

**SUBMISSION TO THE TREASURY CLIMATE-RELATED FINANCIAL
DISCLOSURE: EXPOSURE DRAFT LEGISLATION**

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TABLE OF CONTENTS

1. Introduction	1
2. Reporting Framework	3
2.1 Background	3
2.2 Submission: Climate-related exposure draft legislation	
2.2.1 Sustainability Elements Guidelines	
2.2.2 Sustainability Disclosures Notes	4
3. Enhancing market supervision and enforcement	4
3.1 Background	
3.2 Submission: Climate-related exposure draft legislation	4
3.2.1 Due Diligence Checklist	5
4. Conclusion	5

Submission in relation to The Treasury Climate-related financial disclosure: exposure draft legislation

1. Introduction

Professor Tony Ciro, Associate Professor Rebecca Leshinsky, Dr Sugumar Mariappanadar, Dr Victoria Obeng and Dr Alexander Campbell, welcome the invitation to provide a submission to The Treasury into the *Climate-related financial disclosure: exposure draft legislation*.

2. Reporting Framework

2.1 Background

The policy position statement on mandatory climate-related financial disclosures articulates a proposed reporting framework for large reporting entities to provide an annual sustainability report as part of their annual financial reporting obligations. The annual sustainability report will ordinarily form the fourth report of the reporting entity's financial reporting obligations. The proposed sustainability reporting obligation will be phased in for reporting entities between 1 July 2024, 1 July 2026 and 1 July 2027 depending on their size as measured by their respective consolidated revenue, consolidated gross assets and number of employees.

Establishing a world-class financial reporting framework for financial disclosures in alignment with IFRS – S2 will play an increasingly important role in understanding an entity's resources and capabilities to manage climate-related financial risks and opportunities. The aim here is for reporting entities to **disclose 'sustainability elements'** including:- governance, visionary leadership, organisational systems, management approaches and positive and negative impact metrics. The sustainability elements are designed to shape organisational resilience and human capital to explore climate-related opportunities and mitigate climate-related risks for the creation of long-term value.¹

2.2 Submission: Climate-related exposure draft legislation

We make the following submissions, designed to achieve the policy objectives of the position statement within the exposure draft legislation:-

- 2.2.1 Our first submission is for the draft legislation or proposed regulation to include clear and concise *sustainability elements guidelines* (see 2.1 above) that should be provided by regulatory bodies to encourage disclosure of a reporting entity's for organisational resilience and human capital. The framework for sustainability-related financial disclosure guidelines should include *objective and verifiable investment allocations to allow for change with the entity's ESG (environment, social and governance)*

¹ T.Ciro, R.Leshinsky and S.Mariappanadar, "Green and ESG Derivatives: Financial Innovation in the Global Fight Against Climate Change" (2024) 39(1) *Journal of international Banking Law and Regulation* 1-13.

*capabilities, systems and practices. The guidelines are designed to enhance the required human capital to achieve enterprise resilience, to facilitate climate change-related opportunities and to minimise climate change-related risks.*²

The sustainability elements which are aligned to the IFRS – S2 standards should be included as part of the disclosure guidelines framework of the draft legislation. This would serve to avoid greenwashing. The government’s proposed disclosure guidelines framework will promote objective, verifiable and reliable information to end-users (eg: investors, sustainability rating agencies and other stakeholders) to make informed choices regarding their sustainable financial investment decisions.

2.2.2 Our second submission relates to reporting entities that have sourced green investments from the market. The financial disclosures would specifically relate to sustainable financial instruments and could include:- green bonds, green loans and ESG derivatives.³ It is submitted that *investors and end-users of financial reports would find useful more detailed information regarding:- use of proceeds, type, scope and individual dollar volumes of sustainable financial instruments that are used by reporting entities.* The financial disclosures would aid in the development of organisational ESG capabilities for human capital to manage climate-related risks and opportunities. Financial disclosures relating to the use of proceeds would be particularly useful for investors and end-users who have made their investment choices on the basis of the reporting entities ‘green credentials’. Financial disclosures relating to ‘*use of proceeds*’ from green bonds for example, would be particularly useful for end-users when making their assessments regarding their investment allocation. It is further submitted that this type of disclosure could be accommodated within *a note to the sustainability report* in a similar way as other types of disclosures in the notes to the financial report that are made by reporting entities.

3.0 Enhancing market supervision and enforcement.

3.1 Background

Minimising the risk of greenwashing and false green labelling via a robust regulatory and enforcement framework will be crucial in providing effective market integrity for sustainable finance markets. Evidence from both here in Australia and overseas has demonstrated the corrosive effect that misleading or deceptive conduct with false green and ESG reporting can have on overall market integrity.⁴ Developing appropriate ESG criteria along with an effective and certain taxonomy should mitigate the risk of greenwashing claims, thus increasing accountability and transparency of disclosures. Further, providing the corporate and securities

² T. Ciro, R.Leshinsky and S. Mariappanadar, (n 1 above) p.12.

³ T. Ciro, R.Leshinsky and S. Mariappanadar, (n 1 above) p. 2-3.

⁴ United Nations, Greenwashing – the deceptive tactics behind environmental claims: [Greenwashing – the deceptive tactics behind environmental claims | United Nations](#)

regulator, the Australian Securities and Investments Commission (ASIC) with sufficient resources and expertise would provide for even more effective enforcement of disclosure laws.

ASIC has demonstrated a proactive approach when it comes to investigating claims of greenwashing in recent times.⁵ The proactive approach adopted by ASIC with green washing claims and the commencement of litigation when appropriate should be encouraged, consistent with one of the major recommendations by the Royal Commission into the Misconduct in the Banking, Superannuation and Financial Services Industry.⁶

3.2 Submission: Climate-related exposure draft legislation

3.2.1 To aid further efficiencies within the proposed compliance and liability framework to the draft legislation we propose in this submission that an additional ***‘sustainable/green due diligence’ checklist*** or ***‘sustainable/green code of conduct’*** be provided by issuers, lenders and market participants to retail and unsophisticated end-users.⁷ The due diligence checklist or code of conduct could include entity relevant warnings and risks associated with climate-related events, including ESG sustainability elements (see point 2.1 above) that are intended to be applied to the sustainable financial product, financial market or financial instrument.

4.0 Conclusion

The intention of the government’s policy position statement is to improve the quality of climate-related disclosures and to provide investors with greater transparency and more comparable information to make informed decisions regarding an entity’s exposure to climate-related financial risks and opportunities. We believe that our submissions as contained above in **2.2.1 (sustainability elements guidelines)**, **2.2.2 (sustainability disclosures notes within the financial report)** and **3.2.1 (due diligence checklist)** will improve transparency and provide more detailed information to end-users in line with the government’s policy statement objectives.

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⁵ T. Ciro, R.Leshinsky and S. Mariappanadar, (n 1 above) p.9-11.

⁶ Final Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Vol 1 (2019) Recommendation 6.2.

⁷ The UK has a similar code of conduct that is monitored by the UK’s advertising watchdog under the UK Green Claims Code: [Green Claims Code – Check your environmental claims are genuine](#)

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