18 December 2024

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Feedback on the Consultation Paper 380 - Sustainability Reporting

We write in response to ASIC's request for feedback on the proposed guidance on sustainability reporting regime. We have provided our responses to the questions raised in the Consultation Paper 380 on the draft Regulatory Guide 000 Sustainability Reporting (Draft RG000) in this letter.

We are a collective of Australian scholars, based in Australia, dedicated to advancing research in the fields of sustainability and climate change accounting and reporting. As signatories, we are affiliated with the Social and Environmental Sustainability in Organisations (SESIO) Research Group at Swinburne University of Technology, Australia. Our mission within SESIO is to generate insights that enable organisations to avoid unethical and socially and environmentally harmful business practices, while also providing actionable intelligence to policymakers to foster sustainable business environments. The SESIO research group serves as a nexus, bringing together academic and industry researchers along with practitioners from the business, government, and civil society sectors, both within Australia and on a global scale.

The draft Regulatory Guide which facilitates the mandatory sustainability reporting regime in Australia addresses issues of great significance to society and the environment and, therefore, to the stakeholders of the SESIO research group.

We support the need for a regulatory guide to help entities prepare annual statutory sustainability reports and other documents containing climate-related financial disclosures and the assurance of those reports in accordance with Corporations Act 2001 (Cth), the Australian Securities and Investments Commission Act 2001 (Cth), and AASB S2 *Climate-related Disclosure*.

We advocate for a robust sustainability reporting framework that enables organizations to report both financially material climate-related risks and their broader societal and environmental impacts, even when these do not have immediate financial implications (i.e., impact material sustainability-related disclosures). Investors and stakeholders are increasingly concerned about businesses' impacts on the environment and society regardless of the direct financial effects of those impacts on the business. Our position is that ASIC's regulatory guidance should support entities wishing to adopt the principle of double materiality while complying with AASB S2 *Climate-related Disclosure*. We advocate for guidance that encourages, rather than discourages, the use of other frameworks, such as the GRI Standards, which prioritize the disclosure of impact material information. Ensuring entities have the flexibility to report on the full scope of their sustainability impacts is essential.

The Appendix to this letter contains responses to the questions asked by Consultation Paper 380.

If you have any queries on the provided comments, please contact [redacted] at [redacted].

Signatories

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Appendix

RESPONSES TO THE CONSULTATION QUESTIONS IN THE CONSULTATION PAPER 380 SUSTAINABILITY REPORTING (CP 380)

Entities that must prepare a sustainability report

B1Q1 Do you agree with our proposed guidance?

The proposed guidance should avoid repeating information already included in AASB S2.

To eliminate redundancy, duplication between Parts A and B of the regulatory guidance should be removed. Specifically:

- The sections titled *Sustainability Reporting* and *Objective of Sustainability Reporting* in Part A are unnecessary, as more detailed guidance on these topics is provided in Part B.

- The section on *Climate-Related Risks and Opportunities* in Part A is redundant, as this information is already covered in AASB S2.

Repetition of information can lead to confusion for users of this regulatory guidance, and streamlining the content will enhance its clarity and usability.

B1Q2 What further guidance could we provide to help entities determine whether they are required to prepare a sustainability report?

Please revise paragraph RG000.37 to include the phrase **"in combination"** to clarify that the size threshold should be satisfied by both the entity and the entities it controls collectively.

For example, RG000.37 could be revised as follows:

An entity must prepare a sustainability report if it is a Ch 2M entity, and the entity *in combination* with any entities it controls, satisfies either the corporate size threshold or assets under management threshold.

This revision ensures clarity and accurately reflects the intended requirement.

B1Q3 What additional guidance should we provide to clarify how the s292A thresholds apply to RSEs, registered schemes and retail CCIVs?

State that entities registered as schemes, RSEs, or retail CCIVs that are not classified as Ch 2M entities will not be required to prepare a sustainability report for periods commencing on or after 1 January 2025.

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?

Sustainability data encompasses a wide range of information, including inputs from supply chain partners, real-time data generated by IoT devices, and records captured and stored in computer systems. However, the examples of sustainability records provided in RG000.46 may inadvertently give the impression that only documents directly prepared by the company or its consultants qualify as sustainability records. The examples primarily focus on methods and assumptions, whereas the majority of sustainability records are likely to fall under the evidence category. This includes sustainability data such as energy consumption and greenhouse gas emissions emanating from a variety of sources.

A more precise definition of sustainability records should be provided, emphasizing their role in enabling directors to verify and justify the sustainability-related information disclosed in the sustainability report and facilitating auditors in conducting their assurance of these reports.

B2Q3 Does our proposed guidance help you understand our expectations for directors in complying with their sustainability reporting requirements?

The guidance states that "directors should consider the extent to which material climate-related physical and transition risks, like all other material risks, pose a foreseeable risk of harm to the interests of the entity." However, the impact of climate-related transition risks is often more immediate compared to physical risks. The degree to which directors prioritize physical risks will largely depend on their investment horizon. Without a defined timeline for consideration, it becomes challenging to hold directors accountable for the adequacy of the company's disclosure of climate-related risks and opportunities.

B2Q4 Are there any aspects of the sustainability reporting requirements where further ASIC guidance would be helpful for directors?

Further guidance should be provided for determining the time horizon within which climate-related risks and opportunities are expected to impact the organisation.

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?

Yes. They do.

B2Q6 What further guidance should we provide about the modified liability settings?

No comment

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 proposed guidance is ambiguous and defeats the purpose.

A climate statement asserting that there are no material financial risks or opportunities related to climate for a financial year undermines the intent of the legislation. Climate-related risks and opportunities are inherently forward-looking. Hence, it seems counterintuitive for a climate statement to focus solely on the past year. Capital providers are unlikely to derive significant value from a retrospective declaration of material financial risks and opportunities related to climate. In a semi-efficient market, such information would likely already be accessible through other channels before the publication of sustainability reports.

Instead, a statement of no financial risks or opportunities relating to climate should be made if an entity believes there will be no climate-related risks or opportunities affecting the entity in the foreseeable future.

Statements with forward-looking climate information

C3Q1 Do you agree with our proposed guidance?

Yes, however stipulating specific time frames that constitute short, medium and long term would facilitate more consistent, comparable and tangible planning. For (b) climate-related strategies and (d) climate-related metrics and targets within RG 000.73 specifically, the inclusion of specified time frames could facilitate alignment with climate targets set by governments.

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**

AASB S2 mandates that entities disclose information about climate-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, access to finance, or cost of capital over the short, medium, or long term.

However, the standard primarily emphasizes the impact of climate change on the entity, with less focus on the entity's impact on climate change. This presents an opportunity to encourage entities to provide forward-looking statements regarding their contributions to climate change, particularly concerning net-zero commitments and the strategies they plan to implement to achieve their emissions targets.

Incorporating such forward-looking disclosures aligns with globally recognized sustainability reporting frameworks, notably the Global Reporting Initiative (GRI) Standards. The GRI Standards are designed to help organizations understand and communicate their impacts on issues such as climate change among other things.

Aligning AASB S2 with GRI Standards would enhance international comparability and provide a more comprehensive view of an entity's climate-related impacts. This alignment would not only meet the information needs of investors and other stakeholders but also support global efforts toward sustainability and transparency.

Moreover, the ISSB Sustainability Disclosure Standards, which underpin AASB, serve as the baseline for sustainability reporting globally. The inclusion of impact material information within AASB S2 would not compromise the comparability of climate disclosures.

Cross-referencing in a sustainability report

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

Yes, although it is recommended, we suggest that instead of merely strongly encouraging the reporting entity to lodge the cross-referenced documents alongside their sustainability report, it should be mandated that such documents must be lodged without exception.

We suggest encouraging entities to include a table that clearly lists climate statements alongside the documents cross-referenced within those statements.

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?**

Yes. We agree.

However, more clarity is sought.

The terms "climate statement" (singular) and "climate statements" (plural) are used interchangeably throughout this guide. While section 296A specifically requires the preparation of climate statements, this guide also uses the singular term. Clear and consistent labelling should be applied to distinguish between these uses. To avoid ambiguity, we suggest the regulatory guide should use the term "climate statements" (plural) in alignment with s296A.

The note to RG000.84 specifies that "sustainability-related financial information" refers to disclosures made under either AASB S1 or AASB S2. However, the term "climate-related financial information," which is also used in the regulatory guide, is not clearly defined. It is unclear whether this term represents a subset of "sustainability-related financial information" or a broader subset of "sustainability-related information," which encompasses disclosures beyond the scope of financial information under AASB S1 or AASB S2. Greater clarity is needed to distinguish these terms and their respective scopes.

C5Q3 If you currently prepare voluntary reports covering sustainability, are there other ways to achieve the outcomes our guidance seeks to achieve?

No comment

Notes to climate statements

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

Regarding RG000.91, while no current legislative instrument requires the inclusion of notes to statements by reporting entities, encouraging the inclusion of notes would increase transparency.

Proportionality mechanisms and exceptions under AASB S2

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

Yes, however given the acknowledged subjectivity involved in determining whether certain specified requirements can be exempted, for example RG000.93 (a) ‘every reasonable effort’; and the potential lack of necessary expertise, for example RG000.93 (d) ‘the reporting entity does not have the skills, capabilities or resources to provide quantitative information about the anticipated financial effects of a climate-related risk or opportunity’, further supportive information and resources could be invested in and created by ASIC, to freely provide to reporting entities in order to increase their capacity to provide this information.

Sustainability-related financial disclosures outside the sustainability report

D1Q1 Do you agree with our proposed guidance? If not, why not?

RG000.100 limits the preparation of voluntary climate statements and sustainability statements to information that directly supports investor decision-making. This approach overlooks the informational needs of other stakeholders who may be disproportionately affected by an entity's climate impacts. We recommend that the guidance adopt a less restrictive approach, allowing entities to address broader stakeholder concerns by aligning with widely recognized standards, such as the GRI Standards, when preparing voluntary climate statements.

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 proposed guidance is supportive of a phased in approach for reporting entities. However, as stated in our response above, it is too restrictive and does not encourage the provision of impact material information recommended by widely recognized standards, such as the GRI standards.

The proposed guidance also discourages efforts by entities to achieve connectivity between sustainability-related financial information and the financial information presented in financial reports as this requires the selection reproduction of information used in the sustainability report.

Sustainability-related financial information in the OFR

D2Q1 Do you agree with our interpretation of s299A(1)? If not, why not?

To align with the terminology in section 299A of the Corporations Act 2001, we recommend using the term "directors' report" instead of "OFR," as the Corporations Act does not reference an OFR.

RG000.117 inaccurately states that section 299A(1)(c) requires the disclosure of "business strategies and prospects for future financial years, *including opportunities and material business risks to prospects*." This is incorrect, as section 299A(1)(c) does not explicitly refer to "opportunities and material business risks to prospects." However, while section 299A does not mandate the disclosure of risks affecting the business, such risks, including climate-related financial risks, may need to be disclosed when explaining prospects for future financial years, particularly if those risks impact the entity's prospects. Furthermore, climate-risk mitigation and climate adaptation strategies could form a significant part of an entity's business strategy, which may require disclosure in the directors' report. To address these complexities, additional guidance should be provided to help entities clearly delineate the information required in the directors' report versus the sustainability report.

D2Q2 Do you agree with our proposed regulatory guidance? If not, why not?

Clear guidance is needed on how to deal with any overlaps as previous sections in the regulatory guide discourage the use of climate-related information in the sustainability report being reproduced in other documents.

Sustainability-related financial information in disclosure documents under Ch 6D

D3Q1 Do you agree with our proposal? If not, why not?

We partially agree with ASIC's proposal regarding the inclusion of sustainability-related financial information in disclosure documents under s710. However, again the proposal implicitly limits disclosures to climate-related financial information under AASB S2, which focuses on financial materiality. This may exclude broader sustainability-related impacts (e.g., social and environmental issues) that investors and stakeholders often expect in the context of disclosure documents, particularly for industries where such impacts are significant but not yet financially material. Therefore, ASIC should clarify that while climate-related financial information aligns with AASB S2, entities may voluntarily provide broader sustainability-related disclosures (e.g., aligned with GRI) where these are relevant to investor decision-making. ASIC should ensure flexibility for issuers to include supplementary disclosures that reflect stakeholder expectations without facing additional compliance risks.

D3Q2 Are there any practical problems associated with our proposal? If so, please provide details.

Restricting disclosures to AASB S2 may exclude other material sustainability impacts (e.g., biodiversity, social considerations) that investors consider critical but are not directly covered under the climate-specific framework of AASB S2. For issuers voluntarily adopting broader frameworks like GRI, reconciling these disclosures with AASB S2 may cause inconsistencies.

Smaller or resource-limited entities may find it difficult to integrate sustainability related financial information effectively into disclosure documents while ensuring compliance with s710 and AASB S2.

D3Q3 What reasonable expectation are investors and other professional advisers likely to have about the disclosure of climate-related financial information if required by s710?

While investors prioritise financially material climate related disclosures in line with AASB S2, they may also reasonably expect issuers to address broader sustainability impacts such as environmental and social factors when these are significant to the business or industry. Investors will look for clear explanations on how climate related risks and opportunities are identified, assessed, and managed, including forward looking details on transition plans and targets. To avoid unnecessary duplication, investors will expect disclosures under s710 to complement, rather than repeat, information already provided in statutory sustainability reports.

Sustainability-related financial information in PDSs

D4Q1 Do you agree with our guidance? If not, why not?

The guidance's emphasis on climate related disclosures (AASB S2) may exclude broader sustainability related considerations. Further, the guidance could better clarify whether issuers can include voluntary sustainability-related disclosures (e.g., aligned with GRI) alongside mandatory climate related financial information without facing compliance risks.

D4Q2 Are there any practical problems associated with our proposal? If so, please provide details.

Smaller issuers may lack the capacity and expertise to prepare high-quality, climate-related disclosures while ensuring compliance with PDS requirements under s1013D and s1013E.

D4Q3 What reasonable expectation are retail investors likely have about the disclosure of climate-related financial information if required by s1013D and s1013E?

Investors may expect clear and easy to understand information explaining how climate risks and broader sustainability related risks and opportunities impact the product's performance, costs, and returns.

Guidance on how we will approach sustainability reporting and audit relief

E1Q1 Does our proposed guidance help you understand how we will approach and assess an application for relief from the sustainability reporting and audit requirements?

Although ASIC has explained how applications for relief from sustainability reporting and audit requirements will be assessed, it would be beneficial to provide clearer examples or thresholds to define what constitutes an 'unreasonable burden.' This is particularly important for smaller entities or those transitioning to mandatory reporting. Additionally, entities would benefit from more explicit guidance on the timeframe ASIC requires to process relief applications, especially during the initial phases of the reporting regime. While ASIC has indicated that relief for financial reporting does not automatically extend to sustainability reporting, further details regarding dual applications for both financial and sustainability reporting relief would also be helpful.

E1Q2 Do you have any feedback about any aspect of our proposed guidance on relief?

Smaller or resource constrained entities may face challenges in preparing robust applications for relief. To address this, providing a simplified template or checklist outlining the required documentation and evidence would be helpful for these entities. Additionally, ASIC could consider implementing a phased assessment approach for smaller entities, where partial relief or temporary waivers may be more appropriate.

E1Q3 Are there additional policy considerations that we should address in our guidance to help entities understand when we are likely to exercise or not exercise ASIC's power to grant relief?

Presumptive environmental sensitivity for certain industry sectors could be assumed, with entities in those industries able to justify why this presumption should not hold in their case.

E1Q4 Are there any specific areas or kinds of relief that you anticipate will be commonly sought from the sustainability reporting and audit requirements? If so, please inform us what, if any, relief topics or types of applications we should provide further guidance on.

Could entities argue that their engagement of a smaller financial audit firm creates an excuse for a lack of skills or resources for that same public accounting firm to be ill-equipped to undertake assurance of a sustainability report? Could guidance on addressing the challenge such a situation presents be needed?

E1Q5 What additional guidance, if any, would help you:

(a) consider whether to apply for relief from the sustainability reporting and audit requirements;

Further specifying set criteria that must be met for which relief can be sought to diminish the influence of subjectivity, in addition to the provision of factors that inform ASIC's decision of whether to grant relief as detailed in RG000.147, would aid in the decision-making process regarding the viability of applying for relief.

(b) prepare applications for relief; and

As mentioned above, the provision of set criteria that must be met in order to apply for relief would aid in the preparation of applications, as the content of applications would be tailored to the necessary criteria.

(c) understand how to lodge an application for relief?

Nothing further.

Relief for stapled entities

E2Q1 Do you agree with our proposal that, for a stapled entity to rely on ASIC Instrument 2023/673, a sustainability report must be prepared on behalf of all members of the stapled group, even if one or more of the stapled entities in the stapled group is not required to prepare a sustainability report under s292A?

Yes.

E2Q2 We are proposing that relief is available only where the sustainability report is prepared as if all members of the stapled group were a *single entity*. Do you agree with this proposal? Does this proposal for preparation and presentation raise any issues?

Yes.

E2Q3 If you consider that an alternative basis for the preparation or presentation of sustainability reports for stapled groups is more appropriate, please explain how. Please also explain why this would be more decision useful for users of the sustainability report.

While the provision of one sustainability report for stapled entities aligns with the fact that a stapled group can only be traded together, in order to facilitate greater transparency, it is recommended that each entity within a stapled group provides a sustainability report summary reflective of their individual positions, that would be a necessary component of the overarching sustainability report on behalf of, and reflective of the stapled group as a single entity.

E2Q4 If relief for stapled entities should be provided on an alternate basis, please explain:

- **(a) how the relief should apply; and**
- **(b) the basis for that relief, considering:**
  - **(i) the statutory preconditions for relief in s342; and**
  - **(ii) the policy objectives of the sustainability reporting regime.**

No comment

Wholly-owned companies

E3Q1 What issues or challenges should ASIC be cognisant of, in relation to the intersection between the sustainability reporting requirements and ASIC Instrument 2016/785?

Wholly owned companies in environmentally sensitive industries should arguably not be automatically granted relief from sustainability reporting requirements if granted relief from financial reporting requirements.

Extending the relief in other ASIC instruments

E4Q1 Do you consider that we should extend the relief in any of the instruments listed in proposal E4 so that it applies to sustainability reporting or the audit requirements for a sustainability report? Please provide submissions about:

- **(a) why the relief is necessary;**
- **(b) how one of the statutory preconditions for providing relief in s342 would be satisfied in relation to the relevant sustainability reporting requirements;**

(c) any relevant aspects of the relief, or relevant conditions—for example, if we extended the relief in ASIC Instrument 2015/839, how should climate statements of the related schemes be presented in the sustainability report?

No

E4Q2 Are there any other legislative instruments that should be amended to extend relief so that it applies to sustainability reporting requirements? If so, please provide details, including:

(a) which of the statutory preconditions for providing relief in s342 would be satisfied in relation to the relevant sustainability reporting requirements, and why; and
(b) why there is a current need for the relief to be extended to those requirements.

No

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?

Yes

Determining revenue, employees and assets for the purposes of applying the sustainability reporting thresholds

F1Q1 Do you require guidance on how to determine revenue, employees and assets, for the purposes of applying the sustainability thresholds?

Guidance on calculating EFT for casual employees not working on the reporting date would be helpful.

F1Q2 Do you consider that there are uncertainties or potential inconsistencies in how these tests might be applied in practice? What are they and how could they be addressed through guidance?

Calculating EFT for temporary workers or farm workers might need guidance.

Other areas where we can support the transition to sustainability reporting

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.

Providing a timeline for the need for readiness for digital reporting would be helpful.

F2Q2 Are there any other issues or additional information that you consider should be explained in draft RG 000 or future guidance? If so, please provide details.

Mapping requirements with Sustainable Development Goal reporting or referring to other guidelines from other bodies that do this could be helpful.

F2Q3 Are there any other areas where we could help reporting entities develop their capabilities to meet the sustainability reporting requirements?

Providing examples of how financial and non-financial information can achieve connectivity between the two types could be helpful.