FSC FINANCIAL SERVICES COUNCIL

19 December 2024

Ms. Claire LaBouchardiere
Senior Executive Leader
Companies & Small Business
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email: sustainable.finance@asic.gov.au

Dear Ms. LaBouchardiere

RE: Consultation Paper 380 and draft Regulatory Guide 000 on Sustainability Reporting

The Financial Services Council (**FSC**) welcomes the opportunity to make a submission to the Australian Securities and Investments Commission (**ASIC**) on Consultation Paper 380 and draft Regulatory Guide 000 on Sustainability Reporting (**RG 000**).

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, financial advice licensees and investment platforms. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing more than $3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

The FSC and its members support the new climate-related financial disclosures regime (**regime**). Fund managers and superannuation funds are in a unique position as both key reporting entities and primary users of sustainability reports. This gives the FSC and its members a unique perspective on the regime and a direct interest in facilitating its smooth implementation. As capital allocators, fund managers and superannuation funds will also be key influencers of how financial markets respond to climate risks and opportunities that are disclosed in sustainability reports.

The FSC is optimistic the regime will enhance investors' confidence in Australia, provided that it is implemented in a way which minimises ambiguities and improves investor certainty. To this end, the FSC regards ASIC's regulatory guidance as a key reference point to help fund managers, superannuation funds and the companies in which they invest understand and comply with their new obligations.

In this submission, the FSC queries ASIC's interpretation of the legislation regarding the thresholds applicable to RSEs, registered schemes and retail CCIVs. The FSC also sets out a series of recommendations to clarify ASIC's interpretation of the regime, suggest minor

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changes to its proposed enforcement approach and other related matters. The FSC also takes this opportunity to make some broader observations regarding the climate-related financial reporting regime and the applicable standards from the Australian Accounting Standards Board (**AASB**) and the Auditing and Assurance Standards Board (**AUASB**). This is done in the hope that ASIC's regulatory guidance can – when combined with the AASB and AUASB's standards – cover the field to minimise outstanding ambiguities for industry presently associated with the new regime. Filling these gaps would provide fund managers and superannuation funds greater certainty as to their obligations and, as major users of sustainability reports, facilitate their efficient allocation of capital on behalf of Australian investors.

The FSC would be happy to assist ASIC further. Please do not hesitate to contact me on jmorgan@fsc.org.au.

Sincerely

Jack Morgan
Policy Director, Investments and Funds Management

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1. List of recommendations

The FSC proposes several recommendations related to the contents of RG 000, the enforcement of the new regime and related matters. These are explored in greater detail in the body of the submission.

1.1. Recommendations for changes to ASIC's interpretation of the regime

The FSC recommends that ASIC:

Recommendation 1: Amend the draft regulatory guidance to provide a clearer delineation between entity level (RE and RSEL) and fund level (registered scheme and RSE) reporting responsibilities.

Recommendation 2: Update RG 000 to confirm that registered schemes, RSEs and retail CCIVs do not need to apply the revenue or employee tests set out in subsection 292A(3).

Recommendation 3: Provide further guidance on the application of determining revenue for the purpose of the thresholds set out in section 292A.

Recommendation 4: Clarify whether AASB 10 should be leveraged to provide definitions for the purpose of section 292A.

Recommendation 5: Enhance clarity on best practices for approaching consolidated reporting at an RSEL and RE level and set clearer expectations for what disclosures should be undertaken at a corporate entity (RSEL and RE) and fund (RSE and registered scheme) level.

Recommendation 6: Provide several worked examples of best practice reporting at a consolidated level for complex entities, including parent companies which own REs, RSELs and/or platforms.

Recommendation 7: Provide additional guidance to help companies identify whether they are an "*asset management*" firm under AASB S2 paragraph B61 and, if so, ASIC's expectations for how they should comply with that provision.

Recommendation 8: Confirm *ASIC Corporations (Related Scheme Reports) Instrument 2015/839* can continue to be used to group financial reporting by funds and may be used for the purpose of sustainability reporting.

Recommendation 9: Clarify its expectations for the disaggregation of scope 1 & 2 emissions across a consolidated accounting group's sustainability reports where it consists of an RE(s)/RSEL(s) and a registered scheme(s)/RSE(s).

Recommendation 10: Clarify the circumstances in which cross-referencing is permissible between sustainability (and related) reports by:

(a) different reporting entities which are related parties;

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(b) related entities or schemes within different consolidated entities (for example, an RE is within the consolidated reporting entity but the registered schemes of which it is RE is not); and
(c) unrelated reporting entities with other close relationships, such as where funds use mandates to enlist external managers to allocate capital.

Recommendation 11: Confirm the extent of cross-referencing permitted between an entity's sustainability reports and PDSs.

Recommendation 12: Clarify how scope 3 emissions reporting obligations interact with routine fund management activities involving external trustees or trust arrangements.

Recommendation 13: Indicate how a platform can or should determine their reporting boundary. We recommend that platforms should be characterised as engaging in '*asset administration'* rather than '*asset management'*.

Recommendation 14: Confirm platforms do not quality as reporting entities and clarify whether the revenue and assets held by platforms which are not reportable entities are attributable to their operator or trustee for the purpose of the thresholds set in section 292A.

Recommendation 15: Clarify the operation of the $5 billion assets under management threshold for classification as a Group 2 entity.

Recommendation 16: Provide insight into its approach to applying the Group 2 $5 billion threshold where unexpected events cause a fund to become a Group 2 entity near the end of a reporting period.

Recommendation 17: Give practical guidance on situations where ASIC considers it would be appropriate to determine that there is '*undue cost or effort*' and situations where it would be appropriate to rely on estimates.

Recommendation 18: Provide clear guidance on financial materiality thresholds for climate risks and opportunities.

Recommendation 19: Indicate the frequency with which internal financial materiality assessments should be conducted.

Recommendation 20: Clarify the disclosure obligations of non-listed entities and ensure that additional requirements on non-listed entities such as continuous disclosure are not inadvertently imposed.

Recommendation 21: Provide guidance as to the frequency of climate-related financial disclosures to financial markets.

Recommendation 22: Clarify how reporting entities should approach director declarations that reasonable steps have been taken to ensure the sustainability report is in accordance with the Corporations Act.

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Recommendation 23: Confirm that any Protected Statements replicated in the OFR and s 710 Prospectuses are subject to the modified liability regime because they are statements that are "*required by law*" pursuant to s 1707D(1)(b).

Recommendation 24: Allow for the application of the modified liability protection in replicated statements in investor-facing communications (such as investor presentations).

Recommendation 25: Consider a phased approach to imposing higher expectations for the disclosure of climate information in PDSs.

Recommendation 26: Provide guidance on how entities should be considering climate materiality under Australian law e.g. under sections 299A, 1013D and 710.

Recommendation 27: Clarify whether its views on the selective use or reproduction of information contained in a sustainability report apply to corporate documents prepared for internal use.

Recommendation 28: Provide more granular guidance on the "*reasonable grounds*" needed for forward-looking climate statements.

Recommendation 29: Acknowledge in its approach to enforcement that forward-looking climate statements are particularly difficult for fund managers and superannuation funds while the new regime is being phased in.

Recommendation 30: Amend RG 000.98 "*all entities*" to "*all reporting entities*", to clarify AASB S2 is only mandatory for reporting entities.

Recommendation 31: Consider ways to ensure its proposed report labelling system can be maintained without compromising the interoperability of Australia's climate-related financial disclosures regime.

Recommendation 32: Clarify the treatment of any entity which ceases to be registered during a financial year.

Recommendation 33: Clarify the impact of the regime's phased implementation arrangements on the breadth of certain reporting obligations.

See Part 3 below for more details.

1.2. Recommendations for ASIC's approach to enforcement and its new powers under the regime

The FSC recommends that ASIC:

Recommendation 34: Take a facilitative approach to enforcement.

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Recommendation 35: Take a facilitative (or alternatively, "*proportionate and pragmatic*") compliance approach to reporting by Group 2 and Group 3 entities for an extended period.

Recommendation 36: Provide examples of situations where ASIC considers its discretion to grant relief from sustainability reporting and audit obligations under section 342(1) may be enlivened.

See Part 4 below for more details.

1.3. Related Recommendations

The FSC recommends that ASIC:

Recommendation 37: Implement industry-specific guidance to help institutional investors comply with their obligations under the climate-related financial disclosures regime.

Recommendation 38: Update existing ASIC guidance material to reflect ASIC's expectations on climate-related disclosures.

See Part 5 below for more details.

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2. Background

2.1. The role of fund managers and superannuation funds

Fund managers and superannuation funds are stewards of the savings of millions of Australians and are key allocators of capital in the Australian economy. They have an important role as fiduciaries in seeking to maximise the returns of their investors. There is a recognition that climate-related risks and opportunities may have a material impact on the financial returns of investments. As such, the information from a climate-related financial disclosure regime will help funds to price in the financial risk that climate change poses to investments, as well as climate-related opportunities for financial return. It will enable more efficient allocation of capital, providing investors with more reliable and consistent data over time to identify where there are material investment risks and opportunities created by climate change, potentially impacting an investee company's cash flows, business operations and strategy, and therefore the valuation investors attribute to that company.

2.2. The new regime and its role

In September 2024, the Australian Parliament passed the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024* which, among other measures, implemented Australia's climate-related financial disclosures regime.

A climate-related financial disclosure regime is vital in helping Australia to achieve its bi-partisan national emissions reduction target of net zero emissions by 2050, which will need to be largely financed by the private sector, as acknowledged by the Government's Sustainable Finance Roadmap. It will contribute to the resilience of the Australian economy by requiring large Australian companies and emitters to turn their mind to and prepare for any material risks climate change poses to their business and operations, including their physical assets, supply chains, or transition risks from technological change and changing consumer preferences as more jurisdictions and companies globally seek to align their activities with a temperature increase below 1.5°C as aspired to in the Paris Agreement.

It is also important that Australia aligns with international developments to be competitive as an attractive investment destination for climate-risk and opportunity aware capital. We consider that the reforms align well with the International Financial Reporting Standards (**IFRS**) Sustainability Disclosure Standards (also known as the **ISSB Standards**), which have become the internationally recognised sustainability disclosure standards with which jurisdictions should seek to align. Jurisdictions such as the European Union, UK, Canada, New Zealand, Singapore and Hong Kong already have in place or are in the process of implementing a mandatory climate-related financial disclosures regime. We also note that many Australian companies already produce climate-related financial disclosures voluntarily. According to KPMG, as of June 2023, 78% of ASX 100 companies report against the

Taskforce on Climate-related financial disclosures (**TCFD**).[1] ACSI reported that as of August 2023, 75% of the ASX200 report against the TCFD.[2] However, the quality of voluntary disclosures can vary with inconsistency in the use of scenario analysis and metrics, adding to the cost for investors in assessing disclosures. Having a mandatory regime will help to streamline reporting, especially for global entities, reducing the burden on reporting entities from multiple and various requests for climate-related information from investors, data providers, regulators, and other stakeholders.

We recognise that this regime will be a big step up for Australian companies, requiring across the economy the development of skills, governance processes, data, and auditing capability. We believe the legislative regime seeks to strike the right balance in requiring disclosures that are meaningful and useful for investors, allowing for the improvement of the quality of disclosures over time, phasing in disclosure requirements for different sized companies and scope 3 emissions, and providing flexibility for preparers of disclosures so that they can report without undue burden and with the data or information available to them at the time of reporting. However, significant ambiguity remains. While this is partly to be expected with a nascent regime, we submit that ASIC's guidance can in certain areas provide important clarity now to help reduce regulatory uncertainty.

As the legislative regime is phased in, ASIC will play a key role in undertaking market surveillance and enforcement activities. As part of this, ASIC's draft regulatory guidance will be an important resource for fund managers, superannuation funds and the companies in which they invest.

2.3. Staged implementation of the new regime

As observed by ASIC Chair Joe Longo, the climate-related financial disclosures regime is a "*once-in-a-generation change*", which requires a "*step up in capability*". Mr Longo acknowledged there will be challenges associated with "*some aspects of the proposed standards*".[3]

Indeed, as the regime is phased-in from 1 January 2025, a key challenge will be the shallowness of market capabilities in accounting, audit and assurance with respect to climate reporting. It will take time to build expertise and capability in these areas and to get fund managers, superannuation funds and the broader market accustomed to this new dimension of financial reporting. It is for this reason that Parliament:

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[1] KPMG, Status of Australian Sustainability Reporting Trends (June 2023) page 2.
[2] ACSI, Promises, Pathways & Performance Climate Change Disclosure in the ASX200 (August 2023) page 4.
[3] Joe Longo, Speech to Deakin Law School (22 April 2024).

- designed the regime to be phased-in over time;
- gave the AASB and AUASB discretion to phase in auditing and assurance requirements; and
- provided for modified liability settings during initial years of the regime.

In addition, the FSC recognises that ASIC has indicated it will be taking "*a proportionate and pragmatic approach to supervision and enforcement as the requirements are being phased in*".[4]

2.4. Remaining ambiguities around the regime

The FSC acknowledges the significant time and effort expended by the Treasury, ASIC, AASB, AUASB and Government in designing the regime and getting the architecture of the current laws, standards and draft guidance to their present stage.

The FSC is sensitive to the fact that, as acknowledged by Mr Longo:

> *"the implementation of mandatory climate disclosure isn't the end – it's the beginning […] there will be some aspects of [climate-related financial disclosures] where ASIC may need to wait and observe market practice and regulatory developments before we can provide more detailed guidance."*[5]

In engaging with ASIC and the AASB, it has become apparent that the AASB (and perhaps ASIC) is still in the process of determining its precise role under the new regime. There is a real risk that when market participants raise certain concerns with the AASB they are referred to ASIC and when they raise the same concerns with ASIC they are referred back to the AASB.

It has also become apparent that the AASB considers its sustainability standards should play a principles-based and non-prescriptive role, with market participants left to interpret a number of provisions which are open to diverse interpretation. As such, there remain significant ambiguities arising from the AASB's standards as well as the broader regime.

In these circumstances, the FSC strongly considers there to be significant merit in ensuring ASIC's regulatory guidance covers the field to minimise remaining ambiguities. The recommendations which follow are made in the hope of helping to fill such gaps. This would provide fund managers and superannuation funds greater certainty as to their obligations and, as major users of sustainability reports, facilitate their efficient allocation of capital on behalf of Australian investors.

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[4] RG 000.24.

[5] Joe Longo, Speech to Deakin Law School (22 April 2024).

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3. Recommendations for changes to ASIC's interpretation of the regime

3.1. Entity versus fund level reporting

The FSC recommends that ASIC:

Recommendation 1: Amend the draft regulatory guidance to provide a clearer delineation between entity level (RE and RSEL) and fund level (registered scheme and RSE) reporting responsibilities.

Section 292A of the *Corporations Act 2001* (Cth) sets out the thresholds for capturing different entities as Group 1, 2 or 3 reporting entities. This section is applicable to corporations and captures responsible entities (**REs**) and registrable superannuation entity licensees (**RSELs**).

However, in section 292A it is only subsection (6) which refers to registered schemes, registrable superannuation entity (**RSEs**) and retail corporate collective investment vehicles (**CCIVs**) (capturing them through the $5 billion assets under management threshold). The other subsections refer to entities, which in the FSC's view does not capture registered schemes, RSEs or CCIVs themselves.

The application of section 292A is refined by section 1707B which clarifies that registered schemes and RSEs are not capable of being Group 1 entities.

The FSC's view is that section 292A is drafted to capture trustees (REs or RSELs) as Group 1, 2 or 3 entities, subject to their size, whereas underlying funds (registered schemes or RSEs) themselves are only captured by the legislation if they meet the $5 billion threshold in Group 2. This reading reflects the underlying trust structures. The asset, revenue and employee thresholds, while applicable to a corporate entity/trustee (including an RE and RSEL) cannot be applied to the underlying trust (a registered scheme or RSE) which is administered by the corporate entity/trustee. This is because the trust structure operates so that the registered scheme/RSE never actually owns assets, receives revenue or employs staff: it is rather the RE/RSEL which owns assets, receives revenue and employs staff. For more information on the issues with applying the asset, revenue and employment thresholds to a registered scheme and RSE, see recommendations 2 to 4, 15 and 16 below.

For instance, an RE with assets of $100 million, revenue of $50 million and over 250 employees might administer a registered scheme with assets under management of $2.6 billion. Under the above interpretation, the RE would be a Group 3 entity (meeting the asset, revenue and employee limbs of the threshold) whereas the registered scheme would not. Similarly, if the registered scheme in this example had assets under management over $5 billion, under the above interpretation both the RE and the registered scheme would be

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Group 2 entities. The RE would be considered a Group 2 entity because it would pass the employee and assets limbs of the test (after assets under management are attributed to it to reflect the underlying realities of the trust structure).

As we have previously stated in our earlier submissions to ASIC and the AASB, the FSC believes that industry would benefit from clarity around what is reportable at the RE/RSEL level where they meet the relevant general thresholds, and what is reportable at the registered scheme/RSE level where they meet the relevant registered scheme/RSE thresholds. Where an RE/RSEL meets the relevant general thresholds but some of the schemes it administers do not meet the $5 billion assets under management threshold, it would be useful to have clarity around reasonable reporting expectations for those individual schemes.

If ASIC disagrees with this interpretation of the regime, the FSC also respectfully suggests that RG 000.34(b) be amended to expressly clarify that, due to the operation of section 1707B, registered schemes and RSEs are not capable of being classified as Group 1 entities.

3.2. Application of reporting thresholds

The FSC recommends that ASIC:

Recommendation 2: Update RG 000 to confirm that registered schemes, RSEs and retail CCIVs do not need to apply the revenue or employee tests set out in subsection 292A(3).

The regime sets out thresholds which entities are required to apply to determine whether they are required to prepare a sustainability report, as well as timing for implementation.

There is currently a disconnect between the legislation, the Explanatory Memorandum and, consequently, RG 000. The legislation stipulates in section 292A(1)(b) that an entity is required to prepare a sustainability report if it meets "*subsection (3), (5)* ***or*** *(6)*" (emphasis added).

Paragraph 4.44 of the Explanatory Memorandum states that:

> *"An entity that is an asset owner that meets the corporate size thresholds in subsection 292A(3) must prepare a sustainability report, even if it does not meet the requirements of subsection 292A(5) (regarding NGERs registered corporations) or 292A(6) (regarding asset thresholds)."*

However, the Explanatory Memorandum also states within the section regarding '*large entities*' in paragraph 4.68 that the $5 billion threshold is designed to capture "*large asset owners that do not otherwise have employees or traditional sources of revenue.*"

The EM does not further explain what would be considered '*traditional'* sources of revenue, which appears to be an acknowledgement of how ambiguous the concept of '*revenue'* can be for a registered scheme or RSE, particularly as it relates to the consideration of realised and unrealised gains and losses, which can fluctuate significantly on a daily basis depending on market movements. Recommendations 3 and 4 of this submission sets out further detail on the ambiguity in current accounting standards regarding the concept of revenue for a registered scheme or RSE.

For the reasons set out at recommendations 1, 3 and 4, the FSC maintains that a registered scheme, RSE or CCIV cannot have employees or revenue due to its trust structure. They therefore cannot meet the test in subsection 292(3) because they can only meet one out of three tests (the gross assets test), and therefore, a registered scheme, RSE or CCIV should only apply the $5 billion test for Group 2.

It is recommended that ASIC states clearly in the asset owner threshold guidance that asset owners are not required the apply the revenue and employee tests.

3.3. Clarifying "revenue" in reporting thresholds

The FSC recommends that ASIC:

Recommendation 3: Provide further guidance on the application of determining revenue for the purpose of the thresholds set out in section 292A.

Greater clarity on the revenue threshold in section 292A is required. The revenue test for asset owners is problematic because of the lack of clarity regarding the concept of revenue for a registered scheme or RSE. Revenue can also fluctuate significantly depending on market movements.

The concept of revenue for a fund creates the following problems and questions:

1. How does a fund account for instances where revenue may fluctuate greatly year to year because of realised and unrealised gains/losses;
2. Do RSEs and MISs have revenue as defined under accounting standards; and
3. How does "*consolidated revenue*" get determined when applying the investment entity exemption in AASB 10 (addressed in recommendation 4 below)?

Year-to-year revenue fluctuation

For most registered schemes and RSEs, the predominant driver of revenue is the recognition of realised and unrealised gains and losses. These balances can swing drastically year-to-year, making it difficult for an RE or RSEL to plan for whether they meet the consolidated revenue thresholds set out in section 292A. Since investment markets can

have large swings day-to-day, month-to-month and year-to-year, impacting recognised realised and unrealised capital gains and losses, there will be many instances in which an RE or RSEL will be unsure whether they will meet the applicable revenue reporting thresholds once the applicable revenues from the performance and fees from registered schemes or RSEs are attributed to them. If ASIC does not accept recommendations 1 and 2 and maintains that registered schemes and RSEs are subject to additional thresholds for becoming reporting entities, industry would also benefit from clarification on this point.

Below is an example of the number of registered schemes/RSEs caught by an FSC member company in FY24 compared to FY22:

	30 June 2024 (a "good" performance year)	**30 June 2022 (a "bad" performance year)**
Group 2	26	1
Group 3	111	8

Further, given the requirement is to make threshold assessments at the end of the financial year, entities that are on the border line can practically only make an assessment as to whether they are covered by the sustainability reporting regime after finalising their financial report. This is problematic as the legislation requires the concurrent issue of the financial report and sustainability report.

To reduce uncertainty, the FSC submits there would be significant benefit in additional guidance from ASIC to assist REs and RSELs with planning their compliance with the revenue limb of the reporting thresholds. The FSC also suggests that ASIC may wish to give further consideration to how its "*proportionate and pragmatic*" approach to enforcement might be applied in the future beyond the expiry of the modified liability periods. There is also potential for ASIC to provide guidance on how it might consider such circumstances when deciding to grant relief from sustainability reporting under section 342(1) (see part 4 below).

ASIC may also wish to consider applying a three-year rolling average revenue threshold. Such an approach would make it more difficult for entities to slip in and out of the regime on a year-to-year basis. Furthermore, at least for the first few years of the regime, ASIC may wish to consider its position (set out in RG 000.172) of only rarely giving reporting entities an extension of time to lodge sustainability reports, particularly in the case of entities which are on the border line of reporting thresholds. In addition, industry would also benefit from clarification as to what happens in years where an investment market is negative and therefore an RSE or registered scheme has large realised and unrealised losses which make the "*revenue*" of the entity negative. There is a strong case for arguing that the definition of "*revenue*" should exclude realised and unrealised capital gains and losses to avoid these sorts of fluctuations, and therefore focus on interest and dividend income.

Definitional issues

We note that question F1 of Consultation Paper 380 seeks views on whether ASIC guidance should address how to determine revenue, employees and assets thresholds in the context

of the sustainability reporting regime and that section 292A refers to "*revenue*". Unfortunately, the AASB's standards leave significant ambiguity as to how (in particular) revenue is calculated.

An accounting standard predating the climate-related financial disclosures regime, AASB 15 (Revenue from Contracts with Customers), defines revenue as *"income arising in the course of an entity's ordinary activities"* and defines income as:

> *"increases in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in an increase in equity, other than those relating to contributions from equity participants."*

This creates a situation where, while all revenue is treated as income, not all income is treated as revenue.

Turning to REs and RSELs specifically, the main sources of "*income*" (noting this income attaches to the ultimate beneficiary and not the corporate entity/RE/RSEL) include:

1. Interest income;
2. Dividend income;
3. Realised gains or losses resulting from the disposal of financial instruments;
4. Unrealised gains or losses resulting from the change in fair value from the original purchase price of financial instruments; and
5. Other income (e.g. securities lending) (note the following analysis will exclude this revenue stream).

The FSC notes there is uncertainty among registered schemes and RSEs as to whether these four main income streams will be treated as revenue for the purpose of section 292A, raising questions about the precise criteria for becoming a reporting entity.

The difference between revenue and income is the subject of longstanding debate in accounting. For instance, in 2016 the International Accounting Standards Board's staff prepared a paper which states:[6]

> *"4.29 The definition of income encompasses both revenue and gains. Revenue arises in the course of the ordinary activities of an entity and is referred to by a variety of different names including sales, fees, interest, dividends, royalties and rent.*
>
> *4.30 Gains represent other items that meet the definition of income and may, or may not, arise in the course of the ordinary activities of an entity. Gains represent increases in economic benefits and as such are no different in nature from revenue. Hence, they are not regarded as constituting a separate element in this Conceptual Framework.*

[6] IASB, Staff paper re definitions of income and expenses (June 2016) page 22.

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> *4.31 Gains include, for example, those arising on the disposal of non-current assets. The definition of income also includes unrealised gains […]"*

The FSC recommends resolving this uncertainty through clear guidance to ensure entities can determine whether they satisfy the revenue limb of the thresholds in section 292A or making it clear that this section does not apply to registered schemes or RSEs (see recommendations 1 and 2).

3.4. Clarify the application of AASB 10

The FSC recommends that ASIC:

Recommendation 4: Clarify whether AASB 10 should be leveraged to provide definitions for the purpose of section 292A.

If ASIC does not accept recommendations 1 and 2 and maintains that registered schemes and RSEs are subject to additional thresholds for becoming reporting entities, it is important to note that subsection 292A(3) refers to "*consolidated revenue*" and "*consolidated gross assets*" in setting reporting thresholds. Subsection 292A(7)(b) further states that:

> "*consolidated revenue, the value of consolidated gross assets and the value of assets are to be calculated in accordance with accounting standards in force at the relevant time*".

Unfortunately, AASB S2 does not provide a definition for "*consolidated revenue*", however an accounting standard predating the climate-related financial disclosures regime, AASB 10 (Consolidated Financial Statements) (**AASB 10**) indicates:

> *"31 Except as described in paragraph 32, **an investment entity shall not consolidate its subsidiaries or apply AASB 3 when it obtains control of another entity**. Instead, an investment entity shall measure an investment in a subsidiary at fair value through profit or loss in accordance with AASB 9.*
>
> *32 Notwithstanding the requirement in paragraph 31, if an investment entity has a subsidiary that is not itself an investment entity and whose main purpose and activities are providing services that relate to the investment entity's investment activities (see paragraphs B85C–B85E), it shall consolidate that subsidiary in accordance with paragraphs 19–26 of this Standard and apply the requirements of AASB 3 to the acquisition of any such subsidiary.*
>
> *33 A parent of an investment entity shall consolidate all entities that it controls, including those controlled through an investment entity subsidiary, unless the parent itself is an investment entity."*

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The definition of "*investment entity*" is likely to capture many RSEs and registered schemes:

> *"A parent shall determine whether it is an investment entity. An investment entity is an entity that:*
>
> > *(a) obtains funds from one or more investors for the purpose of providing those investor(s) with investment management services;*
> >
> > *(b) commits to its investor(s) that its business purpose is to invest funds solely for returns from capital appreciation, investment income, or both; and*
> >
> > *(c) measures and evaluates the performance of substantially all of its investments on a fair value basis."*

The FSC considers that it would be desirable for registered schemes and RSEs to be able to apply the investment entity exemption in AASB 10 in determining consolidated revenue and gross assets. The FSC notes there is some residual uncertainty about the applicability of AASB 10 in these circumstances and requests clarification in the draft regulatory guidance.

3.5. Consolidated reporting

The FSC recommends that ASIC:

Recommendation 5: Enhance clarity on best practices for approaching consolidated reporting at an RSEL and RE level and set clearer expectations for what disclosures should be undertaken at a corporate entity (RSEL and RE) and fund (RSE and registered scheme) level.

Recommendation 6: Provide several worked examples of best practice reporting at a consolidated level for complex entities, including parent companies which own REs, RSELs and/or platforms.

Another key issue, closely related to the above, is what is expected to be reported at the corporate entity level (RE or RSEL) versus the fund level (registered scheme or RSE). The FSC submits it is desirable to allow for consolidated reporting for fund managers and superannuation funds that have a variety of corporate structures. Generally, there should be flexibility to allow an RSEL and RE to report on behalf of their underlying RSEs and registered schemes (which meet the threshold for Group 2 reporting) in one consolidated report, including where the registered schemes are outside the consolidated reporting group. Where an Australian parent corporation has several RSELs and REs underneath it, the corporate group should be able to produce one consolidated report.

The FSC would welcome further guidance from ASIC as to what it expects should be disclosed at an entity level and a fund level. It would also be helpful if ASIC's guidance was to set out several worked examples of how reporting should occur at a consolidated level for complex entities, including parent companies which own REs, RSELs and/or platforms, such as the hypothetical consolidated group structure at Attachment 1.

For example, in a house of investment boutiques model a parent entity typically owns 100% of boutiques (different registered schemes and REs) where the boutiques have full autonomy of investment decisions. It would be helpful for industry to understand how ASIC expects reporting to be consolidated and presented in these circumstances. The FSC recommends that some flexibility be allowed for the presentation of information.

We suggest that any guidance should recognise that in climate-related financial reporting for REs and RSELs, the RE or RSEL (the entity level) should consider their material climate risks and opportunities. In considering their material climate risks and opportunities, regard should be had to the assets under management and how climate risk might affect the entity's prospects. Climate-related financial disclosures for an RE and RSEL will therefore also include both entity level disclosures and registered scheme or RSEs level disclosures (reflecting their assets under management). The RE or RSEL should determine the form of disclosure that makes sense for its business model and operations. We have previously suggested that guidance could provide the following at the corporate entity and fund level:

- Entity or RE/RSEL level: The focus at the corporate entity level would be on the climate-related risks and opportunities both with respect to fees earned and any impact on assets under management. Certain disclosures which would be consistent across the entity and all its underlying funds could include the scenario analysis applied, transition plan, governance, risks and opportunities.
- Fund or registered scheme/RSE level: The focus at the fund level would be on the climate-related risks and opportunities relating to the assets of the fund, the value of portfolio companies/value of the total assets and the returns delivered to members/investors. Disclosures specific to the underlying fund could focus on portfolio metrics, for example reporting on the emissions of portfolio companies.

It is also important to note that AASB S2 requires an asset manager to disclose both the scope 3 emissions on a financed emissions and on an assets under management basis. Since the assets under management of an RE/RSEL would fall under its owned assets for the purpose of the thresholds, there is a risk for double-counting to occur. A worked example on how to address this issue would be instructive.

It is also important to ensure that any additional guidance for complex reporting entities does not create unintended consequences for simpler reporting entities. For example, where a holding company is a Group 1 entity and its diverse subsidiaries include a single Group 2 registered scheme, it would be undesirable for the guidance for complex consolidated reporting arrangements to introduce unnecessary complexity into the holding company's

sustainability reporting or modify the phased implementation of reporting obligations for Group 1 and Group 2 entities.

Recommendation 7: Provide additional guidance to help companies identify whether they are an "*asset management*" firm under AASB S2 paragraph B61 and, if so, ASIC's expectations for how they should comply with that provision.

The FSC notes that AASB S2 at paragraph B61 makes provision for specific additional disclosures by asset managers:

> *An entity that participates in asset management activities shall disclose:*
>
> *(a) its absolute gross financed emissions, disaggregated by Scope 1, Scope 2 and Scope 3 greenhouse gas emissions.*
> *(b) for each of the disaggregated items in paragraph B61(a), the total amount of assets under management (AUM) that is included in the financed emissions disclosure, expressed in the presentation currency of the entity's financial statements.*
> *(c) the percentage of the entity's total AUM included in the financed emissions calculation. If the percentage is less than 100%, the entity shall disclose information that explains the exclusions, including types of assets and associated amount of AUM.*
> *(d) the methodology used to calculate the financed emissions, including the method of allocation the entity used to attribute its share of emissions in relation to the size of investments.*

Asset management activities that a reporting entity may carry out include activities such as:

- Acting as the trustee of an unregistered wholesale trust;
- Acting as the RE of a registered scheme;
- Acting as the investment manager in relation to a portfolio of assets held by a third party client (for example, acting as the investment manager of the Australian equities sleeve of a third party RSE, which may include working with the client's custodian to execute trades);
- Acting as a model portfolio manager, whereby it stipulates (and periodically rebalances) a 'notional' strategic asset allocation for a third party client (for example, a wealth advisory business) which is implemented by the client for its underlying client accounts; and
- Other business activities (e.g. providing research or technology services, consultancy services, owning or leasing property, potentially holding balance sheet assets or investments etc).

Attachment 1 contains a diagram which sets out a hypothetical consolidated group structure. It would be instructive if ASIC could address these questions in the context of a complex corporate structure of such a nature. The FSC also considers that industry would benefit

from clarification on the meaning of terms such as *'entity', 'asset management activities'* and '*financed emissions'*.

If the "*Corporate Entity*" in Attachment 1 meets the corporate thresholds, the question arises: *which activities and financed emissions are included in the gross figure for the purposes of B61?*

For instance:

- Are trust assets (both wholesale and registered) included? Noting that the beneficial ownership of those assets sits with the investors of the trust and those assets are segregated from the assets of the Corporate Entity itself.
- Are third party assets managed by the Corporate Entity included? Noting that the assets are not legally or beneficially owned by the Corporate Entity, however the Corporate Entity is acting as agent.
- Are 'notional' assets that are under advice by the Corporate Entity included? Noting that model portfolios and other advisory services are on 'paper only'.

The FSC considers that the complexity of the regime increases greatly (and the utility of the 'asset owner' thresholds decreases) if the scope is broad enough to capture these activities, but further guidance from ASIC is essential to ensuring robust compliance.

3.6. Existing consolidated financial reporting arrangements for funds

The FSC recommends that ASIC:

Recommendation 8: Confirm *ASIC Corporations (Related Scheme Reports) Instrument 2015/839* can continue to be used to group financial reporting by funds and may be used for the purpose of sustainability reporting.

The FSC notes that some fund managers and superannuation funds utilise a relief instrument from ASIC, the *ASIC Corporations (Related Scheme Reports) Instrument 2015/839*, to use a single financial report to make grouped financial disclosures for multiple related schemes.

Similar to the clarity which ASIC has provided for stapled entities, the FSC recommends that ASIC clarify in its regulatory guidance that fund managers and superannuation funds can continue to utilise this instrument and choose to combine funds' sustainability reports into this single report.

3.7. Disaggregation of Scope 1 & 2 emissions

The FSC recommends that ASIC:

Recommendation 9: Clarify its expectations for the disaggregation of scope 1 & 2 emissions across a consolidated accounting group's sustainability reports where it consists of an RE(s)/RSEL(s) and a registered scheme(s)/RSE(s).

The FSC notes that AASB S2 provides at paragraph 29(a)(iv) for scope 1 and 2 emissions to be disaggregated between:

> *(1) the consolidated accounting group (for example, for an entity applying Australian Accounting Standards, this group would comprise the parent and its consolidated subsidiaries); and*
> *(2) other investees excluded from paragraph 29(a)(iv)(1) (for example, for an entity applying Australian Accounting Standards, these investees would include associates, joint ventures and unconsolidated subsidiaries);*

If recommendations 1 and 2 above are not accepted, the FSC requests clarification on how this ought to occur in the case of fund managers and superannuation funds – particularly vis-à-vis REs/RSELs and registered schemes/RSEs.

3.8. Cross-referencing

The FSC recommends that ASIC:

Recommendation 10: Clarify the circumstances in which cross-referencing is permissible between sustainability (and related) reports by:

(a) different reporting entities which are related parties;
(b) related entities or schemes within different consolidated entities (for example, an RE is within the consolidated reporting entity but the registered schemes of which it is RE is not); and
(c) unrelated reporting entities with other close relationships, such as where funds use mandates to enlist external managers to allocate capital.

We note that for corporate groups with complex structures, breaking down climate reporting across many separate, standalone reports will be unduly confusing to investors and other market participants. Permitting cross-referencing between different entities' reports will make it easier to scrutinise their activities while also enhancing the efficiency of climate reporting.

The FSC notes that ASIC's draft regulatory guidance only provides ASIC's views on how an entity should cross-reference between its own sustainability report and other documents

within the same entity.[7] Similarly, AASB S2 only expressly permits cross-referencing between a sustainability report and other reports by the same entity.[8]

Nonetheless, there does not appear to be an express prohibition on cross-referencing sustainability information between disclosures from one reporting entity and those of another reporting entity (either related entities within the same consolidated reporting entity or separate from it). This is an area in which the FSC considers further guidance is needed, particularly for fund managers and superannuation funds with complex structures or close relationships with external fund managers. It is also anticipated there would need to be significant cross-referencing between the reports of REs/RSELs (or the consolidated group of which the RE or RSE is part of) and their registered schemes/RSEs.

The FSC notes that in many instances, reporting entities captured within a consolidated group's reporting will have the same climate strategy, governance and risk management approach. In some cases, a fund will have a net zero target that covers their entire assets under management. It would be very helpful for industry to understand whether it is expected that each reporting entity within a consolidated reporting group summarise its own governance, strategy, risk management and metrics and targets approach, or whether a single consolidated group response to each disclosure topic would be deemed to be sufficient if it is cross-referenced appropriately.

For example, in the case of a Group 1 RE which, among other activities, oversees a simple registered scheme which is a Group 2 reporting entity in its own right, it would be helpful to understand which aspects of the registered scheme's sustainability report could cross-reference applicable sections of the RE's sustainability report.

We observe that many fund managers and superannuation funds receive mandates from – or issue mandates to – other fund managers, including entities which are not part of the same consolidated group. The FSC suggests that ASIC should amend its guidance to unambiguously permit the use of cross-referencing between sustainability (and related) reports in such circumstances and clarify how the modified liability regime interacts with such disclosures.

The FSC notes approach taken in the UK permits robust cross-referencing between reports of both related and unrelated reporting entities, such that reporting entities can significantly streamline their reporting.[9] The FSC suggests there is significant merit to such an approach

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[7] RG 000.79 to RG 000.81.
[8] AASB S2 Appendix D at paragraph 63.
[9] UK Financial Conduct Authority, Rule PS21/24: Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers (December 2021) at pages 33-35 and Annex B at paragraph 2.1.3R.

and that it would improve the interoperability of Australia's climate-related financial disclosures regime with other jurisdictions' equivalent laws.

Given RG 000.81(a) confirms that information included by cross-reference forms part of the sustainability report, it would be useful if ASIC could explicitly confirm that any forward-looking statements made in these external cross-referenced documents which meet the definition of protected statement under section 1707D(3)(b) are also subject to the modified liability regime.

Recommendation 11: Confirm the extent of cross-referencing permitted between an entity's sustainability reports and PDSs.

The FSC notes that ASIC's draft guidance note makes specific recommendations for the inclusion of sustainability-related information in Product Disclosure Statements (**PDS**) at RG 000.130 to RG 000.142.

The FSC suggests that further guidance should be provided to clarify ASIC's thinking on how cross-referencing should be conducted between sustainability reports and PDSs. The FSC considers that it would be desirable to avoid unnecessary duplication between sustainability reports and PDSs, and for this reason recommends permitting extensive cross-referencing back to entity-level reports. We consider that greater clarity in this area will reduce the potential for muddying of the waters by having multiple sources of climate reporting as well as enhancing certainty for investors and industry.

For example, within a superannuation fund there could be 10 different PDSs representing various cohorts of members or investment strategies (e.g. a fund that has both platform and master trust members in it). The fund would be required to report at a consolidated level but the PDS in theory is at a product level. There is presently a significant disconnect between consolidated level and product level reporting, which could be mitigated by unambiguously supporting the use of cross-referencing.

The FSC considers that without this clarity, it may create the expectation for an additional PDS solely to accommodate the latest financial information when it becomes available, which creates additional cost and resource requirements for product issuers. Incorporating this information by reference within an additional information booklet would also be duplicative and the preference is to inform investors where the annual reporting can be found separately.

We further suggest that, rather than RG 00.142 indicating that, where applicable, the PDS should state that the product issuer has lodged a sustainability report with ASIC and refer investors to that report, an equally effective and more durable statement could be that sustainability reports are prepared annually (or will be from a given financial year) and where

they can be accessed. There could be a similar statement about any relevant voluntary reports.

Regarding RG 000.141(b), the FSC agrees that if an issuer of an investment product takes into account environmental considerations that are climate-related in the selection, retention or realisation of the investment, there should be some reference to the extent to which it is considered in investment decision making processes, perhaps under a 'high / medium / low' range, and a summary of the methodology. However, further guidance, including practical examples, is sought on the current 'weighting' expectation and how a consistent approach may be achieved across entities, funds and product issuers for different parts of their processes, that are rarely formulaic in their implementation.

3.9. Scope 3 emission disclosure obligations where funds have external trustees or use external managers

Recommendation 12: Clarify how scope 3 emissions reporting obligations interact with routine fund management activities involving external trustees or trust arrangements.

We further suggest that for the disclosure of scope 3 emissions, further guidance is needed for REs and RSELs who are engaged in managing the money of a fund that is under an unrelated RE or RSEL under an investment management agreement. In this situation, assuming that consolidated reporting is permitted, we submit that the obligation to report the scope 3 emissions of the registered scheme or RSE could sit with its RE or RSEL (or its ultimate Australian owned controlled entity). The external investment manager would still need to consider whether there are any material climate-related risks and opportunities arising from their investment management activities that would need to be included in the investment manager's entity level reporting.

Clarification is also needed in the case of:

1. feeder funds. Where a registered scheme or RSE (Scheme 1) invests directly in another registered scheme (Scheme 2) whose units are issued by an unrelated RE. Therefore, Scheme 1 has no direct exposure to the underlying companies of Scheme 2. In this situation, we submit that the obligation to report the scope 3 emissions of Scheme 2 would sit with Scheme 2's RE. Provision for this exists in the UK, but under the Australian regime it is open to interpretation whether reporting obligations exist. If an exemption existed, the RE or RSEL of Scheme 1 invested into Scheme 2 would still need to consider in their entity level reporting whether there are any material climate-related risks and opportunities with respect to the units it holds in Scheme 2.
2. where a platform is the issuer of a non-unitised managed investment scheme and investments are made into non-related RE fund.

3. funds where the fund doesn't have direct assets, but instead holds interests on behalf of members.

3.10. Platforms

The FSC recommends that ASIC:

Recommendation 13: Indicate how a platform can or should determine their reporting boundary. We recommend that platforms should be characterised as engaging in '*asset administration'* rather than '*asset management'*.

For platform providers, clarity is needed around the applicability of the reporting requirements to platforms and to RSEs that facilitate the investment of funds through platforms. Platforms are technological conduits through which individual investors may invest. The platform providers themselves do not undertake investment decisions regarding the investment options on their platform, so cannot be characterised as engaging in "*asset management"*. Our view is that they are engaged in asset administration rather than "*asset management*". The FSC considers it would be useful for a definition of "*asset management*" to be provided. Our view is that it should be expressed clearly in ASIC's regulatory guidance that platforms which do not provide their own asset management services, but are merely asset administrators, are excluded from the requirements.

Recommendation 14: Confirm platforms do not quality as reporting entities and clarify whether the revenue and assets held by platforms which are not reportable entities are attributable to their operator or trustee for the purpose of the thresholds set in section 292A.

Platforms such as an Investor Directed Portfolio Service (**IDPS**) are not corporate entities and so are not required to prepare their own financial statements. As such, it is not anticipated they will be required to prepare their own sustainability reports. The FSC seeks confirmation that their revenue and assets will not be attributed to the platform operator or trustee.

The FSC recommends that the draft regulatory guidance be amended to clarify whether the revenue and assets held by platforms which are not reportable entities are attributable to their operator or trustee for the purpose of the thresholds set in section 292A. We suggest that since the assets and revenue belong directly to investors, they should not be attributed to the operator or trustee of the platform.

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3.11. Clarifying assets under management in reporting thresholds

The FSC recommends that ASIC:

Recommendation 15: Clarify the operation of the $5 billion assets under management threshold for classification as a Group 2 entity.

Recommendation 16: Provide insight into its approach to applying the Group 2 $5 billion threshold where unexpected events cause a fund to become a Group 2 entity near the end of a reporting period.

The FSC notes that section 292A(6) sets a $5 billion threshold to capture registered schemes and RSEs as reporting entities. This is recognised in table 2 of the draft regulatory guidance, which describes the following as Group 2 reporting entities:

> "*Registered schemes, RSEs and retail CCIVs where the value of assets at the end of the financial year of the entity and the entities it controls is equal to or greater than $5 billion.*"

The FSC urges ASIC to provide registered schemes and RSEs with additional guidance on how to apply this $5 billion threshold. While section 292A(6)(b) makes it clear it is based on "*the value of assets at the end of the financial year of the entity and the entities it controls (if any)*", it is not clear how a registered scheme or RSE should calculate the value of these assets, particularly in response to the use of leverage.

Registered schemes and RSEs routinely borrow and then invest funds to increase their exposure to certain markets. By way of example, it remains unclear whether a registered scheme with funds under management of $4 billion, which is not a reporting entity, that borrows and invests an additional $1.5 billion would in ASIC's view be captured by the regime. The FSC requests clarification in ASIC's regulatory guidance whether the $5 billion threshold is gross or net of leverage.

The FSC also suggests that given the day-to-day, month-to-month and year-to-year volatility of financial products, ASIC may wish to give further consideration to how its "*proportionate and pragmatic*" approach to enforcement might be applied in the future beyond the expiry of the modified liability periods. There is also potential for ASIC to provide guidance on how it might consider such circumstances when deciding to grant relief from sustainability reporting under section 342(1) (see part 4 below).

Furthermore, at least for the first few years of the regime, ASIC may wish to consider its position set out in RG 000.172 of only rarely giving reporting entities an extension of time to lodge sustainability reports, particularly in the case of entities which are on the border line of reporting thresholds.

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Similarly, where a registered scheme or RSE with less than $5 billion in funds under management receives a large institutional mandate shortly before the end of a reporting period, it may find itself unexpectedly classified as a Group 2 entity without having had the opportunity to prepare to comply with the new regime. It would assist members to understand how ASIC might approach enforcement and relief in such circumstances.

The FSC notes that the UK has set its equivalent threshold based on a three-year rolling average, which makes it more difficult for entities to slip in and out of the regime on a year-to-year basis. The FSC suggests this may be an appropriate benchmark for ASIC to use in determining whether to grant relief.

3.12. Interpretation of proportionality relief mechanisms

The FSC recommends that ASIC:

Recommendation 17: Give practical guidance on situations where ASIC considers it would be appropriate to determine that there is '*undue cost or effort*' and situations where it would be appropriate to rely on estimates.

The inclusion of proportionality relief mechanisms in AASB S2 acknowledges that ISSB-compliant climate reporting is still developing, and that improving data quality and availability will take time. Broadly, the AASB standards, read together with the enabling legislation, allow for flexibility in the reporting of scope 3 emissions and other forward looking information like scenario analysis, recognising that it will take time for the quality and the availability of data to develop, but that entities should begin turning their minds to the reporting and improvement of reporting scope 3 emissions and scenario analysis even with the use of estimates and nascent data. We emphasise the need for a flexible and pragmatic approach to scope 3 emissions disclosure.

We note the recognition in the AASB standards that an entity might have a different reporting period from some or all of the entities in its value chain is therefore only expected to use information that it can obtain without undue cost or effort. We also note the allowance in the AASB standards for the entity to report information that may be different from its own reporting period in reporting information from entities in its value chain.[10]

We consider the AASB standards attempt to strike a balance for scope 3 emissions by allowing for estimates to be used and by explicitly stating that it is expected that scope 3 emissions in the immediate term will mostly be estimates, reflecting information that is accessible to the reporting entity at the time of disclosure. We also note the AASB standards

[10] AASB S2 section B19.

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state that an entity will use '*all reasonable and supportable information that is available to [it] at the reporting date without undue cost or effort*'.

To encourage more robust disclosures, particularly in areas with high measurement and outcome uncertainty (such as scope 3 and scenario analysis, among others) the FSC welcomes guidance from ASIC on:

- the threshold at which it would be appropriate to determine that undue cost or effort is reasonably anticipated;
- practical examples of the types of "*reasonable and supportable*" information that are likely to be available to an entity;
- where estimates would be appropriate to use; and
- how estimates should be formulated.

We submit that for fund managers and superannuation funds, it should be appropriate to rely on data where the underlying investee company has disclosed their scope 1 and 2 emissions under a mandatory regime. Where investee companies fall out of the regime, are in a jurisdiction that does not have mandatory disclosure requirements, or have not reported information due to falling under a different reporting period, it should be appropriate to rely on estimates and it should be considered undue cost or effort to seek data exhaustively that covers every underlying investee company if they do not fall under a mandatory reporting regime. Fund managers and superannuation funds should not be required to undertake exhaustive searches for emissions data which covers every underlying investee company where such companies are not covered by a mandatory reporting regime and/or if this information is not readily accessible

It would also be helpful to understand whether a reporting entity can rely on external data providers' reporting for the purpose of calculating their scope 3 emissions and the nature of any further work which may be required to reach a reasonable state of satisfaction that the data is accurate and appropriate.

An appropriate balance appears to be struck in the AASB standards in clarifying that an entity need not undertake an exhaustive search for information to identify climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects and that the assessment of what constitutes undue cost or effort depends on the entity's specific circumstances and requires a balanced consideration of the costs and efforts for the entity and the benefits of the resulting information for primary users.[11]

Lastly, we note that under section 315 registered schemes and RSEs are required to lodge their sustainability (and other) reports and make them publicly available within three months of the financial year ending. Due to the inherently uncertain nature of scope 3 emission reporting and the bifurcation between each registered scheme or RSE (as well as RE or

[11] AASB S2 section B10.

RSEL) and its underlying investees, this will in many instances be too short a period to form a comprehensive analysis of scope 3 emissions in that financial year, given the necessary reliance on third parties for information. The FSC therefore respectfully suggests that ASIC's regulatory guidance should allow for scope 3 emissions reporting for a given financial year to be based on reasonable estimates modelled off the previous financial year's emissions.

To this end, we note the Explanatory Memorandum states:[12]

> *Based on the exposure draft standards issued by the AASB, when preparing sustainability reports, an entity will be required to use all reasonable and supportable information that is available to it at the reporting date without undue cost and effort.*
>
> *For Scope 3 emissions reporting, this will mean that entities will not be required to disclose exact data or detailed information that their customers or suppliers cannot provide easily. Entities will also only be required to disclose scope 3 emissions from their second reporting year, and this may comprise information from a reporting year up to 12 months prior to the current period, allowing entities to use information gathered from public disclosures made by other entities in the previous year.*

It would be helpful to industry to understand ASIC's views on how this translates across into the recognition of scope 3 emissions through funds which are managed externally on behalf of a reporting entity.

3.13. Materiality

The FSC recommends that ASIC:

Recommendation 18: Provide clear guidance on financial materiality thresholds for climate risks and opportunities.

We note the AASB standards include materiality provisions which allow reporting entities to determine the extent to which disclosure topics represent financially material climate risks and opportunities (AASB S1 sections 17-19 and B13-B37; AASB S2 appendix D sections 17-19 and B13-B37), without setting a clear threshold for materiality (AASB S1 section B19; AASB S2 appendix D section B19). The FSC consider that fund managers and superannuation funds would benefit from further guidance and examples around ASIC's expectations about the process by which entities should set materiality thresholds for disclosing climate-related risks and opportunities, including the types of sustainability records required to establish to ASIC that such a process is reasonable. We consider that

[12] Explanatory Memorandum at paragraphs 4.77 to 4.78.

materially financial risks to a funds management and superannuation business would include:

- An elevated risk of individual catastrophic weather events damaging the business;
- Long-term systemic weather changes impacting the viability of the business's model;
- Transition risks;
- Elevated sovereign risk;
- Increased litigation risks;
- Potential for stranded assets and the write-off of investments in outdated technologies;
- Market risks with shifts in the supply and demand for certain products and services; and
- Reputational risks associated with failing to navigate the related challenges.

Section D of the draft regulatory guidance sets out ASIC's expectation that, in addition to the sustainability report, material climate-related disclosures are set out in other statutory reports, including the Operating and Financial Review (**OFR**), prospectus and any PDS. Under existing law, materiality is assessed by consider what information the user "*would reasonably require*."[13] It would be informative for ASIC to provide guidance on what steps entities should be taking to assess whether, and what, climate-related information relevant users would "*reasonable require*."

3.14. Frequency of internal climate-related assessments

The FSC recommends that ASIC:

> **Recommendation 19:** Indicate the frequency with which internal financial materiality assessments should be conducted.

RG 000.52 states that ASIC expects that directors conduct regular materiality assessments over the existence and impact of any climate-related risks and opportunities. ASIC states:

> "*It is important that these assessments are not confined to the annual reporting season, but are considered on an ongoing basis*".

The FSC notes that the enabling legislation and AASB S2 only provide for climate-related financial reporting on an annual basis. The FSC therefore considers that guidance on ASIC's

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[13] Section 299A for OFR disclosures, section 710 for prospectuses and section 1013D for PDSs.

expectations on the suggested timeframes, nature, scope and granularity of such board climate assessments and reviews would be instructive.

Recommendation 20: Clarify the disclosure obligations of non-listed entities and ensure that additional requirements on non-listed entities such as continuous disclosure are not inadvertently imposed

Recommendation 21: Provide guidance as to the frequency of climate-related financial disclosures to financial markets.

At RG 000.78, ASIC states:

> *"Reporting entities that are disclosing entities must comply with their continuous disclosure obligations, including for forward-looking information in the climate statement, when relevant facts or circumstances change: see s674 and 675. Reporting entities that are not disclosing entities should also provide an update to the market when these relevant facts or circumstances change."*

The FSC considers this to be problematic as it appears to impose an obligation akin to a continuous disclosure obligation on non-listed entities beyond what is provided for in section 675(1)(b). It also appears to be inconsistent with the legislative intent of requiring only annual climate disclosures.

The FSC recommends clarifying the extent to which this applies to non-listed entities and providing more information about the frequency with which such additional disclosure should occur (especially in the case of non-listed entities) and any thresholds for events which should trigger an update to disclosures.

3.15. Qualified director declarations

The FSC recommends that ASIC:

Recommendation 22: Clarify how reporting entities should approach director declarations that reasonable steps have been taken to ensure the sustainability report is in accordance with the Corporations Act.

RG 000.55 provides that:

> *"For the financial years commencing between 1 January 2025 and 31 December 2027, directors of reporting entities are only required to declare that, in their opinion, the*

entity has taken reasonable steps to ensure that the sustainability report (other than the directors' declaration) is in accordance with the Corporations Act."

The FSC suggests that it would be helpful to industry to have a clearer framework for understanding ASIC's views on whether reasonable steps have been undertaken to ensure a sustainability report is compliant with the *Corporations Act*, including several examples of the steps which ASIC considers to be appropriate.

3.16. Disclosures outside of sustainability reports

The FSC recommends that ASIC:

Recommendation 23: Confirm that any Protected Statements replicated in the OFR and s 710 Prospectuses are subject to the modified liability regime because they are statements that are "*required by law*" pursuant to s 1707D(1)(b).

Recommendation 24: Allow for the application of the modified liability protection in replicated statements in investor-facing communications (such as investor presentations).

Recommendation 25: Consider a phased approach to imposing higher expectations for the disclosure of climate information in PDSs.

Recommendation 26: Provide guidance on how entities should be considering climate materiality under Australian law e.g. under sections 299A, 1013D and 710.

Section D of the draft regulatory guidance sets out ASIC's expectation that, in addition to the sustainability report, material climate-related disclosures are set out in other statutory reports, including the OFR, prospectus and any PDS. Given ASIC's view that climate-related disclosures in these documents is currently "*required by law*" (if material), the FSC requests clarification from ASIC that, as is the case with protected statements replicated in PDS documents,[14] replicated protected statements in the OFR and section 710 prospectuses will be subject to the modified liability regime pursuant to section 1707D(1)(b). Further guidance on how entities should be considering climate materiality under these existing obligations,[15]

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[14] Noting that at RG 000.64(b) ASIC has confirmed that protected statements within PDS disclosures are subject to the modified liability regime.
[15] Including, but not limited to, s299A, s 1013D and s 710 of the *Corporations Act 2001* (Cth).

and how this materiality assessment intersects with materiality under AASB S2, would also be useful to industry.

More broadly, the FSC suggests that requiring a dissemination of climate disclosures across a broad range of statutory reports may conflict with the regime's objective of providing accessible and comparable climate-related information. It will also increase duplication and add to the compliance burden (which may be significant for Group 2 and 3 entities). Some of the requirements, particularly in the absence of clarification of the application of the modified liability regime, may also trigger liability risk. For instance, ASIC's statement that issuers should '*summarise'* climate-related information from the sustainability report in the prospectus[16] and PDS[17] appears to conflict with earlier guidance[18] cautioning against selective reproduction of climate-related information.

The FSC recommends that reproduction of material elsewhere, whether this be in PDS or website or other publications such as investor recommendations, so long as the reference to the Annual Statements is made, is protected.

In addition, any lifting of ASIC's expectations for climate-related disclosures in PDSs should not come ahead of the first mandatory climate reporting for the relevant funds, implementation of the Australian sustainable finance taxonomy and finalisation of the planned sustainable investment product labelling regime. These initiatives are essential building blocks to facilitate the development by ASIC (in consultation with industry) of clear regulatory guidelines/guard-rails that will enable industry to meet any increased PDS disclosure requirements in a consistent manner that is helpful for consumers.

The FSC contends that failing to apply the modified liability regime to replicated climate-related disclosures made outside of the sustainability report, particularly to investor-oriented representations, will likely lead to reduced disclosures on critical climate topics. This is a counter-productive outcome – rather than encouraging robust, easily navigable disclosure on the critical topics of scope 3 emissions, scenario analysis and transition planning, such a narrow application will likely lead to limited, less accessible disclosures and subsequent discussions.

Recommendation 27: Clarify whether its views on the selective use or reproduction of information contained in a sustainability report apply to corporate documents prepared for internal use.

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[16] RG 000.128(b).
[17] RG 000.142.
[18] See RG 000.102 to RG 000.106.

In a note to RG 000.105, ASIC observes:

> "*ASIC's reviews of sustainability disclosures will extend to information from sustainability reports reproduced in other corporate documents. We will likely carefully scrutinise information that selectively includes or references information from a sustainability report.*"

While the FSC suspects that it is ASIC's intention for this statement to relate solely to public and investor-facing documents, to resolve industry concerns the FSC would be grateful if ASIC could refine its wording to make it clear that ASIC does not also take this approach to corporate documents which are prepared for internal use. The FSC recommends that the guidance clarify material developed internally will not be adversely used by regulator.

3.17. Forward-looking climate information

The FSC recommends that ASIC:

Recommendation 28: Provide more granular guidance on the "*reasonable grounds*" needed for forward-looking climate statements.

Recommendation 29: Acknowledge in its approach to enforcement that forward-looking climate statements are particularly difficult for fund managers and superannuation funds while the new regime is being phased in.

The modified liability regime under section 1707D(4) protects forward-looking statements in sustainability or auditors reports which relate to climate and the future as at the time they are made. However, this provision only applies to reports prepared for the applicable financial year commencing during 1 January 2025 to 31 December 2025.

In the introduction to section C of its draft regulatory guidance, ASIC states:

> "*Forward-looking climate information in climate statements should be based on reasonable grounds.*"

At RG 000.75, ASIC also notes that:

> *"Under the Corporations Act and the ASIC Act, some representations about future matters will be taken to be misleading unless there are reasonable grounds for making the representations, see s769C of the Corporations Act and s12BB of the ASIC Act."*

The FSC suggests that forward-looking climate disclosures involve greater uncertainty than traditional forward-looking financial disclosures. Combined with the lack of legal precedent on what constitutes "*reasonable grounds*" in the context of climate disclosures, to encourage more robust and useful disclosures, the FSC strongly recommends that ASIC provides further guidance on this.

In the absence of clear guidance on how to conduct forward-looking climate disclosures, the FSC anticipates that some industry participants may be deterred from making robust disclosures which would represent a missed opportunity for accomplishing the new regime's objective of increased transparency.

The FSC further notes that forward-looking statements about scope 3 targets are inherently more difficult for fund managers and superannuation funds to prepare, as funds are significantly reliant on the contents of their investees' historical sustainability reports. This problem will recede as the new regime matures, but during its phased implementation it will impact the reliability of funds' forward-looking statements.

3.18. Other

The FSC recommends that ASIC:

Recommendation 30: Amend RG 000.98 "*all entities*" to "*all reporting entities*", to clarify AASB S2 is only mandatory for reporting entities.

In RG 000.98, ASIC states:

> "*Therefore, all entities should consider, and be informed by, the sustainability standards when preparing climate-related financial information, and other sustainability-related financial information, for users of the information outside the sustainability report.*"

The FSC considers that use of the phrase "*all entities*" signals that it also applies to entities which are not reporting entities under the climate-related financial disclosures regime. The FSC suggests that such expansive wording will create an unreasonable compliance burden, particularly on smaller organisations not captured by the climate reporting regime.

The uplift required to comply with AASB S2, even for large ASX200 organisations already disclosing under the new regime is significant. Imposing such a requirement on small organisations which have been carved out of any mandatory climate disclosures cannot be justified. To the extent that ASIC maintains its view that all entities must "*consider and be informed by*" AASB S2 when making climate-related disclosures, it should provide clear guidance on what steps entities should be taking to comply.

Alternatively, ASIC may wish to consider deleting RG 000.98 or issuing comprehensive guidance on what "*consider[ing] and be[ing] informed by*" AASB S2 means for those not captured by the mandatory climate reporting regime.

Recommendation 31: Consider ways to ensure its proposed report labelling system can be maintained without compromising the interoperability of Australia's climate-related financial disclosures regime.

The FSC notes the labelling sections of the draft regulatory guidance at paragraphs RG 000.82 to RG 000.89 may be of assistance to industry by clarifying the nomenclature for different types of reporting. However, since the labelling requirements have not been applied in other jurisdictions, it risks compromising the interoperability of Australia's climate-related financial disclosures regime.

The FSC also requests clarification that the labelling requirements will only apply from the commencement of the regime and not to sustainability produced in previous years.

Recommendation 32: Clarify the treatment of any entity which ceases to be registered during a financial year.

The FSC notes it would be useful to industry to understand ASIC's view of how the regime applies in circumstances where an entity ceases to be registered during a financial year. For example, where a registered scheme is converted to an unregistered scheme during a financial year, it would be helpful to industry to understand how this impacts its sustainability reporting obligations during that financial year.

Recommendation 33: Clarify the impact of the regime's phased implementation arrangements on the breadth of certain reporting obligations.

The FSC notes that the phased implementation of reporting obligations for Group 1, 2 and 3 entities may have unintended consequences for the breadth of certain reporting obligations.

For example, in a corporate group where the holding company is a Group 1 entity in its own right and its diverse subsidiaries include a Group 2 RE, it is not clear whether the holding company's first sustainability report should consider climate-related risks and opportunities associated only with its reportable Group 1 operations or also its Group 2 RE for which mandatory reporting has not yet commenced.

Guidance on ASICs expectations in such circumstances would be instructive to industry.

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4. Recommendations for ASIC's approach to enforcement and use of its new powers under the regime

4.1. Enforcement

The FSC recommends that ASIC:

Recommendation 34: Take a facilitative approach to enforcement.

The FSC notes ASIC has indicated it will be taking "*a proportionate and pragmatic approach to supervision and enforcement as the requirements are being phased in*".[19] While the FSC is supportive of the sentiment behind this statement, we submit there is uncertainty as to precisely what this entails.

To improve certainty, the FSC suggests that ASIC articulate its approach to enforcement in a similar level of detail set out in Information Sheet 224 (ASIC financial reporting and audit surveillances).

For the avoidance of ambiguity, the FSC requests that ASIC adopt a facilitative compliance approach to enforcing the climate-related financial disclosures regime. This would apply where reporting entities make a good faith attempt to comply with the applicable reporting requirements but are unable to do so because of, for example, uncertainty regarding value chains creating ambiguities in calculating scope 3 emissions.

The rationale for such an approach is that – as noted above – it will take time to build expertise and capability across the industry for accounting, audit and assurance in climate-reporting.

Given companies will need time to develop their climate reporting capability and it will take time for data availability to mature, a pragmatic approach ought to be taken to the reporting of scope 3 emissions and other forward-looking statements, applying at least to the period covered by the modified liability period. We submit that such an approach should in the very least be designed to help reporting entities better understand and comply with their new obligations.

As part of a facilitative compliance approach, the FSC also requests ASIC to ensure its guidance clarifies the matters set out elsewhere in this submission.

[19] RG 000.24.

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Recommendation 35: Take a facilitative (or alternatively, "*proportionate and pragmatic*") compliance approach to reporting by Group 2 and Group 3 entities for an extended period.

Further to recommendation 34, the enabling legislation sets out a modified liability regime consisting of one- and three-year protections for certain disclosures.[20] These protections commence on the "*start date*" which is defined as 1 January 2025.[21]

Since:

- Group 2 entities' reporting obligations do not commence until reporting periods starting on or after 1 July 2026; and
- Group 3 entities' reporting obligations do not commence until reporting periods starting on or after 1 July 2027,

this means that Group 2 and Group 3 entities, have comparatively less benefit from the modified liability protections than Group 1 entities.

In view of how Group 2 and Group 3 entities have fewer resources than Group 1 entities yet will enjoy fewer statutory protections, the FSC recommends that ASIC apply a facilitative compliance (or alternatively, its "*proportionate and pragmatic*") approach to Group 2 and Group 3 entities for a correspondingly longer period.

4.2. ASIC's power to grant relief from sustainability reporting and audit obligations

The FSC recommends that ASIC:

Recommendation 36: Provide examples of situations where ASIC considers its discretion to grant relief from sustainability reporting and audit obligations under section 342(1) may be enlivened.

Under Part 2M.6 of the *Corporations Act 2001 (Cth)*, ASIC may grant relief to a reporting entity from its sustainability reporting and audit obligations.

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[20] *Corporations Act 2001* (Cth) section 1707D. Note exemptions for misleading and deceptive conduct as well as criminal proceedings.
[21] *Corporations Act 2001* (Cth) section 1707.

As acknowledged by ASIC at RG 000.144, section 342(1) provides ASIC discretion to grant this relief where ASIC is satisfied the obligations would:

"*(a) make the financial report, sustainability report or other reports misleading; or*

(b) be inappropriate in the circumstances; or

(c) impose unreasonable burdens."

The FSC notes that while ASIC provides some examples of inappropriate or invalid grounds for sustainability reporting relief, it would be helpful for ASIC to provide some examples or guidance where grounds could be successfully established – for instance, circumstances that would amount to compliance imposing "*unreasonable burdens*." The FSC has specified above at recommendations 3 and 16 examples of circumstances where it considers ASIC may wish to indicate that compliance would represent an unreasonable burden or be otherwise inappropriate in the circumstances.

5. Related recommendations

5.1. Additional industry-level guidance

The FSC recommends that ASIC:

Recommendation 37: Implement industry-specific guidance to help institutional investors comply with their obligations under the climate-related financial disclosures regime.

The FSC has previously submitted that the AASB should provide industry specific guidance, developed in collaboration with industry, on what good reporting looks like for fund managers and superannuation funds, to create greater comparability and reduce barriers to reporting.

The FSC also considers that ASIC could play a role in supporting this and should consider developing its own industry-specific guidance for fund managers and superannuation funds. This could include guidance on:

- reporting scope 3 (financed emissions for registered schemes and RSEs) for specific industries (including boundaries and estimates);
- how disclosures should be undertaken for funds with complex corporate structures and allowance for consolidated reporting;
- industry metrics, creating clearly defined and consistent metrics for strategic sectors; and
- scenario analysis.

5.2. Updates to separate ASIC regulatory guides

The FSC recommends that ASIC:

Recommendation 38: Update existing ASIC guidance material to reflect ASIC's expectations on climate-related disclosures.

Given ASIC's view on the need for climate disclosures outside of the sustainability report, the FSC respectfully requests that once RG 000 is finalised, ASIC consider consequential climate-related updates to other regulatory guides, including:

- RG 247 Effective disclosure in an operating and financial review;
- RG 228 Prospectuses: Effective disclosure for retail investors;
- RG 254 Offering securities under a disclosure document;

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- RG 168 Disclosure: Product Disclosure Statements (and other disclosure documents);
- RG 66 Transition-specific disclosure for PDSs; and
- RG 65 Section 1013DA disclosure guidelines.

Additional clarification on how ASIC's approach set out in these regulatory guides might have been altered by RG 000 would be of significant assistance to industry in ensuring its compliance the climate-related financial disclosures regime.

Attachment 1