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Climate Disclosure Unit
Climate & Energy Division
Treasury
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Submitted via comment letter: ClimateReportingConsultation@treasury.gov.au

To whom it may concern,

Climate-related financial disclosure: exposure draft legislation and explanatory materials

The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia and represents approximately 89% of private sector general insurers. As a foundational component of the Australian economy, the general insurance industry employs approximately 60,000 people, generates gross written premiums of \$60.2 billion per annum and on average manage \$159 million in claims every working day.

The Insurance Council of Australia (Insurance Council) thanks the Australian Government for the opportunity to provide a submission in response to the climate-related financial disclosure exposure draft legislation. We appreciate the collaborative approach the government has taken to welcome submissions from the business community, civil society, government bodies and other interested stakeholders. We recognise the draft legislation is an important next step for more consistent climate-related financial disclosures and welcome the opportunity to comment.

Our submission draws on the consolidated feedback of the ICA's members and focuses on issues and implementation concerns around the proposed draft legislation. ICA's member views on the main themes are summarised below. Some members may provide their own separate submission.

Our submission makes the following key points:

- **International alignment:** As much as possible, the Australian mandatory disclosure legislation and standards should align with global standards to ensure interoperability between Australia and other jurisdictions. Given the substantial size of the Australian market and its relatively high global integration, such consistency is crucial for disclosing entities operating across multiple jurisdictions.
- **Consolidated reports:** The Insurance Council and its members strongly recommend that flexibility be applied to large Australian subsidiaries of overseas parent entities that are required to report, to allow these subsidiaries to rely on their global climate financial risk report rather than requiring them to create a bespoke Australian report. Similarly, Australian entities with material operations outside Australia should be able to align their reporting with global requirements. This will help ease administrative burdens on these entities, help contribute to an overall improvement in the quality of reporting and support Treasury's objective of internationally aligned climate reporting.
- **Forward looking statements:** The Insurance Council and its members welcome the modified approach to liability however further clarity is needed on the type of forward-looking statements modified liability will apply to. Modified liability should be provided for all forward-looking statements required in an entity's sustainability report and should extend to reasonable duplication



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and discussion of statements taken from a sustainability report, made outside of the sustainability report.

- **Scope 3 Emissions:** The Insurance Council and its members recommend a phased-approach in disclosing Scope 3 emissions. Scope 3 categories with established and matured methodologies should be disclosed first, followed by those with limited/no available methodologies to be adopted at later phases on a best endeavour basis.
- **Scenario Analysis:** Forward looking statements regarding financial position, financial performance and cash flows associated with climate-related risks and opportunities are inherently uncertain. Standardised wording for a disclaimer should be included in the draft legislation to reflect the uncertainty in forward looking statements disclosed to avoid legal risks associated with material misstatement. We feel that some elements of the scenario analysis approach could be further clarified.
- **Materiality:** The Insurance Council and its members support the Group 3 materiality exemption but recommends that a Group 3 entity that determines it has no material climate-related risks and opportunities be required to disclose how it came to that conclusion.
- **Assurance Requirements:** The Insurance Council and its members support the approach of limited assurance and recommend that the progression to reasonable assurance aligns with the development of the relevant auditing standards and uplift in auditing capabilities in Australia.

Further details are outlined below.

We trust that our initial observations are of assistance. If you have any questions or comments in relation to our submission please contact Ange Nichols, Senior Advisor, Climate Change:

ange.nichols@insurancecouncil.com.au.

Yours sincerely,

Andrew Hall
Executive Director and CEO

ATTACHMENT A: Response to Climate-related financial disclosure: exposure draft legislation and explanatory materials

Specific matters for comment

Reporting entities

Consolidated reporting

The Insurance Council and its members support consolidated sustainability reporting. Consolidated group reporting is essential for enabling alignment, removing duplication, and reducing the reporting workload on subsidiaries.

For many of our internationally owned members, climate strategy is strategically coordinated at a global group level, leveraging the expertise and resources of the parent company. The implementation of consolidated group reporting at the company level would ease administrative burdens on Australian subsidiaries, help contribute to an overall improvement in the quality of reporting and support Treasury's objective of internationally aligned climate reporting. Similarly, Australian entities with material operations outside Australia should be able to align their reporting with global requirements.

Flexibility should be provided to allow these entities to use their global climate financial risk report or align their reporting with global requirements. This is an option which has either been adopted or is being proposed in other jurisdictions such as the European Union and Singapore. This flexible approach should be accompanied by guidance from ASIC to ensure a standardised method for these entities to meet their Australian obligations while relying on their global climate financial risk report and/or aligning their reporting with global requirements.

National Greenhouse and Energy Reporting Scheme (NGERS)

Many of our internationally owned members use the Corporate Value Chain (Scope 3) Accounting and Reporting Standard (GHG Protocol) rather than NGERS. To enable alignment, minimise duplication, and ease the reporting burden, the Insurance Council and its members recommend that entities reporting under NGERS must adhere to the NGERS methodology for scope 1 and 2 emissions. Entities not reporting under NGERS may choose to follow the NGERS method or alternative methods in line with the GHG Protocol.

Proposed 1 January 2025 commencement date

If the Government amends the draft legislation to require a 1 January 2025 commencement date for Group 1 entities, a sufficient period is essential between the release of the final standard and legislation and the commencement of reporting requirements to allow entities to prepare. For example, a 1 January 2025 commencement date for Group 1 entities should only occur if the final standard and legislation are released mid-2024. It is not feasible to expect entities to commence data collection and reporting simultaneously with the publication of the standard and legislation.

Further clarification

Further clarity should be provided on:

- How the framework applies to subsidiaries and joint ventures if they do not comprise a material part of activities within the reporting entity's financial or operational control. There are particular complexities regarding joint ventures and the degree of operational control parent companies have to enable emissions reduction. AASB guidance would be welcomed to assist in the standardisation of approach to joint ventures and subsidiaries, including the application of a materiality threshold.
- Requirements of inter-jurisdictional reporting to ensure that entities are not subject to multiple different reporting regimes of the same or slightly different information. This could also lead to inconsistency and increased complexity. For example, given the proposed Australian framework is solely emissions focused whereas NZ also covers adaptation/transition planning on both a low carbon and climate resilient future, entities reporting in both Australia and New Zealand will be required to produce multiple transition plans. The Australian Law Reform Commission (ALRC) is currently undertaking a review into regulatory and legislative complexity for corporations and financial services - it may be helpful to align design principles for the disclosure framework to design principles adopted from the ALRC review.

Reporting Requirements

Location of reporting

Further clarity is needed on whether the sustainability report must be included in a single, consolidated annual report alongside the financial statements, or whether reporting entities will have discretion to disclose in a standalone sustainability report. While the Insurance Council and its members acknowledge the need for reporting integration, we recommend flexibility be provided for reporting entities, as the use of a single expanded annual report may be problematic in the short-term for end users.

Annual reporting

The Insurance Council and its members also support the proposed approach to annual (rather than half-year) disclosures. The Insurance Council and its members are of the view that that climate disclosures would be more meaningful if disclosed on an annual basis, as there will likely be limited progress on climate strategy and emissions reductions between 6-month interval periods.

Metrics and targets

Further clarity is needed on where the additional detail on metrics and targets should be disclosed. A preferred option would be for this additional detail to sit in a data book provided separately on the reporting entity's website, with appropriate referencing from the annual report. In addition, further clarity is needed on continuous disclosure obligations for fund raising documents from ASIC and ASX, given the timing difference between data collection and data assurance may be an issue.

Liability Framework

Forward looking statements

While the Insurance Council and its members welcome the modified approach to liability, further clarity is needed on the type of forward-looking statements modified liability will apply to. We note that in the Policy Position Statement, modified liability

will be provided for disclosures of climate-related forward-looking statements. However, under the draft legislation, modified liability will only be provided for disclosures of forward-looking statements relating to scope 3 emissions and scenario analysis.

Under the proposed mandatory climate disclosure scheme, there are many types of forward-looking statements that require estimation of impacts of risks and opportunities which are inherently uncertain and may be deemed misleading or deceptive under the existing regulatory framework, specifically the misleading and deceptive conduct regime, for example s.769C of the *Australian Corporations Act*, s12BB of the *ASIC Act 2001* and s.4 of the *Australian Consumer Law*. Unlike certain other jurisdictions, reporting entities in Australia (as well as directors and officers) are exposed to the liability relating to forward-looking statements because there is no safe harbour exemption which allows for the exclusion of liability by identifying a statement as a forward-looking statement and including a proximate cautionary statement. Regulator-only actions for a fixed period will assist in mitigating this challenge.

These forward-looking disclosures (as set out in the draft Australian Sustainability Reporting Standards, ED SR1), may include:

- anticipated effects of climate-related risks and opportunities on the entity's business model and value chain;
- anticipated changes to the entity's business model, including its resource allocation;
- how the entity expects its financial position to change over the short, medium and long term given its strategy to manage climate-related risks and opportunities, taking into consideration its investment and disposal plans and its planned sources of funding to implement its strategy; and
- how the entity expects its financial performance and cash flows to change over the short, medium and long term, given its strategy to manage climate-related risks and opportunities.
- how the entity plans to respond to climate-related risks and opportunities in its strategy and decision-making, and how it plans to resource this;
- anticipated direct and indirect mitigation and adaptation efforts;
- any climate-related transition plan the entity has; and
- how the entity plans to achieve any climate-related targets, including any greenhouse gas emissions targets.

At a minimum, modified liability should be provided for both scenario analysis and transition planning, given scenario analysis and transition planning are intrinsically linked and collectively form an entity's climate risk strategy. This

interconnection between scenario analysis, transition plans and other forward-looking disclosures will make it very difficult to apply limited liability to some forward-looking disclosures and not others.

The draft legislation and the explanatory memorandum should be amended to make clear that modified liability will be provided for disclosures of all climate-related forward-looking statements, as reflected in the Policy Position Statement. We recommend that Section 1705B(2) of the draft legislation should be amended, drawing on the current section 728(2) which deals with forward looking statements, to explicitly cover “statements made about a future matter in order to comply with the substance or intent of the sustainability standards, including such statements made as part of a transition plan.”

Statements made outside a sustainability report

The Insurance Council and its members note that under the draft legislation, modified liability “...does not apply to a statement made other than in a sustainability report (even if such a statement is also made in a sustainability report)”. We are concerned with this approach as statements and messaging made in sustainability reports are likely to be repeated elsewhere in the annual report and in forums or venues. For example, many of our internationally owned members operating in multiple jurisdictions may duplicate representations made in their sustainability report to meet the disclosure requirements of foreign laws. As currently drafted, these representations may not be covered by the modified liability period.

The Insurance Council and its members recommend:

- The draft legislation be amended to make clear that modified liability permits reasonable duplication and discussion of statements made in a sustainability report outside of the sustainability report.
- The Government provide further clarity and/or guidance regarding how reporting entities should approach duplication of sustainability content in other sections of the annual report under general disclosure requirements.

Reporting years

The Insurance Council and its members note the transitional three-year period refers to reports issued between 1 July 2025 and 30 June 2027 rather than three full years of reporting. We recommend that entities in all Groups receive relief for three reporting years, particularly considering the data, methodology, capability and assurance gaps, and the limited resources available to Group 3 entities. It may also be more effective to align the regulator-only enforcement period with the development of standardised scenario analysis and methodologies to give entities a framework for including uncertainties and data gaps before the full penalty period.

Disclaimer for forward looking statements

The Insurance Council and its members welcome the modified approach to liability for forward looking statements like climate scenarios during the initial years of the disclosure regime. However, the financial position, financial performance and cash flows associated with climate-related risks and opportunities over the short, medium and long term will remain inherently uncertain. Standardised wording for a disclaimer should be included to reflect the uncertainty in forward looking

statements disclosed to avoid legal risks associated with material misstatement, such as potential liability for misleading and deceptive disclosure under s1041H of the *Corporations Act 2001* and s18 of the *Australian Consumer Law*.

Disclosure of Material Scope 3 Emissions

Methodology and data gaps

There are considerable methodology and data gaps which currently prevent the accurate measurement and reporting of some Scope 3 emissions. Where data is available, there may be other factors limiting its availability for scope 3 reporting, such as state or territory regulatory prohibitions on sharing data. The disclosure framework will need to be designed with this in mind.

To accommodate these methodology and data gaps, the Insurance Council and its members recommend:

- A phase-approach in disclosing Scope 3 emissions, tied to the successful development of key methodologies and data. Only requiring entities to disclose Scope 3 emissions following the completion of a widely recognised and agreed methodology for measuring Scope 3 emissions would allow entities to report and disclose this data clearly and consistently. This would also avoid entities using different approaches to measure and report emissions, which would hamper the comparability of disclosures and lead to a fragmented rather than standardised approach.
- A phase-approach in disclosing Scope 3 emissions by category. The Scope 3 categories with established and matured methodologies should be disclosed first, followed by those with limited/no available methodologies to be adopted at later phases on a best endeavour basis. Treasury could seek clarity from reporting entities on which categories there is sufficient data to report against, and which categories require improved data and reporting methodologies.

Capability and collaboration

The Insurance Council and its members would welcome a comprehensive program aimed at enhancing data capability and availability throughout the economy, given the interdependencies involved in Scope 3 reporting. Specifically, it's noted that Scope 3 financed emissions span the entirety of the Australian economy, requiring the collection of both upstream and downstream information by reporting entities. To facilitate this, the Insurance Council and its members would welcome the development of guidance documents by the Australian Government on calculating financed emissions and recommend the creation of enhanced datasets at a sector level.

Recognising the ongoing need for cooperation and collaboration across industries to implement Scope 3 measurement and reporting methodologies effectively, the Insurance Council and its members recommend that Treasury with input from the ACCC, provide guidance on 'approved industry collaborations', which would not require authorisation by the ACCC under s88 Competition and Consumer Act 2010.

Modified liability

The Insurance Council and its members welcome the modified approach to liability for disclosing Scope 3 emissions during the initial years of the disclosure regime. However, considerable methodology and data gaps which prevent the accurate

measurement and reporting of some Scope 3 emissions will continue over the short, medium and long term. Standardised wording for a disclaimer should be included to reflect the uncertainty in disclosing Scope 3 emissions to avoid legal risks associated with material misstatement. For example, potential liability exists for misleading and deceptive disclosure under s1041H of the *Corporations Act 2001* and s18 of the *Australian Consumer Law*. This would also assist with the comparability of statements.

GHG Protocol

The Insurance Council and its members note that under the proposed approach, 'scope 3 emissions' has the same meaning as in the GHG Protocol. However further clarity is needed on whether reporting entities will be *required* to use the GHG Protocol for scope 3 emissions reporting and categorisation, or whether discretion will be provided.

Climate Scenario Analysis

Phased approach

As outlined in our previous submissions to Treasury on climate-related financial disclosure, the Insurance Council and its members welcome the proposed phased approach to reporting requirements for climate scenario analysis, to allow for the development of appropriate methodologies and data availability, whilst also providing entities with time to prepare for more detailed scenario analysis requirements.

We note that quantitative analysis will be required for financial years commencing on or after 1 July 2027. Further guidance should be provided to confirm if this timeframe also applies to climate-related metrics, given that quantitative scenarios analysis will be needed to quantify exposure to climate-related transition and physical risks and opportunities, as well as quantifying the impact of climate risks and opportunities.

International alignment

Where feasible, the Australian mandatory disclosure standards and legislation should align with global standards to ensure interoperability between Australia and other jurisdictions. Given the substantial size of the Australian market and its relatively high global integration, such consistency is crucial for entities operating across multiple jurisdictions. For example:

- The Insurance Council and its members agree with the proposal to specify the minimum number of climate scenarios and the lower-temperature scenario for climate resilience assessments to enhance comparability of transition risks disclosures. However, to strengthen international alignment, the lower-temperature scenario of 1.5°C above pre-industrial levels should be linked to the Paris Agreement rather than the Climate Change Act 2022 (Cth).
- Many of our overseas owned members use the Sixth Assessment Report (AR6) GWP values, rather than Fifth Assessment Report (AR5) GWP values. To ensure alignment, remove duplication and minimise the reporting burden on entities, the Insurance Council and its members recommend that rather than requiring the use of AR5 for converting

greenhouse gases into a CO2 equivalent value, flexibility should be provided to reporting entities to allow them to use at least AR5 GWP values or above, as new assessment reports are released.

Specified climate scenarios

It is also recommended that Treasury also establish a minimum upper climate scenario, to ensure that entities do not opt for a lower upper scenario to reduce perceived climate risk. In the case of entities relying on their global climate financial risk report or aligning their reporting with global requirements, this approach would provide flexibility for the entities to use an appropriate scenario at or above the minimum upper climate scenario that aligns with reporting at the global level.

Further Guidance

Further guidance should be provided on:

- preferred climate scenarios aligned to the TCFD and/or Network for Greening the Financial System scenarios.
- expectations regarding the frequency for updating climate scenario analyses. When done well, climate change scenario analysis leveraging science-based physical and transitional models, such as those recommended the Intergovernmental Panel on Climate Change (IPCC) and Network for Greening the Finance System (NGFS), is a major exercise. Annual re-assessments will be onerous.

Materiality

The Insurance Council and its members support an approach to materiality that aligns with the position on materiality from the ISSB and ensures harmonisation with existing definitions of financial materiality in the Australian and international standards. This helps to ensure consistency for reporting entities. We support the proposed approach providing entities with substantial discretion on the application of materiality, including how an entity determines the materiality and need for these types of disclosures.

The Insurance Council and its members supports the Group 3 materiality exemption but recommends that a Group 3 entity that determines it has no material climate-related risks and opportunities be required to disclose how it came to that conclusion. This will provide useful information for investors and facilitate greater transparency.

Assurance Requirements

The Insurance Council and its members support the approach of limited assurance and recommend that the progression to reasonable assurance aligns with the development of the relevant auditing standards and uplift in auditing capabilities in Australia.

There are significant challenges associated with assurance of scenario models and Scope 3 emissions, given the quantum of inputs, level of estimation and variability in assumptions. Instead of imposing a time-bound requirement, The Insurance Council and its members recommend a transition to reasonable assurance as the necessary data and capabilities are acquired.

While there is a critical role for independent external assurance to lend credibility to climate and sustainability information, reasonable assurance across climate-related content isn't practical whilst applicable accounting/reporting best practices aren't yet clearly defined.