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Submission by the Scope 3 and Human Rights Hub to the Climate Disclosure Unit of The Treasury on the 'Climate-related financial disclosure – Consultation paper'

Climate Disclosure Unit
Market Conduct Division
The Treasury

9 February 2023

The Scope 3 and Human Rights Hub thanks the Australian Government for providing an opportunity to provide our views on key considerations for the design and implementation of standardized, internationally aligned requirements for the disclosure of climate-related financial risks and opportunities and antecedent matters in Australia. The Hub welcomes the opportunity to share our perspectives based on our knowledge of the complex interface between Australia's decarbonization pathway and human rights law, principles and frameworks.

Introduction to the Scope 3 and Human Rights Hub

The Scope 3 and Human Rights Hub is a research project of the Australian Human Rights Institute, within UNSW Law & Justice. The project was established in 2022, founded on the conclusion that climate change is the single greatest threat to human rights in Australia. The Hub's purpose is to work towards building an evidence-based, detailed body of knowledge on climate-related impacts on human systems, communities and rights in Australia, and on the links and interrelationship between these and the Scope 3 emissions resulting from Australia's coal and LNG exports. The Hub is applying this knowledge to, amongst other outcomes, develop a human rights-based National Plan for Australia to phase out these export sectors.

At present, Australia is the world's largest exporter of LNG and coal (by volume) and, contrary to common assumption, these exports are continuing to grow in absolute terms. The CO₂ potential from these exports is already more than twice the size of Australia's domestic emissions and when taken together, combustion of Australian fossil fuels produces around 5% of global CO₂e.¹ This relative proportion is projected to grow exponentially as other countries reduce their emissions in line with their reduction targets. Based on current government and industry projections, between 11.9-17.4% of global CO₂e emissions will be attributable to the combustion of Australian fossil fuels by 2030, principally from exported coal.²

Ongoing climate change driven by global emissions presents a range of potentially devastating impacts for human systems, communities and rights in Australia. Every fraction of a degree of warming will raise climate impacts exponentially. Australia's scope 3 emissions will contribute measurably to our changing climate, yet we are one of

¹ Climate Analytics, [Evaluating the significance of Australia's global fossil fuel carbon footprint](#), 2019, at 2.

² As above, at 4: 'Because emissions need to be decreasing under a Paris Agreement compatible scenario, each tonne of CO₂ that Australia places in the international market will take a greater share of the allowed emissions in each subsequent year.'

the more highly exposed countries to damaging climate trends and impacts,³ due to our largely arid land area and largely coastal population.

The identified information gap: A lack of transparency regarding the contribution of emissions from Australia's coal and LNG industries to worsening climate change within Australia

The IPCC has clearly stated that achieving the Paris Agreement goal of limiting global temperature rise to 1.5C requires a wide portfolio of mitigation actions, which include moving out of high GHG-emitting commodities and activities [[IPCC 2018](#)]. However, limiting global warming can only be achieved where businesses are able to identify, understand, assess, manage and disclose not only the impacts on their operations of climate change but also the impacts of their operations as *drivers* of ongoing warming and climate impacts. This is particularly the case for fossil fuel producers but also applies for producers in the other non-financial sectors identified in the [TCFD Final Report](#) (p 15) as the most significant contributors to global warming (Materials and Buildings; Transportation; and, Agriculture, Food, and Forest Products). The proposed disclosure standards have the capacity to ensure that detailed and accurate information is available, much of it for the first time, about emissions resulting from Australian business activities. While the information is restricted to that judged to be material to investors and will be disclosed mainly in the financial pages of companies' annual reports, nevertheless it will assist the wider public to assess impacts, researchers to explore trends and establish connections, and policymakers to develop the best responses.

Statement of support and summary of submission

Overall, the Scope 3 and Human Rights Hub strongly supports the proposal for nationally regulated, standardized, internationally aligned requirements for the disclosure of climate-related financial risks and opportunities in Australia. The current lack of emissions reporting, particularly in relation to Scope 3 emissions, across the private sector inhibits investor and public access to information regarding the true scale of Australia's contribution to global warming and, consequently, the extent to which our own fossil fuel industries are worsening our climate problems.

The Hub considers the proposal a positive step amid increasing pressure from investors for Australia to introduce mandatory reporting requirements in line with pending international standards and compatible with requirements being developed by other advanced economies, including New Zealand, the United Kingdom and the European Union. In the Hub's view, the proposal provides a significant opportunity to support Australia's net zero emissions target and adaptation action, as well as its broader efforts to promote sustainable finance globally, particularly through aligning with international reporting practices.

The key points raised in our submission can be summarized as follows:

1. Within a phased approach, the scope of the regulatory disclosure regime must extend to cover all corporations operating in the Australian economy that meet certain size thresholds.
2. Any national regulatory disclosure regime in Australia should mandate disclosure of scope 3 emissions in line with the ISSB's position in its imminent climate-related disclosures standard.

³ Australian Academy of Science, [The Risks to Australia of a 3 Degrees Warmer World](#) (March, 2021).

3. Australia should ensure its regime can readily align with upcoming international standards in this area, for the greatest benefit of businesses, investors, regulators and the general public.

The scope and coverage of the mandatory disclosure regime should extend to non-listed entities of a certain size (Questions 2 and 3)

The Hub supports the proposal for a phased approach to the implementation and scope of the standards. Initially targeting larger financial institutions and entities is reflective of approaches in other jurisdictions (e.g. New Zealand) and allows time for smaller organizations to build up the requisite capacity and resources to make climate-related and other sustainability-related disclosures.

However, it is the Hub's view that the scope of the regulatory regime must extend beyond large financial institutions and large ASX-listed entities to cover all corporations operating in the Australian economy that meet certain size thresholds (set by market capitalization, net turnover, employees or other means). Many of the highest emitters in Australia are not publicly listed on the ASX (e.g. Chevron, Glencore, Anglo American, GFG Alliance, Inpex Holdings, ConocoPhillips, Shell, Centennial Coal and Esso).⁴ These companies will not be captured if a narrow scope is adopted. Extending the scope of application to non-listed corporations over a certain size will provide necessary accountability and level the playing field.

Importantly, extending the scope in this way will also protect against potentially negative outcomes, particularly as a counter to the current trend by publicly listed companies to offload their fossil fuel arms to private equity ventures in order to insulate themselves against certain reporting and regulatory requirements. Particularly in the case of thermal coal, the increasing cost of capital has led to 'private equity increasingly filling the thermal coal finance gap.'⁵ These private entities are not subject to the same pressures to reduce emissions, which is reflected in the inadequacy of their efforts to address their climate impacts or to make climate-related disclosures.

Extending the scope of application to include private equity companies of a given size operating in Australia would align with the European Union's recently adopted Corporate Sustainability Reporting Directive (CSRD), which took effect on 5 January 2023. Mainly justified by the concerns surrounding impacts and accountability (including through a corporation's value chain), under its phased approach the CSRD rules will apply to entities listed on EU regulated markets and to large EU entities that meet certain threshold criteria relating to their net turnover, balance sheet and/or number of employees. The CSRD contemplates that certain non-EU entities that meet specific net turnover thresholds, and/or have large or listed EU subsidiaries will also be subject to disclosure requirements as part of its phased approach.

Reporting and disclosure obligations not only provide an essential tool for informed investor decision-making, but also more broadly help to place businesses on an even footing, support well founded policymaking and inform consumer decision-making. Taking a broader scope provides greater transparency of information across the whole of the economy regarding the climate-related risks and impacts of a business. The assistance it provides to consumers to make more informed decisions regarding the products and services they consume puts greater public

⁴ DCCEEW, [Quarterly Update: June 2022](#); See also Australia's largest historical emitters, in J Moss and P Fraser, [Australia's Carbon Majors Report](#) (2019). Of these, Peabody and ExxonMobil are also not ASX listed.

⁵ Fitch, ['Shifting Ownership Patterns of Fossil Fuel Assets and Decarbonisation'](#) (May 2021), at 4.

and market pressure on businesses in the economy, catalyzing a movement away from emissions-intensive products and services – raising pressure on high emitting producers to transition away from these products.

Reporting scope 3 emissions must be included in the mandatory disclosure requirements (Questions 9 and 11)

Due diligence schemes covering scope 3 emissions have existed for some time (e.g. the Science Based Targets initiative). However, Australian fossil fuel exporters are not currently required under applicable domestic law to disclose their scope 3 emissions. Given scope 3 emissions make up almost all of the emissions profile for Australia's largest coal and LNG exporters,⁶ calculating and disclosing these emissions is essential to providing necessary transparency over the climate-related risks of these entities and for understanding their impact in the global economy as it transitions.

The TCFD framework initially required that reporting entities only disclose their scope 3 emissions 'if appropriate'. In response to increasing demand for scope 3 disclosures, in 2021 the TCFD published revised guidelines which state⁷ that scope 3 emissions are an 'important metric reflecting an organization's exposure to climate-related risks and opportunities' and that all reporting entities are 'strongly encourage' to disclose them. In particular, 'when considering whether to disclose scope 3 GHG emissions, organizations should consider whether such emissions are a significant portion of their total GHG emissions.' At this point, the TCFD refers entities to the threshold in the Science Based Targets initiative, under which an entity must disclose its scope 3 emissions where they comprise more than 40% of its total emissions. This threshold catches all Australian coal and LNG exporters.

The ISSB has taken an even stronger stance on scope 3 emissions disclosure. The Climate-related exposure draft released in 2022 proposed the disclosure of scope 3 emissions, specifically requiring a covered entity to:

- i. include upstream, and downstream, emissions in its measure of scope 3 emissions;
- ii. disclose an explanation of the activities included within its measure of scope 3 emissions, to enable users of general purpose financial reporting to understand which scope 3 emissions have been included in, or excluded from, those reported;
- iii. if the entity includes emissions information provided by entities in its value chain in its measure of scope 3 greenhouse gas emissions, it shall explain the basis for that measurement; and
- iv. if the entity excludes those greenhouse gas emissions, it shall state the reason for omitting them, for example, because it is unable to obtain a faithful measure.⁸

In October 2022, the ISSB unanimously confirmed the inclusion of scope 3 emissions in the disclosure requirements, applying the current version of the GHG Protocol Corporate Standard and including relief provisions for covered companies, such as phasing in.

In light of the Australian fossil fuel exporting sector's significant contribution to global emissions and the global trends in mandating scope 3 emissions disclosures, it is the Hub's view that any nationally regulated disclosures

⁶ For example, information from BHP's 2022 '[Scope 1,2 and 3 GHG emissions calculation methodology](#)' report shows that Scope 3 emissions comprise 96.7% of its emissions profile in FY2022 (based on BHP's total scope 3 GHG emissions [adjusted for divested operations] recorded as 364.3 MtCO₂-e, and its total operational GHG emissions (including carbon offsets) (i.e. its Scope 1 and 2 emissions) recorded as 12.3 MtCO₂-e.

⁷ See footnotes 32 and 33, p. 21 of the [updated implementation guidance for the TCFD recommendations](#) (October 2021).

⁸ See pp. 41-42 of the [Exposure Draft IFRS S2 Climate-related Disclosures \(Climate Exposure Draft\)](#) (July 2022).

scheme should mandate the disclosure of scope 3 emissions in line with the ISSB's position in its exposure draft and October 2022 decision (both of which we expect will be reflected in the final version of the standards set to be released shortly). It is no longer acceptable for corporations, particularly fossil fuel producers, to ignore the emissions resulting from their products once sold. Indeed, as was pointed out in the Bylong Coal Project case, distinguishing between the three emissions scopes is illogical given that all of the emissions, wherever they occur, will adversely impact the Australian climate.⁹ As a highly advanced economy, Australia must do everything reasonable within its capacity to limit global temperature increase to 1.5 degrees in line with its commitment as a Paris Party. These actions must include legislative efforts to require entities with the most significant influence over, and investment in, coal and LNG exports to fully disclose their scope 3 emissions. Having an investment market which is well informed about entities' total emissions is particularly important given the absence of clear legislative or policy guidance for decision-makers charged with evaluating the environmental impacts of fossil fuel projects.

The regulatory regime should be designed so as to be flexible enough to align with the developments of international reporting standards, including the ISSB, and consider the potential expansion into broader sustainability initiatives including human rights (Questions 1, 4, 11 and 17)

The Consultation Paper raises a range of questions regarding alignment with current and future international standards addressing climate-related financial disclosures and broader environmental and sustainability initiatives, including the ISSB sustainability disclosure standard set to be finalized in 2023 and other environmental, social or climate-related disclosures yet to be standardized by the IFRS. In recent years, there has been a proliferation of global standards and metrics for managing and reporting climate and sustainability-related risks for the private sector. Particularly since the TCFD's initial report in 2017, there has been increased uptake of climate and sustainability-related disclosure regimes globally.

There are strong arguments of general principle in favour of Australia aligning with international standards. The first relates to regulatory agility to respond to continuing advancements in this area. Aligning with internationally recognized reporting standards will allow Australia more easily to update and expand its disclosure regime in line with future global trends and movements (future-proofing). Secondly, it will simplify the implementation process for businesses captured by the regime. Thirdly, increased standardization will benefit investors and the public, better equipping them to compare climate-related business risks and impacts at the national and the global scale.

A more climate-specific argument relates to the context in which climate-related financial disclosure will be taking place and arises from the extensive overlap between climate risks and human societies. In its 2022 chapter on [Australasia](#), IPCC WGII stated at 1583 that 'increasing climate risks are projected to exacerbate existing vulnerabilities and social inequalities and inequities', confirming (with 'High Confidence') the deep interconnectedness of the two risk areas of climate and human societies. The potential for harmful interaction with human systems and human communities by businesses operating within a changing and increasingly extreme climate presents a specific *transition* risk to many businesses beyond their more anticipated physical and transition (e.g. technology disruption) risks. This is particularly true for businesses' *responses* to the risks they will be disclosing in their climate reporting. For example, an enterprise may underestimate the level of protection required for its staff or customers from cascading extreme weather events or it may provide wrongly pitched adaptations which result in harm to individuals.

⁹ NSW Government IPC, [Statement of Reasons for Decision](#) (Sept., 2019), para 690.

The ISSB's climate disclosure exposure draft requires entities to identify (under Metrics and Targets) the extent to which their businesses are vulnerable to climate-related transition risks. For many businesses, this exercise will expose the existence of transition risks which are either considered non-financial or are otherwise not required by the standard to be disclosed. Because of this material information gap, it is highly likely that future international standards will require disclosure of these broader risks, where the risk is significant. An obvious illustration is the imminent ISSB general sustainability disclosure standard. An Australian climate-related disclosure regime which is insufficiently flexible to 'incorporate the growth of other sustainability reporting' (Qu. 17) will reinforce the unhelpful siloeing of risk assessment and disclosure, and will not serve the interests of Australian businesses, investors, regulators or the general public. On the contrary, it will simply encourage unnecessary and dangerous gaps in the regulation of climate-related risk disclosure.

Yours sincerely,

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