Submission – ASIC draft guidance on sustainability reporting

19 December 2024

Overview

The Responsible Investment Association Australasia (RIAA) thanks the Australian Securities and Investment Commission (ASIC) for the opportunity to comment on its consultation on the reporting obligations under the mandatory climate-related financial disclosure (CFRD) regime. RIAA's submission focuses on responding to the questions in Consultation Paper 380: Sustainability Reporting on Attachment 1 to CP 380: Regulatory Guide 000 *Sustainability Reporting* (the RG).

RIAA welcomes the development of ASIC guidance for sustainability reporting as an essential step in the mandatory climate-related disclosure regime in Australia for which RIAA has long campaigned.

Existing and potential investors (both institutional and retail), lenders and other creditors need high-quality, comprehensive, comparable climate-related financial disclosure to make decisions about where to direct capital to align with both financial and sustainability objectives. Appropriate guidance is paramount to ensuring the intent of this mandatory disclosure regime is achieved.

RIAA broadly supports the draft guidance and has suggested additional areas for which guidance would be useful, both for its members and the broader market.

In preparing this submission, RIAA has been supported by RIAA members who contributed to this submission which is also informed by:

- Submission – EDSR1 – AASB Sustainability Reporting Exposure Draft (March 2024);
- Submission – Climate-related financial disclosure: exposure draft legislation (February 2024).

RIAA supports the significant step forward in the Austn policy settings of sustainable finance represented by this guidance and looks forward to continuing to work closely with ASIC, Treasury and others to ensure that the mandatory climate-related financial disclosure regime, underpinned by the Australian Sustainability Reporting Standards, is a success.

OUR MISSION

To promote, advocate for, and support approaches to responsible investment that align capital with achieving a healthy and sustainable society, environment and economy.

RIAA represents

75% professionally managed funds in Australia

73% professionally managed funds in New Zealand

A$ 76 trillion managed by our members in assets globally

10 largest super funds by no. members / asset under management in Australia are RIAA members

Our journey so far

- Formation of RIAA — Year 2000
- Benchmark report launch — Year 2002
- Establishment of RI product labelling program — Year 2005
- RI Academy launched — Year 2010
- Global Sustainable Investment Alliance — Year 2020
- Australian Sustainable Finance Institute established — Year 2021
- Sustainability Classifications Initiative launched — Year 2024

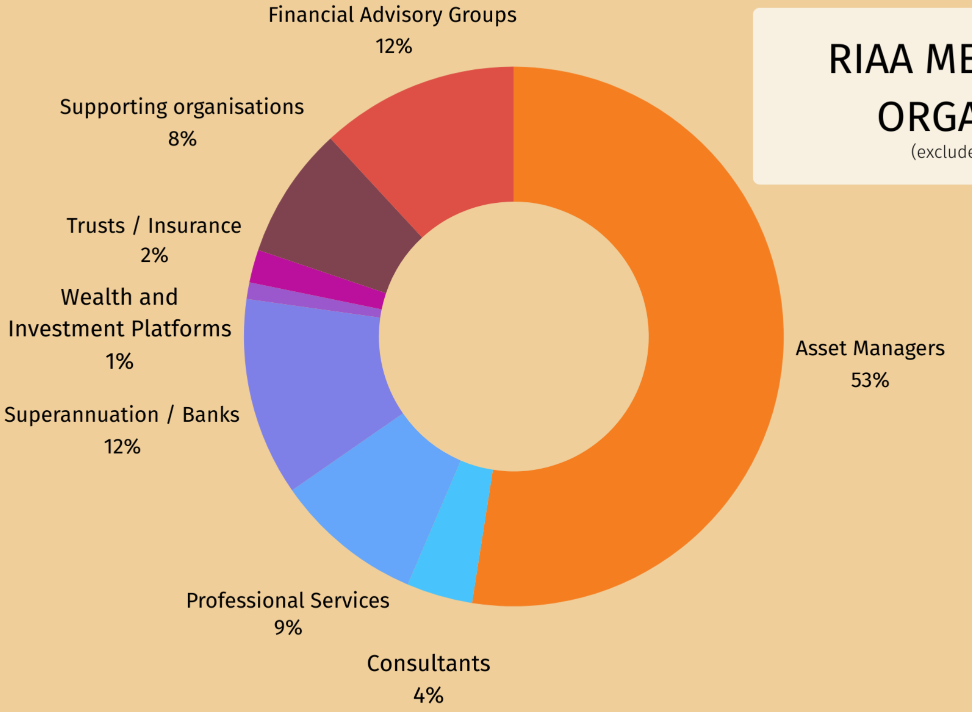
CERTIFIED BY RIAA

World's longest running certification program for responsible investment products

340+ RIAA certified products

RIAA MEMBERSHIP BY ORGANISATIONS

(excludes individual members)



*as at September 2024

RIAA submissions

Modified liability settings applicable to reports

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?

RIAA remains of the view that modified liability is not necessary; however, given the content of the legislation, RIAA broadly supports the draft guidance on modified liability settings. The draft guidance finds an appropriate balance between useful information and accountability.

For the avoidance of doubt, and in line with previous submissions, the modified liability provisions should not compromise the quality of information provided in the annual sustainability reports or reduce the accountability for statements made by reporting entities. Investors rely on climate disclosures, including forward looking statements, to inform significant decision-making. Investors recognise that uncertainty and assumptions are inherent in some types of disclosures but must be able to have confidence in the information on which they are basing decisions. Climate-related risks and opportunities, and the governance and management of such risks, are highly relevant to company valuation and performance. In this context, companies and directors should be legally required to make forward looking statements about climate risks and opportunities on a reasonable basis.

Statements of no financial risks or opportunities relating to climate

C1Q1 Are there other issues relevant to reporting entities' assessment of whether there are no material financial risks or opportunities?

Consistent with our previous submissions, we consider that it is highly unlikely that any entity within the reporting threshold for the CRFD regime will have no material climate risks and opportunities. Therefore, to avoid inadequate explanations, RIAA submits that it would be beneficial for ASIC to provide guidance in relation to minimum considerations or principles to be considered when determining there are no material financial risks or opportunities, including the evidence appropriate for such a conclusion.

In addition, while the Regulatory Guide mentions that a statement of no financial risks or opportunities would be the 'climate statement' for an entity that meets the relevant requirements, RIAA recommends this guidance be moved from notes to the body of the Guide (e.g. at RG 000.04, .67). This is important information as director's declarations apply to climate statements and therefore it would apply, for qualifying entities, to statements of no financial risks or opportunities relating to climate. It would also be useful to note this in the specific section on statements of no financial risks or opportunities relating to climate (RG 000.68-.71).

Statements with forward-looking climate information

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 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.*

RIAA submits that it is important to provide increased clarity on what constitutes a reasonable basis and how this applies to annual sustainability reports, and statements made outside of annual sustainability reports but using information within. This guidance should be practical and include examples which illustrate good and substandard practice. ASIC has provided useful guidance on forward looking statements in relation to other areas, such as for mining and resources disclosure: see Information Sheet 214.

RIAA also supports the submission to this consultation from the Investor Group on Climate Change (IGCC) which asks that ASIC: "expressly acknowledges that forward-looking statements from institutional investors inherently involve a high degree of uncertainty and provides illustrative guidance on ASIC's expectations as to how investors should substantiate 'reasonable grounds' for such statements consistent with ASIC's 'pragmatic and proportionate approach'[1] to enforcement." This uncertainty arises from the limited control institutional investors have on the climate-related risks and opportunities of their investment business which relies on the operations of companies within their portfolios.

Cross referencing in a sustainability report

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

RIAA's experience with the NZ climate-related disclosure (CRD) regime, which has completed its first reporting year, has shown that climate-related disclosure reports can be compliant with the law but still be difficult to read and understand, especially when there are numerous other documents cross referenced.

RIAA recommends that ease of navigation of climate-related financial disclosure is prioritised. The useability of the information provided under annual sustainability reports is important for the success of the regime. This could be achieved by encouraging reports to provide a streamlined index table or summary that highlights the key areas of disclosure, and includes hyperlinks to other referenced documents and where to find relevant information within them. This would also be consistent with other regulated documents that many CFRD reporting entities would be familiar with, such as an investment overview under prospectus disclosure guidance: see Regulatory Guide 228.

Disclosing sustainability related information outside a 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?

RIAA supports the requirement to disclose climate-related financial information in other regulated disclosure documents, including prospectuses and product disclosure statements (PDS). RIAA submits there is value in information from climate statements being provided in other disclosure documents, in particular those aspects which would be required by the prospectus disclosure principles or overlap with the PDS content requirements (in addition to any climate risk that is already being disclosed as part of the key risks section). This reflects the materiality of climate-related disclosure on retail investors' decision making.

In particular, governance and risk management aspects are relevant to existing or prospective retail investors as they go directly to understanding the entity offering the financial product and the leadership looking after investors' money. Providing this information beyond the annual sustainability report can improve consistency of information in the market and mitigate the risk of both the quality and substance

[1] https://asic.gov.au/regulatory-resources/sustainability-reporting/asic-s-administration-of-the-sustainability-reporting-regime.

of information varying widely within an entity's different documents and communications, as well as between entities at the early stages of this regime.

The inclusion of this information is even more important in disclosure documents for initial public offerings (IPO). An IPO disclosure document usually contains the first information provided to the market and will often remain the primary source of disclosure for a period of time. The market and investors would expect an issuer raising funds from the public that is a CFRD reporting entity to include information for prospective investors, such as how it manages its climate risk and its approach to governance and risk management vis a vis climate. Such disclosure would address the materiality of climate activities on investors' decision making and would not be an insurmountable regulatory burden on the issuer.

Approach to reviewing and enforcing sustainability regime

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

RIAA supports and appreciates the public statements from ASIC regarding its intention to take a proportional and pragmatic approach to regulation and enforcement of the new CFRD regime.

We recommend the following as additional useful guidance:

- how statements falling within the modified liability regime will be treated as part of any reporting review or surveillance; and
- the legal implications, potential liabilities and penalties for any misstatements, omissions or non-compliance relating to annual sustainability reports.

Separately, RIAA encourages ASIC to communicate to the market whether, and how, it will enforce the requirements of the climate-related financial disclosure regime on entities that should report but fail to do so. In RIAA's view, this should be the priority for regulatory activity following commencement of the regime, to ensure its success in providing consistency and transparency of information across the market.

Other areas for guidance

F2Q1 Are there any other areas of concern or uncertainty about complying with the sustainability reporting requirements that you consider ASIC could address through regulatory guidance? If so, please provide details.

RIAA supports the submission to this consultation by the Australian Council of Superannuation Investors (ACSI), in particular their suggestions to expand the draft guidance to encompass all reporters, including circumstances relevant to investment businesses, and to provide more practical examples to underpin the regulatory guidance. For example. due to the nature of investment businesses, which issue a PDS relating to a financial product that includes a number of different companies, ASIC should provide further clarification around cross-referencing in a PDS. As a PDS remains open and is usually updated every 12 months, would any changes to climate statements of portfolio companies require continual updates to a PDS? Updating a PDS takes significant resources and companies within a particular investment product may have different reporting dates (i.e. dates when there are updates following a new annual sustainability report).

Other useful areas for ASIC guidance relate to:

- supporting users of climate statements, such as these user guides developed by the Financial Markets Authority to support the CRD regime in New Zealand;
- the use of data, its limitations, and the regulator's expectations of a reporting entity's reliance on third-party data and appropriate disclosure of data gaps and limitations;

- any changes from the relevant provision of the accounting standards in relation to threshold calculations under the climate-related financial disclosure regime. RIAA's view is that there should be minimal departure outside those absolutely necessary for the operation of the law;
- clarity around obligations for investment entities which are wholly or majority owned but whose equity is accounted for by the parent entity.