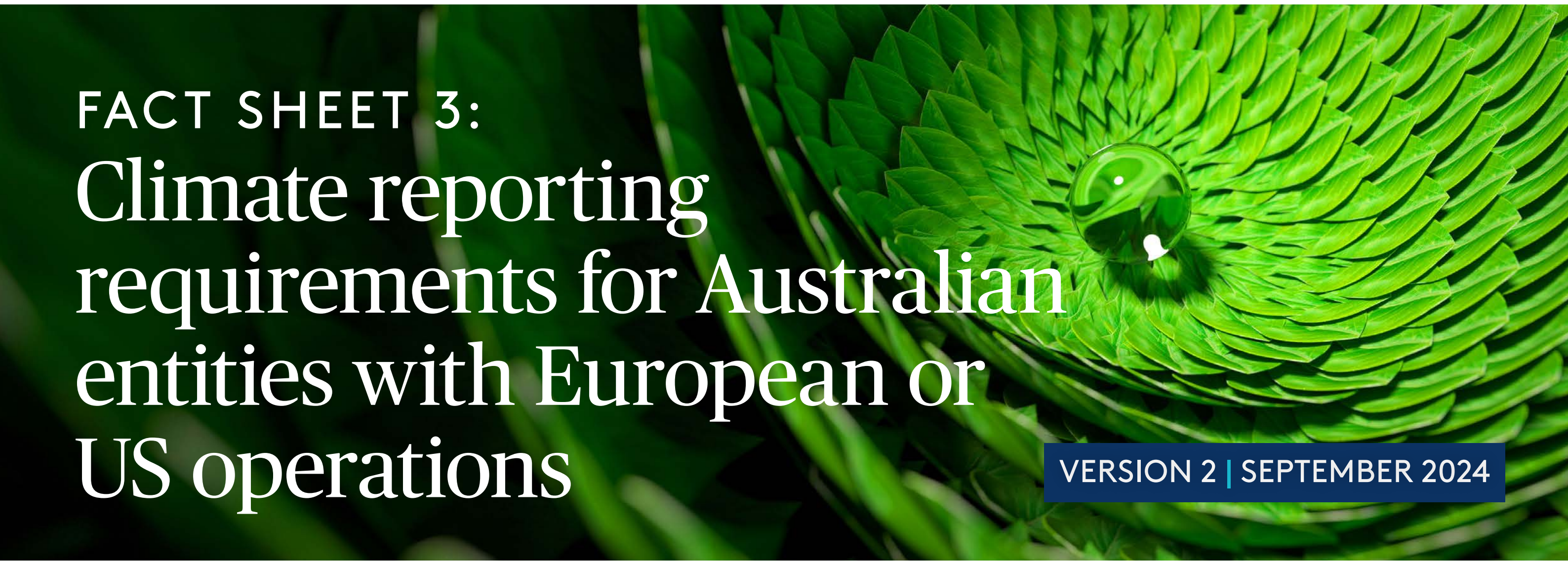
Climate Governance Initiative Australia

A JOINT PUBLICATION BY Australian Institute of Company Directors | Deloitte. | MinterEllison.



FACT SHEET 3:

Climate reporting requirements for Australian entities with European or US operations

VERSION 2 | SEPTEMBER 2024

Sustainability reporting developments in the European Union (EU) and the United States (US) have potential worldwide reach.

Australian-based organisations with activities in the EU, or which are owned by US Securities and Exchange Commission (SEC) registrants, should pay careful attention to possible reporting obligations in these jurisdictions.

EU REPORTING REQUIREMENTS

WHO IS IMPACTED

The European Sustainability Reporting Standards (ESRS), which sit within the broader legal and reporting framework known as the Corporate Sustainability Reporting Directive (CSRD), were adopted by the European Commission (EC) on 31 July 2023. In stages from 1 January 2024 to 1 January 2028, the CSRD will require Australian companies with certain European subsidiaries or branches to report on their worldwide operations.

These standards, will apply to:

- **Australian entities with securities listed on EU-regulated markets;**
- **'large' undertakings in the EU,** being organisations listed on an EU regulated market or unlisted[1] organisations which have operations or are based in the EU and subsidiaries of Australian parent organisations who meet at least two of the following three criteria: (1) a balance sheet of over EUR25 million; (2) over EUR50 million net turnover; and (3) over 250 employees.
- **EU-listed small-[2] and medium[3]-sized undertakings (SMEs)** (other than micro[4] undertakings) that are subsidiaries of Australian-based companies with debt or equity securities listed on an EU-regulated market now have the option for simplified reporting, with phase-in relief; and
- **Certain Australian-based entities, being those that from 2028:** (1) have generated a net turnover of more than EUR150 million in the EU in each of the last two financial years; and (2) have at least one large or listed subsidiary on regulated markets in the EU (or branch, if there are no EU large or listed subsidiaries) with more than EUR40 million net turnover.

1 An organisation that is listed on an EU regulated market does not need to have operations within the EU to be brought into scope. An organisation that is not listed on an EU regulated market must have operations or be based within the EU to be brought into scope.

2 Small undertakings are those that meet at least two of the following three criteria: (1) no greater than EUR4 million balance sheet total; (2) no greater than EUR8 million net turnover; and (3) no greater than 50 employees

3 Medium-sized undertakings are those that do not qualify as small and meet at least two of the following three criteria: (1) no greater than EUR20 million balance sheet total; (2) no greater than EUR40 million net turnover; and (3) no greater than 250 employees.

4 Micro undertakings are those that meet at least two of the following three criteria criteria: (1) no greater than EUR350,000 balance sheet total; (2) no greater than EUR700,000 net turnover; and (3) no greater than 10 employees.

WHEN WILL REPORTING COMMENCE?

Reporting phases in from 1 January 2024, starting with companies listed on EU-regulated markets.[5] Certain phase-in relief is available.[6]

WHAT IS REQUIRED?

The ESRS requires disclosure against two cross-cutting standards (ESRS 1 and ESRS 2) and 10 topical standards covering ESG topics (which are outlined in Figure 1). **All organisations must comply with the general requirements of ESRS 1 and ESRS 2.** However, the 10 topical standards are subject to a materiality assessment, with some disclosure requirements voluntary regardless of materiality (such as biodiversity transition plans and certain indicators on non-employees).

Unlike the international sustainability reporting standards which adopt an investor-focused approach,[7] the ESRS requires entities to apply **'double materiality.'** Double materiality involves consideration of the organisation's impact on sustainability matters ('impact materiality') in addition to impact on the company ('financial materiality').[8] This approach captures a greater number of stakeholder perspectives, beyond investors.

FIGURE 1: ESRS Disclosure requirements

Cross-Cutting	ESRS 1	General requirements
Cross-Cutting	ESRS 2	General requirements
Environmental	ESRS E1	Climate Change
Environmental	ESRS E2	Pollution
Environmental	ESRS E3	Water and marine resources
Environmental	ESRS E4	Biodiversity and ecosystems
Environmental	ESRS E5	Resource use and circular economy
Social	ESRS S1	Own workforce
Social	ESRS S2	Workers in the value chain
Social	ESRS S3	Affected communities
Social	ESRS S4	Consumers and end users
Governance	ESRS G1	Business Conduct

5 Which may include their worldwide operations at the global ultimate parent consolidated level by 2029
6 Deloitte, (June, 2023) European Sustainability Reporting Standards – Unpacking the Commissions first draft Delegated Act
7 Based on financial materiality from the perspective of existing and potential investors, lenders and other creditors
8 For more information surrounding double materiality, see Workiva blog: What Is Double Materiality? Here's What You Need To Know.

US REPORTING CONSIDERATIONS

In March 2024, the United States Securities and Exchange Commission (SEC) adopted a new disclosure rule requiring certain listed entities to make Task Force on Climate-related Financial Disclosures (TCFD)-based climate disclosures (SEC Climate Disclosure Rule).[9] The SEC Climate Disclosure Rule was passed following an extensive two-year consultation process, with the initial draft having been released for feedback in March 2022 (Draft SEC Rule).

A phased approach is being implemented, with disclosures starting in fiscal years beginning in 2025 for the largest listed entities.

The SEC Climate Disclosure Rule, differed in certain key respects from what was initially proposed under the Draft SEC Rule, including:

- Removing the requirement to disclose scope 3 emissions.
- Limiting scope 1 and 2 emissions disclosures to large organisations (those with more than US$75 million in public investor-held shares), on a phased basis from 2026, and only when such emissions are material.
- Extending existing safe harbour protections so that forward-looking climate-related disclosures – pertaining to transition plans, scenario analysis, internal carbon pricing, and targets/ goals – are shielded from private liability if accompanied by 'meaningful cautionary statements' (as per existing forward-looking safe harbour provisions).
- Removing or simplifying certain disclosure requirements, making many subject to a materiality qualifier. Notable removals included the requirement to identify specific board members responsible for climate risk oversight, whether any board member has expertise in climate-related risks, how frequently the board is informed of such risks, and whether the board sets climate-related targets and goals. Additionally, the requirement to disclose if there is a separate board or management committee to assess and manage climate-related risks was eliminated.
- Eliminating the requirement to disclose certain financial statement impact metrics in a note to the financial statements.

The SEC Climate Disclosure Rule was stayed less than a month after being issued in light of multiple legal challenges (most arguing that the rule constitutes unlawful Commission overreach). Entities with SEC filing requirements are advised to closely monitor developments and remain flexible in response to the evolving regulatory landscape.[10]

In late September 2023, California passed the Climate Corporate Data Accountability Act (SB 253) and the Climate-related Financial Risk Act (SB 261). Collectively, these Bills require all organisations which 'do business in California' with annual revenues in excess of USD$500 million (for SB 261) or over USD$1 billion (for SB 253) to disclose certain climate-related information. Some commentators consider that these Bills go beyond the requirements of the SEC's proposed climate-related disclosure rule.[11]

9 See https://www.sec.gov/news/press-release/2024-31
10 Climate Governance Initiative US (July 2023) SEC climate disclosure briefing for board directors
11 DavisPolk (Sep 2023) Major California climate-related disclosure bills poised to become law

US, EU AND AUSTRALIAN CLIMATE REPORTING COMPARED

The table highlights the main differences between the US, EU and Australian sustainability reporting requirements/ proposals.

	US (SEC)	EU (CSRD/ESRS)	Australia
Type	Disclosure requirements developed by the securities regulator	Regulation issued by the European Commission (EC)	Adapted from the international (ISSB) standards
Scope	TCFD-based climate-related disclosures	Sustainability disclosures with 10 topic-specific standards	Builds on and significantly extends TCFD requirements
Materiality	Investor-focused	Double materiality	Investor-focused
Assurance	Limited assurance for Large Accelerated Filers and Accelerated Filers over scope 1 and 2 GHG emission disclosures, with a phase-in to reasonable assurance for Large Accelerated Filers	Limited assurance (expected to be followed by reasonable assurance)	'End point' being assurance over all disclosures by 1 July 2030 (proposed to start with limited and progressing to reasonable)

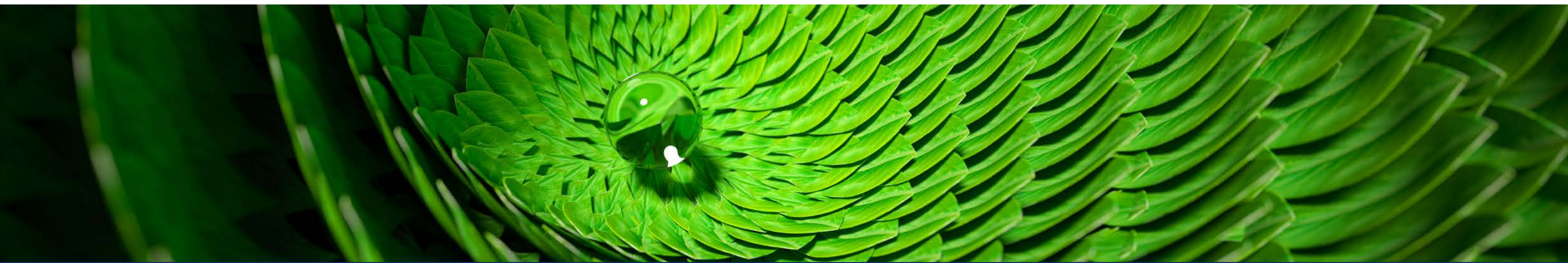
QUESTIONS FOR DIRECTORS TO ASK

EU operations:

- Have we evaluated how our EU operations will be affected by the EU reporting requirements, including any specific member-state requirements?
- Have we compared our current climate reporting with the EU's double-materiality requirements?

US operations:

- Will our entity be captured by the SEC Climate Disclosure Rule?
- If so, what steps are we putting in place to comply with those requirements?
- Are we considering the application of the forward-looking statement safeharbour provision when making forward-looking climate statements (this will require the inclusion of relevant cautionary language)?



ABOUT US

The Australian Institute of Company Directors is committed to strengthening society through world-class governance. We aim to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. Our membership includes directors and senior leaders from business, government and the not-for-profit sectors.

DISCLAIMER

The material in this publication does not constitute legal, accounting or other professional advice. While reasonable care has been taken in its preparation, the AICD, Deloitte, and MinterEllison do not make any express or implied representations or warranties as to the completeness, reliability or accuracy of the material in this publication. This publication should not be used or relied upon as a substitute for professional advice or as a basis for formulating business decisions. To the extent permitted by law, the AICD, Deloitte, and MinterEllison exclude all liability for any loss or damage arising out of the use of the material in the publication. Any links to third party websites are provided for convenience only and do not represent endorsement, sponsorship or approval of those third parties, any products and services offered by third parties, or as to the accuracy or currency of the information included in third party websites. The opinions of those quoted do not necessarily represent the view of the AICD. All details were accurate at the time of printing. The AICD, Deloitte, and MinterEllison reserve the right to make changes without notice where necessary.

CCT1687_24