

27 July 2023

Climate Disclosure Unit
Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

Re: Climate-related financial disclosure consultation June 2023

BHP (hereinafter “we,” and “our”) appreciates the opportunity to provide comments in response to the Australian Government’s second consultation on climate-related financial disclosure. We have been an early supporter of climate-related disclosures and commend the Government’s commitment to design and implement standardised, internationally-aligned requirements for climate-related disclosures in Australia. A move toward a consistent and decision-useful climate-related disclosure regime, which seeks to meet increased demand from investors and other users and is implemented in a workable manner for reporting entities, will enable Australia to align with similar developments in major international capital markets. We therefore encourage maximum alignment of a Climate-related Financial Disclosure regime in Australia with the finalised International Sustainability Standards Board (“ISSB”) disclosure standard released in June 2023. We believe this will be foundational to building global consistency and comparability in climate-related financial reporting.

Supportive of standardised, internationally aligned climate-related disclosures

BHP is a global resources company producing some of the essential resources needed to support the global energy transition, such as nickel and copper, and we strive to produce them sustainably, efficiently and ethically. Our purpose is to bring people and resources together to build a better world.

As one of the world’s largest mining companies, we are committed to playing our part to help accelerate the Australian and global pathways to decarbonisation. This includes increasing awareness of the vital role of the mining industry in providing essential commodities as building blocks for the renewable energy and other decarbonisation infrastructure required to enable a net zero greenhouse gas (“GHG”) emissions future.

BHP’s Climate Transition Action Plan 2021 and Annual Report 2022 outline our approach to reducing GHG emissions and managing climate risks, including our climate change targets and goals. We have been represented on the Task Force on Climate-Related Financial Disclosures (“TCFD”) since its inception and have continued serving as one of the leading voices in shaping the TCFD and other global standards from an industry sector perspective. We have actively contributed to consultation on the development of proposals by the ISSB and United States Securities and Exchange Commission (“US SEC”) aimed at enhancing climate-related disclosures.

As set out in our response to the Government’s first consultation, BHP supports the Government’s objective to ensure Australia remains aligned with international capital markets and believes that the standardisation and international alignment of climate disclosure requirements in Australia will benefit

investors, while building on the work of companies such as BHP that have placed climate action and transparency at the forefront of their corporate agendas.

We have focused our feedback to the second consultation paper (“Consultation Paper”) on the need to balance enhancing the decision-usefulness, consistency, and comparability of disclosures with the practicality of implementation and ongoing compliance. While broadly supportive of the Australian Climate-related Financial Disclosure (hereafter referred to as “CFD”) reporting requirements proposal, we have identified a number of areas where we expect the practical application of certain aspects of the proposal would be challenging or potentially impracticable.

We offer our views to Government based on BHP’s experience in preparing climate disclosures aligned with voluntary frameworks such as the TCFD and as we consider emerging regulations in other jurisdictions to assist the Government in the design of an effective regime for Australia to meet the reform principles set out in the Consultation Paper.

The importance of a global baseline of sustainability reporting standards

We strongly believe that consistently applied disclosure requirements, overseen by regulators, are key to ensuring complete and transparent reporting. Current global practice includes a number of standards and interpretations, creating a disclosure system that is complex and difficult for both companies and investors to navigate and is potentially unreliable. We support the efforts of governments and regulators to establish a common, or at least more consistent, set of requirements. Consistency is critical for investors to understand and compare disclosures across borders, for civil society to understand corporate action on a comparable basis, and for companies preparing disclosures in multiple jurisdictions.

Given the benefits of a shared set of transparent standards and methodologies to enable comparisons to be drawn, we strongly endorse the Government’s commitment to standardise and align climate reporting in Australia and replace the more ad hoc framework of voluntary regimes that currently exists. We are therefore supportive of a CFD regime being introduced in Australia and believe maximum feasible alignment with the finalised ISSB disclosure standard released in June 2023 (IFRS S2 Climate-related Disclosures (“IFRS S2”)) is critical. This will be foundational to building global consistency and comparability in climate-related financial reporting.

We believe the proposed coverage of reporting entities and the phased implementation of the CFD based on a scaled threshold strikes the right balance, and would give regulators the greatest scope to manage systemic risk. It would also help to avoid creating adverse competition impacts between those entities in and out of scope or incentives for regulatory arbitrage.

Scenario analysis and climate resilience assessments

We are supportive of the proposal related to scenario analysis and climate resilience that initially allows for qualitative assessment with subsequent progression to quantification. The phased in approach is particularly important for physical risk scenario assessment, which is often less mature due to the inherent complexity involved and technical expertise required. We note that for physical climate risk assessment, it is likely to be more prudent to use a higher GHG emissions scenario than a Paris-aligned scenario as many of the physical risks would be expected to increase with higher temperature outcomes. As entities will seek to use the outcomes of physical risk scenario analysis to consider the extent to which adaptive measures may be required for enhancing the resilience of the entities’ assets and business, it is important for entities to have flexibility to use a higher temperature scenario in this context as this should lead to a higher level of resilience.

We support the proposed approach to allow entities to use their own sources for climate scenario preparation (subject to meeting the proposed requirement to disclose against at least two possible future states, of which one is a scenario aligned to the Paris Agreement’s global temperature goals) as this provides flexibility and would give a diversity of perspectives with respect to the potential future(s) across the economy. While it may assist some entities to have the option to perform their

analysis against a standard scenario published by Government for this purpose, we would not recommend this be a mandatory requirement for the reasons outlined and because this would increase the burden for entities reporting across multiple jurisdictions. Of course, companies should provide the detail and rationale for the scenarios used to provide transparency for investors in assessing resilience.

The provision of best practice guidance on physical risk scenario analysis (particularly quantitative analysis) and alternative methods, as well as physical risk databases, will be important in assisting entities undertaking this exercise and to support the provision of assurance over these disclosures. The work of the Coalition for Climate Resilient Investment may be a resource for the Government to draw upon in this regard. Finally, there may be confidentiality or competition considerations around disclosure of certain information, such as pricing information used in climate-related scenarios. Therefore, disclosure requirements will need to be framed to enable reporting entities to comply while also avoiding a breach of competition laws (across all relevant jurisdictions) or the disclosure of information that is commercial-in-confidence, or otherwise confidential.

Greenhouse gas emissions

We support as much alignment as possible with the National Greenhouse and Energy Reporting (NGER) regime for GHG emission sources located in Australia to reduce the regulatory burden on reporting entities. However, NGER, in most instances, does not require companies to restate prior reporting period emissions, for example in the case of a material change to the measurement methodology in a subsequent period. Inter-period comparability of data on a like-for-like basis, particularly for the purpose of GHG emissions target tracking, is a key premise of GHG Protocol accounting standards and is important for transparency for users of information. We would encourage Government to explore how CFD can ensure that GHG emission data is presented on a comparable basis between periods, while recognising that in some instances it may not be possible or practicable to restate prior period data. Also, it may not be practicable to report the same GHG emission inventory for the purpose of CFD disclosure and for NGER purposes due to the different timing of reporting requirements that may require estimates to be used for CFD disclosure. Allowance should be made for subsequent period adjustments, where material differences are identified.

Reporting location, frequency and timing

We support the requirement for climate disclosures to be published in an entity's annual report, consistent with the Government's primary intention that climate disclosures are presented in the context of an entity's financial position and climate-related risk and opportunity are integrated into company decision-making. However, we would encourage clarity with respect to those aspects of the core content outlined in IFRS S2 that must be published annually compared to content that does not need to be repeated annually because there has been no year-on-year change. In a number of cases, IFRS S2 stipulates that an activity does not have to be performed annually; for example, an entity is permitted to update its climate-related scenario analysis in line with its strategic planning cycle, which might be only once every three years (see paragraphs B3 and B18) and is only required to reassess the scope of any climate-related risk or opportunity in its value chain on the occurrence of a significant event or significant change in circumstances (see paragraph B34). It would be unproductive, and reduce readability, if entities had to repeat unchanged content annually.

The importance of clarity about which disclosures must be made annually is different from the ability to meet annual climate-related disclosure requirements by reporting some information in a separate report. We appreciate and support the intention outlined in the Consultation Paper to allow certain annual disclosures to be provided outside the annual report, but suggest that this flexibility should be broadened beyond just the proposed 'metrics and targets' standards. For example, an entity should be able to include assessment of its climate resilience as at the reporting date within its annual report, but refer to a separate report for the extensive information IFRS S2 requires about its underpinning climate-related scenario analysis. This could cross-reference a prior-year report or a report issued

contemporaneously with the annual report (for a year in which the entity's climate-related scenario analysis was updated in line with its strategic planning cycle).

Assurance requirements

Third party assurance is important to foster transparency and support confidence by users in the reported information. However, we question the additional value to users of reasonable assurance over Scope 3 emissions from FY2028 onwards (compared to limited assurance). It is unlikely that the maturity of the data for most organisations will reach the current level of maturity of Scope 1 and Scope 2 data by that timeframe (or indeed for some time thereafter). Scope 3 data is likely to remain reliant on imprecise elements such as emission factors or spend based calculations for the long tail of small suppliers until a global ecosystem of Scope 1 and Scope 2 data reporting across the value chain develops. Further, the precision and accuracy of downstream Scope 3 emissions data is highly contingent on customers' ability to provide quality data. While reporting entities can seek to make data provision a contractual requirement, it will take time for a combination of policy and regulatory settings in local jurisdictions, particularly in the downstream value chain, to make contractual obligations for quality data feasible. Aside from the inherent problems regarding the nature of Scope 3 data, there may also be a capacity issue for auditing firms to provide services of this nature for all covered reporting entities, which could lead to significant increased costs for reporting entities as well as potentially disparity or unreliability of assurance undertaken to meet this requirement. Therefore, we would encourage an approach that makes the introduction of this requirement contingent on sufficient improvements in the reliable availability and quality of Scope 3 data to warrant a more precise level of assurance.

Application guidance

We encourage the Government to develop guidance to accompany and support application of the CFD, in addition to the guidance already issued by ISSB. For example, further guidance is required on selection of organisational boundaries. If the intent is to align GHG emissions reporting with how the financial statements are prepared, detailed guidance would be appreciated on how emissions should be accounted for with respect to joint operations, joint ventures and equity investments, recognising the data challenges for operations where reporting entities do not have operational control. Other GHG emissions accounting considerations would also benefit from more clarity, particularly how more complex financial arrangements such as leases should be treated from an emissions accounting perspective both for emissions inventory and to assess and report progress against GHG emission reduction targets. As mentioned above, quantitative physical risk scenario analysis is another area where further guidance is required, and we outline an additional topic that would benefit from accompanying guidance in the Liability and enforcement section below.

Liability and enforcement

As an overarching comment, we note the importance of retaining in the Australian regime the clarifications that have been made in IFRS S2 to allow a reporting entity not to provide certain quantitative information if it cannot be separately identified or is too uncertain.

The proposal for an interim modified liability framework over the transitional period for the phasing in of reporting requirements to end of FY2027 is an important recognition of inherent challenges associated with certain disclosures. We would encourage Government to explore targeted enhancements to the proposed modified liability settings to give reporting entities confidence to enhance their disclosures and make them more decision-useful. In particular:

1. *Timeframe:* Given annual reporting occurs in arrears, the interim liability framework would need to extend for three years from the annual report due date for FY2025, rather than three years from 1 July 2024, to provide reporting entities with the proposed protections across three cycles of the new reporting regime.

Additionally, as noted in the Assurance requirements section above, the data availability and integrity issues that apply for Scope 3 emission data will not automatically solve within a fixed three-year period. We recommend that the modified liability settings for reporting Scope 3 emissions should remain in place until a global ecosystem of emission data reporting across the value chain develops to enable a reporting entity to obtain accurate data from third parties. If our suggestion is adopted to make the introduction of mandatory reasonable assurance for Scope 3 contingent on sufficient improvements in its availability and quality, the modified liability settings could end once the requirement for reasonable assurance commenced.

2. *Extended application to other third-party sourced or derived emissions data:* We appreciate Government's recognition of the challenges that reporting entities face in producing disclosures that inherently rely on estimates or data that are outside the entity's control, such as for Scope 3. For those reasons, we suggest the proposed modified liability settings should be extended also to apply to any third-party sourced or derived data or other information in the Strategy and Risks and Opportunities and Metrics & Targets disclosures, where clearly identified as such. It would be logical for this modified liability setting to continue without an end date.
3. *Coverage:* The scope of the proposed modified liability framework (extended as described in points 1 and 2 above) should be expanded, or parallel accommodations made, to provide equivalent protections for circumstances where statements required to be disclosed in the annual report are otherwise reasonably expected to be made. Specifically, we suggest that there should be express provision for the modified liability settings also to apply to (a) separate reports (containing part of the required climate-related information) referenced from the directors' report; and (b) fundraising documents.
4. *Interim reporting:* We understand the Government does not intend to create a new obligation for the inclusion of climate-related financial disclosures within the half-year report for FY2025 or future half-year reports. It would be useful for this to be expressly stated.
5. *Guidance on forward-looking statements:* It would assist both reporting entities and users to have a clear understanding of the types of content that would be considered a "forward-looking statement" in the distinctive context of mandatory climate-related disclosures. It should be clear-cut that statements making assumptions about future events, projections regarding future impacts of climate-related risks or similar are forward-looking and not intended as promises or guarantees. However, other mandatory statements may require disclosure of information that is derived from, or relies in whole or in part, on forward-looking information, but may not be a forward-looking statement exclusively, or as conventionally defined, particularly for disclosures related to strategy (scenario analysis, transition planning and climate-related targets and goals) and risks and opportunities.

We encourage the Government to develop guidance, including specific examples, to support the understanding of both the interim protection under the proposed modified liability framework and thereafter with respect to the protection from misleading or deceptive conduct, false or misleading representations, and similar claims, afforded if statements are made or reaffirmed on reasonable grounds.

Dr Fiona Wild

Group Sustainability and Climate Change Officer, BHP