



# Climate-Related Financial Disclosure Consultation Paper

Ampol Submission

17 February 2023



# Executive Summary

Thank you for the opportunity to respond to your Consultation Paper concerning climate-related financial disclosure (**Consultation Paper**).

Ampol supports the development and implementation of standardised, internationally-aligned requirements for disclosure of climate-related financial risks and opportunities in Australia.

Please find our detailed responses to your specific questions 1 to 19 enclosed with this submission on pages 4 to 12 below.

For further details or to answer any questions, please contact [REDACTED] Head of Sustainability and Climate Change, at [REDACTED]

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# 1. Cost and benefits of aligning with international practice

**Question 1:** What are the costs and benefits of Australia aligning with international practice on climate-related financial risk disclosure (including mandatory reporting for certain entities)? In particular:

- 1.1 What are the costs and benefits of meeting existing climate reporting expectations?
- 1.2 What are the costs and benefits of Australia not aligning with international practice and in particular global baseline standards for climate reporting?

Ampol supports the development and implementation of standardised, internationally aligned requirements for disclosure of climate-related financial risks and opportunities in Australia (**Climate Disclosure Requirements**).

It is Ampol's view that the Australian financial sector must provide transparency on climate-related matters in order to remain an attractive market for investors.

As an ASX-listed entity, together with a New Zealand Exchange listing as a Foreign Exempt Issuer, and operating in an international market, we have observed an increasing level of queries from international investors in relation to climate-related matters, including climate financial disclosure, and expect this will increase over time. As such, alignment to international standards should assist in attracting international capital to Australia .

Ampol believes that an internationally aligned climate-related financial disclosure regime in Australia would overall strengthen the efficiency, quality, transparency, consistency, comparability and reliability of local disclosures and support investors and local regulators by providing key decision-relevant information about the financial risks and opportunities that Australian reporting entities face from climate change.

Despite these benefits, Ampol considers the compliance and auditing cost for reporting entities to be significant, especially in the early stages of implementation. Compliance costs must be kept at a reasonable level and the new climate-related financial disclosure framework should aim to avoid fragmentation and duplication of sustainability reporting and instead consolidate and simplify any existing reporting standards and guidelines.

Ampol notes that workplace shortage issues and knowledge gaps in the Australian market may dampen the required resourcing efforts of reporting entities and independent assurers. We are concerned that without the necessary local talent pool available, reporting entities may be unable to meet their reporting obligations and receive adequate assurance (see Question 13).

We further see a risk that the costs and complexities of not aligning with international standards and best practice will, in the long run, be greater than any costs associated with international alignment. Australian entities that are required to comply with bespoke Australian standards for climate reporting instead of internationally aligned standards will be disadvantaged insofar as they

are unable to rely on and leverage the knowledge and experience from further progressed reporting jurisdictions internationally

## 2. Covered entities and timing

**Question 2:** Should Australia adopt a phased approach to climate disclosure, with the first report for initially covered entities being financial year 2024-25?

2.1 What considerations should apply to determining the cohorts covered in subsequent phases of mandatory disclosure, and the timing of future phases?

Ampol supports a phased approach to the introduction of climate disclosures to allow reporting entities to prepare including overcoming some of the challenges outlined in this submission. A phased approach should also prioritise the ability of organisations to obtain and provide quality information. This is especially relevant to the reporting of scope 3 emissions.

With respect to the timing of periodic reporting obligations, Ampol notes that the climate disclosure reforms should accommodate financial year reporting as well as calendar year reporting in order to allow reporting entities the flexibility to align any new Climate Disclosure Requirements with their current reporting practices.

**Question 3:** To which entities should mandatory climate disclosures apply initially?

3.1 What size thresholds would be appropriate to determine a large, listed entity and a large financial institution, respectively?

3.2 Are there any other types of entities (that is, apart from large, listed entities and financial institutions) that should be included in the initial phase?

As an ASX listed entity, Ampol expects to be captured in the first phase of any rollout of internationally aligned mandatory climate disclosure in Australia.

Ampol suggests implementing existing thresholds/ definitions under the *Corporations Act 2001* (Cth) for the categorisation of any entity as 'large and listed' instead of defining a new threshold for entities to measure against.

Ampol expects that, eventually, mandatory climate disclosures will apply to all Australian publicly listed companies to ensure investors have consistent data available to make informed decisions.

## 3. International alignment of disclosures

**Question 4:** Should Australia seek to align our climate reporting requirements with the global baseline envisaged by the International Sustainability Boards?

4.1 Are there particular considerations that should apply in the Australian context regarding the ISSB implementation of disclosures relating to: governance, strategy, risk management and/or metrics and targets?

#### 4.2 Are the climate disclosure standards being issued by the ISSB the most appropriate for entities in Australia, or should alternative standards be considered?

Ampol supports the Government's reform principles set out in the Consultation Paper and the alignment of domestic reporting requirements with ISSB reporting requirements (once these have been finalised). The adoption of ISSB standards will be a more natural progression/transition for entities who have already been reporting under the Global Reporting Initiative (**GRI**) or Taskforce on Climate-Related Financial Disclosures (**TCFD**) standards, as it is expected that the ISSB standards will build on these frameworks.

It is our view that the adoption of the ISSB standards is imperative for the development of a comprehensive global baseline of sustainability disclosures. Misalignment of local Australian reporting requirements with an internationally accepted global baseline would lead to significant compliance issues for multinational corporates and would discourage investor confidence (e.g. if investors fear that Australian reporting requirements lag behind global standards and do not provide them with sufficient and comparable information to make informed financial decisions). Further consultation rounds should clearly outline any proposed deviations from ISSB standards and justify why these deviations are necessary in the Australian context.

Despite Ampol's overarching view that the climate disclosure reforms should aim to consolidate and streamline existing reporting standards and guidelines and avoid fragmentation of sustainability reporting for efficiency reasons. In addition, alignment across jurisdictions where mandatory climate reporting already exists, like New Zealand, would make it easier to companies to comply across jurisdictions. ,

We believe that reporting under the National Greenhouse & Energy Reporting (**NGERS**) framework should remain separate from any newly introduced Climate Disclosure Requirements. This is because NGERS reporting has a fundamentally different purpose and much narrower focus. The NGERS framework is not an alternative 'standard' that is capable of consolidation/alignment, but a separate and discrete Australian regulatory requirement relating to the reporting of greenhouse gas emissions (Scope 1 and 2) and energy consumption only, for the purpose of informing government policy and measuring Australia's progress against international climate change commitments.

## 4. Regulatory framework for required climate disclosures

**Question 5:** What are the key considerations that should inform the design of a new regulatory framework, in particular when setting overarching climate disclosure obligations (strategy, governance, risk management and targets)?

It is Ampol's preference to incorporate the Climate Disclosure Requirements into the existing Corporations Act and Regulations regime, however noting the remarks we have made below regarding materiality and assurance. This will ensure all Australian companies are being captured/regulated on a level playing field.



## 5. Periodic reporting requirements

**Question 6:** Where should new climate reporting requirements be situated in relation to other periodic reporting requirements? For instance, should they continue to be included in an operating and financial review, or in an alternative separate report included as part of the annual report?

Ampol is of the view that the new climate-related financial disclosure framework should allow reporting entities the flexibility to choose whether to incorporate the new Climate Disclosure Requirements into the operating and financial review (**OFR**) part of their directors' report, or alternatively release a separate/ standalone report as part of the annual report.

With regard to the timing of the climate-related financial disclosure, entities should be free to choose between financial year reporting or calendar year reporting in order to align Climate Disclosure Requirements with their current reporting practices.

Ampol supports digital reporting, and believes that climate-related reporting should not contribute to the ongoing printing practices and printing costs for reporting entities. Ampol supports Treasury's argument that *"sustainability reporting presents an opportunity to embed digital reporting practices in sustainability disclosures from the outset"*.

## 6. Materiality and assurance of climate risks

**Question 7:** What considerations should apply to materiality judgements when undertaking climate reporting, and what should be the reference point for materiality (for instance, should it align with ISSB guidance on materiality and is enterprise value a useful consideration)?

The differences of materiality thresholds between the draft ISSB standards and the current Australian OFR requirements under the Corporations Act, as well as the likely impacts that an adaption of the ISSB guidance on materiality would have in the absence of clarification or adaption, were explored in detail in a legal advice by Herbert Smith Freehills (**HSF Advice**). The HSF Advice was commissioned by the Australian Institute of Company Directors (**AICD**) in connection with the AICD's submission to the Australian Accounting Standards Board's (**AASB**) Exposure Draft 321 concerning the ISSB's draft standards related to general sustainability related financial information and climate-related disclosures (**AICD Submission**).<sup>1</sup>

In summary, the HSF Advice found that the adaption of the ISSB's materiality threshold will lead to the undesired effect of turning climate/ sustainability reporting documents into sources of ongoing

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<sup>1</sup> HSF Advice *"Liability risks associated with the proposed ISSB Standards"* dated 13 July 2022, attached as Attachment D to the AICD Submission dated 15 July 2022: <https://www.aicd.com.au/content/dam/aicd/pdf/news-media/policy/2022/AICD-Submission-AASB-ISSB-Standards-July%202022.pdf>.

continuous disclosure obligations for reporting entities, in particular with respect to forward-looking statements that reporting entities are required to make under the ISSB. This would result in a requirement for reporting entities to closely monitor, and where necessary update, their climate/sustainability disclosure documents in order to prevent a false market from occurring.<sup>2</sup> Ampol shares these concerns and considers it necessary for the climate-related financial disclosure framework to stipulate/clarify that climate-related disclosure documents are not subject to Australia's continuous disclosure regime.

The HSF Advice explores Australia's current OFR reporting requirements and explains that Australian entities are subject to very limited requirements to make forward-looking statements in their OFR reporting,<sup>3</sup> and that the materiality judgment in relation to such forward-looking statements is generally grounded by an 'impact' on the achievement of stated outcomes.<sup>4</sup>

By contrast, the draft ISSB standards require a more granular disclosure of 'material information' about 'significant sustainability-related risks and opportunities', with the materiality threshold being determined by reference to whether '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', which is a test that is similar to the test for continuous disclosure in Australia.<sup>5</sup> We note that ISSB is preparing to issue updated guidance on materiality given the above challenges and these deliberations should be closely monitored.

For the reasons detailed above, Ampol is of the view that materiality should be defined by the company and continue to follow established precedents as per OFR reporting requirements.

**Question 8:** What level of assurance should be required for climate disclosures, who should provide assurance (for instance, auditor of the financial report or other expert), and should assurance providers be subject to independence and quality management standards?

Ampol is of the view that appropriate and robust external assurance of climate/sustainability reporting is paramount to the integrity of the climate-related financial disclosure framework. We believe that strict independence and quality management standards must apply to assurance providers. The additional administrative cost associated with external assurance is necessary to ensure the integrity of the climate-related financial disclosure framework.

The issue of workplace shortages and knowledge gaps in the Australian market in the short-and medium term must be addressed (see Questions 1 and 13). In addition, given that climate disclosures are quite different to traditional financial reporting in particular when it comes to scope 3 emissions and forward-looking statements, reasonable levels of assurance may not be appropriate.

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<sup>2</sup> HSF Advice, pages 2, 9-10.

<sup>3</sup> HSF Advice, page 9.

<sup>4</sup> HSF Advice, page 10 sets out current OFR requirements under section 299A of the Corporations Act, ASIC's guidance in Regulatory Guide 247 on Effective disclosure in an operating and financial review with respect to the materiality assessment forward looking representations and ASX Recommendation 7.4

<sup>5</sup> Ibid.



Given this, Ampol suggests a phased approach to introducing assurance with a focus on making it manageable and cost-effective for companies.

## 7. Reporting of metrics (incl emissions), offsets and transition plans

**Question 9:** What considerations should apply to requirements to report emissions (Scope 1, 2 and 3) including use of any relevant Australian emissions reporting frameworks?

The reporting of Scope 1 and 2 emissions has already become standard practice within the Australian context primarily due regulatory obligations set out under NGERs. Voluntary reporting of Scope 3 emissions is becoming increasingly important, however there are a number of potential complications associated with Scope 3 reporting which must be addressed. These include:

- Difficulty to measure scope 3 emissions (this is of particular relevance where upstream and downstream emission producing activities occur outside of Australia's jurisdiction);
- Risk of double counting/ under counting of emissions;
- Calculations are often based on third party data that the reporting entity has no oversight of/ cannot verify;
- Lack of robust and consistent datasets and metrics for the Australian market;

Given these challenges, Ampol believes that a phased rollout for mandatory scope 3 emissions reporting would be appropriate and would give policymakers the time required to develop a robust reporting framework. Requirements around assurance for scope 3 emissions will need to be realistic given the levels of uncertainty over data.

Ampol is a member of the Climate Leaders Coalition and played a role in the preparation of the Scope 3 Roadmap released last year, demonstrating our support to better understand, report and address Scope 3 emissions across the Australian economy.

**Question 10:** Should a common baseline of metrics be defined so that there is a degree of consistency between disclosures, including industry-specific metrics?

Ampol sees merit in the development of industry specific common baseline metrics for the Australian market. In particular, we believe that defining standardised Australian industry specific climate scenarios and assumptions would lead to greater credibility and consistency in reporting, which in turn would increase market confidence in the information that is being disclosed as well as greater comparability for investors and regulators who rely on the disclosed information.

In order to ensure the quality and integrity of such climate scenarios and assumptions, they should be developed by a specialist government agency with the requisite expertise.

**Question 11:** What considerations should apply to ensure covered entities provide transparent information about how they are managing climate related risks, including what transition plans they have in place and any use of greenhouse gas emissions offsets to meet their published targets?

Ampol does not object to the mandatory disclosure of transition plans and use of offsets to meet published targets. However, to help address concerns around the inherent uncertainty in connection with the making of forward-looking statements and commitments (refer to Question 15), Ampol is of the view that such disclosure requirements must not be unreasonably prescriptive/ burdensome and allow reporting entities the flexibility to advance and adjust their transition plans in order to account for and respond to advances in technology as well as changing market dynamics and globally accepted best practices around the use of offsets.

Ampol recommends the introduction of a safe harbour defence for forward-looking statements that were made in good faith and based on sound business judgment (refer to Question 15) and a carve out to the requirement to disclose information, where the information in question is commercially sensitive and its disclosure likely to result in unreasonable prejudice to the reporting entity or consolidated group.

**Question 12:** Should particular disclosure requirements and/or assurance of those requirements commence in different phases, and why?

Please refer to comments made above on assurance of scope 3 emissions.

## 8. Data and capability to support climate reporting

**Question 13:** Are there any specific capability or data challenges in the Australian context that should be considered when implementing new requirements?

13.1 How and by whom might any data gaps be addressed?

13.2 Are there any specific initiatives in comparable jurisdictions that may assist users and preparers of this information in addressing these challenges?

Ampol notes the Government's intention to roll out the climate-related financial disclosure framework for initially covered entities in the financial year 2024-25. However, the issue of workplace shortages and knowledge gaps in the Australian market in the short and medium term must be considered carefully before deciding on an official rollout date (refer to Question 1). Any newly introduced Climate Disclosure Requirements, including requirements involving third party assurance, need to keep step with the availability of relevant expertise. If mandatory Climate Disclosure Requirements are imposed in Australia, the reforms must allow for a sufficient transition period/ phased rollout in order to allow reporting entities and third party assurers to understand their new mandatory obligations and source staff with requisite skills.

## 9. Governance of supporting information for disclosures

**Question 14:** Regarding any supporting information necessary to meet required disclosures (for instance, climate scenarios), is there a case for a particular entity or entities to provide that information and the governance of such information?

No comment.

## 10. Proportionate application of liability

**Question 15:** How suitable are the 'reasonable grounds' requirements and disclosures of uncertainties or assumptions in the context of climate reporting? Are there other tests or measures that could be considered to ensure liability is proportionate to inherent uncertainty within some required climate disclosures?

Ampol is concerned about the inherent reputational and litigation risks associated with any requirements for reporting entities to make forward-looking statements and representations due to the requirement that representations as to future matters must be made on 'reasonable grounds'.

The draft ISSB standards require reporting entities to make estimations and predictions of the impacts of climate-related risks and opportunities, notwithstanding that those impacts are inherently unknowable and associated disclosures speculative in nature.<sup>6</sup> Reporting entities must rely on climate-related scenario analysis to assess their climate resilience,<sup>7</sup> which requires a reliance on inherently uncertain matters such as the development of future technologies, energy transition challenges, changing market dynamics and globally accepted 'best practices'. We see a high risk that forward-looking statements and associated speculative disclosures that reporting entities will be required to make under the new framework will be questioned as not being based on reasonable grounds, and therefore automatically taken to be misleading and deceptive. This is particularly concerning given Australia's facilitative class actions regime and heightened regulatory scrutiny of climate and sustainability claims.

Ampol is of the view that Australia's climate-related financial disclosure framework must include a protection from liability for disclosures which were made in good faith and based on sound business judgment. This can be achieved by the implementation of a safe harbour defence for forward looking statements (which currently exists in other jurisdictions). For example, in the US and Canada, liability

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<sup>6</sup> HSF Advice, page 5; referencing paragraph 79 of IFRS S1 which provides that "even a high level of measurement uncertainty would not necessarily prevent such an estimate from providing useful information. An entity shall identify metrics it has disclosed that have significant estimation uncertainty, disclosing the sources and nature of the estimation uncertainties and the factors affecting the uncertainties".

<sup>7</sup> IFRS S2 at [15].



can be excluded if the relevant forward-looking statement is identified as such and includes a proximate cautionary statement.

We believe that the inclusion of a safe harbour defence would strike the right balance between penalising misconduct and incentivising good faith disclosure. It would serve to remove the anxiety around reputational and legal risk for reporting entities and their directors.

## 11. Interaction with other reporting obligations

**Question 16:** Are there particular considerations for how other reporting obligations (including continuous disclosure and fundraising documents) would interact with new climate reporting requirements and how should these interactions be addressed?

As discussed in Question 7 above, there is a risk that the adoption of ISSB standards in Australia will lead to the undesired effect of turning periodic disclosure documents into sources of ongoing continuous disclosure obligations, leading to an onerous requirement for reporting entities to closely monitor and update their disclosure documents in order to prevent a false market from occurring. This can be avoided by clarifications on a domestic level that climate-related disclosure documents are not subject to Australia's continuous disclosure regime.

## 12. Sustainability reporting and digital reporting

**Question 17:** While the focus of this reform is on climate reporting, how much should flexibility to incorporate the growth of other sustainability reporting be considered in the practical design of these reforms?

Ampol believes that the climate-related financial disclosure framework should be kept as flexible as possible to allow for future incorporations/ adaptations of sustainability reporting requirements. Ensuring maximum flexibility will help to minimise the administrative cost of adopting future sustainability reporting requirements and will make the adoption of these requirements by reporting entities more seamless and efficient.

**Question 18:** Should digital reporting be mandated for sustainability risk reporting? What are the barriers and costs for implementing digital reporting?

Yes. Please see answer to Question 6.

## 13. Potential structures of financial reporting framework

**Question 19:** Which of the potential structures presented (or any other) would best improve the effectiveness and efficiency of the financial reporting system, including to support introduction of climate related risk reporting? Why?

Ampol does not have a strong view on the Potential Structures 1 or 3 but is opposing the establishment of a separate sustainability standards board (Potential Structure 2).

