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SYDNEY. BRISBANE. NEW YORK. PHOENIX. AUCKLAND

19 December 2024

Claire LaBouchardiere
Senior Executive Leader
Companies & Small Business
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email: sustainable.finance@asic.gov.au

Dear Ms LaBouchardiere

Submission addressing Consultation Paper 380 Sustainability reporting

Thank you for the opportunity to make submissions in response to ASIC Consultation Paper 380 Sustainability reporting (**Consultation Paper**).

BWD Strategic is an independent sustainability consultancy focused on delivering a sustainability approach that supports corporate strategy, navigates change, and contributes to a flourishing society and planet. We support businesses in the Asia-Pacific and United States assess sustainability-related impacts, risks and opportunities, develop strategies that address those risks and opportunities, and disclose their performance and progress in line with national and international listing rules and disclosure requirements. Over 35 years, we have supported the production of more than 600 corporate reports, including annual and integrated reports, sustainability and impact reports, and climate disclosures.

Our work provides us with insights into the sustainability reporting experiences of small and large, listed and unlisted organisations in Australia and internationally – a depth of experience which may be of use as ASIC considers how to support the successful introduction and uptake of a mandatory sustainability reporting regime.

BWD Strategic supports the global alignment of sustainability reporting standards and the Australian Sustainability Reporting Standards (**ASRS**), and the increased comparability, consistency and transparency that these standards can create.

Our submission follows and addresses the consultation areas most relevant to our expertise and experience.

If you would like to discuss any aspects of our submission, please contact me or [redacted], Senior Strategy Manager, via email at [redacted].

Regards,

Luke Heilbuth
Chief Executive Officer
BWD Strategic

BWD Strategic submission addressing Consultation Paper 380 Sustainability reporting

We have addressed below the proposals where our expertise will add the most value to the ASIC consultation process.

B2 Sustainability records, directors' duties and modified liability

- *B2Q1 Does our proposed guidance help you understand the sustainability records that must be kept?*
- *B2Q2 What further guidance should we provide on keeping sustainability records?*
- *B2Q3 Does our proposed guidance help you understand our expectations for directors in complying with their sustainability reporting requirements?*
- *B2Q4 Are there any aspects of the sustainability reporting requirements where further ASIC guidance would be helpful for directors?*

RG 000.48 states that the sustainability reporting requirements crystallise at the end of the financial year balance date. Where eligibility for sustainability reporting changes in the final quarter of the reporting period to become a reporting entity, entities are unlikely to have sufficient time to conduct the required activities to inform a comprehensive disclosure.

Guidance about what could constitute a sufficient "stepping stone" disclosure in these circumstances may assist reporting entities. For example, whether it would be sufficient to state that no assessment of climate-related risks and opportunities has been completed but one is planned for the next reporting period. This guidance could take the form of industry education separate to the Regulatory Guide. This would provide directors with certainty and, to a degree, comfort that moving towards ASRS reporting in these circumstances fulfils their obligations and provides management and report preparers with sufficient time to undertake these important tasks.

Another aspect where further guidance would be beneficial to inform and support directors is transition plans (RG 000.60, RG 000.62). International guidance and best practice is still developing in this area, and the IFRS has acknowledged the Transition Plan Taskforce Disclosure Framework as complementary to the ISSB standards. Australian guidance would be useful for reporting entities creating transition plans that align with AASB S2. This guidance could cover what entities should include in a transition plan, whether a transition plan covers decarbonising to net zero *and* adapting to physical risk, and the related director's duties.

We note that the New Zealand External Standards Board has prepared several educational guides on transition planning for directors, management, and employees which may be of use in developing this additional Australian guidance. (XRB website: https://www.xrb.govt.nz/standards/climate-related-disclosures/resources/)

- *B2Q5 Does our proposed guidance on the modified liability settings clarify how these settings apply to statements made in sustainability reports and other documents or communications?*
- *B2Q6 What further guidance should we provide about the modified liability settings?*

The guidance regarding modified liability settings is clear, however in our view RG 000.65 creates uncertainty and will limit the use of protected statements by reporting entities outside of the sustainability report.

We believe that more reporting entities need to engage their investors, employees, supply chain partners and stakeholders in understanding the climate-related risks and opportunities they face, and that information within the sustainability report will be valuable to this process of engagement, education and discussion.

The application of RG 000.65 potentially inhibits the ability of reporting entities to undertake this kind of broad engagement on climate-related financial risks and opportunities. As the investor and business community build their collective expertise and understanding of these risks and opportunities, there will likely be informational events such as investor days that require reporting entities to take audiences through medium- to long-term climate-related financial risks and opportunities – content from the sustainability report.

Limiting communication of this information to the format of the sustainability report seems unnecessarily restrictive. Indeed, ASIC inadvertently risks adding to the unfortunate and increasingly common trend of 'greenhushing', where company boards and senior executives force their own sustainability, investor relations, and corporate affairs teams to be *less* transparent and ambitious around climate strategy and disclosure. In our anecdotal experience, their motivations are often fear of unreasonable regulatory, investor, and activist scrutiny, or because they, as company spokespeople, lack the capacity to opine with authority on climate-related risks and opportunities in public fora. Australia will be better served by a regulatory posture that rewards authenticity in relation to climate disclosure, rather than one that punishes good faith attempts to openly share views, data, and insights on the economic, social, technological, and ecological challenges of supporting the transition.

Concerns about the reporting entity's use of full and complete information from the sustainability report could be addressed by requiring that reporting entities include a statement regarding the methodology, assumptions, dependencies and key data sources in such a presentation, or a statement indicating that the content was sourced from the sustainability report. We appreciate that the guidance about the selective use or reproduction of information contained in a sustainability report (RG 000.102-106) outlines how selective content can be appropriately used outside of the sustainability report, however the absence of the protected statements status for those uses is difficult to reconcile with the intention of the selective use guidance.

C1, C2 Statements about no climate risks or opportunities

- *C1Q1 Are there other issues relevant to reporting entities' assessment of whether there are no material financial risks or opportunities?*
- *C2Q1 Do you agree with our proposed guidance? If not, why not?*

The guidance in RG 000.68-71 is clear for reporting entities, in our view. The slight misalignment of AASB requirements and IFRS S1 guidance on this topic is worth noting. While ASRS reporting entities are entitled to disclose that no material climate-related financial risks or opportunities are identified, IFRS education material[1] on S1 states that information about sustainability-related risks or opportunities that an entity considers to be low likelihood and low impact may be assessed as immaterial but still constitute material information if it is a topic that primary users of financial information might expect to be so. If an ASRS reporting entity made this assessment, would it be correct to say that these topics remain immaterial and thus s296B(1) continues to apply?

Based on the guidance in RG 000.69, we interpret that the reporting entity could provide details of this immaterial topic as part of their statement explaining how the entity determined that it had no material financial risks or opportunities relating to climate under s296B(c)-(d). For example, where the entity assesses cyclone risk as low (due to climactic changes) but investors expect it to be high (due to weather history in the geographic location), the reporting entity would include information regarding the climate scenario data that forecasts reduced cyclone activity in the location under a particular global warming scenario. Guidance to clarify whether this is the case would be valuable.

C4 Cross-referencing in a sustainability report

C4Q1 Do you agree with our proposal? If not, why not?

While the proposed guidance is clear, we believe it may have unintended consequences that are counter to the aim of encouraging cross-referencing between the sustainability report and other documents. The climate statement within a sustainability report is likely to include cross-references to the notes to the climate statements and the entity's transition plan (if available), and might also reference a detailed sustainability data pack if prepared by the reporting entity. In our experience, transition plans are sometimes but not consistently lodged on the same day as the annual report.

RG 000.79-81 together with AASB S2 Appendix D[63] "strongly encourage" that all cross-referenced documents are lodged also with ASIC. Reporting entities may be reluctant to lodge these documents – excluding the notes to the climate statement where lodgement requirements have been made clear from the outset – and thus may choose not to cross-reference to them in their sustainability report to avoid the lodgement requirement. This outcome is the reverse of the standard's intention and would hinder primary users in understanding how the reporting entity's various disclosures connect to each other.

BWD Strategic is disappointed that the IFRS deprioritised integrated reporting at the expense of its IFRS S1 and S2 rollout. We are meeting with the IFRS (at their invitation) in January 2025 to discuss how S1 and S2 might interplay with any future updated guidance on integrated reporting. With its focus on value creation, integrated reporting is the IFRS's most valuable intellectual property. The reason we are raising this point here is that the Integrated Reporting principle of 'Connectivity of Information' should (and hopefully will) be updated by the IFRS in time to provide clearer guidance on best practice cross-referencing. ASIC may wish to refer to the IFRS's current guidance on this principle when considering its position.

C5 Labelling

- *C5Q1 Do you agree with our proposal to encourage specific labelling for sustainability-related financial disclosures?*
- *C5Q2 If not, what guidance (if any) should we provide to:*
  - *(a) ensure that users of sustainability-related financial information are not misled by unhelpful or inappropriate labels; and*
  - *(b) support investor comprehension and the consistency of information provided across the market?*
- *C5Q3 If you currently prepare voluntary reports covering sustainability, are there other ways to achieve the outcomes our guidance seeks to achieve?*

We agree with ASIC's proposal to encourage specific labelling for sustainability-related financial disclosures, and recommend that an agreed label be developed for voluntary sustainability disclosures that address broader topics than AASB requirements and/or international frameworks such as the GRI.

A 'sustainability report' is defined in RG000.86 to exclusively contain information required by AASB S2. 'Voluntary sustainability statements' are defined in RG 00.87-88 as voluntary disclosures aligned with AASB S1 and S2. However, no

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[1] ISSB Standards, Education material (Nov 2024), *Sustainability-related risks and opportunities and the disclosure of material information*, page 14: https://www.ifrs.org/content/dam/ifrs/supporting-implementation/issb-standards/issb-materiality-education-material.pdf (accessed 17 Dec 2024)

definition is proposed for voluntary sustainability information that aligns with other frameworks and is not prepared with reference to AASB S1. We believe an agreed common label for this information would be valuable to ensure consistent understanding. A suggested label is 'supplementary sustainability information'.

A second aspect of labelling for consideration is whether guidance is required to distinguish ASRS-related content from other report content. In an integrated report, for example, could a reporting entity provide definitions and a visual key (e.g. use of colours or icons) at the start of the report to distinguish between 'sustainability report' information, 'climate statement' information, 'voluntary sustainability statements', 'voluntary climate statements' and 'supplementary sustainability information' (or any other label for non-ASRS sustainability content), and then use colour, icons and other design elements to delineate content? We can prepare and share an illustrative example of how this could be executed in a report, if this would be helpful.

Several current and prospective clients have been confused by the labelling 'sustainability report', when only climate-related financial disclosures are currently mandatory. We have shared our view that this is because the AASB and Treasury are reserving the right to add future mandatory disclosure obligations around other sustainability-related content, such as nature. That explanation usually suffices, and we have not heard any strenuous objection to this labelling.

C6 Notes to climate statements

C6Q1 Do you agree with our proposed guidance? If not, why not?

We support the proposed guidance that reporting entities publish the notes to the climate statements separate to the sustainability report. We view it as impractical to include the detailed information anticipated for the notes within an annual report, particularly for those with obligations to distribute printed reports to shareholders. In our experience, many organisations are currently challenged to produce annual reports of sufficient size to ensure reasonable printing and postage costs. The proposed approach helps those entities to continue to meet those obligations in a cost-effective way.

C7 Proportionality mechanisms and exceptions under AASB S2

C7Q1 Do you agree with our proposed guidance? If not, why not?

We support the inclusion of proportionality mechanisms and exceptions under AASB S2 as a reasonable adjustment to the reporting regime to support reporting entities that are small and medium sized. As Group 2 and 3 entities begin reporting in accordance with the ASRS, the guidance in this area (RG 000.92-95) will be central to their ability to take advantage of the mechanisms and exceptions. This position is further strengthened by advice we have received that a future Coalition Government may abolish Group 3 (and even Group 2) entity requirements with a view to abolishing expensive and time-consuming 'green tape'. This would be unfortunate and almost certainly delay Australia's transition. To avoid the further politicisation of climate action, we advocate for the inclusion of common-sense proportionality mechanisms and exceptions as well as clear communication around the fact that these mechanisms and exceptions exist.

The guidance is a clear high-level outline of the requirements, however reporting entities will benefit from greater information in RG 000.94-95 about the types of records that ASIC would expect are kept about any eligibility assessment they complete.

For example, information regarding the records required to demonstrate assessment RG 000.93(d) "does not have the skills, capabilities or resources". Would quotes from external advisors indicating the cost of measures accompanied by the entity's sustainability budget be a sufficient record of insufficient resources? Would the resumes of employees responsible for sustainability or associated duties be a sufficient record of insufficient skills? Further guidance or industry education on these mechanisms would be valuable.

D1 Sustainability-related financial disclosures outside the sustainability report

- *D1Q1 Do you agree with our proposed guidance? If not, why not?*
- *D1Q2 Does our proposed guidance strike the right balance between facilitating other sustainability-related disclosures, especially while sustainability reporting requirements are being phased in for reporting entities?*

We support the guidance in RG 000.98-106 regarding the role of sustainability-related financial information and the importance of preparing and presenting selected information outside of the sustainability report consistent with the applicable standards.

D2 Sustainability-related financial information in the OFR

- *D2Q1 Do you agree with our interpretation of s299A(1)? If not, why not?*
- *D2Q2 Do you agree with our proposed regulatory guidance? If not, why not?*

The proposed guidance (RG 000.118-120) risks content duplication between the OFR and sustainability report. Additional guidance or industry education to provide scenario examples of the types of climate information that may be included in each section of the Annual Report would be instructive, including the circumstances (if any) in which cross-referencing to the sustainability report from the OFR would satisfy this requirement.

We envisage, for example, that reporting entities may choose to address material planned investments to mitigate short-term climate-related risks in the OFR, with not-yet-costed investments to address medium- and long-term risks only addressed in the sustainability report due to material uncertainties about their amount and timing. We would welcome further guidance from ASIC as to whether this is a correct interpretation of how this requirement may be addressed in practice.

In circumstances where the climate-related risks and opportunities identified in the sustainability report are not currently significant to the reporting entity's business strategy and prospects (for example, over the next three years), would it be sufficient for a reporting entity to satisfy RG 000.120 with a statement that the identified climate-related financial risks and opportunities are less significant than other matters affecting its strategy and prospects in the years ahead? Guidance or industry education in this area would be beneficial to report preparers.

E5 Use of ASIC's directions power

E5Q1 Does our proposed guidance clarify how we may exercise ASIC's directions power under s296E? If not, why not?

The guidance (RG 000.193–203) provides an explanation of how ASIC may exercise its discretions power and appears consistent with the exercise of similar powers in other areas of ASIC's remit. Additional guidance, industry education or information about how these powers may overlap with, complement and/or be used together with ASIC's greenwashing powers could be beneficial for reporting entities, to understand how ASIC views any connection between corporate reporting information and sustainability-related product information.