

9 February 2024

The Treasury
Langton Crescent
Parkes ACT 2600

Submitted via email: ClimateReportingConsultation@treasury.gov.au

Dear Sir/Madam,

Climate-related financial disclosure: exposure draft legislation

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members are Australian and international asset owners and institutional investors with over AU\$1 trillion in funds under management.

Through research, engagement, advocacy and voting recommendations, ACSI supports members in managing ESG investment risk and exercising active ownership to strengthen investment outcomes. Active ownership, including the management of climate related risk, allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage.

Summary of ACSI's position

ACSI welcomes the release of Climate-related financial disclosure: exposure draft legislation ('Exposure Draft'). We welcome the proposed introduction of mandatory climate-related financial disclosures requirements. Climate-change risks are financial in nature and deeply embedded across the economy. Mandating the disclosure of this information will assist investors' investment analysis, risk assessment, stewardship activities and due diligence processes. Further, this legislation forms one part of the economy-wide policy response required to support decarbonisation and Australia's 2050 net zero target. We encourage coordination across the various policies to set an ambitious structure that supports Australia in meeting the goals of the Paris Agreement.

We note, however, that the policy intent is not always clearly reflected in the legislation. In particular, ACSI welcomes the introduction of an assets under management (AUM) test to bring asset owners into the reporting regime, but the drafting of the legislation has raised confusion as to how the test will be applied. We have highlighted areas where the policy intent is not clearly reflected in the legislation below.

Thresholds

ACSI strongly supports the application of an AUM test to support consistent and effective application of the reporting requirements to asset owners. It will be important to recognise that many superannuation funds include a Registrable Superannuation Entity (RSE) Licensee and Registrable Superannuation Entities (i.e. the funds), often with separate financial reporting. The inclusion of an AUM test also aligns with the UK approach to mandatory TCFD reporting, where the threshold for reporting obligations for occupation pension schemes is based on AUM.¹ This also supports the purpose of reporting for asset owners (i.e. to 'support consistent reporting of climate-related risks and opportunities across the financial sector, noting the significance of these entities in Australia's financial system') and represents a clear and consistent way to capture asset owners under the reporting obligations.

We note that the legislation is unclear on the relationship between the three-part reporting threshold test and the AUM test. This can be resolved by clarifying in the legislation that asset owners and their associated entities are captured only by the AUM test. This outcome appropriately:

- **Aligns to the purpose of reporting.** The AUM test focuses reporting on the fund, which will likely be the area of more significant climate risk.
- **Provides clarity.** The legislation as it currently stands creates confusion and complexity for superannuation funds on which entities are covered by reporting requirements and when.

Corporate structure

It is important that the legislation provides clarity on which entity is reporting and supports the provision of material climate-related financial information. Accounting and corporate structures for superannuation entities are unique and industry specific. As outlined above, most superannuation funds have an RSE Licensee, as well as the RSE, often with separate financial reporting. Given this structure, there is a potential unintended consequence that the legislation would require separate sustainability reports for the RSE and the Licensee (because their financial reports are not consolidated). This could be addressed by clarifying that the AUM test applies to require one sustainability report from the RSE Licensee and the funds for which it is a trustee.

Sustainability report location

The commentary on the location of sustainability reports in the Policy Statement could be interpreted as contradicting the guidance contained in the draft AASB Standard under consultation. Specifically, the Policy Statement refers to the inclusion of the sustainability report in the entity's annual report, with the additional guidance that, 'Entities should include an index table within their annual report that enables users to easily navigate the climate disclosures.' It is not clear in the Policy Statement that cross-referencing is sufficient, and the sustainability report does not need to be contained within the Annual Report, as is outlined in the draft AASB Standard provisions. We consider that the Policy Statement should be amended to clarify that it aligns with the approach in the proposed AASB Standard.

Assurance

ACSI supports the proposed approach to assurance outlined in the Policy Statement and legislation. We support the restriction of audit requirements to limited assurance of scope 1 and 2 emissions for reporting periods up to 30 June 2030. The International Auditing and Assurance Board (IAASB) is in the process of developing the ISSA 5000 *General Requirements for Sustainability Assurance Engagements* ("Sustainability Assurance Standard"), and it is consequently appropriate to wait for the finalisation of these requirements, and the development of an Australian sustainability assurance standard, before expanding assurance areas for the Australian climate reporting regime. We note that the IAASB's Sustainability Assurance Standard is not expected to be finalised until September 2024², while the Policy Statement and s1705D of the legislation require an Australian sustainability assurance standard to be ready by 1 July 2024. This 1 July 2024 date should be reviewed to allow sufficient time to develop an Australian sustainability assurance standard after the finalisation of the IAASB's Sustainability Assurance Standard.

ACSI notes that the legislation requires the financial and sustainability assurance to be performed by the same provider. We consider that it would be more appropriate to give additional flexibility on the choice of provider, as long as they are appropriately qualified. This aligns with the IAASB's proposed Sustainability Assurance Standard that expands the assurance provider qualifications allowable to reflect that sustainability and financial assurance engagements require different areas of expertise. In addition, this flexibility would also allow for entities to diversify audit functions to support improvement in governance outcomes.

Liability arrangements

ACSI remains of the view that appropriate disclosure of assumptions and qualifications relating to a forward-looking statement remains of primary importance. Nonetheless, ACSI does not oppose the temporary liability arrangements proposed in the Policy Statement and legislation. The transitional modified liability regime reflects that reporting capabilities will scale up over time. While ACSI considers that liability issues should be avoided via clear disclosures, we recognise that the proposed time-bound liability provisions strike the appropriate balance between reporter and investor concerns in the context of new reporting obligations.

Legislation

ACSI has identified two areas where the legislation appears to contain errors:

1. We note that s296A6(a) is confusing in its reference to international sustainability reporting standards. We recommend this statement be reconsidered.

2. S296A(3) states that, 'the Minister may, by legislative instrument, require a sustainability report to include statements relating to matters concerning environmental sustainability.' Sustainability encompasses a range of issues beyond the environment, as shown in the ISSB's recent consultation on the prioritization of topics in sustainability standard-setting. The consultation included a range of non-environmental topics related to sustainability, such as human capital.³ Consequently, to avoid unnecessarily limiting the concept of sustainability in the legislation, the word 'environmental' should be removed from this and other similar provisions.

Consideration of sustainability reports at AGM

Public companies will be required to present their sustainability reports at their AGMs. ACSI supports the inclusion of this requirement. Leading companies already provide investors with a vote on their climate reports, and we welcome the requirement to lay the sustainability report before the AGM as a basis for better practice.

Timing of reporting

ACSI notes that the Policy Statement asks for feedback on whether the commencement of Group 1 reporting obligations should be moved from 'on or after 1 July 2024' to 'on or after 1 January 2025'. While there is an urgent need for effective action to manage climate risk, we support this proposal on the basis that it will allow additional time to develop detailed reporting standards, implement the relevant legislative and regulatory provisions. This approach should lead to better quality disclosures and allow reporters to prepare for future reporting years.

I trust our comments are of assistance. Please contact me or Kate Griffiths, Executive Manager – Policy and Research (kgriffiths@acsi.gov.au) should you require any further information.

Yours sincerely,



Louise Davidson AM
Chief Executive Officer
Australian Council of Superannuation Investors