-investment-cleaner-and>

Policy Director

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

ANNEXURE 1: ABA Responses to Consultation Questions

In providing responses to the questions below, the ABA has drawn on earlier submissions to the ISSB and Australian Accounting Standards Board (AASB) the *Exposure Draft on IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information ([Draft] IFRS S1)* and *Exposure Draft IFRS S2 Climate-related Disclosures ([Draft] IFRS S2)*.^{6 7}

Question 1: What are the costs and benefits of Australia aligning with international practice on climate-related financial risk disclosure (including mandatory reporting for certain entities)? In particular:

1.1 What are the costs and benefits of meeting existing climate reporting expectations?

The Australian banking industry plays an important collective role in supporting the shift to a low carbon future. Our ambition is to enable and empower our customers to successfully transition. With respect to meeting existing climate reporting expectations, benefits include:

- Attracting capital and potentially a more diverse investor base, should the disclosure meet good practice standards;
- Allowing an entity to meet demands for information from investors, regulators, and broader stakeholders; and
- Facilitating strategy development and decision making.

Meeting existing climate reporting expectations requires dedicated teams to collect data (including sourcing data from third party providers), prepare reports and prepare data inputs from across corporate groups. For reporting obligations where methodologies are not standardised, additional time and effort is required to re-work data, identify available data sources (or proxies), and refine methodologies. This work requires ongoing upskilling across a broad section of staff.

1.2 What are the costs and benefits of Australia not aligning with international practice and in particular global baseline standards for climate reporting?

The need for globally consistent standards was recognised by the Network for Greening the Financial System (NGFS) *Progress Report on Bridging Data Gaps*, which noted that fragmentation of disclosure frameworks complicates comparability, assurance and impacts availability of climate-related data.⁸ While the ABA supports alignment with ISSB in-principle, we note that there is more than one such “baseline”.

The ABA agrees with the remarks made in December 2022 by the Australian Treasurer, the Hon. Jim Chalmers MP, which outlined the key costs and benefits of aligning with global practice:⁹

...as more and more capital markets and investors demand quality, comparable information on climate risks, any sort of guidance gap in Australia has the potential to quickly become an even greater investment gap.

And:

Investors need investable information, and Australian firms need to make credible disclosures to remain competitive in global capital markets.

As the Treasurer identified, the key cost of not aligning with international practice is fragmentation of reporting requirements both across jurisdictions and within jurisdictions, and the corollary risk of declining access to global capital markets. There is potential for significant cost for preparers if they are required to meet slightly different requirements in international markets.¹⁰ In addition to those identified above, further benefits include:

- Reducing overhead costs of international trade finance arrangements;

⁶ <https://www.ausbanking.org.au/wp-content/uploads/2022/09/220715-ABA-Submission-ISSB-ED-S1-S2.pdf>

⁷ <https://www.ausbanking.org.au/wp-content/uploads/2022/09/220715-ABA-Submission-to-AASB-ED-321.pdf>

⁸ https://www.ngfs.net/sites/default/files/medias/documents/progress_report_on_bridging_data_gaps.pdf 30-31

⁹ <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/speeches/address-australian-sustainable-finance-institute-sydney>

¹⁰ For example, EFRAG requirements in the EU, SEC requirements in the US, XRB requirements in NZ and so on.



- Assisting regulators to identify and combat greenwashing;
- Assisting businesses to identify and manage sustainability related risks and opportunities;
- Reducing the risk of regulatory arbitrage;
- Clearer and more transparent information for investors and stakeholders to support their decision making;
- Reducing time and effort spent to explain and/or reconcile reporting that is misaligned to global baseline standards – or preparing, settling and publishing multiple sets of reporting;
- Decreasing overall complexity and reporting costs by consolidating methodologies, particularly for banks with international reach;
- Minimising complexity in any extra-territoriality application and conflict of laws;
- Improving the availability and cross-compatibility of experts in the field and allowing Australian companies to tap into global talent pools, thereby ameliorating the impact of ESG disclosure and reporting skills shortages in the Australian market;
- Encouraging competitive improvement within the industry through consistency of performance measurement and reporting across peers; and
- Alleviating exposure to claims of greenwashing arising from multiple reporting requirements over different areas of global portfolios.

Many Australian banks operate across multiple jurisdictions and already have (or will have by the time of its introduction in Australia) experience of mandatory disclosure. For those banks, this will not be a completely new compliance obligation. Nonetheless, significant work will be required to develop the enabling tools such that they complement banks' current architecture. For example:

- Systems enhancement and the combining of financial and nonfinancial data sets to create new data;
- System, process, and customer engagement changes may be required to collect any new climate data from customers where it is required (for example, production/activity data to feed into emissions calculations);
- Sourcing staff with appropriate skillsets, given the current market shortages; and
- Other costs of data access or developing new data sources/proxies where none exist.

Implementation costs will be significant in absolute terms for large entities and significant in relative terms for smaller entities. By way of illustration, APRA's climate vulnerability assessment (**CVA**) of five banks, over 2021-22, involved many hundreds of bank staff, some of whom were taken out of their daily duties to perform the test. Further, many of these relevant staff are heavily involved in other regulatory activities such as industry-wide stress testing, demonstrating a skills shortage. Many banks also engaged consultants to support the work.

Suggestions are given throughout this submission as to ways in which these costs could be ameliorated. For example, by aligning implementation timeframes with the development of international standards and for Government to take a leading role in addressing data gaps and ensuring consistency across key datasets. The ABA is working with members to develop a list of data requirements and welcomes the opportunity to work with Treasury when these become available in Q2 2023.

Question 2: Should Australia adopt a phased approach to climate disclosure, with the first report for initially covered entities being financial year 2024-25?

With respect to the commencement year, many Australian banks already make climate disclosures and ABA members would make reasonable efforts to meet reporting requirements from 2024-25, subject to support from Government in terms of consistent methodologies and data, appropriate safe harbour provisions being in place (see answer to **Question 15**), finalisation of key international standards, such as ISSB and the domestic regulatory framework (see answer to **Question 19**) being ready for implementation.

The ABA notes that International Auditing & Assurance Standards Board (**IASB**) intends to finalise a standard for sustainability reporting assurance in March 2025.

2.1 What considerations should apply to determining the cohorts covered in subsequent phases of mandatory disclosure, and the timing of future phases?

Any phased approach to reporting will need to outline clearly defined thresholds for advancing to subsequent phases. This approach would need to take into account several factors:

- Large entities (including banks) may require data from smaller entities for Scope 3 emissions. Without access to data from smaller entities, larger entities will need to rely on averages and proxies – which will impact the quality and accuracy of reporting and impact the ability of auditors to provide assurance;
- Adoption by regulators of a pragmatic approach in early phases. Consideration by regulators regarding comparative disclosures in the first year of reporting, and guidance on when comparatives should be re-stated;
- Clearly defined transition periods are important for supporting transparency and completeness of disclosures; and
- There may be a need for further consideration of what an appropriate disclosure looks like for smaller entities. There may be an intermediary solution short of full ISSB disclosure – such as moving towards economy-wide reporting of greenhouse gas (**GHG**) emissions or similar metrics. This could have the benefit of minimising reporting requirements on small entities while still supporting Scope 3 emissions disclosures by larger entities.

Question 3: To which entities should mandatory climate disclosures apply initially?

3.1 What size thresholds would be appropriate to determine a large, listed entity and a large financial institution, respectively?

The ABA supports initial thresholds being set sufficiently high to avoid unnecessarily burdening smaller entities without the systems, processes and resources in place to implement. Reporting should be at the level of the group entity (aligned to the definition within Australian accounting standards).

We therefore support an approach consistent with the recommendations of the ASFI Roadmap.¹¹ That is, entities within the ASX300 and financial institutions with more than \$100million in consolidated annual revenue would be subject to reporting requirements on an “if not, why not” basis. The definition of entities, subsidiaries and requirements should be aligned with AASB and reporting of consolidated financial statements. In addition, comparably sized reporting entities (unless already reported by a parent at group level), public authorities and government enterprises should be included in the initial phase.

An alternative approach may be to align with AASB thresholds, which would drive consistency with current reporting requirements. Tier 1 reporting already applies to all ASX companies and sufficiently large private companies, while Tier 2 reporting caters for companies with less maturity. Therefore, Treasury may wish to consider aligning with AASB Tier 2 in addition to entities subject to NGER (potentially for Scope 1, 2 emissions).

We suggest that, in subsequent rounds of consultation, the Treasury may wish to undertake additional testing on potential inclusion frameworks with consideration of multiple triggers including both a measure of GHGs and revenue/turnover. That testing would assist in determining the relative pros and cons of different thresholds and should provide the basis for a more detailed consideration of initial scope, and subsequent phasing.

3.2 Are there any other types of entities (that is, apart from large, listed entities and financial institutions) that should be included in the initial phase?

The ABA views that there will be clear value in including entities outside of this scope, such as those subject to NGER and/or other large entities with a high exposure to climate risk. As noted in our above

¹¹ <https://www.asfi.org.au/roadmap> Recs 11 and 12

answer to **Question 2.1**, the accuracy and quality of bank Scope 3 reporting will increase as more entities become subject to disclosure requirements.

Ownership arrangements should not, in principle, be a consideration in determining which entities are subject to mandatory climate disclosures, or in the phasing of cohorts.

For example, state government statutory bodies and enterprises play a key role in critical sectors of the economy. The National Energy Market includes a mix of private and public generation assets,¹² and some state governments are proposing to re-introduce elements of public ownership into electricity generation. There is no convincing rationale to exempt these companies simply due to their ownership status.

We recommend that subsequent rounds of consultation take the opportunity to explore options for initial scope. For example, there may be testing exposure to material climate risk in the context of alignment with Tier 1/2 reporting requirements under AASB 1053.

Question 4: Should Australia seek to align our climate reporting requirements with the global baseline envisaged by the International Sustainability Boards?

4.1 Are there particular considerations that should apply in the Australian context regarding the ISSB implementation of disclosures relating to: governance, strategy, risk management and/or metrics and targets?

4.2 Are the climate disclosure standards being issued by the ISSB the most appropriate for entities in Australia, or should alternative standards be considered?

The ABA supports alignment with the global baseline envisaged by the ISSB. As a caveat, there may be a future need for the Australian Government to explore interoperability between jurisdictions that select different disclosure baselines.

Some considerations within the Australian context include:

- The need to source Australia-specific data to perform scenario analysis and quantify financial risk and opportunity, including how the Government would support that through the NGER scheme or other regulation;
- There is a proposed metric in ISSB S2 requiring disclosure of how an entity is applying an internal carbon price in decision-making. Any proposed Australian carbon pricing mechanisms would need to be aligned; and
- Draft ISSB S2 requires banks to disclose mortgage financed emissions associated with current flood exposure.¹³ Meeting this disclosure requirement will require support from Government to ensure data availability. As noted in our response to **Question 1.2**, the ABA is currently working with members to develop data requirements and would welcome the opportunity to work with Treasury when these become available.

Question 5: What are the key considerations that should inform the design of a new regulatory framework, in particular when setting overarching climate disclosure obligations (strategy, governance, risk management and targets)?

The core consideration is ensuring that Australia keeps pace with global standards, and that our standards are aligned with global practices. Ultimately, Australia should ensure that we are consistent with global frameworks (save where there is a defined reason for specific jurisdictional requirements) in order to support investor and international comparability.

Beyond that, there several considerations should inform the design of a new regulatory framework:

- Flexibility, both to amend and adapt regulatory requirements and flexibility of rules subject to Parliamentary oversight;
- Legal certainty on who is captured and what they must do (as opposed to what they could or should do);

¹² <https://www.energynetworks.com.au/resources/fact-sheets/guide-to-australias-energy-networks/>

¹³ <https://www.ifrs.org/content/dam/ifrs/project/climate-related-disclosures/industry/issb-exposure-draft-2022-2-b19-mortgage-finance.pdf>

- Alignment with established standards (eg. definition of a reporting entity). Reporting should be on a full-year basis, with interim reporting only required for material changes from full-year disclosures. There could also be standardisation of metrics/targets, similar to how financial statements are already relatively standardised across industries;
- Clarity on the types of disclosure and level of detail; and
- Interoperability with regimes operating in other jurisdictions.

We note **Question 17**, which seeks views on future expansion of the regulatory framework to include nature-based disclosures. We suggest that this be considered separately given the high uncertainty in the estimation of nature-based financial impacts.

Question 6: Where should new climate reporting requirements be situated in relation to other periodic reporting requirements? For instance, should they continue to be included in an operating and financial review, or in an alternative separate report included as part of the annual report?

Flexibility around reporting of climate-related disclosures will help to accommodate the range of entities making disclosures. Making climate-related financial disclosures part of general-purpose financial reporting will improve ease of use, connectivity of information and understandability of reporting for users. Different reporting entities will have different procedures and requirements, and we therefore do not feel that a specific location should be mandated.

Notwithstanding, we view that climate disclosures should be subject to similar levels of governance as other reporting requirements, subject to the same rigour, and, ideally, should be required around the same time.

Question 7: What considerations should apply to materiality judgements when undertaking climate reporting, and what should be the reference point for materiality (for instance, should it align with ISSB guidance on materiality and is enterprise value a useful consideration)?

While the ABA's overall view is that the definition of "material" should be globally aligned, as the consultation paper notes, we note that this is a rapidly evolving area.

At present, the ISSB lacks a clear definition of sustainability-related financial information (ie. material sustainability information) and is moving away from the concept of enterprise value in their latest thinking. Additional work is required to improve the clarity of the ISSB definition, particularly to more closely link the ISSB definition with traditional concepts of financial materiality outlined in the International Financial Reporting Standards (namely, items that would influence decisions that users of the reporting make on the basis of that reporting).

It is critical that regulators provide guidance on how to determine which sustainability topics are expected to be reported, irrespective of where they are reported. Further, without a clear materiality assessment definition, the reporting is likely to be limited to mandatory topics such as climate.

Question 8: What level of assurance should be required for climate disclosures, who should provide assurance (for instance, auditor of the financial report or other expert), and should assurance providers be subject to independence and quality management standards?

The ABA notes that capacity constraints may emerge within the audit industry itself as more and more entities become subject to climate reporting requirements.

Our view is that a phased approach, progressing from limited to reasonable insurance based on an agreed timeframe, is the best way to solve some of these key challenges. A phased approach will allow the level of assurance to match the maturity in reporting and allow time for models to develop and best practice to emerge. In determining the phasing, Treasury may wish to have regard to a materiality basis for determining different cohorts.

The ABA agrees that assurance providers should be subject to independence and quality management standards. The existing Australian external auditor independence and quality management standards would be a logical starting point for such requirements.



Question 9: What considerations should apply to requirements to report emissions (Scope 1, 2 and 3) including use of any relevant Australian emissions reporting frameworks?

Avoiding duplication of existing emissions and climate-related risk reporting requirements should be a key consideration. This should factor in the full range of reporting regimes, including voluntary schemes such as Climate Active.

While there may be opportunities to align reporting requirements with existing reporting requirements (such as the NGER), this would need to be done in such a way as to not apply in an overly onerous manner to smaller entities where that would not deliver any significant emissions reduction or community benefit. In addition, there may be circumstances in which revisions to disclosures are necessary for an initial period while disclosure protocols are being developed and maturing.

We suggest that market-based emissions (in addition to location-based emissions required under NGER) be considered. We note that the GHG protocol states dual reporting of both is required – and the Partnership for Carbon Accounting Financials (**PCAF**) states preference for financed emissions to utilise market-based numbers. The potential for double-counting of disclosures across Scope 1, 2 and 3 emissions may also need to be considered.

Finally, consideration should also be given to existing NGER reporting and timing as it may not always align with companies reporting dates. Exemptions around the use of differing timing for Scope 3 emissions should be considered.

Question 10: Should a common baseline of metrics be defined so that there is a degree of consistency between disclosures, including industry-specific metrics?

Yes. Specificity and consistency of metrics will enable efficient calculation by entities and easy comparability between entities. Not all metrics will be relevant to all entities and entities should not be required to report on metrics that are irrelevant to them. The most common metrics could be applied on an “if not, why not” basis per sector, while acknowledging timing differences in reporting by entities.

Question 11: What considerations should apply to ensure covered entities provide transparent information about how they are managing climate related risks, including what transition plans they have in place and any use of greenhouse gas emissions offsets to meet their published targets?

Greater specificity of expectations, requirements, and definitions could help guide entities to prepare transparent disclosure of information. To ensure flexibility, this could be provided in the form of guidance documents, rather than regulation.

The guidance could also include examples of expected narrative points, such as initiatives and process improvements. For example, it could identify activities that would be considered leading practice climate-related risk management or identify the elements that make up a robust leading practice transition plan.

Question 12: Should particular disclosure requirements and/or assurance of those requirements commence in different phases, and why?

Once the policy settings are determined, the lead time should be sufficient to enable reporting. Initial disclosure should establish a baseline while providing enough lead time for data collection and agreement on procedures.

See response to **Question 8** for our comments on assurance. We would welcome further, more detailed consultations on assurance phasing.

Question 13: Are there any specific capability or data challenges in the Australian context that should be considered when implementing new requirements?

Data availability remains a key challenge for banks' Scope 3 emissions reporting, as it relies heavily on the accurate reporting of their customers. In the absence of such reporting, banks will need to rely on proxy data to estimate emissions. It can also be challenging to define boundaries for value chains.

From a scenario analysis perspective, there are several pertinent learnings from the APRA Climate Vulnerability Assessment exercise:

- Climate scenario analysis is an emerging and maturing discipline, with capabilities, modelling and supporting data continuing to develop;
- Cross-functional collaboration was required to develop climate risk management capabilities. Some banks engaged external consultants to bridge resource and skills gaps;
- Climate-related data quality and accessibility remain a challenge;
- From a transition risk perspective, inputs and estimates essential to modelling a transition to a lower emissions economy scenario remain a significant challenge; and
- For data relating to physical risk, business lending asset location and future climatic data modelling remains an area for improvement.

13.1 How and by whom might any data gaps be addressed?

There is a key role for Government in working collaboratively with industry to solve data gaps. This need will become more acute as climate reporting requirements begin to apply across a greater range of entities and begin to bring smaller companies into scope. Government support, via the provision of data or the creation of new data, will be a critical input to managing compliance costs and other risks, improving consistency and ensuring all participants in the financial system have access to comparable data (thereby increasing their resilience).

On that basis, we strongly view that there is a role for centrally-coordination collection and provision of data by an independent entity. Opportunities for public-private collaboration include:

- Standardised Scope 3 methodologies or emissions factors could be included in NGER regulations. For example, methods and factors to calculate Scope 3 emissions from mining;
- More information from government organisations could be made available to disclosing entities, such as weather patterns, impact of storm events, sea level rise, flood maps and so on;
- The frequency of government surveys (such as the DCCEEW Australian Energy Statistics and the AER Residential Energy Consumption Benchmark) could be increased to allow for more accurate disclosures.

Without limiting the above, the ABA would welcome the opportunity to work with Government to explore opportunities for data provision.

13.2 Are there any specific initiatives in comparable jurisdictions that may assist users and preparers of this information in addressing these challenges?

Some examples include:

- Elements of the New Zealand approach could be adopted, where the External Reporting Board is working with banks to increase the quality of climate scenarios and underpinning data;
- The GHG Protocol and PCAF contain guidance on calculating Scope 3 emissions;
- The Hong Kong Monetary Authority has set up a cross-agency steering group with other financial regulators, and is collaborating with CDP Global, an international non-profit organisation; and¹⁴
- The French Government's announcement of a Climate Data Steering Committee to advise on how to capture and create open, centralised climate data.¹⁵

Question 14: Regarding any supporting information necessary to meet required disclosures (for instance, climate scenarios), is there a case for a particular entity or entities to provide that information and the governance of such information?

¹⁴ <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2022/12/20221220-5/>

¹⁵ <https://www.gfanzero.com/press/french-president-emmanuel-macron-and-un-secretary-generals-special-envoy-for-climate-ambition-and-solutions-michael-r-bloomberg-announce-a-climate-data-steering-committee/>

There is a strong case for public provision of common data and other information, including methodologies and scenarios. The need to improve the availability, quality and comparability of climate-related data is recognised globally. Recommendation 4 of the NGFS *Final Report on Bridging Data Gaps*,¹⁶ highlighted the role for regulators and central banks in developing tools such as:¹⁷

- Publicly available dashboards offering currently available macro data;
- Publicly available repositories of micro data; and
- Other tools to automate collection and central storage of data, for example data hubs.

The ABA recommends deeper exploration of how such an approach may apply within the Australian context – using Australia-specific data –and would welcome the opportunity to work with the Treasury to do so. The benefits of this approach include:

- **Transparency and comparability.** A single source of truth provided by a public facility would improve transparency and comparability as entities would be reporting from a single agreed dataset. Use of common information would likewise help to allay concerns of greenwashing;
- **Simplification and ease of access.** Scope 3 emissions calculations require an entity to source data from a range of suppliers and customers across the entity's value chain. Even for large firms, this is a costly and complex exercise, and small-to-medium firms may struggle to source this information on their own. Digital reporting may provide a partial solution (see response to **Question 18**) but only for in-scope entities to which the mandate applies. Consolidation and provision of supporting information via a public facility would greatly assist; and
- **Labour supply.** A public facility would help alleviate capacity constraint of appropriate skillsets within the Australian labour market, as in-scope entities would not need to compete for scarce talent.

Common information may be particularly useful in several areas:

- APRA's CVA process highlighted the importance of an aligned industry approach to some aspects of climate scenario development.¹⁸ A key challenge is data availability in critical areas, such as insufficient data on emissions, limited reconstruction of historical data to inform future physical risk assessments, lack of Australia-specific climate projections, among others;
- National expected transition pathways for key sectors; and
- In developing options for simple, scalable, and cost-effective solutions for emissions reporting from small enterprises and households.

Question 15: How suitable are the 'reasonable grounds' requirements and disclosures of uncertainties or assumptions in the context of climate reporting? Are there other tests or measures that could be considered to ensure liability is proportionate to inherent uncertainty within some required climate disclosures?

Is the "reasonable grounds" requirement suitable?

As noted by Treasury, under Australian law, any representation with respect to a future matter must be based on reasonable grounds at the time it is made or it will be deemed to be misleading. The consequences for a disclosing entity and its directors and other persons 'involved in' any breach of law are severe. Accordingly, disclosing entities provide forward-looking information only after careful consideration and confirming that investors reasonably require that information.

The introduction of mandatory climate disclosures creates additional risk for disclosers of that information. As Treasury notes, compared to traditional financial reporting, climate disclosures involve substantial use of forward-looking information. Climate disclosures require broad and detailed disclosures over a long

¹⁶ https://www.ngfs.net/sites/default/files/medias/documents/final_report_on_bridging_data_gaps.pdf

¹⁷ https://www.ngfs.net/sites/default/files/medias/documents/final_report_on_bridging_data_gaps.pdf 44

¹⁸ There are two main uses for scenario analysis – developing pathways to net zero and as a risk management tool.

time-period, much of which depends upon external parameters that are subject to uncertainty, such as climate scenarios.

For example, where climate disclosures are in whole or part dependent on third parties (such as Scope 3 emissions or the timing, location, and severity of future-dated physical risk predictions), banks will have to rely on information provided by those parties if available and may need to make assumptions where there may be gaps in data. There are other areas in which assumptions may need to be applied, including uncertainty around technological advancement. Many key methodologies remain under development at the global level, including accounting and reporting standards issued by the PCAF.

As noted in **Question 2**, these concerns have been raised and considered at a global level, with a staff paper issued by the IFRS in December 2022 recommending that the ISSB introduce certain categories of relief for Scope 3 disclosures.¹⁹

We further draw the Treasury's attention to advice from the Corporates Committee of the Business Law Section of the Law Council of Australia that was provided to the ISSB in earlier submissions.²⁰ This advice stated, among other matters:

No other current law or accounting standard requires a company to make these types of speculative forward-looking statements about financial impacts that are supposed to inform investors but are inherently uncertain. Indeed, Australian securities laws and ASIC policy guidance (ASIC Regulatory Guide 170) discourage statements involving speculation and supposition, as opposed to information that can be positively demonstrated to have a reasonable basis and that is based on reasonable assumptions rather than hypothetical projections.

The legal requirement for a reasonable basis for these statements, coupled with the low threshold for shareholder and other stakeholder class actions in Australia, would create a material risk of breach and exposure to damages. If compliance with these standards becomes mandatory in Australia, these types of forward-looking statements should be excluded from current legal requirements that statements in published reports as to future matters have a reasonable basis – in effect they should be covered by an explicit “safe harbour” to encourage appropriate good faith disclosure without fear of litigation.

It is also worth noting that Australia's peer jurisdictions (including the UK, US and Canada) already possess legal safe harbours applying more generally to statements about future matters. We note that the consultation paper seeks views on a draft proposal issued by the US Securities and Exchange Commission (**SEC**). The draft SEC proposal would require that a disclosure has a “reasonable basis” and has been made in “good faith” before safe harbour protections would apply. It would therefore build on pre-existing US rules rather than standing alone.

The ABA accepts the need and urgency for climate-related financial disclosures and recognises that those disclosures must be reliable. However, we consider that the current legal requirement that forward-looking statements be based on ‘reasonable grounds’ is unsuitable for climate disclosures.

There are over 2,200 climate change litigation cases globally, representing an exponential shift on litigation compared to ten years ago. Roughly one-quarter of those cases were filed between 2020 and 2022. Outside of the US, Australia has seen the highest volume of cases by a significant margin, followed by the UK and the EU.²¹ Forward-looking statements that are based on measures with low probability of occurrence or for which there is low confidence will fuel civil litigation. Australia has been highlighted as a particular focal point for litigation and increased regulatory action.

We are therefore concerned that, in the absence of appropriate and proportional protections, there is a material risk that disclosers will respond by providing overly cautious disclosures that do not meet the needs of the market or investors.

How to ensure proportionality

¹⁹ <https://www.ifrs.org/content/dam/ifrs/meetings/2022/december/issb/ap4b-climate-related-disclosures-scope-3-greenhouse-gas-emissions.pdf>

²⁰ <https://www.ausbanking.org.au/submission/aasb-request-reply-on-issb-ifrs-submission/>

²¹ <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2022/>

Banks, being in the position of both preparers and users of climate-related financial disclosure statements, accept the urgency for mandatory climate-related financial disclosures. To mitigate the risks outlined above, we would welcome a safe harbour provision or alternative legal measures that strikes a balance between incentivising climate-related disclosures and ensuring that the disclosures are reliable and sufficient.

We suggest the following for consideration:

- Protections for certain categories of statement around Scope 3 emissions and other disclosures that are in whole or part dependent on third parties (including external estimates, data or other information that is outside the disclosing entity's control);
- Protections for climate related disclosures dependent on forward-looking statements and/or other uncertainties such as climate scenarios, technological advancements and the ongoing development of standards and methodologies at a global level; and
- Enforcement only by public regulatory authorities (such as ASIC).

Legal certainty may also be enhanced by providing clarity on how the reasonable grounds for disclosure test (and the related *Australian Consumer Law* assumption) or an alternative legal test applies to climate-related disclosures (through legislative amendments and/or regulatory guides). This includes assumptions to be included as part of the disclosures and clarity on the extent to which directors of disclosing entities may rely on advice provided by others for the purpose of discharging their directors' duties when approving climate disclosures (see s189 of the *Corporations Act 2001*).

We would welcome the opportunity to work more deeply with the Treasury on these proposals, including in subsequent rounds of consultation.

Question 16: Are there particular considerations for how other reporting obligations (including continuous disclosure and fundraising documents) would interact with new climate reporting requirements and how should these interactions be addressed?

We see the potential for secondary impacts on legislation, including:

- The Banking Executive Accountability Regime (**BEAR**) and its potential successor the Financial Accountability Regime (**FAR**). Where and how the reporting requirements are situated may influence who exactly is the accountable executive under BEAR/FAR. Any new legislated reporting obligations should be consistent with any equivalent accountability obligation under the BEAR/FAR in terms of scope, limitations and consequences for breach;
- Continuous disclosure obligations under the *Corporations Act 2001* and ASX Listing Rules. Companies will provide updates if there is a material change to their business, and we would expect that the ASX and ASIC would provide guidance on when this relates to climate disclosures;
- The *Australian Consumer Law* (as introduced in the *Competition and Consumer Act 2010*) and the *Australian Securities and Investments Commission Act 2001* each provide that a representation with respect to any future matter that is made without "reasonable grounds" is taken to be misleading. Similar principles apply to representations about future matters made in offer documents under the *Corporations Act*, including section 738U (crowd-sourced funding offers) section 670A (takeovers), section 728(2) (prospectuses), section 769C (financial services and markets) and sections 1100ZC, 1100ZH and 1100ZI (Employee Share Scheme offers) As discussed above in our answer to **Question 15**, these matters may require further consideration or clarification under any safe harbour provision;
- Director's & officer's fiduciary & statutory duties (such as trust & loyalty and competence duties), including as discussed above in our answer to **Question 15**;
- Other prudential requirements and guidance (such as CPG 229 Climate Change Financial Risks) and delegated legislation under the Banking Act and ASX Corporate Governance Practice; and

- Reporting requirements and conventions relating more broadly to Environmental, Social and Governance (**ESG**) considerations, and how any liability regime implemented in respect of climate related financial disclosures might interact with, and apply more broadly across, ESG reporting.

We would welcome national and international alignment on the relevant climate-related disclosure rules and liabilities regimes to the extent appropriate, to ensure that companies (including banks operating and raising funds in multiple jurisdictions) have clarity on the rules required to meet by reporting entities and in relation to continuous disclosure and fundraising requirements in all relevant jurisdictions.

Question 17: While the focus of this reform is on climate reporting, how much should flexibility to incorporate the growth of other sustainability reporting be considered in the practical design of these reforms?

While flexibility is an important principle, even climate-related reporting standards remain under development. Biodiversity and nature-related standards are in a nascent state – with elements such as data and methodologies still maturing. Social issues are even more complex and difficult to measure/compare between jurisdictions.

Therefore, while we agree that it is appropriate to build appropriate levels of flexibility into governance structures, the immediate focus should remain on climate-related financial disclosure.

See also our answer to **Question 5**.

Question 18: Should digital reporting be mandated for sustainability risk reporting? What are the barriers and costs for implementing digital reporting?

ABA members do not have any in-principle objection to digital reporting. It has the potential to improve transparency of industry climate performance for investors and public stakeholders, enhance the ability of entities to collect climate-related data from key customers and suppliers and reduce ongoing costs.

However, we make the following caveats:

- The option to make financial reports via digital channels has been available since 2010 but has not been mandated. Mandating digital reporting for sustainability risk reporting would create a discrepancy with broader financial reporting;
- While digital reporting could theoretically improve comparability, this would only be for comparisons between Australian entities subject to the regime;
- In the absence of a global agreement on digital reporting, Australian entities operating globally would have to prepare multiple sets of reports. This would add duplication and cost and could partially unwind the benefits of alignment to a global baseline; and
- There would be additional costs and time to implement digital reporting, which may be an additional level of complexity for limited benefit.

Should the Government wish to proceed with mandated digital reporting, we strongly recommend a specific consultation.

Question 19: Which of the potential structures presented (or any other) would best improve the effectiveness and efficiency of the financial reporting system, including to support introduction of climate related risk reporting? Why?

We suggest that there are several principles which should inform the structure's development.

First, an effective reporting framework for climate-related financial risks will require close integration of expertise in both financial reporting and climate risk. If, as envisaged by **Question 17**, sustainability reporting will gradually expand beyond climate-risk reporting, then this will require further extensions of expertise to cover new areas (such as biodiversity or social). Second, the reporting framework should, as far as possible, look to ensure consistency with accounting standards and avoid duplication. Finally, the body should be appropriately resourced.

For example, a dual board structure (with one focussing on traditional accounting standards and the other on ESG) would require deep consideration of how integration will be managed, and how they will work



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together. As the overarching board would already be tasked with oversight of corporate governance, they may not be able to undertake the integrating role.

The ABA would welcome the opportunity to review and comment on concrete proposals at a later stage of the consultation.

– ENDS –