



Key elements in ASIC's Regulatory Guide 280

What you need to consider when preparing your sustainability reporting



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Introduction

In March this year, the Australian Securities and Investment Commission (ASIC) published the *Regulatory Guide (RG) 280: Sustainability Reporting* (RG 280) to assist entities mandated by the Corporations Act 2001 to prepare sustainability reports that include climate-related financial information.



RG 280 seeks to clarify how ASIC interprets, will enforce and administer the new climate-related disclosures requirements, and provides guidance for preparing mandatory sustainability reports¹. RG 280 also provides guidance for disclosing sustainability related financial information outside the sustainability report, such as in Operating and Financial Reviews (OFRs), Product Disclosure Statements (PDSs) and prospectuses.

This publication provides some background, summarises key areas of the guidance, and highlights some key issues expected to be of interest to entities. For further details, entities should refer directly to RG 280.

RG 280 is a legal document, and organisations are recommended to seek appropriate legal advice as needed. This publication does not constitute legal, accounting, or financial advice but serves as a resource to guide stakeholders in navigating the new regulatory landscape.

RG 280: Summary

RG 280 provides useful guidance on a number of areas, including:

- 1 Determining who must prepare a sustainability report under the Corporations Act, including guidance on determining reporting thresholds - particularly around revenue and employees.
- 2 Required content for the sustainability report, including scenario analysis and cross referencing.
- 3 Disclosure of sustainability-related financial information outside the sustainability report - in particular, in the OFR, prospectuses and PDSs.
- 4 ASIC's administration of the sustainability reporting requirements, including the granting of relief and its 'proportionate and pragmatic approach' to supervision and enforcement.

¹ Last year ASIC issued Consultation Paper 380 to gather feedback for a regulatory guide to support these disclosure requirements. These efforts have culminated in the issuance of RG 280.



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Key highlights

Determining the size threshold – who needs to report?

The Corporations Act mandates entities to prepare sustainability reports if they are required to prepare a financial report under Chapter 2M (Ch 2M), and if either:

- They satisfy at least two of three size thresholds based on revenue, assets, and employee metrics.
- If they exceed specified emission, energy production or consumption thresholds under the National Greenhouse and Energy Reporting (NGER) scheme.

RG 280 clarifies that these size threshold tests apply at the financial year end, and entities should set up systems that assess whether these thresholds are likely to be met by the financial year end.

The size tests based on revenue, assets and employees are the same as those used to define a 'large proprietary company' under the Corporations Act (s45A(3)), so their application should be consistent with the size test considerations for financial reporting purposes (refer below for further information). ASIC has also provided more guidance on applying the size thresholds but acknowledges that in some cases entities may need to seek professional advice.

Defining revenue

RG 280 specifies that entities should apply definitions of revenue and income from AASB 15 *Revenue from Contracts with Customers*. However, AASB 15 does not cover all forms of revenue and ASIC acknowledges that entities may need to consider other accounting standards that give rise to other forms of revenue or income such as AASB 9 *Financial Instruments*, AASB 11 *Joint Arrangements*, AASB 17 *Insurance Contracts*, AASB 140 *Investment Property* and AASB 141 *Agriculture*. The standards mentioned in RG 280 are not an exhaustive list, and no further guidance is given about whether or when, for example, fair value gains and losses or equity-accounted profits should be included in revenue.

Our view

Significant judgement may still be required in interpreting 'revenue' for the purposes of the size test in the Corporations Act.

Revenue as defined in AASB 15 relates to income arising in the course of an entity's ordinary activities. Therefore, in considering what might be included in 'revenue' for the purposes of the reporting thresholds in the Corporations Act, an entity should consider whether an item of income or revenue arises in the course of its ordinary activities.

Entities may find it helpful to apply a broad set of factors to make this assessment such as:

- Does the income appear in previous reporting periods? Is it expected to occur again in the following reporting periods?
- Does the income relate to the entity's ordinary activities, as described in the annual report or other investor documents?

Assessments should be performed based on the specific facts and circumstances of the entity. An entity may need to consider obtaining legal advice on this assessment. The rationale supporting the assessment should be clearly documented.

Defining assets

The asset owner test applies only to registered schemes, registrable superannuation entities or retail corporate collective investment vehicles (CCIVs). RG280 specifies the "value of assets" tested should equal the amount presented as total assets on the reporting entity's statement of financial position.

Defining employees

RG 280 specifies that entities should apply the employee definition as 'employees and others providing similar services' from AASB 2 *Share-based Payment*. This is "individuals who render personal services to the entity and either:

- The individuals are regarded as employees for legal or tax purposes,
- The individuals work for the entity under its direction in the same way as individuals who are regarded as employees for legal or tax purposes.
- The services rendered are similar to those rendered by employees."

This definition also highlights that employees encompass all management personnel, including non-executive directors.

Consolidated reporting

RG 280 specifies that only parent entities required to prepare consolidated financial statements under Ch 2M are allowed to prepare a consolidated sustainability report for its consolidated group. Australian subsidiaries of foreign parents must prepare their own sustainability report under s292A and cannot lodge the consolidated sustainability report prepared by the foreign parent. Additionally, a consolidated sustainability report can be prepared for entities in stapled groups² that rely on ASIC Corporations (Reporting by Stapled Entities) Instrument 2023/673.

² Stapled entities are listed entities whose securities are traded together such that each investor has the same proportionate interest in each entity. For ASIC's definition of stapled issuers and groups, and the related financial reporting relief, see [ASIC Corporations \(Reporting by Stapled Entities\) Instrument 2023/673](#)



Directors' duties

To comply with the Corporations Act, directors are required to declare whether, in their opinion, the sustainability report complies with the Corporations Act and AASB S2 *Climate-related Disclosures*. For the first three years of mandatory climate reporting (i.e. between 1 January 2025 and 31 December 2027), the Corporations Act allows directors to make a modified declaration that the entity has taken 'reasonable steps' to ensure that the 'substantive provisions' of the sustainability report are in accordance with the Corporations Act, including AASB S2. This relief recognises that, over time, the sophistication and maturity of an entity's controls, policies, procedures and systems for sustainability reporting are expected to develop and directors are expected to develop their understanding, experience and capabilities in relation to sustainability reporting.

Underscoring the significance of directors' involvement, RG 280 recommends that Directors actively engage with and oversee sustainability reporting processes to better equip themselves in making the declaration. RG 280 outlines that key responsibilities of directors include:

- Understanding the entity's sustainability reporting obligations and climate-related risks
- Requiring the establishing of systems for risk management including to identify, assess, and monitor material climate-related financial risks, and changes over time
- Requiring the setting of controls and procedures to manage and prepare sustainability reports and maintain relevant records
- Applying a critical lens to proposed disclosures, including to advice received from experts

While directors may rely on the special knowledge or expertise of others, they still need to make an independent assessment of the disclosed information using their own skills and judgement.

Cross-referencing and modified liability

RG 280 addresses cross-referencing considerations by referring to the requirements in AASB S2. AASB S2 permits cross-referencing within a sustainability report to information in other documents as long as the cross-referenced information is for the same reporting entity. Cross-referenced information must be available on the same terms and at the same time as the climate-related financial disclosures and cross-referencing must not make the disclosures as a whole less understandable. The report within which the cross-referenced information is located must be identified. In addition, the entity must explain how to access the report, and specify the precise location of the cross-referenced information within it.

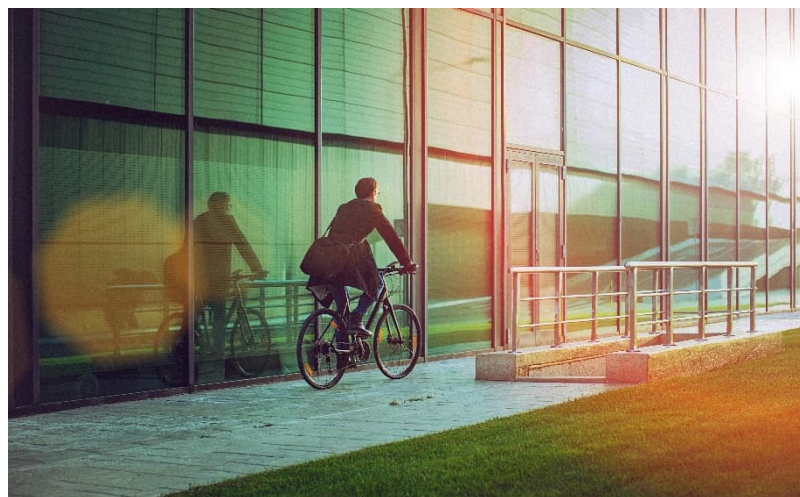
RG 280 strongly encourages entities that use cross referencing to lodge the cross-referenced documents together with their sustainability report to ASIC.

With the introduction of mandatory climate-related reporting, the Corporations Act was amended to temporarily suspend the liability for misleading and deceptive (and other) conduct relating to the most uncertain parts of a climate statement. This limited immunity applies to statements in sustainability reports prepared for financial years commencing between 1 January 2025 and 31 December 2027 to allow time for experience and practice to develop³. In RG 280, ASIC has clarified that the modified liability settings do not extend to information included by cross-reference in the sustainability report (s1707D and RG 280.69(b)).

Climate scenario analysis

The Corporations Act requires entities to perform scenario analysis using at least two climate scenarios - one relating to a 1.5°C increase in global average temperatures above pre-industrial levels, and another focused on a higher warming scenario well exceeding 2°C. RG 280 has clarified the meaning of "well exceeding 2°C" by stating that there is a risk that an entity would not be complying with the Act if it used a scenario based on an increase of less than 2.5°C.

RG 280 does not provide detailed guidance on the selection of climate scenarios, such as which IPCC scenarios would be consistent with the temperature increases referred to in the Corporations Act. ASIC explained that RG 280 only provides general guidance on the legislative requirements relating to scenario analysis and their intent because it expects that the climate scenarios used by entities will evolve as real world facts and circumstances change.



³ For further information on the modified liability approach, refer to [EY Mandatory climate-related financial disclosures: What you need to know](#).



Sustainability related financial information outside sustainability reports

ASIC has also used RG 280 to clarify its expectations about greater disclosure of climate and other sustainability related financial information in public disclosure documents other than the sustainability report. In particular, RG 280 emphasises that sustainability related financial information may be required to meet existing requirements for OFRs, prospectuses and PDSs.

The key guidelines of RG 280 are:

Scope	Guidelines
All disclosure of sustainability related financial information outside the sustainability report	<p>All entities</p> <ul style="list-style-type: none">Encouraged to adopt defined terms and apply principles from AASB S1 General Requirements for Disclosure of Sustainability-related Financial Information and AASB S2 to disclose useful sustainability related financial information
Additional disclosure considerations specific to OFRs, Prospectuses, PDSs	<p>All entities</p> <ul style="list-style-type: none">Must disclose sustainability-related financial information where it would be reasonably required for users and their professional advisers to make informed decisions <p>Reporting entities⁴</p> <ul style="list-style-type: none">Must signpost to/include the latest sustainability reportCautioned on selective use or reproduction of climate-related financial disclosures to avoid misleading information

Our view

The introduction of mandatory climate reporting has brought more attention and focus on sustainability related financial information and how that information should be incorporated into disclosure documents prepared for investors and the capital markets. Adoption of defined terms and disclosure principles from AASB S1 and AASB S2 into OFRs, prospectuses and PDSs is a natural starting point, facilitating compliance with regulatory requirements for these documents to be clear, concise and effective and not be misleading or deceptive. Issuers and their advisers should consider:

- How RG 280 affects the due diligence process for prospectuses and PDSs, for example around how disclosed climate risks, opportunities and commitments are incorporated into assumptions underlying financial forecasts
- How sustainability-related financial information aligns with financial data, is appropriately supported by evidence of “reasonable basis” and, where possible, is verifiable ([RG170 Prospective financial information](#))
- Stakeholder expectations, e.g. whether there is a need for assurance over such disclosures.



4 “Reporting entities” are defined as entities required to prepare a sustainability report under Ch 2M of the Corporations Act.



ASIC administration

ASIC will take a “proportionate and pragmatic” approach to regulating the new sustainability reporting requirements in the earlier years to allow entities time to build reporting capabilities. RG 280 outlines its principles around supervision and enforcement and on the types of relief that it will make available (refer to the summary below for further information).

Aside from the general guidance outlined below, ASIC does not provide specific details regarding the circumstances that could lead to granting these reliefs, considering it too early at this stage. It will assess applications during the early years on a case-by-case basis, publishing its decisions and assessing the need for further guidance.

The key themes of these requirements are summarised at a high level below:

Enforcement

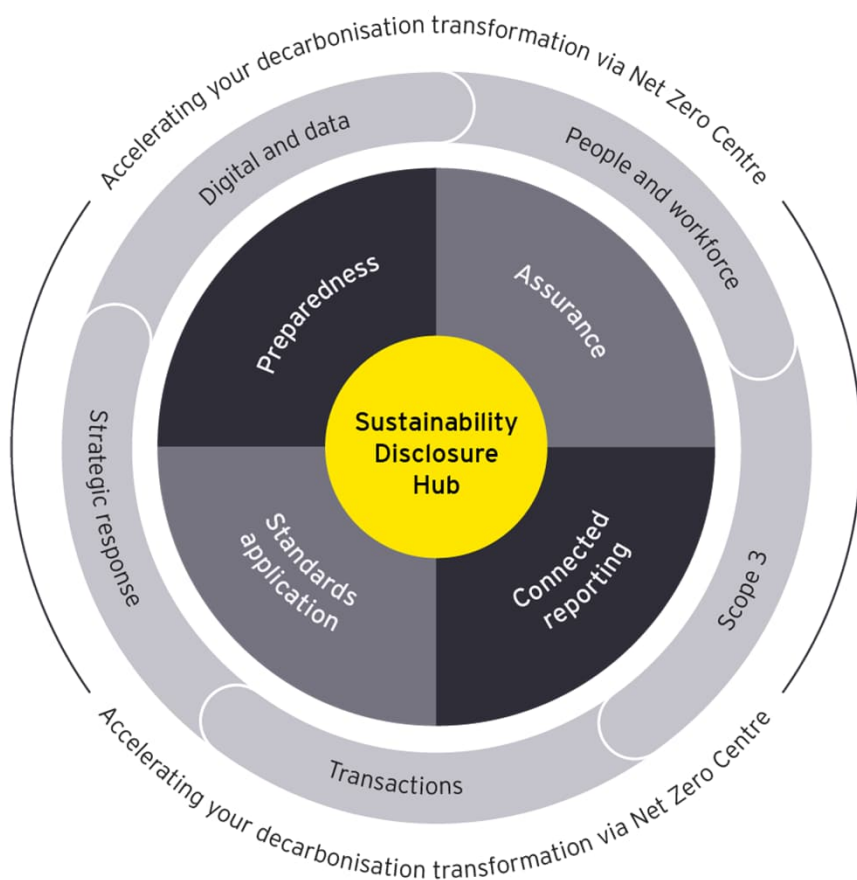
ASIC state that they:

- Will likely review both sustainability reports and audit files to ensure compliance and quality
- May ask for revisions and aim to engage directly with reporting entities to provide opportunities for revisions
- Will be more likely to commence an enforcement investigation where they see misconduct of a “reckless or serious nature” or no report is prepared at all

Granting relief

ASIC may grant multiple forms of relief - class or individual basis, consolidated reporting relief, audit relief, extended time and (in the early years) single-period relief and no-action letters.

- Relief will be granted only where entities demonstrate how one or more criteria is met:
 - a. Compliance would make the sustainability report or other reports misleading
 - b. Compliance would be inappropriate in the circumstances
 - c. Compliance would impose unreasonable burdens
- “Unreasonable burdens” must be shown to be “disproportionate to the value of the disclosures for users”. The threshold is high given the materiality basis, proportionality mechanisms and other exemptions in AASB S2.
- In granting individual relief ASIC will take into account circumstances e.g. size. However, relief is unlikely to be granted simply because an entity is privately owned, its report has limited users, or the information is available elsewhere.
- Entities granted relief under ASIC instruments from preparing financial reports do not need to prepare sustainability reports. However, other forms of relief (e.g. audit relief, extended time, etc.) granted for financial reporting do not automatically exempt entities from preparing a sustainability report.



The EY Sustainability Disclosure Hub offers practical guidance to assist companies across the region prepare for mandatory reporting of climate and sustainability-related reporting.

Headed by Oceania market-leading financial and non-financial reporting professionals, the Sustainability Disclosure Hub brings together EY capability locally and across the globe – coupling financial and non-financial reporting strategy, readiness and assurance capabilities that have intimate knowledge of the work of the ISSB and local market insights, including the development of the climate-related disclosure requirements by the AASB.

The Sustainability Disclosure Hub collaborates closely with the EY Net Zero Centre, which helps EY clients to make the right decisions at the right times and set themselves on a pathway for success in a net zero economy.

Please reach out to our Sustainability Disclosure Hub team to discuss what the requirements mean to you.

Sustainability Disclosure Hub



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