21 July 2023

Climate-related financial disclosure

ACCR response to Treasury consultation

ABOUT ACCR

The Australasian Centre for Corporate Responsibility (ACCR) is a not-for-profit, philanthropically-funded research organisation, based in Australia. ACCR monitors the environmental, social and governance (ESG) practices and performance of Australian-listed companies, including climate change, human rights, and labour rights. We undertake research and highlight emerging areas of business risk through private and public engagement. For more information, follow ACCR on Facebook, Twitter and LinkedIn.

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Introduction

ACCR is grateful for the opportunity to input into the Treasury's Climate-related financial disclosure consultation (round 2). Our previous submission to this inquiry is at: https://www.accr.org.au/research/submission-climate-related-financial-disclosure/.

Implementation of a rigorous, comparable, and consistent climate disclosure scheme, applicable to listed and non-listed entities, will support Australia to achieve its climate goals. Implementation of a flawed or unambitious disclosure scheme will facilitate greenwashing by financial entities, and enable 'overstated profits and asset values, and understated liabilities'.[1]

As ACCR recently noted in our submission to this government's inquiry into greenwashing:

> *'Greenwashing is a major issue across many industries, but particularly in the energy, mining, oil and gas sectors. Many companies in these industries are struggling to maintain a social licence to operate, and are facing serious and sustained pressure from investors. It is in this operating environment that many companies adopt communications and marketing strategies designed to promote their activities and products as environmentally sound and/or critical for the energy transition underway'.*[2]

Similarly, many companies are adopting creative disclosure practices in annual reporting, and presenting climate-related financial information in an obfuscatory manner. As with 'greenwashing' in marketing and communications, poor climate-related financial disclosures have the potential to lead to misaligned capital expenditure, increase risks of future stranded assets, and suppress opportunities for investment in the transition'.[3]

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[1] Carbon Tracker, 2021, 'Flying Blind: The Glaring Absence of Climate Risks in Financial Reporting', https://www.unpri.org/download?ac=14597, p 53.

[2] https://www.accr.org.au/research/submission-greenwashing-inquiry/

[3] https://www.accr.org.au/research/submission-greenwashing-inquiry/&sa=D&source=docs&ust=1689744784451692&usg=AOvVaw3DLAoYe1h6oT2i7Vu-yIwv

Treasury proposal	ACCR’s submission CR-FD 2.0
PROPOSAL, Reporting entities: all entities that meet prescribed size thresholds and that are required to lodge financial reports under Chapter 2M of the Corporations Act 2001 (Cth) (Corporations Act) would be required to make climate-related financial disclosures.	ACCR supports this proposal, including the requirements for 'Controlling Corporations' reporting under The National Greenhouse and Energy Reporting Act 2007 (NGER Act) ('NGERS'). As noted previously, ACCR is keen to ensure that any mandatory climate disclosure scheme will cover the most systemically significant listed and non-listed entities, from an emissions and physical risk perspective, to enhance the resilience of the Australian economy. The development of a scheme to commence no later than 2024 is reasonable. Many large entities already collect a lot of the information which will be covered by this proposed reporting scheme, and will be in a position to adapt quickly to new reporting requirements.
PROPOSAL, Materiality: principles of financial materiality would apply.	ACCR supports the existing guidance from the AASB on materiality assessments, “sustainability-related financial information is material if omitting, misstating or obscuring that information could reasonably be expected to influence decisions that the primary users of general purpose financial reporting make on the basis of that reporting”, since this highlights that materiality decisions cannot be made by an issuer in isolation.
PROPOSAL, Governance: from commencement, companies would be required to disclose information about governance processes, controls and procedures used to monitor and manage climate-related financial risks and opportunities.	ACCR supports this proposal. It is reasonable that ISSB standards form the basis of reporting requirements around climate risk governance. Governance standards should include a requirement for companies to nominate a director who is responsible for climate matters and transition planning, as a matter of good governance. As well as 'risks and opportunities', governance processes, controls and procedures used to monitor and manage emissions should also be disclosed. Boards need to be responsible for the content of these reports, and for audits. Directors should be required to ‘sign off’ on statements (certified accounts).
PROPOSAL, Scenario analysis: from commencement, reporting entities would be required to use qualitative scenario analysis to inform their disclosures, moving to quantitative scenario analysis by end state.	It is noted that a phased approach to scenario analysis is recommended, moving from qualitative to quantitative analysis in time. Importantly, for a qualitative scenario analysis to be meaningful, it should be accompanied by the following information on each chosen scenario: ● Temperature outcome in 2100; ● Peak temperature in the 21st century; ● Whether greenhouse gas emission reach net zero in the second half of the 21st century; ● How much the scenario relies on carbon sequestration

	technologies (natural (e.g. natural offsets), geological (CCS) and carbon removal (e.g. DAC or BECCS); ● The year of publication of the scenario being used. The above information is needed to inform the user how well a scenario aligns with the Paris Agreement, how current the assumptions are and how much of the abatement trajectory is reliant on carbon removal (i.e. it quantifies the anthropogenic emissions still being emitted at a given time or period).
PROPOSAL, Scenario Analysis: from commencement, reporting entities would be required to disclose climate resilience assessments against at least two possible future states, one of which must be consistent with the global temperature goal set out in the Climate Change Act 2022 ('holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels').	**Importance of a 1.5C scenario** Climate resilience assessments must require users to assess a company's alignment with a 1.5C scenario. In the science community it is accepted that the IPCC AR6 category C1a is the only set of scenarios that satisfies all Paris Agreement criteria.[4,5] This in turn means that fulfilling all Paris Agreement goals is equivalent to alignment to the 1.5C temperature outcome in 2100 and reaching net-zero greenhouse gas emissions in the second half of the century. Scenarios that align with a temperature outcome of 1.5C, the Paris Agreement and the goals of the Climate Change Act 2022 include:[6] ● IPCC AR6 scenarios, category C1a. These scenarios are aligned with all the Paris agreement goals of holding global average temperatures well below 2C as well as reaching net zero greenhouse gases in the second half of the 21st century.[7,8] ● The latest IEA NZE scenario[9] (as defined in the World energy outlook 2022, possibly updated in 2023) ● ClimateWorks Decarbonisation Futures Scenarios[10] ● Baringa 1.5 scenario[11] (National Electricity Market specific scenario) **Current issues with scenario selection and disclosure** ACCR has observed that many companies are: using scenarios which are most favourable to their products, not disclosing fundamental assumptions of that scenario, and/or selecting particular parts of a chosen scenario to

[4] Schleussner, C.-F., et al., 2022, An emission pathway classification reflecting the Paris Agreement climate objectives, https://doi.org/10.1038/s43247-022-00467-w

[5] Kikstra, J.S., et al., 2022, The IPCC Sixth Assessment Report WGIII climate assessment of mitigation pathways: from emissions to global temperatures, https://doi.org/10.5194/gmd-15-9075-2022

[6] https://www.legislation.gov.au/Details/C2022A00037

[7] Climate Analytics, 2022, New pathways to 1.5°C: interpreting the IPCC's Working Group III scenarios in the context of the Paris Agreement, https://climateanalytics.org/blog/2022/new-pathways-to-15c-interpreting-the-ipccs-working-group-iii-scenarios-in-the-context-of-the-paris-agreement/

[8] IPCC, 2022, Table SPM.2 p.18 in IPCC, 2022: Summary for Policymakers. In: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf

[9] International Energy Agency (IEA), 2022, World Energy Outlook, https://www.iea.org/reports/world-energy-outlook-2022

[10] ClimateWorks, 2020, Decarbonisation Futures: Solutions, actions and benchmarks for a net zero emissions Australia, https://www.climateworkscentre.org/resource/decarbonisation-futures-solutions-actions-and-benchmarks-for-a-net-zero-emissions-australia/

[11] Clean Energy Investor Group (CEIG), Baringa, 2023, Decarbonising Australia: Accelerating our energy transition with a credible 1.5°C scenario, https://ceig.org.au/wp-content/uploads/2022/07/CEIG-x-Baringa-Report_2023-Final.pdf

	present. This undermines the quality of scenario analysis, and makes it difficult for the users of financial reports to make appropriate decisions. For example, Woodside Energy Group (WDS) has used a category of scenarios (a 'pathway' - P3) from the 2019 IPCC 1.5C special report[12] to show that gas use can increase under a 1.5C scenario.[13] Comparing the P3 pathway against the Paris aligned IPCC AR6 scenarios[14], gas use in the P3 fell outside the interquartile range of all assessed scenarios. The interquartile range for gas use in Paris aligned scenarios declines prior to 2030, while gas use in the P3 scenario increases towards 2030 and beyond. Further, P3 includes a range of criteria beyond increased gas use, which are not tracking as predicted in the scenario for it to be considered plausible, and the company's reporting was not consistent with these other metrics (e.g. level of coal and oil use or the amount of CCS capacity available) attached to P3. This use of an outlier pathway, that relies on already outdated assumptions, gives a more generous view of the future of Woodside's main product than the majority of scenarios and is arguably misleading. A second example is Glencore, Australia's largest thermal coal exporter. Glencore chose to assess its resilience and emission reduction targets against an aggregated fossil fuel decline pathway instead of a specific coal decline pathway, even though coal is the majority of its fossil fuel business.[15] This allowed Glencore to conceal to its shareholders the uncomfortable reality that coal emissions reduce faster than overall fossil fuel emissions in every Paris aligned scenario.[16] **Additional scenario details required for disclosure** To mitigate common issues with current scenario analysis, transparency of scenario assumptions is critical, regardless of whether these scenarios are in-house or publicly available. As stated above, the following details must be disclosed for each scenario used: • Temperature outcome in 2100; • Peak temperature in the 21st century; • Whether greenhouse gas emission reach net zero in the second half of the 21st century; • How much the scenario relies on carbon sequestration technologies (natural (e.g. natural offsets), geological (CCS) and carbon removal (e.g. DAC or BECCS); • The year of publication of the scenario being used. In addition, disclosure of the most important assumptions around energy (e.g. fossil fuel use, the role of carbon sequestration and removal technologies) and society (e.g. GDP, food security) should be mandatory,

[12] IPCC, 2019, Global warming of 1.5°C, https://www.ipcc.ch/sr15/
[13] Woodside 2022 Climate Report, p11
[14] IIASA AR6 Scenario database, https://data.ene.iiasa.ac.at/ar6/#/about
[15] Glencore 2022 Climate Report, p10
[16] Glencore 2022 Climate Report, p10

	along with informing where the assumptions sit within the interquartile assumption range of scenarios with an equivalent temperature outcome. This demonstrates to readers that the assumptions used are not outliers, or unlikely values of the total range of possibilities (on the probability density function) . **Publicly available vs in-house scenarios** ACCR recommends use of the IEA scenarios for scenario analysis, given their granularity, reputation and the fact they are updated annually to reflect major events, such as Russia's invasion of Ukraine and the associated impacts upon the energy market. Noting that the IEA scenarios do not cover all commodities, publication of a common set of commodity prices for various scenarios could be helpful to give companies a way to assess and report impacts without disclosing commercially sensitive information. This would be optional and should not preclude issuers using alternative scenarios. A key focus of ACCR's research and advocacy is industry lobbying, and we would note that any government agency that publishes such scenario analysis assumptions would need governance systems in place that ensure it remains impartial.
PROPOSAL, transition planning and climate-related targets: from commencement, transition plans would need to be disclosed, including information about offsets, target setting and mitigation strategies.	Companies should disclose short, medium and long term emission reduction targets, along with details relating the baseline year, target coverage and metric specifics, such as whether targets are absolute or intensity targets. Companies should also disclose the expected timing and quantum of abatement that will be achieved through different activities, including: ● Renewable energy investment/procurement ● Fuel switching ● Retirement of carbon intensive assets ● Divestment of carbon intensive assets ● Carbon credits (including type, amount, price paid, project baseline details, monitoring arrangements and verification details) ● GHG removals It is ACCR's experience that companies in the fossil fuel sector are highly reliant upon unproven technologies, the use of carbon credits and asset divestment in transition plans. Whilst issues with carbon capture and storage (CCS) and offset market integrity are widely publicised and increasingly understood, the issues with asset divestment are discussed further below. **Asset divestment treated as decarbonisation** Companies using asset divestments to decrease scope 1 & 2 emissions are not delivering real world emission reductions. Rather, divestment is just a change of financial ownership. Whilst asset divestment may be a sensible business decision, it is not a meaningful abatement activity. It is expected

	that companies will apply the GHG Protocol Accounting Standards when disclosing the impact of asset divestment, meaning that the baseline year is adjusted to exclude the emissions of the divested asset. Furthermore, recent in-depth research on fossil fuel asset sales by supermajors from the Columbia Center on Sustainable Investment found that fossil fuel asset sales by the supermajors (the largest publicly owned oil and gas companies) do not just shift greenhouse gas emissions but may increase them.[17] For a sample of 46 assets: 'post-sale emissions intensities tended to be higher, indicating that, on average, assets operated less efficiently' after the sale. For 33 of the 46 assets in this sample, this percent change is positive: most transactions resulted in higher average emissions intensity in the year or years after the transaction year.'
PROPOSAL, transition planning and climate-related targets: From commencement, all entities would be required to disclose information about any climate-related targets (if they have them) and progress towards these targets.	As stated above, companies should be required to disclose short, medium and long term emission reduction targets, along with details relating the baseline year, target coverage and metric specifics, such as whether targets are absolute or intensity targets. **Claims that targets are science-based** Many listed corporations claim that their targets are science-based due to verification of the target by a paid consultancy (primarily big four audit firms), rather than an independent third party such as the Science-Based Targets Initiative. This leads to various inconsistencies around the treatment of scope 3 emissions, use of offsets and the chosen decarbonisation trajectory. At a minimum, the party that verified the target as "science-based" should be disclosed, along with detail on the methodology used to validate the claim, to enable users of the disclosures to assess the credibility of the claim. **Adjustment of targets and baselines** In accordance with the GHG Protocol, entities should be required to adjust baselines when structural changes are made to their business/portfolio - such as divestments, or as production sharing contracts evolve. The GHG Protocol requires each reporting company to define and quantify a set inventory of emissions resulting from "chosen organizational and operational boundaries" that define that company's reporting universe. Each company then establishes a "base year"—a year "for which verifiable emissions data [from the emissions inventory] are available"—and uses its base year as a reference point for future emissions reporting.[18] Companies are required to retroactively recalculate base year emissions when significant structural changes occur in the reporting organisation, such as mergers, acquisitions, or divestments. A company applying this recalculation standard and appropriately reporting its recalculations, as required by the GHG Protocol, would be unable to achieve material emissions reductions simply by offloading emissions from sold assets.

[17] https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1013&context=sustainable_investment, pp 5,6, 45, 49
[18] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf, p 101

PROPOSAL, risks and opportunities: from commencement, entities would be required to disclose information about material climate-related risks and opportunities to their business, as well as how the entity identifies, assesses and manages risk and opportunities.	ACCR supports the proposed requirements to 'disclose information about where risks and opportunities are concentrated in the entity's supply chain, the anticipated time horizon and metrics that help investors understand the scale and impact of risks and opportunities' (p15, Treasury). Specifically, disclosure of the following information would be useful: ● Major and minor infrastructure costs of replacement, locations and their vulnerability to increasing climate risks such as sea level rise, storm surge, higher intensity storms/cyclones etc - not just in Australia but around the world, costs of upgrade to withstand identified risks (i.e. increase cyclone ratings for buildings/infrastructure) ● This would be equally important for any "nature based solutions" that the company is relying on to meet their net zero obligations - what their risk of reversal is, i.e. with increase fire risks - what are the processes in place to re-capture emissions, there are financial costs associated with such events that need to be assessed and adequately disclosed. ● Projected increase in insurance premiums for related infrastructure ACCR notes that the release of the research by the Institute and Faculty of Actuaries and the University of Exeter that shows that financial services are using climate models that underestimate the climate risk.[19] These climate models do not incorporate climate impacts such as extreme weather, sea-level rise or mass migration. This will shape how entities quantify climate-related risks.
PROPOSAL, metrics and targets: From commencement, scope 1 and 2 emissions for the reporting period would be required to be disclosed.	**Comment on NGERS methodologies** ACCR notes that the methodologies set out in NGERS are based on assumptions that in some cases do not corroborate with international best practices nor are aligned with empirical observations (e.g. the quantification of fugitive methane emissions). While methodologies historically have been designed on the best estimates at the time, there has been significant progress on the quantification of greenhouse gases using observations and modelling techniques. The methods in NGERS should be updated to take these advancements into account. ACCR notes that the industries accountable for fugitive methane emissions, such as coal mining and oil and gas supply chain, have significant vested interest in the continued underreporting of methane. We expect that any effort to enhance methane accounting under NGERS will prioritise input from experts rather than industry. **Comment on inclusion of emissions from agricultural sources or land use, land use change and forestry** ACCR encourages the inclusion of emissions from land use and we note that this will interact with a range of land-based Australian Carbon Credit

[19] Trust, S et al., 2023, The Emperor's New Climate Scenarios. Limitations and assumptions of commonly used climate-change scenarios in financial services (link). This has also been identified by Stern, N. et al., 2022, The economics of immense risk, urgent action and radical change: towards new approaches to the economics of climate change, https://doi.org/10.1080/1350178X.2022.2040740

	Unit (ACCU) methodologies. It is recognised that this accounting is complex and a key reason for the delay in inclusion in NGERS. There are some questionable assumptions being embedded in land based ACCU methodologies, such as the method[20] for calculating additional soil carbon uptake, which appears to use assumed carbon uptake that is far outside the realm of possibility of what science says is possible.[21] So we note again that there will be commercial interests heavily focused on the way in which the GHG accounting evolves for land use, change and forestry and trust that input from experts will be prioritised over industry.
PROPOSAL, metrics and targets: disclosure of material scope 3 emissions would be required for all reporting entities from their second reporting year onwards. Scope 3 emissions disclosures made could be in relation to any one-year period that ended up to 12 months prior to the current reporting period.	Scope 3 emissions are critical to determining a complete picture of a company's climate risk exposure. ACCR queries the proposed delay in mandated disclosure of Scope 3 emissions for large heavy emitters as many already quantify and report on this. ACCR has a long-term focus on BHP, Rio Tinto, Woodside, Santos, AGL and Origin Energy and all of these ASX-listed companies already disclose Scope 3 emissions in their annual reporting. Scope 3 emissions, by their nature, include a diversity of emission sources, some of which are genuinely uncertain. However most global emissions are due to 'use of sold product' emissions from fossil fuel production and these emissions are relatively simple to calculate and are already reported by many fossil fuel producers (reported on a financial control (equity) basis in Annual Reports). For example; in their latest Annual Report[22] BHP disclosed both upstream and downstream Scope 3 emissions, along with their methodology for calculations.[23] Shell reports its Scope 3 emissions on both an equity basis and operational control basis on their website.[24] This level of transparency should become standard, as it allows investors to scrutinise the assumptions and analysis themselves. Whilst Scope 3 disclosures by the large resource and utility sector have been commonplace for multiple years, ACCR notes that this is not standard across all industries. A 2023 paper[25] investigating voluntary emissions disclosures found out of 13,169 companies across 90 jurisdictions, 87% of companies disclose both Scope 1 and 2 emissions, while only 6% disclosed scope 3 of their distributors (i.e. customers) with even less knowing anything about their downstream supplier emissions. This research demonstrates that companies voluntarily disclosing emissions had lower Scope 1 emissions but higher Scope 3 emissions than non-disclosing companies, further highlighting the importance of requiring Scope 3 emissions to be calculated using standardised methods and openly reported.

[20] https://www.legislation.gov.au/Details/F2021L01696
[21] Lam, S.K. et al., 2013, The potential for carbon sequestration in Australian agricultural soils is technically and economically limited. https://doi.org/10.1038/srep02179
[22] BHP Annual Report 2022, p 52, https://www.bhp.com/-/media/documents/investors/annual-reports/2022/220906_bhpannualreport2022.pdf
[23] BHP Scope 1, 2 and 3 Emissions Calculations Methodology, https://www.bhp.com/-/media/documents/investors/annual-reports/2022/220906_bhpscope12and3emissionscalculationmethodology2022.pdf
[24] https://www.shell.com/sustainability/transparency-and-sustainability-reporting/performance-data/greenhouse-gas-emissions.html
[25] Shi, Yilin and Tang, Christopher S. and Wu, Jing, Are Firms Voluntarily Disclosing Emissions Greener? (April 23, 2023), http://dx.doi.org/10.2139/ssrn.4426612

PROPOSAL, industry-based metrics: By end state, reporting entities would be required to have regard to disclosing industry based metrics, where there are well-established and understood metrics available for the reporting entity. (p17)	One of the fundamental problems with current disclosures is that issuers select metrics that present their entity in a favourable light. This reduces the comparability and decision-usefulness of these disclosures. As a case study, ACCR reviewed the draft IFRS S2 oil and gas metrics[26] and considers that these are insufficient. They do not, for example, include: ● scope 3 metrics ● the amounts of offsets (including the program and standard used, price paid, project specifics and how offsets are verified and assessed), divestment and CCS contributing towards the company's long term strategy and expenses ● key assumptions used for impairment testing All three of the above metrics should be required for reporting emissions reductions.
PROPOSAL, reporting location: Climate disclosures would be required as part of both the directors' report and the financial report.	Material financial issues belong in financial statements. Where climate-related disclosures are made outside of the audited financial statements, they should be subject to the same governance and assurance as the financial report including board certification, auditing, etc.
PROPOSAL, modified liability approach: Climate-related financial disclosure requirements would be drafted as civil penalty provisions in the Corporations Act. The application of misleading and deceptive conduct provisions to scope 3 emissions and forward-looking statements would be limited to regulator-only actions for a fixed period of three years	We note your secretariat's advice that the moratorium on liability is intended to be forward-looking, and intended only to affect causes of action based on disclosures made after the scheme commences. **ACCR strongly opposes any limitation on third-party rights**, and supports retaining third party rights to enforce misleading or deceptive conduct provisions. A moratorium on liability may inappropriately deny private litigants access to justice at a time when greenwashing is rampant[27] and climate action is critical. **Private litigation is needed** Per ASIC, greenwashing is a 'corrosive agent to market integrity and thus to fair, efficient and informed markets'.[28] We welcome ASIC's increased focus on greenwashing. Misleading information could skew the market in favour of companies that are not adequately responding to climate risks and, as a result, impede an effective and timely transition. While ACCR welcomes increased attention by regulators, given the pervasiveness of greenwashing, regulators are - by their own admission - not capable of enforcing all breaches. An adequate response to

[26] IFRS, 2022, [Draft] IFRS S2 Climate-related Disclosures Appendix B Industry-based disclosure requirements Volume B11—Oil & Gas–Exploration & Production, https://www.ifrs.org/content/dam/ifrs/project/climate-related-disclosures/industry/issb-exposure-draft-2022-2-b11-oil-and-gas-exploration-and-production.pdf
[27] ACCR, June 2023, 'Submission: Greenwashing Inquiry', https://www.accr.org.au/research/submission-greenwashing-inquiry/
[28] ASIC, May 2023, 'ASIC and greenwashing antidotes', https://asic.gov.au/about-asic/news-centre/speeches/asic-and-greenwashing-antidotes/

	greenwashing will require not only robust regulatory action, but support for private litigation by civil society members as well. ACCR is currently engaged in "greenwashing" litigation similar to that which may be prevented by the proposed moratorium. On 25 August 2021, ACCR commenced proceedings in the Federal Court of Australia against gas company Santos Ltd. ACCR alleges that in its 2020 Annual Report and other documents Santos engaged in conduct that is misleading or deceptive or likely to mislead or deceive, arising from Santos' statements to the effect that the natural gas it produces is a "clean fuel" and provides "clean energy"; and in relation to Santos' claim that it has a "clear and credible pathway" to Net Zero by 2040. The court case is ongoing. The ACCC welcomed ACCR's action, as well as that of other private litigants.[29] The proposal would prevent such actions for a period, inadvertently delaying climate action. **Sufficient protection is in place** We appreciate that there is some uncertainty inherent in the use of forward-looking information, and that disclosures need to be decision-useful. Liability needs to be allocated in proportion to this. In our view, the 'reasonableness' standard accommodates this proportionality requirement.[30] As in our previous submission (February 2023) to this inquiry, we refer to the recent legal opinion of barrister Sebastian Hartford Davis: 'Directors must make a genuine assessment as to the appropriateness of the forward-looking disclosure at the time it is made, but they will not face liability merely because their assessment later turns out to be incorrect'.[31] If directors are diligent, supported by capable management teams, and can demonstrate that their assessment of climate matters have a 'reasonable basis', then they will be sufficiently protected. **Company preparedness to disclose** The proposed disclosure regime allows reporting entities a year from its enactment to prepare to report on scope 3 emissions, on a reasonable basis. This is a long lead time. Australian reporting entities would be well aware that internationally, major regulators are already requiring such disclosures from their counterparts. It is clear from this government's December 2022 consultation paper that a form of mandatory scope 3 reporting is being considered, and is likely, giving entities further forewarning. Many companies are already reporting scope 3 emissions. Climateworks Centre found that 51% of the ASX 200 had reported at least "some, but not

[29] https://www.afr.com/companies/financial-services/accc-says-it-s-ready-to-pursue-greenwashers-20220615-p5atv7

[30] Corporations Act 2001 (Cth) s 796C - http://www5.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s769c.html

[31] ACSI, 'Advice regarding potential liability of directors under the ISSB draft standards for forward looking statements', https://acsi.org.au/wp-content/uploads/2023/02/Legal-opinion-on-ISSB-Draft-Standards.Feb23.pdf, p2

	all" of their scope 3 emissions.[32] 54 companies had fully disclosed their scope 3 emissions. Generally speaking, the level of disclosure has considerable variation, with some companies, particularly in the resource sectors, currently measuring and reporting scope 3 emissions, which is often the largest share of these companies' footprints. Further, many large and high-emitting companies are already making disclosures around emissions targets and transition plans. ACSI reports that 'Net Zero commitments are now the norm for Australian companies with $1.59 trillion or 70% of the ASX200's collective market capitalisation adopting net zero commitment'[33] and this group of companies is already subject to actions by third parties if these commitments are not made on a reasonable basis. **Shielding these companies from such actions for a period of time represents a step backwards.** **If temporary liability protections are pursued** If temporary liability protections are pursued, relief should be limited to declarations and injunctions in respect of third party actions for misleading or deceptive conduct in relation to scope 3 emissions disclosure. This represents an appropriate balance between protecting entities from liability for damages and retaining third party enforcement rights. Even a proposal to limit the application of misleading and deceptive conduct provisions to scope 3 emissions and forward-looking statements to regulator-only actions for 3 years necessarily assumes that the regulator that will bear sole responsibility for enforcement during the transition period is ready, willing and able to discharge this crucial function to an adequate standard. Consequently it would be helpful to receive information demonstrating ASIC's readiness and capacity in that regard.

[32] Climateworks centre, 2022, '1.5°C climate goal: How does the ASX200 stack up in 2022?', https://www.climateworkscentre.org/wp-content/uploads/2022/12/CWC_NZMT_How-does-the-ASX-stack-up_December-2022.pdf
[33] ACSI, July 2022, 'Promises, pathways & performance Climate change disclosure in the ASX200', https://acsi.org.au/wp-content/uploads/2022/07/ACSI-Research-Climate-Change-Disclosure-in-ASX200-July-2022.pdf, p5