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9 February 2023

Climate Disclosure Unit

Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: climatereportingconsultation@treasury.gov.au

CC: The Hon Dr Jim Chalmers MP, The Hon Chris Bowen MP

Dear Climate Disclosure Unit,

RE: Property Council Submission to the Climate-Related Financial Disclosure Exposure Draft Legislation

The Property Council of Australia welcomes the opportunity to provide comments on proposed amendments to parts of the *Australian Securities and Investment Commission Act 2001* (Cth) and the *Corporations Act 2001* (Cth) (the Draft Legislation) that will introduce mandatory requirements for large businesses and financial institutions to disclose their climate-related risks and opportunities.

These are important reforms, and our industry supports the Australian Government's ambition to enhance business transparency through quality climate-related financial disclosures. However, we remain concerned that the timing proposed to phase in reporting is inadequate to allow industry preparedness, particularly in relation to Scope 3 emissions in the built environment.

The relevant disclosure standards, the Australia Sustainability Reporting Standards (ASRS) are yet to be finalised, and the ISSB's IFRS S1 and S2, upon which the ASRS will be based are in themselves relatively new. Implementation of mandatory disclosures, before there is sufficient industry capacity, could result in increased inconsistencies in the way companies measure, report, and verify their climate-related information - reducing the overall quality and comparability of disclosures.

About us

The Property Council of Australia is the leading advocate for Australia's largest industry - property. Our industry represents 13% of Australia's GDP, employs 1.4 million Australians and generates \$72 billion in tax revenues. Property Council members invest in, design, build and manage places that matter to Australians across all major built environment asset classes.

Most of our leading members have net zero goals by 2030 or before (Scopes 1 & 2), with several having reached it already at a fund level. Our members have a long-term stake in ensuring our

capital and regional cities thrive and want to see decisive action on climate mitigation and adaptation to avoid the worst projected impacts of climate change.

General comments

We have actively participated in Treasury's consultation process on these proposed reforms and have **enclosed** for your reference our detailed submissions from both February 2023 and July 2023.

We note that we are also currently engaged with the Australian Accounting Standards Board (AASB) to provide industry feedback on the ASRS exposure drafts. While we support the development of these standards to align with international frameworks, policy settings, inclusive of the ASRS and the Draft Legislation now put forward by Treasury, must be appropriate for the Australian context. We have outlined our feedback below for your consideration.

Key Priorities

The Property Council's key priorities in relation to the implementation of Climate-related Financial Disclosure are set out below.

1. **The Draft Legislation requires amendment to clarify that Group 1 reporting entities are limited to 'controlling corporations' that meet the NGER publication threshold.** The Property Council supports the thresholds established for the three proposed reporting groups in the policy statement. The end goal of requiring all entities that meet the threshold laid out in Chapter 2M to make Climate-related Financial Disclosure appropriately balances organisational capacity to report and climate-related impact.

However, we note that the Group 1 threshold in the exposure Draft Legislation to amend the *Corporations Act 2001* (Cth) incorrectly references the NGER reporting thresholds¹ rather than the publication threshold.² *Treasury Laws Amendment Bill 2024: Climate related financial disclosure*, [Schedule #, item 129, subsection 1705 notes:

(5) This subsection applies to an applicable entity for a financial year if:

(a) it is:

(i) a registered corporation under the *National Greenhouse and Energy Reporting Act 2007* at the end of the financial year; or

(ii) required to make an application to be registered under subsection 12(1) of that Act in relation to the financial 20 year; and

(b) its group meets a threshold for the financial year within the meaning of subsection 13(1) of that Act.

The reference at 5(b) to section 13(1) of the NGER Act establishes reporting thresholds for controlling entities – not the publication threshold – which we understand is the policy intent as outlined in the current policy statement.³

The NGER reporting threshold is more expansive than the publication threshold as it is triggered if:

¹ *National Greenhouse and Energy Reporting Act 2007* (Cth) s 13(1).

² *Ibid* s 24(1B).

³ Mandatory climate-related financial disclosures: Policy position statement, p 2.

- the amount of greenhouse gas emissions emitted from the operation of facilities under operational control exceeds 50kT scope 1 and 2 carbon emissions;⁴ or
- the energy produced or consumed from the operation of facilities under operational control exceeds 200TJ;⁵ or
- an entity that is a member of the group has operational control of a facility the operation of which during the year causes scope 1 and scope 2 emissions 25 kT or more,⁶ or production or consumption of energy of 100TJ or more.⁷

In contrast, the publication threshold for controlling corporations is created by the limitation on publication of information by the regulator in section 24(1B) of the NGER Act, and is only triggered if:

- corporate totals have combined scope 1 and scope 2 greenhouse gas emissions equal to or greater than 50 kT CO₂-e; and
- no application has been made under section 25 in relation to that information, or if such an application has been made, it has been refused.

The reference to the NGER reporting thresholds, rather than the publication threshold would fundamentally change and expand the range of entities that would be captured in Group 1, and is not consistent with the current policy statement, policy impact analysis or previous consultation materials. Given the public nature of disclosures it is logical that Group 1 entities should be defined to include only those entities who meet the NGER publication threshold as set out in 24(1B) of the NGER Act.

Recommendation 1: Treasury amends the Draft Legislation to make it clear that Group 1 entities are limited to entities that meet the NGER publication threshold.

2. **The timing proposed to phase in reporting is inadequate to allow industry preparedness.** While many Group 1 and Group 2 entities already report their climate risks and opportunities against an international framework, we remain concerned that the implementation of Australian specific standards, based on the newly released IFRS 1 and IFRS 2 ISSB standards are not uniformly used across industry and go to a level of granularity that will be new to many Australian businesses. We do not agree that 'a preliminary understanding of reporting obligations' is sufficient preparation for entities required to report from 1 July 2024.

Recommendation 2: The proposed standards should apply no earlier than reporting periods commencing 24 months *following the establishment of a local regulatory implementation framework and governance mechanisms to oversee local implementation*. Should the AFRS be finalised and the Draft Legislation be passed in FY24, we suggest the following implementation dates:

- Group 1: FY26 onwards
- Group 2: FY27 onwards
- Group 3: FY28 onwards

⁴ National Greenhouse and Energy Reporting Act 2007(Cth) s13(1)(a).

⁵ Ibid s13(1)(b).

⁶ Ibid s13(1)(c)(i).

⁷ Ibid s13(1)(c)(ii)-(iii).

3. **Modified liability should be extended to all forward-looking disclosures and remain in force until the Australian Government has completed its post-implementation review.**

By aligning the Australian standards to the ISSB standards, reporting entities will be required to provide a range of new and more detailed forward-looking disclosures when compared to historic TCFD reporting, including:

- Current and anticipated impact of climate- and sustainability-related risks and opportunities across that entity's value chain.⁸
- Strategies and supporting resources to achieve climate related targets.⁹ This may include transition plans to describe key assumptions and dependencies, methods, and resourcing to achieve targets and interim targets.¹⁰
- The intended use of carbon credits to achieve targets including the extent to which those credits will be relied on as well as information to support assessment of the integrity, credibility, and certification of those credits.¹¹
- Information about how the entities financial position and performance will be impacted over the short, medium and long term by giving effect to its strategy addressing risks and opportunities.¹²

The ISSB IFRS S1 and S2 were only released in June 2023, and represent a significant departure from voluntary TCFD reporting practices including the forward-looking disclosures outlined above. Forward-looking disclosures represent a clear business risk for reporting entities given the reliance placed on inherently uncertain matters. This is because any forward-looking statement that does not result in an intended or predicted outcome will naturally be subject to close scrutiny, including questions about whether that statement was made on reasonable grounds.

While we welcome the Australian Government's intention to modify liability for the first year of disclosures for areas that represent a high risk – safe harbour currently only applies to scenario analysis and Scope 3 emissions. This is inadequate, given the links between the use of scenario planning and other types of forward-looking disclosures, for example, transition plans. Limiting liability in relation to only scenario analysis will have limited practical value to encourage companies to make forward looking statements.

Recommendation 3: Treasury expands the limited immunity for statements in new sustainability reporting to:

- a) include all forward-looking statements, including transition plans; and
- b) apply modified liability arrangements until the government has completed its mandatory post-implementation review of the legislation for all reporting entities.

4. **It is not reasonable expose directors to personal liability for compliance with the new sustainability standards through unqualified declarations.** The Draft Legislation anticipates that climate statements will include declarations that the sustainability report complies with the sustainability standards (s 296C) and that the climate statements disclose the required matters (s 296D). This is a new requirement and has not

⁸ IFRS S1 at [15(b) and 20].

⁹ IFRS S2 at [13].

¹⁰ IFRS S2 at [14(a)(iv)-(v)].

¹¹ IFRS S2 at [13(b)].

¹² IFRS S1 at [22(c)(d)]; IFRS S2 at [14(c)-(d)].

been raised in industry consultation to date. Requiring directors to make an unqualified declaration of compliance with a newly created standard creates unnecessary risks for business.

Recommendation 4: Treasury should amend the Draft Legislation and Explanatory Material to make clear that directors are only required to make a statement that they have 'reasonable grounds to believe that' the climate disclosures are in accordance with the Sustainability Standards and Corporations Act. The Explanatory Memorandum should also acknowledge the current market limitations which prevent an unqualified directors' declaration.

5. **We do not support the eventual requirement that all disclosures have reasonable assurance.** The cost and effort to obtain reasonable assurance over all aspects of reporting outweighs any value to investors.

Recommendation 5: Reasonable assurance only be required for financial impacts to financial statements. All other aspects (governance practices, scenario analysis, transition plans and all GHG emissions) should be subject to limited assurance in a phased manner as tabled by Treasury.

6. **Disclosure of Scope 3 material emissions is complex in the property sector and should be voluntary until there is accepted industry practice.** The property sector has complex and far-ranging supply chains, barriers to obtaining tenancy electricity consumption data, and no agreed way to assess embodied emissions consistently. With notable variations across asset classes, this makes it extremely challenging to quantify and report on Scope 3 emissions. While we understand that the Draft Legislation extends modified liability in relation to Scope 3 emissions, mandating disclosure of Scope 3 emissions may undermine the quality and consistency of disclosures over the long term in the property sector.

Reporting on Scope 3 emissions should initially be voluntary with a transition to mandatory as reporting methods mature over time. Inclusion of Scope 3 within a mandatory reporting framework, before such methods mature, will lead to fractured approaches to reporting to ensure compliance in the short term.

Work is underway to create a framework for measuring embodied emissions in the built environment, but it is not yet accessible. Following its implementation, we support the inclusion of embodied emissions in reporting. Further, there are regulatory barriers in place that prevent access to tenancy data – government should take action to reform regulation to allow asset owners to access tenancy energy data. This could be done initially by expanding the scope of the Commercial Buildings Disclosure program to include tenancies.

Additionally, the definition of Scope 3 emissions, as presented in Draft Legislation states:

"scope 3 emissions has the same meaning as in the Corporate Value Chain (Scope 3) Accounting and Reporting Standard, published by the World Business Council for Sustainable Development and the World Resources Institute, as existing on the commencement of this definition."

While there is value in aligning Australian policy settings to international practice in the GHG protocol, we are concerned that 'locking in' the boundaries of Scope 3 emissions by legislating a third-party standard at a point in time, puts Australia at risk of failing to keep pace with international developments on this issue.

Recommendation 6: Until these issues are addressed, reporting of Scope 3 emissions should be done on a voluntary basis and allow the market to determine their preferred approach to disclosure.

7. **There is a need to provide industry-specific reporting metrics and guidance.** The Property Council and its members welcome further engagement on establishing the parameters for industry specific, robust disclosure guidelines that deliver sound information to the investment community and reduce reporting burdens. It is essential to agree a common approach and deliver comparable climate-related financial disclosures across asset types and organisations.

Recommendation 7: The Australian Government should release a roadmap outlining an approach and timeline for the development and recognition of industry specific reporting metrics and guidance.

Please reach out to Eleanor Sondergeld, National Policy Manager – Sustainability and Regulatory Affairs at esondergeld@propertycouncil.com.au should you wish to discuss this submission in further detail.

Yours faithfully,



Matthew Kandelaars

Group Executive, Policy and Advocacy
Property Council of Australia

Enclosures

1. **Property Council Submission to the Climate-related Financial Disclosure Consultation Paper – 23 February 2023**
2. **Property Council Submission to the second Climate-related Financial Disclosure Consultation Paper – 21 July 2023**