



Australian Banking  
Association

# **Climate-related Financial Disclosure: Exposure Draft Legislation**

ABA Submission to the Australian Treasury Consultation

9 February 2023



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## 1.0 Key Recommendations

### 1. Clarify the scope of the modified liability regime.

- a. Given the inherent uncertainties and complexities of climate-related forward-looking statements, and consistent with the Treasury's [Policy Statement](#), the scope of the proposed modified liability regime contained in 1705B should include all forward-looking climate-related statements, rather than limited to scenario analysis. A summary of our changes recommended under Section 3.1 includes:
  - i. Working with stakeholders to clearly define forward the legislative approach to climate-related looking statements and test those options with industry.
  - ii. Amending 1705B to cover **all** forward-looking climate-related statements.
  - iii. Working with regulators and stakeholders to develop, in advance of the implementation date, (a) clear regulator guidance on climate-related forward-looking statements, and (b) guidance on the expected regulator approach to enforcement and compliance including during the modified liability period.
- b. The legislative note following 1705B(1) should be deleted, and the section should be clarified to provide that relevant statements contained in a sustainability report and repeated in other forums are covered by the modified liability regime.
- c. Provide further clarity and/or guidance regarding how reporting entities should approach duplication of sustainability content in other sections of the annual report under general disclosure requirements.

### 2. Clarify the operation of consolidated reporting for corporate groups.

- a. To improve consistency and prevent confusion, the wording and definitions regarding corporate parents and subsidiaries contained in the *Climate-related Financial Disclosure: Exposure Draft Legislation (ED)* should be aligned with those in Australian Accounting Standards Board (AASB) [Sustainability Reporting Exposure Draft \(ED SR1\)](#).
- b. To improve global interoperability, Australian subsidiaries of global corporate groups should be permitted to rely on a climate report of their global parent, so long as that report is aligned to the International Sustainability Standards Board (ISSB) standards.

### 3. Ensure that legislated assurance standards remain feasible.

- a. As the availability of assurance for climate-related disclosures will depend on factors outside the control of reporting entities, the rollout of assurance requirements should be linked to the development of capacity and capability in the assurance sector, rather than a strict time limit.
- b. Further to the above, amend the ED to align director declaration requirements with assurance requirements.

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## 2.0 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.

## 3.0 Discussion of Key Recommendations

The Australian Banking Association (**ABA**) welcomes the opportunity to provide comments to the Treasury consultation on the ED. The ABA and member banks support the introduction of mandatory climate-related financial disclosures aligned to the International Sustainability Standards Board (**ISSB**) and have made submissions at previous stages of the Government's consultation.<sup>1</sup>

Notwithstanding our broad support, there are critical areas that need to be addressed for the regime to operate successfully. This section of our submission makes recommendations in three key areas – the modified liability, consolidated reporting, and reporting location.

We further note the interoperability of our recommendations related to modified liability, directors' declarations/assurance and consolidated reporting.

### 3.1 Modified liability period

Proposed section 1705B would introduce a modified liability period for certain statements made in sustainability reports published during the first three years of the scheme's operation. The ABA agrees with the Treasury statement that the modified liability period is necessary given the inherent uncertainties surrounding climate-related forward-looking statements and Scope 3 disclosures.<sup>2</sup>

The ABA and member banks hold two strong concerns about 1705B's drafting:

- It covers only Scope 3 emissions and a subset of climate-related forward-looking statements, specifically scenario analysis. Further, even for scenario analysis, the extent of 1705B remains unclear.
- It would not extend to statements made in a sustainability report were they to be duplicated outside of the sustainability report, even where such duplication is mandatory (such as under general disclosure requirements of the *Corporations Act*).

We are concerned that, in the form presented, the proposed 1705B represents a substantial and unexplained variation from earlier positions, including the [Policy Impact Analysis](#) documents. The current proposal would materially impact the disclosure regime's operation, and we expect will result in some reporting entities making limited and highly technical disclosures.

The ABA views that the modified liability regime should be expanded to all forward-looking climate-related statements. Further, we view that there be clear regulator guidance developed in advance of the implementation date regarding forward-looking statements in this context, as well as their expected approach to enforcement and compliance, including in the modified liability period.

The following sections expand on our concerns and offer constructive recommendations for amending the drafting.

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<sup>1</sup> ABA (Feb 2023) *Climate-related financial disclosure* ([link](#)); ABA (July 2023) *Climate-related financial disclosure – second round consultation* ([link](#))

<sup>2</sup> For example, the Australian Government has recognised limitations in sustainability data and methodologies. See Priority 7 of the Treasury's [Sustainable Finance Strategy](#) and Chapter 10 of the [Final Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act](#). The modified liability period will provide critical breathing space for methodologies and data to develop, and we look forward to working with the Australian Government as these initiatives progress.

### 3.1.1 Scenario analysis and climate-related forward-looking statements

The Treasury [Policy Impact Analysis](#) documents each indicate that the modified liability period is intended to apply to all climate-related forward-looking statements:

*The application of misleading and deceptive conduct provisions to scope 3 emissions and forward-looking statements would be limited to regulator-only actions for a fixed period of three years. Relief provided in this way would encourage best-practice disclosures while assuaging concerns in areas of the disclosure regime that are more uncertain.*<sup>3</sup>

The proposed section 1705B(1)(b)(ii) is more limited, applying only to “scenario analysis (within the meaning given by the sustainability standards for the purposes of this subparagraph).”

This limitation misunderstands the nature of scenario analysis within an entity’s climate-related financial disclosures, does not account for similar challenges posed by other climate-related forward-looking statements, and would undermine the intent of the proposed modified liability regime. We consider that all forward-looking climate-related statements should be included within the liability regime – consistent with the policy intention.

#### Scenario analysis

Scenario analysis is a conceptual tool that, when used effectively, enables the exploration and/or comparison of possible outcomes. Scenario analyses can be used for a range of purposes – including strategic planning, setting decarbonisation targets, product comparison, or risk management among other matters.<sup>4</sup> Outputs from scenario analysis may be used as part of disclosures, supporting a transition roadmap, providing a forward-looking view of risk and resilience measures, or other matters.

Within ED SR1, scenario analysis is given a particular meaning, as “a process for identifying and assessing a potential range of outcomes of future events under conditions of uncertainty”.<sup>5</sup> It is a component of a broader set of the ED SR1 disclosure requirements known collectively as **Climate Resilience** – “the resilience of the entity’s strategy and business model to climate-related changes”.<sup>6</sup> Broadly speaking, ED SR1 section 22 would require entities to disclose two different categories of information regarding climate resilience:<sup>7</sup>

- 22(a) – areas in which the entity would need to respond, areas of uncertainty, and its ability to adjust its business model to meet the challenges and opportunities of climate change. In assessing these matters, section 22 provides that an entity must use climate-related scenario analysis as the basis for these disclosures.
- 22(b) – various matters about how the entity carried out its climate-related scenario analysis – inputs, key assumptions, and reporting period.

Therefore, climate scenario analysis is not only a discrete disclosure requirement under 22(b) but forms an intrinsic part of an entity’s broader disclosures on climate resilience under 22 and 22(a). In addition, as discussed at the beginning of this section, it will underpin a range of other disclosures across the sustainability report and general-purpose financial reports.

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<sup>3</sup> Policy Impact Analysis, page 9

<sup>4</sup> Scenario analysis may serve as the basis for disclosures including but not limited to: Adaptation planning financing, physical risk exposures, transition risk exposures, management uncertainties, decarbonisation pathways, sustainable financing to support customers across physical and transition risks, climate and climate-related financial risk metrics, strategic business planning, including business model changes and resulting impacts on financial performance, and transitional roadmap planning.

<sup>5</sup> AASB ED SR1, Appendix A

<sup>6</sup> AASB ED SR1, section 22

<sup>7</sup> Noting also that both are subject to qualifications in the following paragraphs Aus22.1 and Aus 22.2.

Given this, the proposed 1705B is unclear as to how far the modified liability regime would apply. For example, it is unclear:

- Whether the modified liability regime would apply to **only** the disclosure of the scenario analysis under 22(b), or **both** the scenario analysis and the broader disclosures accompanying it under 22(a).
- Whether the modified liability regime would apply to climate scenario analysis used to inform climate-related forward-looking statements where climate scenario analysis would not specifically be required by ED SR1. For example, transition planning may include a component of climate scenario analysis to assess net zero pathways against a range of technological, policy and social trends.

### Other climate-related forward-looking statements

The proposed form of 1705B would exclude many climate-related forward-looking statements that entities would be required to disclose under the draft AASB ED SR1. ED SR1 section 14 provides an additional set of disclosure requirements, each of which would require some form of forward-looking statement. These are equally subject to questions of uncertainty and data availability as are those requirements underpinned by scenario analysis. The following table outlines our concerns around uncertainty and data availability for additional section 14 requirements:

Section 14 Requirement	Associated uncertainties
current and anticipated changes to the entity's business model, including its resource allocation, to address climate-related risks and opportunities	See above section on climate resilience.
Current and anticipated direct mitigation and adaptation efforts	<p>Mitigation and adaptation efforts require consideration of various climate-related forward-looking factors that are inherently uncertain.</p> <p>For example, appropriate mitigation and adaptation efforts will vary based on different climate trajectories. A mitigation strategy that is appropriate for one temperature goal may not be appropriate for another. They therefore require an entity to consider future climate states, which are inherently uncertain.</p> <p>They also further require consideration of adaptation and mitigation measures that may be undertaken by other entities, as well as underlying policy settings. For example, the need to relocate a facility may depend on whether Government implements effective mitigation measures. In this example, this would require both analysis of future climate states and consideration of Government plans.</p>
Current and anticipated indirect mitigation and adaptation efforts	See above.



Section 14 Requirement	Associated uncertainties
<p>Any climate-related transition plan the entity has, including information about key assumptions used in developing its transition plan, and dependencies on which the entity's transition plan relies</p>	<p>There remains significant uncertainties associated with transition planning for hard-to-abate sectors. For example, one or more of the following may apply to a sector:</p> <ul style="list-style-type: none"> <li>• Technological pathways may be uncertain for hard-to-abate sectors.</li> <li>• Transition pathways for one sector may heavily depend on developments in related sectors.</li> <li>• Data may be incomplete, complicating the development of transition plans.</li> <li>• Future public policy changes and their impacts are not known.</li> <li>• Methodologies are still maturing.</li> <li>• Legislative requirements and regulator guidance likewise continue to evolve.</li> </ul> <p>Improvements in data quality and availability, the underlying science, and methodological approaches, may lead to significant changes in the assessment of the effectiveness of particular emissions reduction or mitigation measures, or of particular business activities.</p> <p>While the Australian Government is currently developing <a href="#">sectoral decarbonisation pathways</a>, these are due for finalisation by EOY 2024 and are not expected to be available to inform the initial round of disclosures.</p>
<p>How the entity plans to achieve any climate-related targets, including any greenhouse gas emissions targets, described in accordance with paragraphs 33–36</p>	<p>For entities in the financial sector, net zero transition pathways for Scope 3 financed emissions are heavily reliant on credible transition pathways of their customers (and the accurate disclosure of such pathways).</p>

### Recommendations

The ABA recommends that Treasury:

- Work with stakeholders to clearly define forward the legislative approach to climate-related looking statements and test those options with industry prior to finalising the ED.
- Amend the ED to ensure that 1705B covers **all** forward-looking climate-related statements. This could be accomplished by aligning 1705B(2) with the current section 728(2) so as to explicitly cover “statements made about a future matter in order to comply with the substance or intent of the ED or sustainability standards, including but not limited to such statements made as part of a transition plan”.
- Work with regulators and stakeholders to develop, in advance of the implementation date, clear regulator guidance on forward-looking statements in the context of the new sustainability reporting legislation, as well as guidance on the expected regulator approach to enforcement and compliance including during the modified liability period. This would be consistent with the approach taken by regulators previously, such as guidance on forward looking statements developed by ASIC for specific contexts (e.g. mining).

- Continue to work with industry to build out data availability.

### 3.1.2 Statements made outside a sustainability report

The legislative note following 1705B(1) states that the immunity “...does not apply to a statement made other than in a sustainability report (even if such a statement is also made in a sustainability report)”. The ABA is concerned that this legislative note substantially increases the risk of reporting entities making limited and highly technical disclosures.

Statements and messaging made in sustainability reports are likely to be repeated elsewhere in the annual report and in other forums or venues. The fact that the modified liability regime would not extend to such statements will materially impact the effectiveness of the scheme. We offer the following examples of representations that, as currently drafted, may not be covered by the modified liability regime:

- Information contained in a sustainability report will be subject to other general disclosure requirements. For example, sections 299 and 299A of the *Corporations Act* may require disclosure of climate-related information in the director’s report.
- Entities operating in multiple jurisdictions may be subject to disclosure requirements of foreign laws, many of which continue to evolve.
- The ED would require the sustainability report to be laid before the entity’s annual general meeting. Bank representatives and/or auditors may be required to repeat statements made in the sustainability report verbally and/or in the notice of meeting to address the content of the sustainability report and answer shareholder questions or respond to resolutions.
- In updating investors, bank representatives would be expected to repeat statements made in the sustainability report, verbally, in a written presentation, in answer to questions about the sustainability report.
- Given the broader desire for greater transparency to the market, information in a sustainability report may be duplicated in other published reports or on an entity’s website.
- In response to investor, customer, or activist queries or campaigns, bank representatives may repeat statements made in the sustainability report.
- Compliance with voluntary disclosures exercises, including answering questions asked by ESG analysts and data providers.
- Benchmarking exercises (eg. Dow Jones Sustainability Indices, Carbon Disclosure Project).
- Considering the ISSB’s intention to adopt the Integrated Reporting Framework, it is not clear that the sustainability report will continue to exist in isolation of general-purpose financial reporting moving forward.<sup>8</sup> There may be a need to consider future-proofing.
- Certain information (for example, transition plans) may not be updated on an annual basis – therefore, reporting entities may need flexibility to enable such documents to be incorporated into the reporting suite by reference.

The ABA recommends that Treasury:

- Amend the ED to delete the legislative note following 1705B(1), and expressly clarify that the modified liability regime permits reasonable duplication and discussion of statements made in a sustainability report outside of the sustainability report, and includes statements that are substantially the same as those included in the sustainability report, even if not identical.

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<sup>8</sup> IFRS (August 2022) Integrated Reporting Framework ([link](#))

- Provide further clarity and/or guidance regarding how reporting entities should approach duplication of sustainability content in other sections of the annual report under general disclosure requirements.

### 3.2 Consolidated reporting for corporate groups

The ABA and member banks welcome the proposal in section 292A to permit a group head to prepare consolidated climate reports for a consolidated group. The ABA views that the section could be improved by using consistent terminology to describe group heads and consolidated reporting groups and clarifying the treatment of Australian subsidiaries of global entities.

#### 3.2.1 Australian subsidiaries of global entities

While the ED provides for one consolidated report for Australian reporting groups, the ABA recommends further consideration of the position of Australian subsidiaries of global entities. This would assist in reducing duplication in reporting.

Global entities typically undertake sustainability reporting at the place the parent company is incorporated and in respect of its global activities. Likewise, their sustainability and climate strategies are typically set by the global parent. This allows a consolidated view across the group, supports international comparability, and meets the needs of their global investors.

While the ED provides for a group head to prepare a consolidated statement on behalf of the group, it is unclear whether this would extend to an Australian subsidiary of a global entity. Requiring such an entity to separately prepare a sustainability report would create unnecessary duplication of effort. For example, ED SR1 contains several Australian specific clauses – including use of ANZSIC codes (Aus32.1, Aus37.1, Aus48.1, Aus 55.1, Aus 58.1, AusB20.1), and NGER methodologies (Aus31.1(b), AusB25.1). This would effectively require the Australian subsidiary to create two overlapping sets of disclosures.

Moreover, given that Australian-specific requirements do not always align with global standards,<sup>9</sup> the two disclosures would not be entirely consistent. This may raise market confusion for global investors unfamiliar with Australian reporting standards.

The ABA recommends that Treasury:

- Amend the ED to explicitly permit Australian subsidiaries of global entities to rely on ISSB-aligned sustainability disclosures of their global parents and that such statements remain subject to the modified liability regime.

#### 3.2.2 Terminology

There is some inconsistency and lack of clarity in some terminology:

- Section 292A of the Treasury Exposure Draft introduces the concept of a group head. This is not referred to elsewhere in the *Corporations Act*, nor is it included in the definitions section.
- The AASB Exposure Draft uses different terminology to refer to the same entity, referring to the parent and its subsidiaries (AusB38.1) or the parent and its consolidated subsidiaries (Aus31.1) rather than the group head.

The ABA recommends that Treasury and/or the AASB:

- Explicitly clarify the meaning of group head and align the legislative definitions with the definitions in the sustainability reporting standard.

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<sup>9</sup> For example, the NGER methodology for calculating global warming potential differs from that contained in the GHG Protocol,  
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### 3.3 Assurance levels

#### 3.3.1 Complexities of assurance

The ABA and members emphasise the complexities of obtaining assurance for many of the statements contained in climate-related financial disclosures. At present, global standards for sustainability assurance remain under development by the International Audit and Assurance Standards Board (**IAASB**), with finalisation not anticipated until late 2024.<sup>10</sup> Importantly, the IAASB consultation anticipates challenges in several areas, including:

- Evaluating whether the sustainability matters within the scope of engagement are appropriate – whether they are identifiable and capable of consistent measurement or evaluation.
- Rational purpose – to obtain a meaningful level of assurance with the evidence to support the conclusion.
- Designing and performing procedures to obtain sufficient and appropriate evidence.
- Doubts about the relevance and reliability of information used as evidence.
- Sampling, analytical procedures, materiality, and documentation.
- Understanding entity and its environment, legal and regulatory framework, risk, and control environment.

Further, as a practical matter, the availability of reasonable assurance for climate related statements will depend on factors outside the control of reporting entities. This is particularly so for statements that are subject to inherent uncertainties, such as forward-looking statements and statements about scope 3 emissions.

We note Treasury's commitment to empower the Australian Audit and Assurance Standards Board (AUASB) to create an assurance roadmap. We view that the progressive rollout of assurance requirements should be linked to the development of capacity and capability in the assurance sector, rather than a strict time limit. We reiterate that a reporting entity's ability to receive reasonable assurance over many aspects of climate-related disclosures will depend on developments outside of its control.

In making these comments, we are seeking to avoid a situation in which reporting entities are legally required to purchase a service that is either not provided by the market, cannot readily be procured, or cannot be procured at reasonable expense.

We look forward to working with the AUASB on this matter, and recommend that further clarification will be needed on the following matters:

- Whether materiality assessments will be captured by assurance.
- The level of assurance required for particular disclosures, in particular for scenario analysis.
- Ensuring that skills and capacity uplift is incorporated into any roadmap.
- Consideration of flexibility Australian subsidiaries in cases where the assurance mechanism has yet to be applied to their global parents.
- Alignment with the latest global developments, for example Exposure Draft IAASB 5000 [International Standard on Sustainability Assurance](#).

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<sup>10</sup> International Audit and Assurance Standards  
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We recommend that Treasury:

- Consider including timeframes in Regulations, rather than enabling legislation. This would balance the needs of certainty in timing, while providing flexibility to link requirements to market developments.

### 3.3.2 Directors' attestations

Following on from our above comments, we note that there is a mismatch concerning the director's declarations and the assurance roadmap. ED 296A(6) requires that the entity's director's make a declaration about certain matters, including:

*whether, in the directors' opinion, the climate statements, the statements mentioned in paragraph (1)(c), and the notes to the climate statements are in accordance with this Act, including sections 296C (compliance with sustainability standards etc.) and 296D (climate statement disclosures).*

The ABA does not dispute the policy rationale for requiring a directors' declaration. However, while this section would begin operation from the legislation's commencement, the legislation envisages that reasonable assurance over all matters in the sustainability report would not commence until 1 July 2030.<sup>11</sup> Even at this point, as we have noted in the section above, the ability to obtain reasonable assurance will depend on developments in that market.

This section would therefore require directors to attest to matters that, at the time, are not subject to limited or reasonable assurance. While we do not suggest that a director would solely rely on reasonable assurance in making a declaration, the abovementioned challenges with assurance (Section 3.1) would equally apply to director declarations. We view that the policy rationale underpinning the phased approach to assurance levels equally applies to directors' declarations. In short, the need for maturation of data availability, methodology, capacity development, and so on.

The ABA recommends that the Treasury:

- Amend the ED to either:
  - Confine the director's declarations for climate-related disclosures to only those disclosures for which reasonable assurance has been obtained.
  - Amend the director's declarations such that it takes into account the level of assurance that has been obtained.

## 4.0 Other Matters

### 4.1 Reporting location and format

We suggest that clarity be provided as to the reporting location of the sustainability report, and its relationship to the wider general purpose financial reports. The ABA will make analogous comments to the AASB consultation on ED SR1.

The proposed changes to Chapter 2M would require that, in addition to preparing a financial report, directors' report, and remuneration report, a company would also need to prepare a sustainability report. The [Treasury Policy Position Statement](#) states that the sustainability report would form part of an entity's "annual report".

A sustainability report consistent with the ED SR1 will necessarily contain a substantial amount of information – including substantial and technically complex disclosures of scenario analysis and explanations of methodologies for calculating Scope 3 emissions. This is particularly the case for complex

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<sup>11</sup> Subject to the development of a proposed assurance roadmap by the AUASB.

entities in the financial sector (such as banks, insurers, superannuation, fund managers, etc.) that will need to make disclosures against portfolios spanning the breadth of the national economy. Conversely, reporting entities are not expected to provide similar levels of granular technical detail on general financial reporting – for example, methodologies and assumptions used in the calculation of provisions, credit losses, and so on.

The inclusion of this material in the annual report could easily overwhelm the broader financial and legal reporting requirements and would easily make up most of an entity's annual report. Other options – such as permitting a summary of the sustainability report to be included in the annual report – may help alleviate this concern (noting that any solution would need to be subject to the modified liability regime). Further, this would seem to go against concise reporting, which is a key principle of integrated reporting.

Further, we suggest clarification of the expected position on an Index Table. While the [Treasury Policy Position Statement](#) indicates that entities making reporting should include an index table in the annual report (page 4), ED SR1 would not require entities to issue an index table but rather proposes "requiring an entity to apply judgment in providing information in a manner that enables users to locate its climate-related financial disclosures". As the draft legislation does not appear to require an index table, the position in ED SR1, if adopted in the final standards, would be the default.

Finally, Section 299A of the *Corporations Act* provides additional general requirements for listed entities, including matters such as "the business strategies, and prospects for future financial years".<sup>12</sup> This is one example of a statutory requirement that will mean that entities cannot avoid discussing climate-related business risks in the operating and financial report. Given, ASIC Regulatory Guide 247 (**RG247**, which was published prior to the introduction of the mandatory climate disclosure regime) does not permit cross-referencing of material, this could result in the content of the operating and financial report becoming significantly longer to the extent that it duplicates the content of the sustainability report..<sup>13</sup>

The ABA recommends that Treasury and/or the AASB:

- Clarify the expected location of the sustainability report, and the Index table, through the AASB consultation on ED SR1.
- Clarify their expectations as to the identity of the users. It is unclear whether the reports are intended to be directed towards capital providers or more broadly to the public. This will impact the language used in the report.
- Consider whether the sustainability report should be published as part of the annual report,
- Publish examples to illustrate the above – that is, how the sustainability report is intended to be integrated into the annual report.
- Provide further clarity/guidance regarding how reporting entities should approach duplication of sustainability content in other sections of the annual report as required under general disclosure requirements.
- Work with industry to further consider the potential impacts and interactions with the Basel Committee on Banking Supervision (**BCBS**) consultation on [Disclosure of climate-related financial risks](#), following the finalisation of that consultation.

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<sup>12</sup> *Corporations Act* 299A(1)(c)

<sup>13</sup> RG247.15

- Consider whether the Index Table may be a better place to clarify where contents of the Sustainability Report are to be found – which may be the Sustainability Report itself, or other sections of the Annual Report (ie. remuneration report, financial statements and directors’ report).

## 4.2 Materiality assessments

There is potential confusion as to the use of materiality assessments in reporting. Section 296B(1)(a) of the ED provides that Group 3 entities will undertake a risk and opportunity assessment to determine whether it faces material climate-related risks or opportunities. If no such risks or opportunities are identified, then the climate statements for that entity will merely be a statement to that effect. 296B(6) requires that such assessments be undertaken in accordance with the sustainability standards.

296B(1)(a) may duplicate existing provisions in ED SR1, which already provides for a materiality assessment before climate disclosures.<sup>14</sup> This raises the following concerns:

- The duplication may give rise to an expectation in a reader of the legislation that climate-related disclosures of Group 1 and 2 entities are **not** subject to a materiality assessment (when, in fact, they are).
- It is unclear whether section Aus6.2 of ED SR1 would apply to Group 3 entities who determine they do not face any material climate-related risks or opportunities. Aus6.2 would require an entity that makes such a determination to explain how it came to that conclusion. However, 296B(1) would merely require that entity to make a statement to the effect it has no such risks or opportunities. While 296B(6) requires reference to the sustainability standards in making the determination, it has no analogous requirement for publishing the same information required by the standard. If this is intentional, the ABA suggests consideration of an intermediate position – where the Group 3 entity could publish a redacted or summary version of their reasons for making a 296B(1) determination as to materiality.
- Sustainability standards for materiality assessments (for example, **GRI 3: Material Topics 2021**) are not limited to climate-related risks or opportunities.
- Materiality assessments are not the only source to identify climate-related risks or opportunities, the provisions infer that ‘but for’ the outcomes of a materiality assessment there is no requirement for a Group 3 entity to progress climate-related risk or opportunity considerations.

The ABA recommends that Treasury and/or the AASB:

- Amends the legislation to clarify that entities who disclose that they do not have any risks or opportunities must disclose the basis for that statement.

## 4.3 Timing of reporting

In discussing timing of reporting, ED section 296D aligns reporting requirements to the financial year. While an entity may have a metric or target for a given financial year, the metric or target itself may fall due in a different year. We further note that NGER reporting is done on an EOFY timeframe, which does not align to banks’ audit timeframe. Additionally, greenhouse reporting is typically at least three months (and often over a year) out of sync, and this is unlikely to change in the near term.

The ABA recommends that Treasury and/or the AASB:

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<sup>14</sup> ED SR1 17-19, B13-37

- Clarify whether the quantitative information within the sustainability report needs to be aligned with the NGER reporting period (1 July to 30 June) or with the entity's own financial reporting period.
- Clarify whether, in an instance where an entity's financial reporting period does not align with NGER reporting period, an entity is expected to report Scope 1 and 2 emissions under different reporting periods.
- Consider any recommendations arising from ISSA 5000 specifically as they relating to timing of reporting and alignment of reporting periods, particularly with respect to the assurance roadmap.

#### 4.4 Transition planning

The ABA and members view that further work is needed to define an appropriate form of transition plan disclosure that would be suitable to support climate-related financial disclosures. The Australian Government's [Sustainable Finance Strategy](#) indicated that work would commence in 2024 to "support credible net zero planning". The ABA looks forward to working with the Treasury on those matters.

The ABA has made recommendations regarding transition planning in our comments under **Section 3.1 – Modified Liability Regime**.

#### 4.5 Commencement date

ABA members are working towards the Australian Government's previously announced timeframe of 31 July 2024 as the first reporting cycle. Given the ongoing development of data and methodology, and the maturing of understanding of the business community, and the need for many Group 1 entities to undertake substantial work to align to NGER reporting requirements, we agree with Treasury's view that delaying commencement to 1 January 2025 would improve the quality of the initial reports.

However, data availability and methodologies will continue maturing for several years and we caution Treasury against adopting the expectation that the proposed delay would allow sufficient time to completely address these issues. A modified liability regime, and facilitative approach to enforcement by regulators, would still be needed during this period.

Finally, the ABA strongly suggests that, should the commencement date be amended, this extra time be productively used to develop market and regulator understanding of climate-related financial disclosures. This could include:

- Preparation of material, guidance, examples, and so on, to define what an effective report would look like.
- ASIC guidance and clarity as to their approach to liability and compliance during the operation of the modified liability regime, in advance of the commencement of the liability period.

- ENDS -