



Climate Disclosure Unit
Climate & Energy Division
Treasury
Email: ClimateReportingConsultation@treasury.gov.au

Friday 9 February 2024

RE: Climate-related financial disclosure: exposure draft legislation

The Australian Dairy Industry appreciates the opportunity to provide comment on the draft legislation to amend the Australian Securities and Investment Commission Act 2001 and the Corporations Act 2001 (Cth) to introduce mandatory requirements for large businesses and financial institutions to disclose their climate-related risks and opportunities.

This submission builds on the industry's positions previously outlined in submissions to Treasury's consultations on Climate Related Financial Disclosure, with particular comment on the climate disclosure reporting obligations, climate resilience assessments, industry-based metrics, and liability for climate disclosure.

We have consulted with industry partners and members in the development of our response, and also with the Australian Food and Grocery Council.

Key recommendations

1. Climate disclosure obligations and scope 3 data issues:

- Government must understand the regulatory impost this legislation would introduce to dairy businesses and provide the necessary tools, guidance materials, and capacity and capability building to enable reporting on all of the proposed CRFD requirements noted, from financial materiality to scenario analysis and methodology. This includes:
 - Immediate government support and investment to both dairy farmers and processors, to foster better understanding of baseline GHG emissions and measures to reduce it, to help provide information which both complies with the regulation and is useful to investors.
 - Addressing data integrity, confidentiality, and accessibility.
- The ADIC acknowledges the proposal in the Exposure Draft for reporting to be delayed to a commencement date of 1 January 2025 for Group 1 entities (instead of 1 July 2024) – however, this must be seen as a minimum given the concerns about capacity and capability needed for all aspects of reporting – and it is essential that all other reporting periods are also amended accordingly to reflect the delayed commencement.
- Further consideration should be given to the phased implementation of the CRFD reporting requirements (e.g., starting with governance, existing climate-related targets, scope 1 and 2 emissions, and transition planning) – and only expanding upon these once methodologies, capacity and capability are developed for the other proposed requirements – and government must work collaboratively with industry to support this.
- It is unlikely that dairy supply chains will be able to meet legislated timeframes for scope 3 reporting without government support noted above.

2. Climate resilient assurance:

- Sustainability reporting – technical experts outside of financial auditing are necessary and the decision to include them in a team should not be at the discretion of the financial auditor.
- These audits must be undertaken by experts who have environmental credentials, rather than those with purely financial credentials.

3. Provision of other legislative requirements for reporting

- The proposed legislative package includes a provision that "the Minister may make rules to require other statements relating to environmental sustainability-related financial matters to be included as part of the sustainability report".
- This provision should be removed to retain the focus on climate. Other issues should be considered separately through due process and legislation developed separately as required.
 - Government should also recognise that reporting requirements stipulated in this draft legislation are in addition to those already imposed on dairy businesses, including a range of environmental, food safety, animal health and financial audits and reporting requirements. Mandatory reporting on sustainability already includes scope 1 and 2 emissions under the National Greenhouse Energy Reporting Scheme (NGERS), gender and diversity under the Workplace Gender Equality Agency (WGEA) and Modern Slavery Act.
- Government must also recognise the substantial cost impost of all reporting requirements – this needs to be minimised and appropriately shared across all sectors to reflect the beneficiaries – including investors and government.

4. Industry Based Metrics

- Reporting metrics must include industry-based metrics that can be supported by industry actions.
- Government, Treasury and the AASB, must work with the dairy industry on what these industry-based metrics should be, to ensure that they are able to be provided in a timely and cost-effective manner.

5. Liability framework

- As per our previous submission, the ADIC had asked for the word 'deliberate' to be included in the legislation, to avoid Board members being fined for simple mistakes or malpractice and misconduct by staff.
- It would read:

For reports issued between 1 July 2025 and 30 June 2028, only the regulator will be able to bring action relating to 'deliberate' breaches of relevant provisions made in disclosures of scope 3 emissions and climate-related forward-looking statements, and the remedies available to the regulator will be limited to injunctions and declarations.
- Reporting requirements should also recognise continuous improvement and not unfairly penalise simple mistakes as businesses build capability and capacity.

Each of these recommendations is discussed in more detail below.



Australian Dairy Industry Structure

The **Australian Dairy Industry Council (ADIC)** is the peak national body of the Australian dairy industry, representing the interests of dairy farmers and processors through its two constituent bodies Australian Dairy Farmers and the Australian Dairy Products Federation.

Australian Dairy Farmers (ADF) is the peak national industry representative body that represents Australia's dairy farmers. ADF is the dairy industry representative body to organisations such as Dairy Australia and Animal Health Australia. ADF's members include state representative dairy bodies and dairy farmers from across the six dairying states of Australia.

Australian Dairy Products Federation (ADPF) is the national peak policy and advocacy body representing the post farm gate members of the Australian dairy supply chain, including processors, traders and marketers of Australian dairy. ADPF members process more than 90% of Australian milk volumes and work across rural and regional Australia, to transform raw milk into safe, nutritious and premium dairy products for domestic and global markets.

Dairy Australia (DA) is the national services body for dairy farmers and the industry. Its role is to help farmers adapt to a changing operating environment, and achieve a profitable, sustainable dairy industry. As the industry's research and development corporation (RDC), it is the 'investment arm' of the industry, investing in projects that cannot be done efficiently by individual farmers or companies. Working with DA are eight Regional Development Programs based in the dairying regions around Australia, each of which delivers extension and engagement programs for farmers in their region.

Climate Disclosure Obligations and Scope 3 Data Issues

In building on our previous submission, the ADIC and DA remain highly concerned about the emergence and impact of climate and nature related financial disclosure reporting requirements across the supply chain, especially in the context of mandatory reporting of Scope 3 emissions.

Treasury is holding an assumption that the Climate Related Financial Disclosure (CRFD) work has been complete, to then be able to report – which is certainly not the case.

There are gaps in the guidance from government and in current capability and capability of businesses to report on all of the proposed CRFD requirements noted, from financial materiality to scenario analysis and methodology.

There are particular concerns that many dairy farms will not be able to meet the reporting requirements outlined under the proposed new legislation.

Reporting for dairy processors currently focusses on scope 1 and 2 emissions. Scope 3 emissions for dairy processors will include accounting for supplier emissions across the supply chain – including dairy farm emissions, as well as transport and other ingredients suppliers for example.

However, baselining of carbon emissions across suppliers, is not yet mature.

The dairy industry is concerned that this lack of maturity in the market, including the lack of associated time, capability and expertise, resources and tools to enable dairy farmers and processors to first understand and then meet regulatory requirements as proposed by Treasury, will have unintended consequences – such as stifling productivity and, more significantly, forcing unintended non-compliance given the inability of the market to comply.

This is in addition to the significant cost impost of compliance, to both dairy farmers and processors – and what consequence this may have to the consumer who is already managing cost inflationary pressures.

In past submissions, the ADIC had sought to have the legislation differentiate between deliberate and unintended non-compliance so that unintended breaches can be addressed via education and not punitive regulatory action – especially during the early years of reporting. This should be included in the legislation.

There is also lack of standardised methodology for reporting of scope 3 emissions (from all inputs – not just dairy farms) amongst dairy processors, including what is in and out of scope.

Measurement of emissions on farms is an emerging area and needs significant investment to reach maturity.

The release of the latest version of the Australian Dairy Carbon Calculator (v5) to support farmers to understand their carbon footprint, along with an increased whole of industry focus on ‘knowing your number’ on dairy farms, will improve the reporting of scope 3 emissions. However, this will require considerable time, skill, and resources before a full view of the sector can be gained and must be considered as part of the timeframes proposed.

This issue is complicated by farm businesses which have mixed systems, such as dairy plus cropping, as each agricultural sector has different advice and carbon calculators. This is an issue that the agriculture sector is currently working through.

For dairy processors, farmers are one supplier. They will need to collect scope 3 data for all suppliers, each needing to understand and undertake measures to be able to report confidently on their baseline carbon measure – and to continue this ongoing reporting.

While some relief is proposed through features such as a delayed start to reporting on scope 3 (i.e., starting in second year), and the use of estimations in initial phases of reporting (i.e., reporting without undue cost or effort), increasing to robust scope 3 reporting for investor purposes will place significant pressure on dairy farmers for measurement, data collection and reporting to liable entities such as dairy processors in coming years.

Gathering the required information on physical and transition climate risks will also place pressure on dairy farmers to provide information to companies through value chain and business relationships.

Additionally, data reporting is a sensitive issue with confidentiality and commerciality considerations that must be carefully considered.

The implications of Scope 3 emission reporting must be considered.

Recommendations:

Climate disclosure obligations and scope 3 data issues:

- **Government must understand the regulatory impost this legislation would introduce to dairy businesses and provide the necessary tools, guidance materials, and capacity and capability building to enable reporting on all of the proposed CRFD requirements noted, from financial materiality to scenario analysis and methodology. This includes:**
 - Immediate government support and investment to both dairy farmers and processors, to foster better understanding of baseline GHG emissions and measures to reduce it, to help provide information which both complies with the regulation and is useful to investors.
 - Addressing data integrity, confidentiality, and accessibility.
- The ADIC acknowledges the proposal in the Exposure Draft for reporting to be delayed to a commencement date of 1 January 2025 for Group 1 entities (instead of 1 July 2024) – however, this must be seen as a minimum given the concerns about capacity and capability needed for all aspects of reporting – and it is essential that all other reporting periods are also be amended accordingly to reflect the delayed commencement.
- Further consideration should be given to the phased implementation of the CRFD reporting requirements (e.g., starting with governance, existing climate-related targets, scope 1 and 2 emissions, and transition planning) – and only expanding upon these once methodologies, capacity and capability are developed for the other proposed requirements – and government must work collaboratively with industry to support this.
- It is unlikely that dairy supply chains will be able to meet legislated timeframes for scope 3 reporting without government support noted above.

Climate Related Financial Disclosure - assurance requirements

The draft legislation proposes climate disclosures will be subject to similar assurance requirements to those currently in the Corporations Act for financial reports and will require entities to obtain assurance reports from their financial auditors – i.e. the information in the sustainability report will be required to be "audited by the auditor of the financial report, supported by technical climate and sustainability experts where appropriate".

It is important that the legislation recognises that technical experts outside of financial auditing are necessary and the decision to include them in a team should not be at the discretion of the financial auditor.

Recommendation:

- Sustainability reporting – technical experts outside of financial auditing are necessary and the decision to include them in a team should not be at the discretion of the financial auditor.
- These audits must be undertaken by experts who have environmental credentials, rather than those with purely financial credentials.

Provision of other legislative requirements for reporting

The proposed legislative package includes a provision that "the Minister may make rules to require other statements relating to environmental sustainability-related financial matters to be included as part of the sustainability report".

This implies that this legislation is paving the way for mandatory reporting and disclosure by businesses on other topics in environmental sustainability. That is, this provision is raising the possibility of legislative 'scope creep' where other 'sustainability-related' matters may be included, but no indication of what these may be.

It is unclear what topics might be under consideration or how environmental sustainability has been scoped in this package, as no definition has been given in the documents made public at this stage.

Recommendation:

- **The proposed legislative package includes a provision that "the Minister may make rules to require other statements relating to environmental sustainability-related financial matters to be included as part of the sustainability report".**
- **This provision should be removed to retain the focus on climate. Other issues should be considered separately through due process and legislation developed separately as required.**
 - **Government should also recognise that reporting requirements stipulated in this draft legislation are in addition to those already imposed on dairy businesses, including a range of environmental, food safety, animal health and financial audits and reporting requirements. Mandatory reporting on sustainability already includes scope 1 and 2 emissions under the National Greenhouse Energy Reporting Scheme (NGERS), gender and diversity under the Workplace Gender Equality Agency (WGEA) and Modern Slavery Act.**
- **Government must also recognise the substantial cost impost of all reporting requirements – this needs to be minimised and appropriately shared across all sectors to reflect the beneficiaries – including investors and government.**

Industry-based metrics

The government has rejected the use of a particular standard in Australia at this stage (i.e., a US centric standard known as SASB which includes multiple industry-based metrics).

Instead, the Exposure Draft proposes that entities may choose to disclose relevant industry-based metrics voluntarily prior to 1 July 2030 and then use well-established and understood industry-based metrics.

The Australian Dairy Sustainability Framework provides an opportunity to include industry-based metrics that can be supported by industry actions. The dairy industry **seeks the opportunity to work with government, Treasury and the AASB, on what these industry-based metrics should be, and would be available to undertake the necessary actions needed to establish these metrics.**

Recommendation:

- **Reporting metrics must include industry-based metrics that can be supported by industry actions.**
- **Government, Treasury and the AASB, must work with the dairy industry on what these industry-based metrics should be, to ensure that they are able to be provided in a timely and cost-effective manner.**

Liability framework

The Exposure Draft currently states that entities will be provided relief for a fixed three-year period for disclosures relating to Scope 3 emissions and certain climate-related forward-looking statements.

For reports issued between 1 July 2025 and 30 June 2028, only the regulator will be able to bring action relating to breaches of relevant provisions made in disclosures of scope 3 emissions and climate-related forward-looking statements, and the remedies available to the regulator will be limited to injunctions and declarations.

Recommendation:

- **As per our previous submission, the ADIC had asked for the word ‘deliberate’ to be included in the legislation, to avoid Board members being fined for simple mistakes or malpractice and misconduct by staff.**
- **It would read:**
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- **Reporting requirements should also recognise continuous improvement and not unfairly penalise simple mistakes as businesses build capability and capacity.**

Conclusion

The dairy industry is committed to improving environmental outcomes and welcomes government support to achieve this.

The proposed draft legislation, however, does not support the industry to achieve emissions reductions, but instead opens the possibility of non-compliance and subsequent penalty.

To avoid this, the Government must re-consider the dates and phased implementation proposed for CRFD reporting, including scope 3, to remove uncertainty regarding ‘sustainability experts’ for climate resilience assessments and what is considered as ‘other legislative requirements’ for reporting, and work with industry to develop specialist industry-based metrics for reporting.



The industry has provided submissions to state and federal climate consultations all of which seek a just transition to a low-emissions economy. Each of these previous submissions have outlined where Government can support industry to make this transition.

The ADIC asks that Treasury continues to consult with the dairy industry in the development of any new requirements for CRFD reporting in Australia, due to the considerable implications and costs this could have to the sector.

We look forward to discussing this with you further.

Yours sincerely

A handwritten signature in black ink that reads "Ben Bennett".

Ben Bennett
Chair
Australian Dairy Industry Council

A handwritten signature in black ink that reads "John Williams".

John Williams
Deputy Chair
Australian Dairy Industry Council