

21 July 2023

Climate Disclosure Unit, Treasury

By email: climatereportingconsultation@treasury.gov.au

To whom it may concern,

Climate-related financial disclosure: June 2023 consultation paper

The Insurance Council of Australia (**Insurance Council**) thanks the Australian Government for the opportunity to provide a submission in response to the climate-related financial disclosure consultation paper. We appreciate the collaborative approach the government has taken to welcome submissions from the business community, civil society, government bodies and other interested stakeholders.

The Insurance Council is the representative body of the general insurance industry in Australia and represents approximately 89% of private sector general insurers. As a foundational component of the Australian economy, the general insurance industry employs approximately 60,000 people, generates gross written premiums of \$64.5 billion per annum and on average pays out \$147 million in claims each working day, totalling \$36.5 billion per year.

The Insurance Council welcomes the alignment and harmonisation of existing and future climate and sustainability frameworks across jurisdictions globally. Clear and comparable disclosure of sustainability and climate related information is one of the foundational building blocks of a well-functioning global financial system. It is essential that Australia's climate disclosure regime also aligns.

The Insurance Council and its members are supportive of mandatory climate and sustainability disclosures, aligned with the International Sustainability Standards Board (ISSB), and of the view that the proposed approach is a suitable disclosure framework. 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. We look forward to making further comments under those processes.

Our submission makes the following key points:

- **Reporting entities:** The Insurance Council and its members welcome the proposed phased approach for reporting, as disclosure comes with significant financial costs of implementation. However, we feel that some elements of the phased approach could be further clarified.
- **Financial Materiality:** The Insurance Council and its members support an approach to materiality that aligns with the ISSB's position on materiality and ensures harmonisation with existing definitions of financial materiality in the Australian and international standards to ensure consistency for reporting entities.
- **Location of Reporting:** The Insurance Council and its members support climate disclosure appearing in the annual report and ensuring that all disclosures are publicly available, however flexibility should be applied to allow large Australian subsidiaries to rely on their global climate financial risk report rather than requiring them to create a bespoke Australian report.
- **Disclosure of Material Scope 3 Emissions:** While we acknowledge the proposal to align with the ISSB's proposed approach to provide entities with necessary relief regarding scope 3 emissions disclosures, rather than a time bound minimum, the Insurance Council and its members suggest that relief be tied to the successful development of key methodologies and data for Scope 3 emissions reporting. We feel that some elements of the material scope 3 approach could be further clarified.

- **Scenario Analysis:** Forward looking statements regarding financial position, financial performance and cash flows associated with climate-related risks and opportunities are inherently uncertain. Standardised wording for a disclaimer should be included to reflect the uncertainty in forward looking statements disclosed to avoid legal risks associated with material misstatement. We feel that some elements of the scenario analysis approach could be further clarified.
- **Assurance:** The Insurance Council and its members support the approach of limited assurance and recommend that the progression to reasonable assurance aligns with the development of the relevant auditing standards and uplift in auditing capabilities in Australia.
- **Modified Liability:** The Insurance Council and its members welcome the modified approach to liability. There are many aspects of the proposed standards that require estimation of impacts of risks and opportunities which are inherently uncertain and may be deemed misleading under existing Australian law. Regulator-only actions for a fixed period will assist in mitigating this challenge. We feel that some elements of the modified liability approach could be further clarified.

Further details are outlined below.

Reporting Entities

The Insurance Council and its members welcome the proposed phased approach for reporting, as disclosure comes with significant financial costs of implementation in terms of the collection and disclosure of robust, consistent, and reliable industry-specific information. The phased approach based on consolidated revenue and gross assets assists in accommodating these challenges, phasing in medium and smaller entities overtime to enable them to develop the appropriate measurement methodologies and data collection processes.

The proposed approach can be further refined to make it clearer which entities are captured under the three cohorts in the following ways:

- The framework should ensure that the highest emitters are captured, as a result the Insurance Council and its members are supportive of the inclusion of companies who are 'controlling corporations' reporting under the National Greenhouse and Energy Reporting Act (NGERS). The framework should be clearer that even if entities *don't* meet the consolidated revenue or consolidate gross asset thresholds, if they report under NGERS they should be captured by the mandatory climate disclosure framework regardless.
- The proposed approach should make clear that the intention is to capture the ASX200 in 'Group One' (as indicated by Treasury in their stakeholder information sessions).
- The proposed approach should make clear that it also applies to global companies with large Australian subsidiaries. These companies may not be currently captured by the framework as drafted, as they are headquartered overseas and aren't required to report under Chapter 2M of the Corporations Act or under the National Greenhouse and Energy Reporting (NGER) Act. Despite this, the entities' operations can be significant and should be included under the disclosure framework.
- The framework should clarify whether subsidiaries can report via a consolidated group report or separately, noting the Insurance Council and its members would prefer consolidated group reporting at the company level to ensure alignment and minimise compliance costs. For example, if a consolidated listed Parent and an unlisted subsidiary are within the reporting thresholds of Groups 1-3 and both are Australian reporting entities, its recommended that the unlisted subsidiary can leverage the Group consolidated disclosure on climate change by referencing to the Parent's consolidated financial reports, to minimise the duplication and reporting burden on the unlisted subsidiary.

- Clarification on requirements of inter-jurisdictional reporting would be helpful to ensure that entities are not subject to multiple different reporting regimes of the same or slightly different information. This could also lead to inconsistency and increased complexity. For example, given the proposed Australian framework is solely emissions focused whereas NZ also covers adaptation/transition planning on both a low carbon and climate resilient future, entities reporting in both Australia and New Zealand will be required to produce multiple transition plans in FY25. The Australian Law Reform Commission (ALRC) is currently undertaking a review into regulatory and legislative complexity for corporations and financial services - it may be helpful to align design principles for the disclosure framework to design principles adopted from the ALRC review.
- It should be clarified how the framework applies to subsidiaries and joint ventures if they do not comprise a material part of activities within the reporting entity's financial or operational control. There are particular complexities regarding joint ventures and the degree of operational control parent companies have to enable emissions reduction. AASB guidance would be welcomed to assist in the standardisation of approach to joint ventures and subsidiaries, including the application of a materiality threshold.
- The framework should clarify how the effective commencement date for covered entities takes into consideration that some entities will report to financial year end, whilst others report to calendar year end. As a result, a timing leeway may need to be provided to accommodate this discrepancy and to allow climate disclosure to align with an entities' other reporting.
- Given Chapter 2M reporting requirements include half-year and full-year disclosures, the framework should make clear whether entities will be required to report annually or biannually. The Insurance Council and its members are of the view that that climate disclosures would be more meaningful if disclosed on an annual basis, as there will likely be limited progress on climate strategy and emissions reductions between 6-month interval periods.

Financial Materiality

The Insurance Council and its members support an approach to materiality that aligns with the anticipated position on materiality from the ISSB and ensures harmonisation with existing definitions of financial materiality in the Australian and international standards to ensure consistency for reporting entities. Namely, the Insurance Council and its members recommend the framework provide entities with substantial discretion on the application of materiality, as occurs under the ISSB standards.

Location of Reporting

The Insurance Council and its members support climate disclosure appearing in the annual report and ensuring that all disclosures are publicly available. If large Australian subsidiaries are required to report, flexibility should be applied to allow these subsidiaries to rely on their global climate financial risk report rather than requiring them to create a bespoke Australian report.

The framework would be strengthened by clarifying where the additional detail on metrics and targets should be disclosed. A preferred option would be for this additional detail to sit in a data book provided separately on the reporting entity's website, with appropriate referencing from the annual report. In addition, further clarity is needed on continuous disclosure obligations for fund raising documents from ASIC and ASX, given the timing difference between data collection and data assurance may be an issue.

Disclosure of Material Scope 3 Emissions

The Insurance Council and its members note that there are considerable methodology and data gaps which prevent the accurate measurement and reporting of some Scope 3 emissions across underwriting portfolios, supply chains and some investment asset classes (i.e., sovereign bonds, exchange traded

funds, derivatives etc.) Some of these gaps are set to be addressed over the next few years through the Science-Based Target Initiative (SBTI), the Partnership for Carbon Accounting Financials (PCAF) and Net-Zero Asset Owner Alliance (NZAOA).

Where data is available, there may be other factors limiting its availability for scope 3 reporting. For example, for scope 3 insurance associated emissions, entities may experience difficulties in reporting any Motor Accident Injuries (MAI) Schemes as this data is regulated at a state level and may not be owned by the reporting entity. Equally, there may be state or territory regulatory prohibitions on sharing data. The disclosure framework will need to be designed with this in mind.

We acknowledge the proposal to align with the ISSB's proposed approach to scope 3 emissions disclosures which provides entities with necessary temporary relief. However, rather than a time bound minimum, members suggest that relief be tied to the successful development of key methodologies and data for Scope 3 emissions reporting. For example, it would be more appropriate to propose that following the completion of the PCAF methodology for measuring Scope 3 emissions across commercial lines and personal motor, full disclosure of this emissions category is required, as this would then align with global best practice and allow insurers to report and disclose this data clearly and consistently. In other jurisdictions this approach has not been taken and as a result companies are utilising different approaches to measure and report emissions - this has hampered the comparability of disclosures and led to a fragmented rather than standardised approach. There is currently no global process to establish a measurement methodology for emissions in supply chains, including insurers' claims supply chains, however a similar phased approach could apply to these emissions categories too. It is also important to note that reinsurers are reliant on the disclosure of insurers, and this should be considered when requiring reinsurers to disclose.

The Insurance Council and its members would also be supportive of a voluntary framework for disclosure of Scope 3 emissions in the absence of an agreed international methodology (for example for insurer's supply chain emissions). However, where standardised methodologies are not available, reporting entities should be required to include disclose high level methodology approaches adopted and once an agreed methodology is developed, this should supersede the voluntary framework. The Insurance Council and its members would also welcome a comprehensive program to uplift data capability and availability across the economy given the extent of interdependencies for Scope 3 reporting.

Members are also supportive of the ISSB guidance that divides Scope 3 emissions into different categories and recommends clarity from reporting entities on which categories there is sufficient data to report against, and which categories require improved data and reporting methodologies. Our preference is a phase-approach in disclosing Scope 3 emissions by category. The Scope 3 categories with established and matured methodologies should be disclosed first, followed by those with limited/no available methodologies to be adopted at later phases on a best endeavour basis. Clarification on what constitutes 'best endeavours' in this context would be useful. Disclosing on a best endeavour basis should allow entities opportunities to refine and improve their data overtime and entities should follow ISSB/AASB's guidance on prior years restatement in this scenario. This should be coupled with guidance for reporting entities on what is considered material in relation to scope 3 emissions, best practice methodologies and clarity on what is meant by reporting on a best endeavour basis.

Scenario Analysis

The Insurance Council and its members welcome the proposed phased approach to reporting requirements to allow for the development of appropriate methodologies and data availability, whilst also providing entities with time to prepare for any detailed scenario analysis requirements. However, there are several key areas where reporting entities will need greater guidance including:

- Regardless of methodology and data development, the financial position, financial performance and cash flows associated with climate-related risks and opportunities over the short, medium and long term will remain inherently uncertain. Standardised wording for a disclaimer should be included to

reflect the uncertainty in forward looking statements disclosed to avoid legal risks associated with material misstatement. For example, potential liability exists for misleading and deceptive disclosure under s1041H of the *Corporations Act 2001* and s18 of the *Australian Consumer Law*. This would also assist with the comparability of statements.

- Clearer guidance on:
 - preferred climate scenarios aligned to the TCFD and/or Network for Greening the Financial System scenarios and greater clarity on why on a 2-degree scenario rather than a 1.5-degree scenario, as advised by the Science-Based Targets initiative, has been included.
 - when quantitative analysis will be required, namely when “end state” is expected or what criteria will have been reached before an entity gets to end-state. Noting that a balance needs to be struck between the level of effort to produce detailed quantitative scenario analysis for long-term time horizons and the benefits this provides.
 - what needs to be disclosed under physical risk.
 - what risks and opportunities in the value chain need to be disclosed and how entities should balance the need for disclosure against commercial sensitivities relevant to value chains.
 - if there will be an expectation for quantitative analysis to be updated frequently (e.g., annually). When done well, climate change scenario analysis is a major exercise, and a full re-assessment annually may be very onerous for reporting entities.
- If the framework will be relying on ISSB industry metrics that often involve complex modelling and a high degree of uncertainty, there needs to be oversight as to the relevance, achievability and uncertainty associated with these metrics. There needs to be sufficient monitoring of, and discussion with international standard setters to ensure industry metrics are not out of reach for reporting entities, and that there is a standardised approach to disclosing quantitative uncertainty associated with these metrics.
- The AASB, in partnership with ISSB, could also form agreements with key independent data and indices organisations such as the Carbon Disclosure Project (CDP), Dow Jones Sustainability Index (DJSI), Sustainalytics and Morgan Stanley Capital International (MSCI), to streamline citation and digital tagging of disclosures, reducing the reporting burden while delivering better disclosures and sustainability outcomes.
- The framework should make clear that Australian entities should be required to apply the Greenhouse Gas Corporate (GHGC) Standard given it is the leading international standard for GHG emissions disclosures and assists in harmonisation across jurisdictions. In addition, Australian entities’ emissions reporting should be harmonised with existing National Greenhouse and Energy Reporting scheme (NGER) emissions measurement requirements for the Australian region.

Assurance

There are significant challenges associated with assurance of scenario models and Scope 3 emissions, given the quantum of inputs, level of estimation and variability in assumptions. The Insurance Council and its members welcome the proposed phased approach for assurance. The approach aligns with member feedback that reasonable assurance across climate and sustainability related content would be challenging whilst applicable accounting/reporting best practices aren’t yet clearly defined. As a result, the approach of limited assurance is appropriate and the progression to reasonable assurance should align with the development of the relevant auditing standards and uplift in auditing capabilities in Australia.

Ultimately, there is a critical role for independent external assurance to lend credibility to climate and sustainability information. The view of the Insurance Council and its members is that the goal should be for investors and other stakeholders to rely on the assurance performed and the integrity of the information

provided, similar to how they rely on audited financial statements. A consistent baseline is needed for there to be trust and confidence in the information provided and to avoid confusion or misunderstanding amongst investors and other stakeholders. If subsidiaries can report via a consolidated group report at the company level, the framework should clarify if these subsidiaries can rely on assurance undertaken at the company level.

Modified Liability

The Insurance Council and its members welcome the modified approach to liability. However, there are many aspects of the proposed standards that require estimation of impacts of risks and opportunities which are inherently uncertain and may be deemed misleading or deceptive under the existing regulatory framework, specifically the misleading and deceptive conduct regime, for example s.769C of the *Australian Corporations Act*, s12BB of the *ASIC Act 2001* and s.4 of the *Australian Consumer Law*.

Unlike certain other jurisdictions, reporting entities in Australia (as well as directors and officers) are exposed to the liability relating to forward-looking statements because there is no safe harbour exemption which allows for the exclusion of liability by identifying a statement as a forward-looking statement and including a proximate cautionary statement.¹ Regulator-only actions for a fixed period will assist in mitigating this challenge. During this time, transparent disclosure could be encouraged on a best endeavour basis. Clarification on what constitutes 'best endeavours' in this context would be useful.

Additional clarity is required for reporting entities, including:

- More detail regarding how the regulator only component will work in practice. For example, further clarity on whether the three year stay on private litigants provides protection from all misleading or deceptive conduct or only "elements of mandatory disclosure including scope 3 reporting, scenario analysis and transition planning".
- Whether the transitional three-year period refers to three full years of reporting as opposed to three fiscal years. It may be effective to clarify that the three-year period commences from the first year of an entity disclosing. The ICA and its members recommend that three reporting years would be more appropriate, particularly considering the data, methodology, capability and assurance gaps in the market.
- What will occur at the conclusion of the three-year period.
- Whether it would be more effective to align the regulator-only enforcement period with the development of standardised scenario analysis and methodologies to give entities a framework for including uncertainties and data gaps before the full penalty period.

Conclusion

We trust that our initial observations are of assistance. If you have any questions or comments in relation to our submission please contact [REDACTED], Senior Manager Climate Action and Resilience [REDACTED]

Yours sincerely

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Chief Executive Officer

¹ [AICD-Submission-AASB-ISSB-Standards-July 2022](#), p 32.