

15 December 2023

Mr Warren Tease
Chief Adviser
Sustainable Finance Branch
Climate and Energy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: SustainableFinanceConsultation@treasury.gov.au

Dear Mr Tease

SUSTAINABLE FINANCE STRATEGY CONSULTATION PAPER

The Law Council of Australia appreciates the opportunity to provide a submission in response to the Treasury's *Sustainable Finance Strategy Consultation Paper*, released in November 2023.

It acknowledges the assistance of the Law Society of New South Wales in the preparation of this submission. Given time and resource constraints, this submission is necessarily high-level, and refers the Treasury to previous Law Council submissions. The Law Council would appreciate the opportunity to participate in later consultation stages, as greater detail on the Sustainable Finance Strategy and its implementation emerges.

In particular, the Law Council notes that relevant committees of its Business Law Section and Legal Practice Section were unable to contribute substantively to a Law Council submission at this time, given competing priorities. These relate to a large number of other Commonwealth consultations by Treasury and other bodies, which are closing in December but are at a more advanced stage of the law reform process. This is regrettable, given the level of interest that these committees—including the Business Law Section's Financial Services Committee and the Legal Practice Section's Superannuation Committee—have in the proposed Strategy. The Law Council encourages Treasury to reach out in the first quarter of 2024 should future opportunities, including more informal processes (such as online roundtable discussions) arise for stakeholder participation in the development of the Strategy.

General Comments

The Law Council broadly welcomes the Australian Government's proposal for an Australian Sustainable Finance Strategy, and the 12 Priorities identified in the Treasury's Consultation Paper.

It supports the adoption of a 'climate first' approach, whereby the Strategy would start with a climate-related focus in the short to medium term, before it is expanded to incorporate broader sustainability considerations.

Large-scale investment of capital in sustainable products, technologies and industries is critical to the transition to net zero. It is also crucial that Australia remains aligned and competitive with global practices and the emerging ways in which businesses, investors and governments across the world are responding rapidly to the unprecedented global emergency of climate change.

The Law Council commends the Australian Government's express recognition that 'there is a critical role for Government leadership' in supporting the systemic shifts in markets, industries and technologies that will be necessary to underpin a prosperous net zero emissions future, and in providing greater long-term certainty to business on climate change policy.¹

Climate-Related Financial Disclosure

Climate-related financial disclosure is central to proposed Priority 1 of the Sustainable Finance Strategy.

The Law Council refers Treasury to the Law Council's earlier submissions, dated 2 March 2023 and 2 August 2023, for its detailed positions on Treasury's climate-related financial disclosure proposals.²

In these submissions, the Law Council endorsed a mandatory climate-related financial disclosure regime in Australia. However we strongly recommended that Treasury undertake further consultation before introducing new disclosure obligations into the existing legal framework, which is highly technical and complex and has become increasingly unwieldy, particularly as regards the *Corporations Act 2001* (Cth). The Law Council recommended Treasury obtain expert corporate disclosure law advice on the implications of proposed reforms before drafting legislation.

The Consultation Paper indicates an Australian Government commitment to expanding these climate-related financial disclosure requirements. First, disclosure requirements set by the Minister for Finance will apply to Commonwealth entities, commensurate to those requirements on large companies, including large Commonwealth companies, caught under the current proposals. Second, disclosure requirements in areas beyond climate, such as sustainability-or nature-related may be included in due course in Australia's Sustainable Finance Strategy. The Law Council broadly supports the expansion of disclosure requirements over time, subject to the same caveat that comprehensive consultation must occur with legal experts. This consultation must inform, at an early stage, how proposed reforms intersect with the existing complex corporations and financial services legislative frameworks.

The Law Council strongly supports the alignment of Australian climate-related and sustainability-related disclosure requirements with international standards, in particular the new global baselines released by the International Sustainability Standards Board of the IFRS Foundation.

Sustainable Finance Taxonomy

The Law Council's recent submission to the Senate Environment and Communications References Committee's broad-ranging inquiry into greenwashing, posited that the most significant 'missing piece' in Australia's regulation of greenwashing is uniformity of language,

¹ Australian Government, The Treasury, [Sustainable Finance Strategy Consultation Paper](#) (November 2023) 5 ('Consultation Paper').

² See Law Council of Australia, Submission to the Treasury, [Climate-related financial disclosure—Consultation Paper](#) (2 March 2023); Law Council of Australia, Submission to the Treasury, [Climate-Related Financial Disclosure: Second Consultation—Consultation Paper](#) (2 August 2023).

meaning and purpose across the activities associated with, and the actors issuing or regulating, environmental and sustainability claims and information.³

It raised the concept of a taxonomy in this context as one example of a centralised and uniform system for substantiating commonly used terms and standards. Providing a consistent and rigorous nomenclature will be central to both firm/business and investor/consumer confidence. It will help to clarify the regulatory expectations that apply to firms and businesses. It will also increase the transparency and accountability of firms and businesses in their claims about their assets, products, activities, operations, and supply chains. This will benefit investors and consumers.

The Law Council welcomes the Australian Government's acknowledgment of taxonomies as a critical part of market and regulatory architecture for sustainable finance. It supports the development of an Australian sustainable finance taxonomy as a collaboration between government and industry, pending consideration of the detail of the taxonomy's criteria, its regulatory use cases, legislative status, and governance arrangements.

Contact

Please contact Ms Alex Kershaw, Senior Policy Lawyer, on (02) 6246 3705 or at alex.kershaw@lawcouncil.au, should you require further information or clarification on the content of this correspondence.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Luke Murphy', with a stylized flourish at the end.

Luke Murphy
President

³ See, Law Council of Australia, Submission to the Senate Environment and Communications References Committee, [Greenwashing](#) (18 August 2023); Law Council of Australia, Submission to the Australian Competition and Consumer Commission, [Environmental and Sustainability Guidance](#) (5 October 2023).