ACSI

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19 December 2024

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

Submitted via email: sustainable.finance@asic.gov.au

Dear Ms. LaBouchardiere,

Consultation Paper 380 Sustainability Reporting

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members include Australian and international asset owners and institutional investors with more than $1.9 trillion in funds under management.

Through our research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership, which enhances the long-term value of the retirement savings entrusted to them to manage. ACSI members can achieve value for their beneficiaries through genuine and permanent improvements to the ESG practices of the companies in which they invest.

This submission draws on ACSI's long-standing practice of detailed engagement with listed companies in relation to climate-related risks and opportunities, as well as detailed research into market practice. ACSI is responding to this consultation with the perspective of reporters, as many of our members will have sustainability reporting obligations.

Summary of ACSI's position

ACSI welcomes the release of draft ASIC regulatory guidance ('the guidance') for sustainability reporting. We strongly support the introduction of mandatory climate-related financial reporting, its proposed timeframe and phased implementation. Climate change represents a material financial risk that is deeply embedded across the economy. Mandating the disclosure of climate-change related information assists investors' investment analysis, risk assessment, stewardship activities and due diligence processes. We support the introduction of guidance that aims to support consistent and clear reporting, as well as to clarify ASIC's administration and enforcement of the disclosure requirements. We also welcome ASIC's stated intention to release further guidance as the reporting matures. The comments in this submission aim to improve the clarity of ASIC's proposed regulatory guidance.

Expanding guidance to encompass all reporters

ACSI welcomes the guidance, and notes as a general comment that it would be beneficial for further consideration to be given to referencing all types of reporters. In some areas of the guidance, it would be helpful to pull out more specific references to certain types of reporters. As the ISSB Standards were designed for listed companies, additional specific guidance that acknowledges the relevant context, including other regulatory or legislative obligations to which other types of entities may also be subject, would be beneficial. For example, registrable superannuation entities (RSEs) have a legislative obligation to act in their members' best financial interests. Additional clarity could be provided in the guidance by referencing this obligation, such as at RG 000.21 when it refers to "an entity's directors and management acting in the entity's best interests."

Potential unintended consequences should be carefully considered

ACSI understands that the intent of the guidance's focus on reporters to consider the AASB Standards is to support harmonisation of the reporting of sustainability reporting across multiple contexts. While we support the intent, we recommend that careful consideration is paid to the potential for unintended consequences. For example, reporters may interpret the term 'consider, and be informed by,' as requiring any non- mandatory climate-related disclosures to comply with AASB S2. This may act to cause confusion, for example, a perception that AASB S2 compliant disclosure is required within a Product Disclosure Statement (PDS). This is likely inconsistent with the policy intent, which we understand is to require climate-related disclosure at the whole of portfolio level. However, it would be appropriate, where climate-related information is set out in a PDS, for such disclosure to use terminology that aligns with the mandatory climate disclosures at RSE level. ACSI encourages ASIC to clarify its intent for the term 'consider, and be informed by,' within the guidance. For example, if it is to encourage common terminology rather than require AASB S2 compliant disclosures into for example, a PDS, we recommend this be further articulated. It would also be helpful to clarify the intent of the "consider, and be informed by," in relation to AASB S1, which is a voluntary standard. More specific guidance, and examples, of the meaning of "consider, and be informed by," will provide additional comfort to reporters when they are disclosing climate-related information for a range of purposes in different formats and locations.

More practical examples to underpin regulatory guidance would be helpful

In many cases, ASIC guidance focuses on identifying the location of relevant provisions in the AASB S2 standard or referencing the regulatory provisions. The guidance would benefit from providing examples of where practice would not fulfil requirements and cases where it would. One clear instance in which further explanatory guidance would be helpful is for the disclosure of forward-looking statements. The timebound period in which modified liability will be provided underlines the need for clear guidance on what constitutes reasonable grounds. Such guidance is also more likely to help preparers develop their reporting practice. Many organisations already successfully manage any perceived legal risks in respect of forward-looking statements, without the modified liability provisions. Consequently, it would be helpful for ASIC's guidance to specifically cross-reference existing provisions as well as provide guidance that articulates how an entity can provide a reasonable basis for such statements. In particular, guidance should seek to equip reporters to understand how the provisions referred to in RG 000.74 can operate in practice to support compliance, rather than moving immediately to reliance on the modified liability provisions.

Providing hypothetical case studies to illustrate some examples of how reporters may meet the aspects of Appendix D would aid clarity of understanding. It may also be useful to provide case study examples for different types of reporters. Further, it may be that it is ASIC's view that the materials referred to in RG 000.77 could form a 'reasonable basis' for a forward-looking statement to be made, in which case it would be helpful for the guidance to specifically articulate this position. It would also be helpful for the guidance to provide more detail in RG 000.31's comment that the "sustainability reporting requirements intersect with other key requirements in the

Corporations Act – many of which are covered by regulatory guidance." For example, it would be useful to note obligations to avoid misleading and deceptive conduct (ASIC Act 12DA and 12DB) and guidance on avoiding greenwashing (Information Sheet 271).

Our responses to selected individual questions are located in Appendix A.

I trust our comments are of assistance. Please contact me or [redacted] Executive Manager Policy and Research [redacted], should you require any further information.

Yours faithfully,

[redacted]

Louise Davidson AM
Chief Executive Officer
Australian Council of Superannuation Investors

APPENDIX A: SELECTED CONSULTATION QUESTIONS

Consultation question	ACSI response
Entities that do not need to provide a sustainability report B1Q2 What further guidance could we provide to help entities determine whether they are required to prepare a sustainability report?	We note that RG 000.43 lists examples of entities that are not required to provide annual financial reports under Chapter 2M of the *Corporations Act 2001* and are therefore not required to provide a Sustainability Report. We recommend that an additional example is included in RG 000.43 to clarify the treatment of investment entities controlled by RSEs that meet the required AASB 10 definition and are consequently not required to be consolidated into the Annual RSE Report. These investment entities are not required to provide an annual financial report under Chapter 2M and therefore will also not be required to disclose a Sustainability Report.
Sustainability records, directors duties and modified liability 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 proposed guidance on modified liability settings outlines the framework for protected statements. While this clarifies many aspects of ASIC's enforcement approach to modified liability, such as there being no modified liability for statements voluntarily made outside the sustainability report, case study examples would provide further context for reporters. A selection of case study examples that articulate how organisations can meet the requirement to have a reasonable basis for such statements would be helpful to encourage entities to appropriately verify their statements, rather than just rely on the modified liability settings. This is discussed in further detail in our response to C3Q1 and C3Q2 below.
Forward-looking statements C3Q1 Do you agree with our proposed guidance? C3Q2 Should we issue more guidance about the facts or circumstances that are more likely to constitute reasonable grounds for forward-looking information in climate statements? If you consider that we should issue more guidance, please explain: (a) what it should cover beyond the application guidance in Appendix D of AASB S2; (b) how you consider that guidance would impact information disclosed under the sustainability standards in Australia, compared to information	We welcome the inclusion of regulatory guidance on forward-looking statements. We note that Appendix D of AASB S2 and RG 170 *Prospective Financial Information* are cited as being helpful in outlining the characteristics required for climate-related forward-looking statements to be made on 'reasonable grounds.' In general, it would aid clarity for reporters if case study (or case law) examples were provided on what would, and would not, be considered 'reasonable grounds.' If ASIC considers that the materials referred to in RG 000.77 could form a 'reasonable basis' for a forward-looking statement to be made, it would be helpful for the guidance to specifically articulate this position. ACSI considers that additional guidance around climate-related forward-looking statements should be developed given the misunderstandings across the market on how forward-looking statements can be made with a reasonable basis. As an example, it would

disclosed under the comparable international standards; and (c) if there is any resultant inconsistency, how this can be reconciled with the context and purpose of the reforms, which cite international alignment of sustainability reporting to be a key priority	be valuable to include additional guidance that notes that as climate reporting is expected to be prepared on an annual basis, this would provide an opportunity to review and update existing statements with reasoning, subject to continuous disclosure obligations. The time frame over which climate risks and opportunities may be expected to materialise will be a relevant consideration.
Sustainability disclosures outside 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?	The draft regulatory guidance states that all entities "should consider, and be informed by, the sustainability standards when preparing climate-related financial information." The guidance would benefit from making the exact intention of this wording explicit as it may incur some unintended consequences. For example, RSEs report at whole of portfolio level under the AASB standards, while if climate-related information is disclosed under the PDS, this will be at a product level. This is discussed in more detail in ACSI's response to D4Q2 below.
S1013D or S1013E D4Q1 Do you agree with our guidance? If not, why not? D4Q2 Are there any practical problems associated with our proposal? If so, please provide details. D4Q3 What reasonable expectation are retail investors likely have about the disclosure of climate-related financial information if required by s1013D and s1013E?	ACSI supports the inclusion of guidance around the reporting of sustainability-related financial information in the PDS. We consider that the guidance would benefit from clarifying the difference between sustainability-related financial disclosures required under the AASB Standards and the sustainability-related information required by legislation covering the PDS. The requirements for a PDS under s1013D concern the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment, whereas AASB S2 specifically concerns climate-related financial disclosures. While there may be overlap with climate-related financial disclosures and environmental considerations that are required to be disclosed in a PDS, we note that the proposed guidance may potentially result in lengthy climate-related financial disclosure information being included in a PDS, beyond the disclosure obligations of s1013D. Consequently, additional guidance should clarify that: • The AASB Standards are disclosures at the whole of portfolio level, while PDS disclosures are, by definition, at a product level. While PDS disclosures may "consider, and be informed" by the AASB Standards, this consideration should in effect be limited to the use of common

	terminology, rather than, for example, effectively requiring that S2 compliant disclosures be prepared at a product level. • Sustainability-related information disclosed in the PDS are typically related to investment processes, and so will have limited relevance to disclosures required under the AASB Standards.