ASIC Consultation Paper 380

Sustainability Reporting

To

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Australian Securities and Investments Commission

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Sustainability records, directors' duties and modified liability **Proposal**
B2 We propose to provide guidance on: (a) the sustainability records that the reporting entity must keep; (b) how material climate risks broadly intersect with directors' duties, including for directors of entities required to prepare a sustainability report; and (c) the modified liability settings that apply until 31 December 2028, in relation to sustainability reporting.
Your feedback B2Q1 Does our proposed guidance help you understand the sustainability records that must be kept? Yes, the proposal is very clear and provides useful examples of sustainability records. We suggest including in RG 000.46 an additional example that considers both shareholder and stakeholder engagement in sustainability practices, including discussions at annual general meetings and through participatory community meetings. This contribution (received from all stakeholders) can help the firm to further develop its sustainability strategy and report accordingly. B2Q2 What further guidance should we provide on keeping sustainability records? It might be appropriate to stipulate a specific period under which these written sustainability records should be kept by the firm. For example, the number of years that firms should maintain the records for future regulatory inquiries.

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

Yes, the proposed guidance helps understand the regulators´ expectations for directors' duties and responsibilities in sustainability reporting. The proposed timeframe for directors´ declaration (RG 000.55 and RG 000.56) allows a three-year gap to move to a full declaration statement. This seems a bit ambitious, especially for directors of small to medium entities, who might require more training to gain the necessary skills or to depend on specialized services to ensure they are well-positioned to sign such a declaration. Our suggestion is to increase this gap to five years. That means that RG 000.56 should state "for the financial years commencing on or after 1 January 2030".

Statements about no climate risks or opportunities
Proposal

C2 We propose to provide guidance that reporting entities that consider they have no material financial risks or opportunities under s296B(1) must:
(a) maintain adequate sustainability records; and

(b) establish robust processes to ensure that they meet the sustainability reporting requirements under s296A(1) for any subsequent financial year that there are material financial risks or opportunities.

Your feedback

C2Q1 Do you agree with our proposed guidance? If not, why not?

Yes, we agree with the proposed guidance. Even if a reporting entity does not have material financial risks and opportunities, it is relevant to keep adequate records and robust processes for the ongoing identification of potential material risks and opportunities that might arise in the future. The assessment of climate risks and opportunities needs to be performed continuously, given the rapid changes in the environment that might affect a company´s exposure in the short, medium, or long term. Companies need to understand the relevance of sustainability reporting even in a scenario of no material risks and opportunities.

Statements with forward-looking climate information

Proposal

C3 We propose to issue guidance about statements with forward-looking climate information in the sustainability report. Notably:

(a) reporting entities must comply with paragraphs D1–D33 of Appendix D of AASB S2 (the qualitative characteristics of useful climate-related financial information) in preparing statements with forward-looking climate information;

(b) in doing so, reporting entities must disclose the basis for those forward-looking statements, including the underlying methods and assumptions used to produce that information; and (c) reporting entities must also maintain adequate sustainability records that explain the methods, assumptions, and evidence for all forward-looking information in the climate statement.
Your feedback C3Q1 Do you agree with our proposed guidance? Yes, we agree with the proposed guidance on how to disclose forward-looking climate information. 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 do you consider that guidance would impact information disclosed under the sustainability standards in Australia, compared to information disclosed under 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? We believe it is necessary to provide more guidance given there is an increasing interest in forward-looking climate-related information to inform financial decision-making. Other examples in RG 000.73 could include forward-looking metrics that focus on physical climate-related risk, future valuations of specific assets, and applications of climate risks and opportunities within more traditional financial valuation metrics. We also acknowledge that many forward-looking methodologies are new and evolving, and there is little transparency in how they are calculated or compared to each other. This will be intensified at the firm level, which will affect the qualitative enhancing characteristic of comparability. Moreover, the calculations of forward-looking metrics are complex and require many assumptions. For example, uncertainty around future climate-related risks and policy can contribute to greater variation in transition models.

Cross-referencing in a sustainability report **Proposal**
C4 We propose to issue guidance about the information included by cross-reference in a sustainability report (under paragraph 63 of Appendix D of AASB S2). Our proposed guidance is that entities should lodge the cross-referenced document with ASIC at the same time as the sustainability report (unless that document has already been lodged with ASIC).

Your feedback

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

Yes, we agree with the proposal. Cross-referencing is very important to ensure the reliability of the disclosed climate information and to validate the assumptions on climate and sustainability strategies. Linkages between related climate change and sustainability risk disclosures should be explained. Thus, when cross-referencing is used, the entity should try to explain the nature of the relationship or interdependency, rather than just highlighting the existence of such relationship or interdependency. This will ensure effective use of cross-referencing and can provide users with more context and a holistic picture of the firm´s sustainability performance.

Labelling

Proposal

C5 We propose to issue guidance recommending how entities should label reports and statements containing sustainability-related financial information. Our proposed guidance includes that:

(a) the term 'sustainability report' should be used when referring to the statutory sustainability report defined in s9 and s292A(1);

(b) the term 'climate statements' should be used when referring to the statutory statements defined in s296A(2) and/or s296B (as applicable);

(c) the term 'voluntary sustainability statements' should be used for sustainability-related information other than climate-related financial disclosures, prepared voluntarily by applying all or parts of AASB S1; and

(d) the term 'voluntary climate statements' should be used for climate-related financial disclosures prepared voluntarily by applying all or parts of AASB S2.

Your feedback

C5Q1 Do you agree with our proposal to encourage specific labeling 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?

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

We overall agree with the proposed guidance on labeling. On the one hand, it helps both preparers and users to better identify sustainability-related financial disclosures. On the other hand, the use of labels might limit or force companies to classify disclosures that fit into a particular label, without recognizing potential synergies. To ensure consistency among terms (a) and (c), we recommend labeling the sustainability disclosures as follows: (a) "sustainability report", (b) "voluntary sustainability report".

Sustainability-related financial disclosures outside the sustainability report

Proposal

D1 We propose to issue guidance that all entities should consider, and be informed by, the sustainability standards when preparing sustainability-related financial disclosures outside the sustainability report.

Your feedback

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

D1Q2 Does our proposed guidance strikes the right balance between facilitating other sustainability-related disclosures, especially while sustainability reporting requirements are being phased in for reporting entities?

We believe the proposed guidance encourages and facilitates the reporting of other sustainability and climate change-related disclosures. With time, the integration of sustainability standards in Australia's capital markets and the increasing reporting on climate and sustainability matters will enable entities to provide higher-quality sustainability-related financial disclosures. We also believe there is a right balance to incentivize entities to produce accurate and reliable sustainability information, which will allow a smooth path towards mandated sustainable reporting requirements.

Sustainability-related financial information in the OFR

Proposal

D2 We propose to provide guidance for listed entities that must comply with OFR requirements that:

(a) all listed entities should disclose sustainability-related financial information (including climate-related financial information) if it would be reasonably required by members to make an informed assessment of the entity's operations, financial position, business strategies, and prospects for future financial years (see s299A); and

(b) reporting entities that are listed (listed reporting entities) should include an overarching narrative and analysis in the OFR that supplements *both* the financial report and the sustainability report.

This will help shareholders understand the operations, financial position, business strategies, and risks and opportunities affecting the prospects of the reporting entity overall.

Your feedback

D2Q1 Do you agree with our interpretation of s299A(1)? If not, why not? D2Q2 Do you agree with our proposed regulatory guidance? If not, why not? We agree with the need to provide a narrative and interpretative analysis in the OFR that supplements the financial and sustainability report. We consider that such a narrative would be also relevant for non-listed entities and for those who voluntarily disclose climate and sustainability information. Not only shareholders but also other interested stakeholders would benefit from such narratives that accompany the metrics. This will facilitate better analysis and interpretation of the sustainability and climate change disclosures.

Determining revenue, employees and assets for the purposes of applying the sustainability reporting thresholds **Proposal**
F1 We are considering whether our guidance should address how to determine revenue, employees or assets for the purposes of applying the sustainability reporting thresholds.
Your feedback F1Q1 Do you require guidance on how to determine revenue, employees, and assets, for the purposes of applying the sustainability thresholds? 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? We believe the determination of revenue, employees, and assets should be done on the same basis as the financial reports. That is, companies should consider the revenue, number of employees, and gross assets corresponding to the last financial year to make the assessment for the purpose of applying the sustainability reporting threshold. An illustrative example might be provided to clarify how these tests are applied in practice.