

Session 3: Mandatory Climate-Related Reporting

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CPD Category: Substantive Law

11:00 AM – 12:00 PM (AEDT)



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Wednesday 21 February 2024

Mandatory Climate-Related Reporting

Jim Bulling, Partner | Asset Management and Investment Funds

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Context of the Regime

- Global developments:
 - June 2017 – TCFD draft recommendations;
 - November 2021 – ISSB formed;
 - August 2021 - COP 26 Glasgow;
 - March 2022 – Final ISSB standards released;
 - April 2023 GHG Protocol – scope 3 standards and calculation guide;
 - January 2024 – draft legislation Australia; and
 - Political issues in Australia, US (and elsewhere).

Context of the Regime Cont.

- Australian climate responses:
 - Australia slow out of the blocks;
 - Switched to fast lane after COP 26 and Labor mandate 2022;
 - October 2023 release of AASB proposed standards, consultation to close March 2024;
 - January 2024 draft legislation; and
 - Other climate related developments e.g. greenwashing enforcement, taxonomy, APRA expectations, focus on stewardship.

Sustainability Reporting

- Sustainability Report for a financial year consists of:
 - Climate statement for the year;
 - Notes to the statement; and
 - Director's declaration about compliance with relevant standards.
- Reporting entity will provide financial report, sustainability report, directors report, auditor's report
- Sustainability Report will be considered at AGM alongside other reports

Sustainability Reporting Cont.

- Entities are required to make climate related disclosures – “Sustainability Report” where they:
 - Are required to lodge reports under Chapter 2M; and
 - If they meet certain minimum size thresholds; or
 - Have obligations under the NGER scheme; or
 - If an asset owner with over AU\$5 billion in assets.

Asset Owners

- Asset owner entity with more than \$5bil of assets
- Industry has raised concerns with asset owners which are part of consolidated groups
- Recommendation for “reporting asset owner” definition
- Industry has raised concerns with commencement dates for asset owners REs and RSEs – recommended for Phase 2
- Industry have argued that platform providers should be exempt
- Scope 3 emissions will dominate

Reporting Thresholds

- Timing of reporting depends on size of entity – consolidated revenue and assets and employees:
 - 1 July 24 large entities;
 - 1 July 26 medium entities plus asset owners; and
 - 1 July 27 smaller entities and large private.
- Assets and revenue calculations follow accounting standards
- Employees includes pro rata part time employees but not contractors

Reporting Thresholds Cont.

- Control determined in accordance with Accounting Standards
- If entity required to prepare financial statements on consolidated basis it may choose to prepare sustainability reports on same basis
- Individual group entities can rely on parent company consolidated sustainability report

Contents of Disclosure

- Scope 1 emissions are those that directly result from activity conducted at organisational level e.g. manufacture and delivery of product
- Scope 2 emissions are those resulting from indirect consumption e.g. coal emissions generated from electricity used
- Scope 3 emissions are indirect emissions not included in Scope 1 and 2 e.g. employee commutes, employee travel, transport of inputs, financed emissions (debt and equity)

Contents of Disclosure Cont.

- Climate statement must include:
 - Material climate risks and opportunities;
 - Smaller entities may say there are no risks;
 - Metrics and targets relating to Scope 1 and 2;
 - Metrics and targets relating to Scope 3 emissions (after lead-in period); and
 - Any governance or risk management processes/controls related to these matters.

Contents of Disclosure Cont.

- Scope 3 emissions are difficult to compile for many large organisations including asset managers and investment funds
- ISSB standards requires entity to:
 - Use all reasonable and supportable information that is available; and
 - Not required to incur undue cost and effort.
- GHG Protocol sets out global standardised frameworks to measure and manage GHG emissions
- Draft legislation contains some relief in respect of Scope 3 emissions disclosures

Audit and Assurance

- Auditing standards to be released by July 2024
- Assurance expectations expected to be similar to existing requirements for financial reports under the Corporations Act
- However for period 1 July 2024 to 30 June 2030 auditors review limited to Scope 1 and Scope 2 emissions

Liabilities and Immunities

- Existing liabilities for preparation and disclosure of financial reports will apply to sustainability reports with some temporary carve outs
- Limited immunities from claims made in respect of scope 3 disclosures for financial years 2024/2025 to 2026/2027
- Applies to misleading and deceptive conduct and breach of statutory and fiduciary duties of directors
- Only applies to Scope 3 emissions and scenario analysis
- ISSB provides some further assistance

Liabilities and Immunities Cont.

- ASIC will still be able to take civil or criminal action during immunity period
- ASIC may during immunity period ask for explanation of any errors
- Any ASIC direction for correction of errors must provide for a hearing

Who Must Disclose?

First annual reporting period commences	Reporting Entity		Any entity (including any entity that it controls) meets two of the three criteria below				Asset Owners		National Greenhouse and Energy Reporting (NGER) Act.
			Consolidated revenue	Consolidated gross assets	Employees				
Phase 1 1 July 2024	Must be an entity who is required to report under Chapter 2M of the Corporations Act, e.g.: <ul style="list-style-type: none"> • Disclosing entity • Public company • Large proprietary company • Registered schemes • Registrable superannuation entities 	AND	AU\$500 million or more	AU\$1 billion or more	500 or more		N/A	OR	A constitutional corporation that does not have a holding company incorporated in Australia and meets certain greenhouse gas emission, energy production, or energy consumption thresholds.
Phase 2 1 July 2026		AND	AU\$200 million or more	AU\$500 million or more	250 or more	OR	If the entity is an asset owner entity, where the value of assets at the end of the financial year (including the entities it controls) is equal to or greater than AU\$5 billion.	OR	A constitutional corporation that does not have a holding company incorporated in Australia: <ul style="list-style-type: none"> • Meets certain greenhouse gas emission, energy production, or energy consumption thresholds • Meets the above threshold taking into account the number of days the corporation has control
Phase 3 1 July 2027		AND	AU\$50 million or more	AU\$25 million	100 or more		N/A	OR	

Timeline for Disclosures

	Phase 1	Phase 2	Phase 3
Obligation to lodge sustainability report	FY commencing 1 July 2024.	FY commencing 1 July 2026.	FY commencing 1 July 2027.
Obligation to report scope 1 & 2 emissions	FY commencing 1 July 2024.	FY commencing 1 July 2026.	FY commencing 1 July 2027.
Obligation to report scope 3 emissions	FY commencing 1 July 2025.	FY commencing 1 July 2027.	FY commencing 1 July 2028.

Specifics for Phases

	Phase 1	Phase 2	Phase 3
<p>Modified liability, e.g.:</p> <ul style="list-style-type: none"> Misleading and deceptive conduct Negligent misstatement Breach of statutory duty Breach of fiduciary duties 	<p>No civil action can be brought against a person or entity in relation to statements of Scope 3 emissions or scenario analysis, with the exception of ASIC, for financial years between 1 July 2024 and 30 June 2027.</p>	<p>No civil action can be brought against a person or entity in relation to statements of Scope 3 emissions or scenario analysis, with the exception of ASIC, for the financial year commencing 1 July 2026.</p>	<p>No modified liability applies.</p>
<p>Limited assurance of sustainability reports before 1 July 2030 in respect of Scope 1 and 2 emissions</p>	<p>Entities must have sustainability reports reviewed for financial years commencing 1 July 2024 to 30 June 2030, but only in respect of Scope 1 & 2 emissions.</p>	<p>Entities must have sustainability reports reviewed for financial years commencing 1 July 2026 to 30 June 2030, but only in respect of Scope 1 & 2 emissions.</p>	<p>Entities must have sustainability reports reviewed for financial years commencing 1 July 2027 to 30 June 2030, but only in respect of Scope 1 & 2 emissions.</p>
<p>Obligation to provide an audit of the sustainability report</p>	<p>FY commencing 1 July 2030.</p>	<p>FY commencing 1 July 2030.</p>	<p>FY commencing 1 July 2030.</p>

Cross-Border Issues – Macro

- US - SEC introduced a proposed ESG disclosure rule in 2022
- EU - mandatory reporting phasing in from Jan 2024
- UK - mandatory reporting phased in from 2022 with large companies and asset managers first
- HK - voluntary codes encourage climate related disclosure
- SG - mandatory disclosure phasing in from Jan 2023 (large companies in selected industries first plus investment funds)

Cross border issues - Micro

- Subsidiaries of foreign entities may be caught by ARBN registration:
 - Size thresholds still apply (consolidated down);
 - Not required to report where consolidated reports provided by parent; and
 - Disclosure under Ch 2M if securities issued by company are ED securities e.g. subject to a prospectus.
- Asset owner position being debated with industry

Preparation - Key Takeaways

- Need to plan for new chapter in reporting from 1 July 2024 for large entities with phase in for smaller entities
- In order to approve Sustainability Report, Directors need to:
 - Oversee conventional due diligence in respect of disclosure of material climate risks and opportunities and associated governance, strategy and risk management;
 - Oversee new due diligence processes, systems, technology and people to collect, report, review and react to the significant number of new data points relevant to Scope 1, 2 and (particularly) 3 emissions; and
 - Approve effective governance and verification procedures.

Preparation - Key Takeaways Cont.

- Offshore entities with presence or subsidiaries in Australia need to consider obligations
- Risk and compliance need to consider interim concessions on scope 3 with full exposure to Corporations Act enforcement and penalties from July 2030

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