

ESG—Australia: Mandatory Climate-Related Financial Disclosures: Legislation Passes Parliament

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On 22 August 2024, the Senate passed the [Treasury Laws Amendment \(Financial Market Infrastructure and Other Measures\) Bill 2024](#) (the Bill), which requires certain organisations to make mandatory climate-related financial disclosures in their annual reports for financial years commencing after 1 January 2025. The Bill passed the Government-controlled House of Representatives on 9 September 2024 and is currently awaiting formal assent.

Please refer to our earlier summaries of the proposed climate-related financial disclosures regime as it passed through the legislative process [here](#) and [here](#).

SENATE EFFECTS

Consistent with its role as the House of Review, the Senate made an important amendment to the draft Bill before its passage. It required the climate statement (included in the Sustainability Report) to include disclosures on scenario analyses required to be undertaken by the reporting entity. Scenario analysis refers to the process by which a reporting entity tests the resilience of its strategy and business model to both physical climate-related risks (largely associated with rising global temperatures) and transition climate-related risks (ie to adjust to a lower-carbon economy). The Senate required that at least two prospective scenarios are to be used as part of this analysis:

- An increase in global average temperatures which “well exceeds” 2°C above pre-industrial levels; and
- An increase in global average temperatures limited to 1.5°C above pre-industrial levels.

There were other attempted amendments by the Greens, Coalition and independent members, but these were defeated. So, once this amendment in passed by the House, the reporting regime will involve the following.

REPORTING REGIME

Who Reports and When?

Mandatory climate reporting will apply to entities which are already required to prepare annual financial reports under Chapter 2M of the *Corporations Act 2001* (Cth) (Corporations Act) and must be made in a Sustainability Report within that annual financial report in accordance with Australian Sustainability Reporting Standards (ASRS).

The obligations for Group 1 reporting entities commence in respect of their financial years commencing after 1 January 2025. The obligations for Group 2 and Group 3 entities will commence for their financial years commencing after 1 July 2026 and 1 July 2027 respectively. The climate reporting regime will apply to not-for-profit entities that meet the same thresholds for Group entities. Charities and certain public authorities are exempt from this regime.

First annual reporting period commences on	Reporting Entities Which Meet <i>Two out of Three</i> of the Following Reporting Criteria			National Greenhouse and Energy Reporting (NGER) Reporters	Asset Owners
	Consolidated revenue for fiscal year	Consolidated gross assets at end of fiscal year	Full-time equivalent (FTE) employees at end of fiscal year ¹		
1 Jan 2025 (Group 1)	AU\$500 million or more	AU\$1 billion or more	500 or more	Above the NGERs publication threshold	N/A
1 July 2026 (Group 2)	AU\$200 million or more	AU\$500 million or more	250 or more	All NGER reporters	AU\$5 billion or more of the assets under management
1 July 2027 (Group 3)	AU\$50 million or more	AU\$25 million or more	100 or more	N/A	N/A

What to Report?

An entity's Sustainability Report will need to include:

- A climate statement for the relevant year, including any applicable notes;
- Any statement prescribed by the Regulations for the relevant year, including any applicable notes; and
- The directors' declaration as to the compliance of such statements with the Corporations Act and relevant sustainability standards.

In summary, the core disclosures for a climate statement include:

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- Governance – the governance processes, controls and procedures the entity uses to monitor and manage climate-related risks and opportunities;
 - Strategy – the approach the entity uses to manage climate-related risks and opportunities, including the now expanded scenario analyses and climate change resilience assessments;
 - Risk management – the processes the entity uses to identify, assess, prioritise and monitor climate-related risks and opportunities;
 - Emissions – Scope 1 and Scope 2 greenhouse gas emissions and Scope 3 emissions from the second year of reporting for all reporting entities;
 - Financial effects – the impacts of climate-related risks and opportunities on the entities' cash flows, revenues and asset values in the relevant reporting period and anticipated future impacts over time; and
 - Metrics and targets – the entity's performance in relation to climate-related risks and opportunities, including progress towards any targets the entity has set or is required to meet by law or regulation.

The draft ASRS provide that entities will be required to use all reasonable and supportable information available to them at the reporting date, will not be required to disclose commercially sensitive information and, with respect to Scope 3 emissions, are subject to information provided by customers and suppliers or information that is otherwise publicly available. The final ASRS will be released after the Bill is passed into law.

A directors' declaration must be made in accordance with a board resolution approving the contents of the relevant statements. During the first three years, the directors are only required to state whether, in their opinion, "the entity has taken reasonable steps to ensure the substantive provisions of the Sustainability Report" comply with the Corporations Act.

Limited Immunity

Limited immunity for the more uncertain aspects of the Sustainability Report (ie Scope 3 emissions, scenario analyses and transition plans) is given for a period of three years and for other forward-looking statements for a period of the first 12 months of the reporting regime.

During this relevant immunity period, actions in respect of statements made in a Sustainability Report may only be commenced by the Australian Securities and Investments Commission (ASIC) or where such statements are criminal in nature.

ASIC may direct reporting entities to provide additional or corrective information in relation to a Sustainability Report if it considers that it is incorrect, incomplete, misleading or deceptive in any way.

Audit and Assurance

Sustainability Reports will need to be audited in accordance with standards passed by the Auditing and Assurance Standards Board (AUASB). However:

- For financial years commencing before 1 July 2030, the AUASB may make standards that specify how such auditing is to occur. The AUASB is currently consulting on a proposed phase-in of such audit and assurance standards in the period up to 1 July 2030 and anticipates issuing a proposed assurance timetable for consultation shortly; and
- For financial years commencing after 1 July 2030, Sustainability Reports must be audited in accordance with the Corporations Act. The auditor's report must confirm such compliance,

confirm that they have been given all relevant information to support such a confirmation, and whether the reporting entity has kept sufficient records to support the contents of the Sustainability Report – or otherwise report on any deficiencies.

Internal Processes

It will be important for reporting entities to:

- Prepare and keep written records (for seven years) to substantiate the statements contained within Sustainability Reports, including the methods by, and assumptions on, which such statements are made; and
- Ensure that the Sustainability Report is publicly available on its website from the date on which it is lodged with ASIC.

HOW CAN WE HELP?

Directors of reporting entities should familiarise themselves with the final reporting regime following its release (expected later this month). They should seek appropriate advice and start to plan and take action to set up the entity's governance, strategy, personnel and verification processes, including engagement and monitoring of outsourced providers, required to support making these mandatory disclosures.

Failure to do so in a timely manner may expose directors and reporting entities to adverse market and regulator scrutiny in addition to potential liability.

Cathy Ma also contributed to this article.

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