21 July 2023

Rebecca McCallum
Director, Climate Disclosure Unit
Market Conduct and Digital Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: climatereportingconsultation@treasury.gov.au

Dear Ms McCallum

Climate-related financial disclosure – second-round consultation

The Australian Banking Association (ABA) welcomes the opportunity to provide a submission to the second round of the Treasury's consultation on *Climate-related financial disclosure*.[1] This submission builds on the points made in our submission to the earlier consultation.[2]

The ABA has long supported the introduction of mandatory climate-related financial disclosures aligned with the International Sustainability Standards Board (ISSB), and we feel that the proposed model generally strikes an appropriate balance. We understand that many of the specifics of implementation will be subject to further consultations, including by the Australian Accounting Standards Board (AASB) and the Government's own forthcoming *Sustainable Finance Strategy* consultation. While we look forward to making further comments under those processes, we wish to reiterate that effective and efficient implementation will depend on support via national data assets and methodological support.

Our submission makes the following key points across five areas:

- **The phased approach.** The ABA supports the proposed phased approach (covering entities, reporting requirements and assurance). Given the scope of the proposed application, we suggest that Treasury continues to monitor to ensure that inappropriate regulatory burden is not added, while meeting the overarching policy objectives. The ability of Australian businesses to meet the proposed approach will depend on external factors, including data availability, common scenarios, and capacity building in the assurance industry itself. We understand that many of these matters will be addressed in the *Sustainable Finance Strategy* consultation.
- **Reporting content.** Noting the breadth of banks' Scope 3 financed emissions profiles, we are keen to see further guidance on what would constitute an appropriate transition plan, and we will make further comments in the *Sustainable Finance Strategy*.
- **Reporting location.** As sustainability reporting continues to expand, flexibility will be needed to balance the need to incorporate material sustainability-related financial risks in the annual report while maintaining useability (not overwhelming the reader with information). Clear guidance on what constitutes material sustainability-related financial risk will also assist.
- **Assurance.** As noted above, the ability of reporting entities to receive assurance for these statements will depend on external factors, including data availability, common scenarios, and capacity building in the assurance industry itself. We would support the adoption of a flexible approach that takes account of capacity within the audit and assurance industry to deliver these services.

---

[1] Treasury (June 2023), Climate-related financial disclosure
[2] ABA (Feb 2023), Submission to the Treasury Consultation, Climate Related-financial disclosure

- **Continuous disclosure.** We would welcome further guidance, noting the difficulties in assessing disclosure requirements in this developing area but which regardless impute related liability risks.
- **Modified liability approach.** We welcome the adoption of a modified approach to liability, which reflects the inherent complexities and uncertainties in making climate-related financial disclosures. We request Treasury to consider clarifying the start and end date, the provision of regulatory guidance, framing the modified liability approach broad enough to ensure it provides the intended protection, and flexibility to extend the modified liability period if circumstances warrant it.

Please do not hesitate to contact us if you have any questions. We look forward to continuing to work with the Treasury and other stakeholders on this critical issue.

Yours sincerely

Merric Foley
Policy Director

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.

Australian Banking Association

Appendix: Comments on specific elements of the proposal

Note: Below, we have provided commentary on selected elements of the consultation paper. While we have generally looked to comment on the formal proposals contained in the paper, many of our comments cross several thematic areas. To reduce duplication in our comments, we have offered consolidated responses across the following thematic areas:

- The phased approach: entities, reporting requirements and assurance.
- Reporting content.
- Reporting location.
- Assurance.
- Continuous disclosures.
- Modified liability approach.

The phased approach: entities, reporting requirements and assurance

Proposal: that all entities that meet prescribed size thresholds and that are required to lodge financial reports under Chapter 2M of the *Corporations Act 2001 (Cth)* (Corporations Act) would be required to make climate-related financial disclosures.

The proposed requirements would be phased-in over three years, with full application of the mandatory reporting for all groups of reporting entities from the 2027-28 reporting year onwards (end state)

The phasing of minimum assurance requirements considers the balance between providing investors with confidence in climate disclosures and ensuring sufficient time for capability uplift. Assurance will also serve to reduce the risk of greenwashing, which can be damaging to investors, the public, and the entities themselves.

The Australian Banking Association (ABA) supports Treasury's proposed approach to phasing-in of entities. We make the following high-level comments:

- Bank Scope 3 financed emissions disclosures are dependent, in part, on the disclosures made by entities in the Group 2 and Group 3 categories. Bank scope 3 disclosures will improve as more entities begin mandatory reporting.
- Banks would support flexibility and clarity regarding consolidated statements for corporate groups. For example, in discussing scenario analysis, the consultation paper states that disclosures would be made by reporting entities.[3] Table 2 identifies that the reporting entity is a reporting entity under Chapter 2M of the *Corporations Act*.[4] This could be interpreted as requiring subsidiaries to report separately. We request clarification on this point, noting that:
  - Emissions metrics may not be able to be disaggregated to a subsidiary level and reporting strategic elements such as scenario analysis at a subsidiary level would add no value to corporate disclosures while significantly increasing costs;
  - IFRS S2 does not require subsidiaries to report separately. IFRS S2 notes that Scope 1 and 2 greenhouse emissions would only need to be disaggregated between the consolidated accounting group (for example, the parent and its consolidated subsidiaries)

[3] June 2023 Consultation paper, page 13
[4] June 2023 Consultation paper, page 8

Australian Banking Association

  - and other investees (for example, associates, joint ventures and unconsolidated subsidiaries);[5] and
  - This question may be resolved during implementation consultations by the Australian Accounting Standards Board (AASB).

In addition to the phasing-in proposed for reporting entities, the consultation paper also outlines proposals to phase in reporting content and assurance requirements.[6] While we do not have any concerns with the proposed phasing *per se*, the ability of Australian businesses to meet the Government's timeframe will depend on external factors:

- Assurers will need to rapidly meet the requirements to provide reasonable assurance for all climate disclosures (carbon accounting, scenario analysis, net zero transition planning, etc.) and the assurance industry will need to be sufficiently mature to provide these services consistently and at reasonable costs.
- Supporting data, scenarios and methodologies will need to come online rapidly to support Australian businesses in undertaking the analysis required for the mandatory disclosures, and to minimise additional cost. We note that quantitative scenario analysis and transition planning remains a challenging exercise even for many Australian banks. We feel that there is a key role for Government in facilitating the rollout of this supporting infrastructure.
- Consideration should be given to the interaction between the assurance requirements timeline for different Groups. As currently proposed, Group 1 will be required to obtain reasonable assurance over all disclosures (including Scope 3) commencing in FY 2027-28. During the same period, information disclosed by Group 2/3 will be subject to limited assurance. Therefore, for a period of time, Group 1 will be required to obtain reasonable assurance over disclosures that include information from Group 2/3 that itself has been subject to only limited assurance. This lag in timing could also be considered in determining an appropriate period for the modified liability approach.

We therefore feel that a national strategy is needed to ensure that capacity constraints do not impact the ability of Australian businesses to make these disclosures. The market may need to be monitored to ensure that labour and skillset shortages do not result in concentration to a handful of service providers.

We understand that some of these issues will be covered in the Government's forthcoming *Sustainable Finance Strategy* consultation, and we will make further comments at that time.

Reporting content

The AASB will be responsible for developing Australian climate disclosure standards, which are envisaged to closely align to the requirements in IFRS S2 Climate-related Disclosures. It is anticipated that the AASB will conduct a public consultation process as part of developing the Australian standards. For this reason, the reporting content positions outlined in this paper should be considered indicative and the content of those standards is not the focus of this consultation paper.

The ABA supports the introduction of climate disclosures standards generally aligned to the requirements of IFRS S2. We note that the precise implementation of these standards in an Australian context will be subject to the normal processes of the AASB, and we will consider that consultation at an appropriate time.

While we understand that this will be the subject of further consultations in the Government's forthcoming *Sustainable Finance Strategy* consultation, banks are keen to see further clarity on what would constitute an appropriate transition plan. We note that banks Scope 3 financed emissions cover the breadth of the Australian economy. We will make further comments in that consultation.

[5] IFRS S2 Paragraph 29 (iv)(1),(2)
[6] June 2023 Consultation paper, page 26

Australian Banking Association

Reporting location

To maintain alignment with existing corporate reporting practices, climate disclosures would be required to be published in an entity's annual report.

We accept that the Treasury's aim of mandating the annual report as the reporting location is to recognise that material climate-related financial risks and opportunities are inextricably linked to business activities, financial results and strategies. We note the Treasury's expectation that embedding climate disclosure in annual reporting will lead Australian entities to more deeply integrate climate-related risk and opportunity into their decision-making.

We feel that clarity could be provided around the location of disclosures. The consultation paper initially states that the proposed climate disclosures would be required to be published in the annual report. We note that the principles contained in IFRS S1 provide that disclosures should be provided as part of general-purpose financial reports and may form part of a separate report referenced within the annual report. This aims to ensure readability and avoid an overly lengthy annual report. More flexibility to disclose in a supplementary document would also allow explanation of technical subjects such as transition planning, scenario analysis and assurance.

The consultation paper seeks to addresses this concern by stating that indexing and cross-referencing could be used to improve readability, and by providing an example of an index table. Given the earlier statement that climate disclosures would be required to be published in an entity's annual report, we would request clarification on this point. For example: What information need to be in the Annual Report, what information need to be in the financial statements, what information can be in a standalone report. Clear guidance on what constitutes material sustainability-related financial risk will also assist.

Finally, as noted in the Treasury's first-round consultation paper, markets are increasingly seeking information about broader sustainability-related financial risks and opportunities,[7] and the International Sustainability Standards Board (ISSB) is consulting on its next round of priorities.[8] As sustainability reporting continues to expand, flexibility will be needed to balance the need to incorporate sustainability-related risks in the annual report while maintaining useability and avoiding overly lengthy annual reports.

We similarly note that Treasury may wish to consider the interaction between the proposals relating to location of disclosures and assurance requirements. Presenting information in a single report that is subject to differing levels of assurance may be challenging from a practical standpoint and may require lengthy assurance reports to explain which information has been subject to different levels of assurance.

Finally, we request clarification of the reporting period. The consultation notes that, to ensure consistency, companies should report the same emissions and energy data in their company reports as they do in their National Greenhouse Energy scheme reporting. However, IFRS S1 require to align with the financial reporting period. We request clarification on this point.

Assurance

Assurance plays an important role in enhancing the credibility of climate disclosures. However, assurance industry participants have cautioned that capability uplift is needed to meet growing demand for climate-related assurance services. Consultation feedback indicated broad agreement for phasing and scaling of assurance requirements. This would allow for skills, capacity, and processes to be developed in the market at a workable pace.

We support the Treasury's statement that capability uplift is needed to meet growing demand for climate-related assurance services. However, we note that the proposed scope of climate assurance goes beyond current approaches applied for financial assurance. For example, it does not currently extend to governance, financial stress testing and scenario analysis. Each of these is proposed for inclusion under the roadmap (for Group 1, from FY25 and FY26 respectively). Nor do the proposed assurance

[7] Treasury (Dec 2022), Climate-related financial disclosure, page 16
[8] ISSB (June 2023), Consultation on agenda priorities

requirements align with those currently applied to large emitters under the *National Greenhouse Emissions Report Act*.

There is a risk that broad application of assurance obligations will increase costs for reporters while capacity continues to develop within the audit and assurance industry. We would support alignment of climate assurance requirements with existing assurance requirements, and the adoption of a flexible approach that takes account of capacity within the audit and assurance industry to deliver these services, capacity development on the preparer side and the maturation of scope 3 methodologies.

Continuous disclosure

Proposal: Climate-related disclosure obligations would extend to continuous disclosure and fundraising document obligations. ASIC has previously stated that depending on the circumstances, disclosure of climate-related risk may already be required by the law in contexts such as a prospectus or continuous disclosure announcement.

We support Treasury's recognition that further guidance issued by ASIC regarding fundraising document requirements, and the ASX regarding climate disclosures in the context of continuous disclosure, may assist reporters in better understanding their obligations. We would welcome such further guidance, noting the difficulties in assessing disclosure requirements in this developing area.

Modified liability approach

Proposal: Climate-related financial disclosure requirements would be drafted as civil penalty provisions in the Corporations Act. 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.

The ABA welcomes the adoption of a modified approach to liability, which recognises the inherent complexities and uncertainties in making climate-related financial disclosures. As we outlined in our earlier submission, some of Australia's peer jurisdictions already possess legal safe harbours applying more generally to statements about future matters, (noting that the legal regimes are not precisely comparably) and the proposed modified liability approach will go some way to mitigating our earlier concerns.

The ABA would suggest that Treasury may wish to give further consideration to the following:

- The precise start and end dates, including whether the transitional period refers to full years of reporting or fiscal years. We suggest that three reporting years would be more appropriate.
- How the time-limited approach will operate in respect of other penalties related to general misleading and deceptive conduct[9] that might be triggered by scope 3 climate disclosures, including impact of/on limitation periods. For example, where a six-year limitation period applies to the cause of action, a claim might be brought after the three-year protection window has ended but relate to conduct/disclosures made in that window.
- Framing the modified liability approach broadly enough to provide the intended protection to reporting entities and their directors and officers, including to claims for breaches of director's duties. For example, depending on how the proposal is ultimately drafted, it may be possible that a derivative action (an action on behalf of a company) could be brought against a director for a breach of director's duties (indirectly relating to misleading and deceptive conduct around forward-looking statements or Scope 3 emissions) within the three-year period.
- Guidance from regulators more broadly on how they would approach their role and what would constitute reasonable grounds for disclosure, ideally by reference to examples. This could include assumptions to be included as part of disclosures and clarity on the extent to which directors of

[9] For example, under Australian Consumer Law, the *Australian Securities and Investments Commission Act 2001*, the *Corporations Act 2001*, common law, and so on.

Australian Banking Association

disclosing entities may rely on advice provided by others for the purpose of discharging their directors' duties when approving climate disclosures.[10] It may also include advice for institutions operating in jurisdictions that may not have the same level of maturity with respect to financed emissions calculations as Australia.

- Whether any additional flexibility could be considered with respect to end-date. For example, it may be appropriate to re-assess the need for a modified liability approach close to the end-date to determine the overall maturity uplift in the market, development of standardised scenario analysis and progress on addressing data availability.
- Extending the transitional relief to apply to all forward-looking disclosures required under IFRS S2, and not just scenario analysis and transition plans. For clarity, this includes the disclosures required under IFRS S2, Paragraphs 13, 14(a), 16(c), and 16(d) – these relate to matters such as the impact of climate-related risks and opportunities on business models, financial positions, and so on. This would create greater consistency in the application of the transitional relief.

- ENDS -

[10] *Corporations Act 2001* section 189