BCA
Business Council of Australia

ASIC Consultation Paper 380 – Sustainability Reporting

December 2024

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1. Introduction and context

The Business Council of Australia (BCA) welcomes the opportunity to respond to the Australian Securities and Investments Commission's (ASIC) Consultation Paper 380 — Sustainability Reporting (the Consultation Paper).

We welcome the development of regulatory guidance in relation to sustainability reporting requirements introduced into the *Corporations Act 2001* following the enactment of the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024*.

BCA members support continuous improvement in the quality of climate related financial disclosures to facilitate investment decision making that has due regard for climate related risks and opportunities.

It is the BCA's strong contention that the primary purpose of these new requirements is to help investors form the most rigorous view possible of climate risks and opportunities as they pertain to investments in corporations.

We also believe that an appropriately calibrated 'training wheels' approach is critical to ensuring a successful implementation of the new requirements that serves both users and preparers of disclosures. There is nothing to be gained for users or preparers of disclosures if the new requirements are poorly implemented in Australia.

Accordingly, ASIC's regulatory guidance should be designed to support this implementation approach.

2. The proposed regulatory guidance

- We welcome ASIC's stated intention to take "a proportional and pragmatic approach" as the new requirements are phased in, as reporting entities' build their capabilities and as the pool of skilled sustainability professionals in the market grows.
  - Industry would welcome an ongoing dialogue with ASIC on this approach as it evolves and ASIC's support in collaborating with government to accelerate capacity building generally in this space.
- ASIC's regulatory guidance with respect to "a proportional and pragmatic approach to supervision and enforcement" should be extended to voluntary statements made outside of the sustainability report — otherwise reporting entities may be unduly reluctant to make otherwise useful and important disclosures, outside of their sustainability report.
  - In ASIC's regulatory guidance RG000.24, the phrase "proportional and pragmatic" would benefit from further elaboration and clarification.
  - We note that reasonable reproduction of materials, with the relevant context and references back to the sustainability report, is standard market practice for results announcements, analyst and investor presentations and roadshows, annual general meeting materials and strategy briefing days.
- ASIC's regulatory guidance with respect to C3 needs to go further by helping to outline how reporting entities can balance the need for long term projections and ambitious target setting, with the requirement for them to be reliable and not misleading — this includes addressing the conflict between ASIC's existing guidance discouraging projections beyond two years and the necessity of such projections for meaningful sustainability reporting.
  - ASIC's regulatory guidance needs to acknowledge and make allowance for the inherent difficulties and uncertainties involved in making many forward looking statements in relation to sustainability — data quality, data availability and data methodologies continue to develop for sustainability related information, and the use of third party data or industry data has a role to play in supplementing actual entity data, provided this is clearly disclosed, including any limitations of the data.
- ASIC's regulatory guidance would benefit from further elaboration and clarification on the following guidance paragraphs.

- RG000.72 — “short, medium and the long term” time frames.
- RG000.76 — “forward-looking information” that does /does not comply with Appendix D of AASB S2.
- RG000.77 — “adequate sustainability records” for forward looking information / statement(s).
- RG000.78 — interplay between “materiality” and “continuous disclosure obligations” and consistency with ASIC RG 170 (prospective financial information, including financial forecasts and projections).

■ ASIC’s interpretation of Australian Sustainability Reporting Standard AASB S2 would benefit from an iterative dialogue with reporting entities in the initial years of the new requirements — regular feedback sessions between ASIC and reporting entities would enable refinement of the application of requirements based on actual reporting situations, help to identify and address challenges early in the process, and contribute to an effective development of reporting entities’ compliance systems.

■ There should be close alignment between ASIC’s regulatory guidance and the guidance included as part of the International Sustainability Standards Board (ISSB) standards — this is particularly important for entities reporting in multiple jurisdictions, which benefit from consistency across all their operations in how they comply with sustainability reporting obligations.

- With respect to proposal B2 (b) ASIC should adopt an interpretation of “material climate risks” that is closely aligned with the ISSB’s definition — that is to say, information is only considered material to sustainability reporting “if omitting, misstating or obscuring it could reasonably be expected to influence decisions” made by investors.
- There is an ongoing role for ASIC to ensure alignment as ISSB Standards evolve and to address any misalignments, for example, where international guidance suggests the use of the Global Industry Classification Standard taxonomy in the absence of a direct concordance with the Australian and New Zealand Standard Industrial Classification.

■ An explicit acknowledgement and allowance for any misalignment of reporting obligations under the new sustainability report requirements and related existing reporting requirements, such as National Greenhouse and Energy Reporting (NGER) — this is particularly important where the same information is required under both obligations but the reporting cycles are different or overlapping.

■ In ASIC’s regulatory guidance paragraphs RG000.37 to RG000.40 the resulting concept of ‘control’ appears to be inconsistent with the definition of ‘control’ under NGER — clarification of this would be helpful for reporting entities under the new requirements.

■ ASIC’s regulatory guidance paragraph RG000.52 is overly prescriptive because it should be left to the corporation and the directors to determine what an appropriate cadence is for informing the board about material sustainability risks and opportunities, as is the case for other sources of risk and opportunity.

- However, if the proposed directors’ duty to be informed and undertake assessments is maintained, then the phrases “ regularly informed” and “on going basis” need to be clarified — what is currently expected of reporting entities in this regard is less than clear.

■ ASIC’s regulatory guidance paragraphs RG000.46 to RG000.48 will increase the complexity, burden and cost of compliance with the new requirements beyond that which is reasonably necessary.

- There is no obvious reason why an alternative record keeping regime should apply to sustainability reporting given that existing record keeping requirements applying to financial reporting are well understood and support the integrity of financial reports.
- However, if the proposed sustainability record keeping is maintained, then ASIC’s regulatory guidance needs to be sufficiently detailed so as to clearly define what constitutes a ‘sustainability record’ — to help reporting entities to develop the appropriate internal processes and systems for managing this information.

- ASIC's regulatory guidance with respect to proposal C4 needs to provide further guidance on the extent to which reporting entities can use cross referencing to minimise duplication when submitting their general purpose financial reports and their sustainability report — it would be useful to be able to use cross referencing in the following examples.
  - The remuneration report (part of the director's report) extensively covers requirements for the sustainability report.
  - The overview pages, creating value, financial performance and corporate governance sections within an annual report have similar content to the sustainability report requirements.
  - The director's report notes environmental obligations, and cross references relevant annual report sections and the climate report and should also be able to reference content in the sustainability report.
- ASIC's regulatory guidance with respect to proposal C4 needs to provide further guidance on any limitations to cross referencing — for example, can sustainability reports refer to corporate websites, the number of clicks allowed to access cross referenced material, and can cross referenced material be in an embedded table source.
- ASIC's regulatory guidance paragraph RG000.80, which "strongly" encourages the reporting entity to lodge cross referenced documents with ASIC, is overly burdensome for a listed entity — a better alternative is to require the reporting entity to ensure the information remains available to users on the entity's website.
- ASIC's regulatory guidance with respect to proposal C5 needs to provide further guidance on labelling — including the provision of specific examples of how labelling should be applied to different statement and document types.
  - As reporting matures, it would be beneficial to allow entities the flexibility to include additional explanatory materials to clarify the meaning of each report's label — for example, the term "sustainability report" may confuse international shareholders unfamiliar with the Corporations Act, especially when the report currently contains only climate information.
- With respect to B1 Q2, ASIC's regulatory guidance should be strengthened to provide unlisted entities with information on what financial (non sustainability related) information will be required — the proposed guidance assumes the entity is listed in Australia, but for consolidated groups who may be listed in other jurisdictions, further clarity is needed on exactly what material is expected from ASIC.
  - If the answer to this question is nothing further than what is filed in a regular Chapter 2M report, then this needs to be made clear in the guidance to empower the reporting entity and their auditor(s).
- ASIC's regulatory guidance with respect to proposal E4 should be expanded to include particular areas of an entity's operation but exclude others if required — this would allow an entity to apply for relief directions from ASIC to exempt some of their activities from the reporting requirements while still lodging a report for their other activities.
  - For example, an entity may seek relief from reporting on its activities that are subject to national security legislation or consideration, while reporting on their commercial activities.
- ASIC's regulatory guidance with respect to proposal F2 should, where possible, include guidance on reporting where the entity's activities in question interact with publicly owned assets — this may include temporary relief from reporting where public sector guidance and reporting regimes do not yet exist.
  - For example, it may be inappropriate to report publicly on the sustainability related risks of publicly owned assets including Defence Estate and related transition planning.
- ASIC's regulatory guidance with respect to proposal F2 should provide clearer guidance on reporting scope 3 emissions data, emphasising transparency about data limitations and potential updates to past reports — scope 3 data is evolving, leading to potential inconsistencies and the need for frequent restatements.