



ASIC
Australian Securities &
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**Australian Securities
and Investments Commission**

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Ms Rebecca McCallum
Director, Climate Disclosure Unit
Climate & Energy Division
Treasury
Langton Cres
PARKES ACT 2600
ClimateReportingConsultation@treasury.gov.au

9 February 2024

Dear Ms McCallum,

**ASIC submission to Treasury
Climate-related financial disclosure: exposure draft legislation**

The Australian Securities and Investments Commission (ASIC) welcomes the opportunity to provide a submission to Treasury on the [exposure draft legislation for climate-related financial disclosure](#).

ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. Our core objectives under the *Australian Securities and Investments Commission Act 2001* include promoting fair and efficient markets, and confident and informed investor and consumer participation in the financial system.

ASIC supports the introduction of a mandatory, internationally aligned and enforceable climate reporting regime. We see this reform as critical to ensuring the availability of high-quality disclosures from Australia's largest businesses and financial institutions about their climate-related risks and opportunities, enabling efficient capital allocation and decision-making by investors and other end users.

As the responsible regulator for administration and oversight of this reporting regime, in this submission we address two opportunities for its enhancement. In particular, we suggest the introduction of financial penalties for climate reporting that does not comply with the applicable sustainability standards.

ASIC otherwise supports the settings adopted in the exposure draft legislation.

1. Absence of financial penalties for non-compliant climate reporting

Under the exposure draft legislation, no civil penalties, infringement notices or criminal sanctions are available against a reporting entity for climate reporting that does not comply with the sustainability standards made by the Australian Accounting Standards Board (AASB).

This is a departure from the position set out in Treasury's June 2023 consultation paper, which proposed that climate reporting requirements would be drafted as civil penalty provisions in the *Corporations Act 2001*, and that infringement notices would also be available.

We understand that existing statutory prohibitions against false, misleading or deceptive statements which carry financial penalties will apply to climate reporting (subject to the three-year modified liability settings). However, these provisions are unlikely to operate where disclosures required by the standards are missing from a climate report, or appear in a climate report in incomplete form.

ASIC's experience is that the availability of meaningful financial penalties is key to incentivising compliance and achieving deterrence and we support their inclusion in relation to reporting-related failures, including climate reporting.

We are concerned that the absence of financial penalties may lead to reduced compliance with climate reporting requirements by some entities. Without penalties, the deterrent impact of any ASIC intervention in response to non-compliant climate reporting would likely also be significantly diminished.

This may ultimately result in lower quality climate reporting, and reduced user confidence in that reporting, undermining the key objective of the reporting regime to ensure the availability of decision-useful information on climate risks and opportunities.

Recommendation

We recommend that civil penalties and infringement notices be made available against reporting entities where their climate reporting does not comply with the AASB-issued standards, to ensure the penalty settings for this regime are fit for purpose over the long term, and to support the ongoing efficacy of the regime.

2. Limited directions power

The exposure draft legislation provides for a directions power enabling ASIC to direct a reporting entity to, among other things, correct a statement in a climate report. As currently framed, the directions power will only be available during the first three years of the climate reporting regime.

ASIC supports the proposed directions power. We consider it could present an efficient means of achieving corrective disclosure, and support flexibility in regulator response, through providing an alternative to court-based action.

Recommendation

We recommend that the directions power be made permanent, as there is ongoing utility in having this regulatory tool available.

Some additional machinery provisions are also likely to be required to support the efficacy of the directions power. We will continue to provide assistance to Treasury in this regard.

Please contact ASIC should you wish to discuss this feedback further.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Sarah Court', is positioned above the printed name.

Sarah Court

ASIC Deputy Chair