



Environmental
Defenders Office

**Submission to Treasury on the exposure draft legislation
on mandatory climate-related disclosures**

9 February 2024

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonization.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on Treasury's Exposure Draft on climate-related financial disclosure (**Exposure Draft**).

It is critical that alignment with the 1.5°C temperature goal of the Paris Agreement and Australia's legislated Net Zero emissions by 2050 target¹ is central to the design and implementation of mandatory climate-related disclosures. Australia needs to be at the forefront of addressing climate change. The State of the Environment Report 2021, states "climate change is continuing and is increasing the impacts of other pressures on our environment. Immediate global action to reduce carbon emissions would result in reduced pressures and improved trajectories for most aspects of our environment."² 2023 was the world's warmest year on record for land and ocean areas with the rate of warming over the past few decades found to be much faster than the long-term trend.³ This increased warming is driving regional and seasonal temperature extremes, resulting in more frequent and severe extreme weather events such as bushfires, floods, heatwaves and droughts, intensifying heavy rainfall, changing habitat ranges for plants and animals.⁴

As part of a national community legal centre specialising in public interest environmental law, the work of the EDO Safe Climate (Corporate and Commercial) lawyers includes highlighting cases where an organisation's net zero or emissions reduction plans contradict the organisation's actual business practices. We are concerned by the prevalence of transition plans that are not aligned with the scientific consensus of what is required to achieve the Paris Agreement's 1.5°C temperature goal and consider this is a key deficiency that the mandatory climate-related disclosure framework should seek to rectify.

Summary of Recommendations

- 1. Proceed with a commencement date of 1 July 2024.**
- 2. Remove the materiality exemption available for preparation of a climate statements**
- 3. Include the requirement for prescribed scenarios.**
- 4. Remove modified liability provisions.**
- 5. Introduce industry-based metrics for disclosures from 2026.**
- 6. Include a requirement for an Index table in annual and sustainability reports.**

¹ Climate Change Act 2022 (Cth) s 10(1)(b).

² Australian Government, State of the Environment Report 2021, available at <https://soe.dcceew.gov.au/overview/key-findings>

³ NOAA Climate.gov Climate Change: Global Temperature, available at <https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature>

⁴ Op cit. 2 and 3.

Introduction

Climate change is internationally recognised as presenting material risks to the global financial system in the form of physical risks of climate change and transition risks associated with market, regulatory and technological changes to mitigate climate change.⁵ The Exposure Draft's Explanatory Memorandum notes that it is the capital markets, regulators and corporations which need to manage these risks to the financial system. The improvement of climate-related financial disclosures is identified as an essential avenue for regulators to assess and manage systemic risks to the financial system while improving consistency and comparability across reporting, and alignment with international climate change commitments.⁶ It is therefore essential that these reporting requirements ensure that businesses, investors, regulators and the public have "a clear and common understanding of obligations of climate-related financial risk and opportunities, in line with international standards."⁷

EDO welcomes a mandatory, transparent, and consistent approach to climate-related financial disclosures which allows comparable reporting, incorporating internationally recognised standards which are aligned with the 1.5°C temperature goal of the Paris Agreement. We set out below a summary of our key recommendations and detailed responses to the issues arising from the Exposure Draft.

Commencement date of 1 July 2024.

Recommendation 1: Proceed with the proposed commencement date of 1 July 2024.

The Exposure Draft sets a commencement date of 1 July 2024 for Group 1 entities which the EDO urges the Government to adopt. Any delay in this commencement date would further compound the material climate-related risks to the financial system. Further, any delay will ensure that Australia falls further behind other comparable jurisdictions which have already implemented equivalent reporting requirements. By commencing on 1 July 2024, entities will be afforded the benefit of participating in international financial markets, which expect the disclosure of climate-related financial risks, which will protect revenue, and support the value of the entities for shareholders and investors.⁸

There is already a sound understanding of climate-related financial disclosure requirements within the Group 1 entities, with a submission from KPMG noting 90% of ASX100 companies recognise climate as a financial risk while 74% are reporting against the Task Force on Climate-Related Financial Disclosures (TCFD) framework. Further, reporting on social risks to business is up to 90% which, ahead of any government mandate, demonstrates the value of, and capacity for

⁵ The Parliament of the Commonwealth of Australia, Exposure Draft Explanatory Materials, available at <https://treasury.gov.au/sites/default/files/2024-01/c2024-466491-exposure-draft-em.pdf>

⁶ Ibid.

⁷ Ibid.

⁸ KPMG February 2023, Submission in response to Climate-related financial disclosure, available at <https://treasury.gov.au/sites/default/files/2023-04/c2022-314397-kpmg.pdf>

disclosure to many organisations.⁹ This voluntary uptake of the reporting supports a 1 July 2024 commencement date.

In addition to the TCFD which was released in 2017, the standards which form the basis of the reporting requirements have been available to all entities for some time. The Greenhouse Gas Protocol (GHG Protocol) has been in existence since 2001. More recently, the International Sustainability Standards Board (ISSB) released International Finance Reporting Standards (IFRS) S1 and S2 in June 2023, which build on the TCFD, and the Australian Accounting Standards Board (AASB) Exposure Draft ED SR1 Australian Sustainability Reporting Standards released in October 2023 which are generally aligned with the ISSB standards. As noted above, a significant proportion of Australia's largest entities have adopted the practice of making voluntary disclosures against the TCFD framework and are familiar with the GHG Protocol which inform the Exposure Draft. Given the familiarity and experience with the disclosure requirements, there is no reason to delay the commencement of the Exposure Draft.

Additionally, the Exposure Draft already contemplates significant relief for entities through the transition, such as disclosure of Scope 3 emissions, modified liability provisions until 30 June 2027 and limited assurance of disclosures until 30 June 2030. This will alleviate the compliance burden for Group 1 entities, ensuring they are well-positioned to commence reporting from 1 July 2024.

EDO submits that the benefits of commencing on 1 July 2024, far outweigh any minor detrimental impacts, which have been contemplated and addressed by the proposed amendments.

Materiality exemption for Climate Statements

Recommendation 2: Remove the materiality exemption for Climate Statements

The Exposure Draft contemplates a process for self-assessment against set criteria to establish material climate risk or opportunities in determining whether an entity is required to prepare an extensive climate statement. Where an entity determines that they do not have material climate risk or opportunity, they need only include a statement to that effect.

The proposed phasing of implementation in the Exposure Draft means that smaller entities have two years to develop the capacity to prepare for climate statements in the first reporting year commencing from 1 July 2027. Further, the related Australian Sustainability Standards will include a proportionality principle and only require disclosure of information that is available without undue cost or effort for smaller entities. Therefore, smaller entities can collate information and make disclosures in a way that is proportionate to their size and resources, reducing any perceived compliance burden.

The materiality exemption would result in a lack of clarity for regulators, shareholders, and investors around how the exemption applies. The simple statement that the entity does not have material climate risk or opportunity does not provide detail on why the exemption is applicable. Given that the State of Environment Report 2021 states that "climate change is affecting every

⁹ KPMG February 2023, Submission in response to Climate-related financial disclosure, available at <https://treasury.gov.au/sites/default/files/2023-04/c2022-314397-kpmg.pdf>

aspect of our environment” it is difficult to see how a company could not have any material risks.¹⁰ In assessing whether the exemption applies there should be consideration of total GHG emissions and possible exposure to climate-related physical and transitional risks, not merely the reliance on consolidated revenue, value of consolidated gross assets and number of employees. This would ensure that regulators can assess and manage systemic risks to the financial system while improving consistency and comparability across reporting, and alignment with international climate change commitments. Further, it will give shareholders and investors comfort that the entity is meeting its climate related obligations.

If the government decides to proceed with the Climate Statement Exemption, there should be a detailed statement outlining why the exemption is applicable to ensure consistency with related reporting standards. Such a requirement for a detailed justification would align with the AASB’s Exposure Draft ED SR1 Australian Sustainability Reporting Standards.¹¹

Climate Resilience scenario assessments

Recommendation 3: Include the requirement for prescribed emission scenarios

In its Policy Position Statement, the government requires the use of at least two possible scenarios in climate resilience assessments, one of which must be aligned with the goal of limiting warming to 1.5°C. This requirement is not however reflected in the Exposure Draft. Instead, the government relies on the AASB which currently incorporates a relevant provision in its Exposure Draft ED SR1.¹²

The EDO believes the amendment to the *Corporations Act 2001* (Cth) should go further and include a requirement for the use of prescribed emission scenarios consistent with both the latest IPCC and IEA modelled pathways that limit warming to 1.5°C, to ensure a science-based, internationally consistent, and comparable approach to climate projections. The inclusion of this requirement in the Corporations Act will not only ensure certainty and clarity for all entities in their reporting requirements, but it will also ensure credible and verifiable, internationally consistent and recognised, current science-based data.

The EDO is concerned that giving entities discretion to choose climate scenarios that are consistent with the objective of holding the global average temperature increase to 1.5°C or “well below” 2°C allows entities to choose scenarios or engage in “scenario shopping.” We note that there are hundreds of climate scenarios, many of which are consistent with the overall objective. However, the extent to which these scenarios are technically feasible, consistent with market structures, available technologies and stated science and policies varies significantly. As such,

¹⁰ Australian Government, State of the Environment Report 2021, available at <https://soe.dcceew.gov.au/overview/key-findings>

¹¹ AASB draft ASRS 1 paragraph Aus6.2 and draft ASRS 2 paragraph Aus4.2

¹² AASB draft ASRS 2 proposed paragraph Aus22.1 requires an entity required by the Corporations Act 2001 to prepare climate-related financial disclosures to disclose its climate resilience assessments against at least two possible future states, one of which must be consistent with the most ambitious global temperature goal set out in the Climate Change Act 2022 (i.e. 1.5°C above pre-industrial levels). The AASB has not specified the upper-temperature scenario because scenarios used in assessing physical risk would depend on the entity’s facts and circumstances, including the nature and location of its operations. See https://www.aasb.gov.au/admin/file/content105/c9/AASBED_SR1_10-23.pdf

climate scenarios that achieve the same long-term temperature goal of “well below” 2°C may vary considerably in terms of energy and land use requirements, technology deployment and temperature overshoot. This, in turn, increases the risk of failing to limit global warming to well below 2°C, the consequence of which is that the worst impacts of climate change would be realised.¹³

Mandating that at least one scenario is aligned with modelled pathways set out by the IPCC or IEA that align with the Paris Agreement goal of limiting warming to 1.5°C with limited or no overshoot, will prioritise immediate emissions reductions across all greenhouse gas emissions, ensure that entities do not “cherry pick” scenarios that appear to minimise risk in their operations and business strategies, and enable the government to meet its international obligations. Further, it will minimise transition risks for entities as early action will accelerate innovation helping entities to become industry leaders in a climate resilient economy.¹⁴

Modified liability for claims relating to Scope 3 emissions and scenario analysis

Recommendation 4: Remove the modified liability provisions

The Exposure Draft proposes a *Modified liability* where there will be a temporary suspension of liability for misleading and deceptive and other conduct in relation to statements concerning scope 3 emissions and scenario analysis. This protection extends to negligent misstatement, breach of a statutory duty and breach of fiduciary duties. During the three-year period from 1 July 2024 to 30 June 2027, only ASIC will be able to take action (in the form of declarations and injunctions) for misleading and deceptive conduct in relation to these types of disclosures.

Removing third party rights would have the unintended consequence of delaying urgent climate action by permitting entities to engage in greenwashing without sufficient accountability mechanisms. The “reasonable grounds” standard contained in misleading or deceptive conduct provisions is sufficiently flexible to accommodate the uncertainties inherent in forward-looking statements.

The EDO submits that the *modified liability* is unnecessary for the following reasons:

- ASIC’s authority should not be restricted in any way. ASIC has, since 2021, adopted a consultative approach in relation to climate related financial disclosures however it has always considered enforcement action for serious disclosure failures, including those related to the impact of climate change on a business;¹⁵
- there are internationally recognised, credible and verifiable scenarios which can form the basis of the scenario analyses;
- climate disclosures will be subject to assurance requirements from financial auditors;

¹³ IPCC, Impacts of 1.5°C of Global Warming on Natural and Human Systems (2018), p274-283, available at: SR15_Chapter_3_LR.pdf (ipcc.ch)

¹⁴ UN HLEG, Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions available at https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf

¹⁵ ASIC, Managing climate risk for directors available at <https://asic.gov.au/about-asic/news-centre/articles/managing-climate-risk-for-directors/>

- a significant proportion of entities have been voluntarily reporting climate risk related financial disclosures based on the TCFD framework to ensure consistency with international requirements and are therefore familiar with the requirements¹⁶;
- entities and financial auditors have had sufficient notice of the imminent commencement of mandatory reporting requirements for some time; and,
- the staged or phased approach adopted by the Exposure Draft allows for any smaller entities to obtain necessary advice and best practice guidance prior to commencement of their obligations.

Greenwashing is an important and pervasive issue. In March 2023, the ACCC reported that of the 247 businesses it reviewed during an ‘internet sweep’, 57% were identified as having potentially engaged in greenwashing. It is an issue because investors require accurate information about the ways in which the global transition of reducing greenhouse gas emissions to net zero by 2050 may impact entities’ future financial prospects to make informed investment decisions. Greenwashing distorts that information so that investors cannot make accurate assessments of the viability of their investment and the extent of their financial exposure. Similarly, consumers without adequate disclosure information cannot make informed choices about which products and services to purchase. Misleading information can leave investors vulnerable to major losses, which erodes investor confidence in the market for sustainability-related products. It also potentially skews the market in favour of companies that are not adequately managing climate related risk and away from companies that are acting responsibly, which poses a threat to the fair and efficient operation of the markets.¹⁷ The importance of tackling greenwashing was recognised by the creation of a current Senate inquiry into greenwashing. It is therefore essential that ASIC’s enforcement powers are not limited in any way in relation to misleading or deceptive disclosures.

The benefits resulting from the removal of the modified liability provisions include the necessity for immediate accountability and best-practice, science-based emission reductions which will in turn assist the Australian government’s attainment of its international obligations under its Net Zero commitments.

Industry-based metrics for disclosures

Recommendation 5: Introduce industry-based metrics for disclosures from 1 July 2026

The Government proposes that entities should only be required to disclose against industry-based metrics from 1 July 2030 onwards. Requiring entities to disclose industry-based metrics is an important aspect of meeting the Government’s policy objectives and avoiding information asymmetry. Disclosure of industry-based metrics enables comparison across companies and jurisdictions. Industry-based metrics provide certainty and granularity that is helpful to those drafting reports and those reading them.

¹⁶ A review carried out by ASIC in 2019-2020 of large listed companies found voluntary adoption of TCFD reporting has materially improved standards of climate-related governance and disclosure. For more information see <https://asic.gov.au/about-asic/news-centre/articles/managing-climate-risk-for-directors/>

¹⁷ Jennifer Balding, ASIC, UNGCNA Webinar “Avoiding Greenwashing, Bluewashing and Other Forms of Corporate Greenwashing” available at: UNGCNA Webinar | Avoiding Greenwashing, Bluewashing and Other Forms of Corporate Whitewashing – YouTube

The ISSB's IFRS S2 requires disclosure of industry-based metrics, with many Australian entities may decide to adopt this on a voluntary basis to meet market and investor expectations.

The EDO supports industry-based metrics and encourages the Government to implement them for disclosures from 1 July 2026 onwards. An earlier implementation date will help establish the metrics as part of best practice disclosures.

Index table in annual sustainability reports

Recommendation 6: Include a requirement for Index tables in annual and sustainability reports

The Government proposes the requirement for entities to include an index table in the annual report that enables users to easily navigate climate disclosures.

Annual reports and Sustainability reports include a vast amount of material and a variety of both mandatory and voluntary disclosures. The EDO supports the use of an index table as it is beneficial for both entities required to prepare the reports as a checklist to ensure the required content is included and regulators and investors can clearly identify and locate relevant information.

Conclusion

The proposed reforms to the climate-related financial disclosures endeavour to improve consistency and comparability across climate related financial reporting, while aligning with international climate change commitments in support of Australia's climate goals. By concealing opportunities for climate-informed investment, misleading information may impede an effective and timely response to climate change. To avoid the worst impacts of climate change, global temperature levels must remain within 1.5°C above pre-industrial levels, which requires that global emissions are reduced to net zero by at least 2050.¹⁸ According to the Intergovernmental Panel on Climate Change in its 2023 Climate Change Synthesis Report, this requires deep, rapid and immediate emissions reductions across all sectors in the next seven years.¹⁹ The latest UNEP Emissions Gap Report²⁰ found that the world is setting alarming emissions and temperature records, which intensify extreme weather events and other climate impacts across the globe. Currently, the world is heading for a 2.5-2.9°C temperature rise above pre-industrial levels unless countries step up action and deliver more than promised in their 2030 pledges under the Paris Agreement.²¹ Therefore, immediate action is essential.²² Delayed action by all levels of Government and corporations will lead to increasing global warming with every additional increment of warming escalating adverse impacts, many of which will be irreversible. While three years appears to be a relatively short time period from the perspective of reporting entities, it is critical from the perspective of climate action.

¹⁸ IPCC, Climate Change 2023 Synthesis Report: Summary for Policymakers (IPCC Report), p19 available at: [IPCC_AR6_SYR_SPM.pdf](#)

¹⁹ IPCC Report, p20-21.

²⁰ UNEP 2023 Emissions Gap Report available at https://wedocs.unep.org/bitstream/handle/20.500.11822/43924/EGR2023_KMEN.pdf?sequence=10.

²¹ Ibid.

²² IPCC Report, p24.

*Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you have further enquiries.*