MinterEllison

1 December 2023

Sustainable Finance Unit
Climate and Energy Division
Treasury
Langton Crescent
Parkes ACT 2600
Via email: sustainablefinanceconsultation@treasury.gov.au

Dear Sir/ Madam

Response to Consultation Paper – Sustainable Finance Strategy

MinterEllison welcomes the opportunity to make a submission in relation to the *Consultation Paper – Sustainable Finance Strategy* recently published by Treasury (**Consultation Paper**).

We strongly support and value the government's commitment to introducing a sustainable finance strategy which is internationally aligned and interoperable, and fit for purpose.

Executive Summary

We have set out our detailed feedback below by reference to each 'Priority', rather than by reference to the specific questions in the Consultation Paper.

In summary, we particularly welcome:

1. a framework for sustainability-related financial disclosures and encourage the government to rapidly prepare for global developments in relation to risks and disclosure regimes beyond climate (e.g. in relation to nature and biodiversity);

2. the development of a sustainable taxonomy which is clear, consistent and aligned with international standards to ensure that investment products which are marketed as 'sustainable' (or similar) are internationally comparable and the risk of greenwashing is mitigated to the extent possible;

3. a credible net-zero transition pathway plan which effectively mobilises 'catalytic capital' for decarbonisation while also driving job creation, increased social equity and innovation;

4. a robust labelling system for 'sustainable' (or similarly marketed) investment funds and products which leverages the development of the sustainable finance taxonomy;

5. improvement of the understanding of sustainability-related financial impacts across government and regulators (including nature related risks) so that systemic risks can be identified and market enforcement can be more effective;

6. remedying the deficiencies in sustainability-related data as a priority to bolster responsible investment practice and strengthen procurement decisions; and

7. catalysing sustainable finance flows and markets (both domestically and internationally) through sovereign green bonds and other green financing techniques to support the net zero transition, transition finance and development of sustainable projects.

Please do not hesitate to contact us if you would like to discuss this submission in further detail.

Yours sincerely

MinterEllison

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Feedback on Consultation Paper – Sustainable Finance Strategy

Area	Comment
	Pillar 1: Improve transparency on climate and sustainability
Priority 1: Establish a framework for sustainability-related financial disclosures	We strongly support the establishment of a framework for sustainability-related financial disclosures, and welcomed the publication of the recent Treasury consultation paper on the design and implementation of Climate-related Financial Disclosures in Australia (**CRFD Consultation Paper**). Since the 2017 publication of the Taskforce on Climate-related Financial Disclosure (**TCFD**) Recommendations, and particularly following the publication of the International Sustainability Standards Board (**ISSB**) financial reporting standards in June 2023, a strong framework around climate-related financial disclosures is no longer just best practice, but rather a baseline expectation of financial market participants. We understand from both this Consultation Paper and the CRFD Consultation Paper that the initial focus will be on climate-related financial disclosures (i.e. IFRS S2), to be implemented by the Australian Accounting Standards Board (**AASB**). In terms of sequencing, we agree that focusing on implementing climate-related financial disclosures based on the ISSB as a first step is appropriate, to ensure that Australia is aligned with developments in other jurisdictions (e.g. UK, EU, Japan, NZ, Singapore etc). We understand from the Consultation Paper that the government is monitoring international developments in relation to other sustainability-related financial disclosure regimes, particularly given that the ISSB has indicated that the recent Taskforce on Nature-related Financial Disclosure (**TNFD**) Recommendations will likely provide the foundation for international nature-related financial disclosure standards. We encourage the government to rapidly prepare for global developments in relation to nature-related risks and disclosure regimes, and to work with industry leaders on this issue to ensure markets can effectively respond. The TNFD Recommendations and the recent Harford-Davis & Bush legal opinion[1] (which followed the Hutley Opinions[2]) on nature-related risks and directors' duties has already started to lift business awareness of the complex risks (and opportunities) posed by interaction with nature and its ecosystems. We anticipate that momentum will build quickly around the need to monitor, evaluate and address nature-related risks (which have been historically unrecognised and undervalued in corporate decision making and value chains), particularly given Australia's vulnerability to some kinds of natural disasters and economic dependence on natural capital and resources. We would welcome the government adopting IFRS S1 to assist in the management and regulation of sustainability related issues beyond climate. We also encourage ASIC to update its guidance in relation to voluntary nature-related disclosures, as it did for climate disclosures in 2019, while international standards are developed.
Priority 2: Develop a Sustainable Finance Taxonomy	We support the development of a sustainable finance taxonomy and commend the work that has already been completed by the Australian Sustainable Finance Institute (**ASFI**) and the Climate Bonds Initiative in this regard. In particular, we encourage the government to ensure the international interoperability of the taxonomy adopted, for several key reasons:

[1] S Hartford-Davis and Z Bush, Memorandum of Opinion: Nature-related Risk and Directors' Duties, 24 October 2023, accessed 26 November, 2023, Australian company directors and nature-related risk: A new legal opinion - Pollination | Climate Change Investment & Advisory Firm (pollinationgroup.com).
[2] N Hutley and S Hartford-Davis, Memorandum of Opinion: Climate Change and Directors' Duties, 7 October 2016, accessed 26 November 2023, Legal-Opinion-on-Climate-Change-and-Directors-Duties.pdf (cpd.org.au); N Hutley and S Hartford-Davis, Further Supplementary Memorandum of Opinion: Climate Change and Directors' Duties, 23 April 2021, accessed 26 November 2023, Microsoft Word - Further Supplementary Opinion.docx (cpd.org.au); N Hutley and S Hartford-Davis, Further Supplementary Memorandum of Opinion: Climate Change and Directors' Duties, 23 April 2021, accessed 26 November, Microsoft Word - Further Supplementary Opinion.docx (cpd.org.au) (together, the **Hutley Opinions**)

	a) When taxonomies are aligned, it is easier for investors to understand and compare investment opportunities across different countries, promoting cross-border investments in sustainable projects and reducing friction and transaction costs. b) The existence of multiple and unaligned taxonomies can create confusion and increase complexity (and regulatory burden and transaction costs) when reporting on sustainable investments (and requires additional time and effort to reconcile different terminology/ baseline standards). c) If taxonomies are clear and consistent (and properly embedded within labelling schemes), the risk 'greenwashing' and misrepresentation of sustainability credentials across jurisdictions is reduced. d) Interoperable taxonomies contribute to the achievement of international sustainability objectives (e.g. the Paris Agreement and the United Nations Kunming-Montreal Global Biodiversity Framework – to which Australian is a signatory). In relation to legislating the taxonomy, we agree with the approach set out in the Consultation Paper – that a legislative approach (like that in the EU) will ultimately be beneficial (applying to an appropriate group of eligible entities) as it will increase certainty and ensure the taxonomy is properly embedded (it would also be consistent with the legislation of climate-related financial disclosures). However, we agree that until the taxonomy is clear, effective and internationally interoperable, it would be most appropriately framed as a voluntary 'best practice guide' by regulators.
Priority 3: Support credible net zero transition planning	We agree that transition planning should be a key priority for the government, particularly given Australia's economic dependence on fossil fuel exports (coupled with declining international demand as other jurisdictions move towards net zero). As flagged in the Consultation Paper, the legislation of climate-related financial disclosures and development of a clear sustainable finance taxonomy goes hand in hand with credible net zero transition planning. Creating market certainty will assist in ensuring that 'catalytic capital' (in particular patient investment) is mobilised effectively to support the transition. As set out in IGCC's guidance on Corporate Climate Transition Plans[3], we encourage the government to incentivise organisations to: a) Set sector-specific, ambitious, granular and science-based targets; b) Ensure that there are clear milestones and actions behind targets; and c) Monitor and independently verify progress towards meeting targets (e.g. independently audit gross greenhouse gas emissions across scopes 1, 2 and 3). When devising strategies around net zero transition planning, we also encourage the government to ensure that the concept of a 'just transition' is kept front of mind in the development of government and corporate transition plans. It is integral that social inclusion and poverty minimisation accompanies global decarbonisation, and that transition planning is a driver of job creation, increased social equity and innovation. We encourage government to closely collaborate with industry and impacted communities throughout the transition planning process so that a just transition can be achieved. Transparent and verifiable transition metrics will be critical to transition finance which will be a key segment of the sustainable finance markets – this is particularly the case for carbon intensive and hard to abate industries which do not fit the 'deep green' activities covered by taxonomies, but nevertheless have a credible transition pathway and do not lock out low emission technologies. Transition strategies are also key elements for the finance sector and compliance with Net Zero Banking Alliance commitments relating to decarbonising loan portfolios.
Priority 4: Develop a labelling system for investment products marketed as sustainable	We are very supportive of a robust labelling system for 'sustainable' (and similarly marketed) investment funds and products. Similar to our comments regarding the taxonomy, we would encourage the government to ensure that labelling is internationally interoperable to encourage standardisation and avoid market confusion (which can in turn increase the risk of greenwashing and misrepresentation of sustainability credentials).

[3] Investor Group on Climate Change, *Corporate Climate Transition Plans: A Guide to Investor Expectations,* IGCC-corporate-transition-plan-investor-expectations.pdf, last accessed 26 November 2023.

	We commend the work undertaken by the Responsible Investment Association of Australia (**RIAA**) to create a certification framework, and believe that emphasis should be placed on encouraging those offering investment products to seek third party certification from trusted bodies, such as RIAA. This will improve confidence in investors and reduce risks associated with greenwashing. While we agree that retail investors should not be the specific focus of reform, we consider that creating consistency and clarity for both retail and institutional investors would increase the effective mobilisation of capital.
Pillar 2: Financial system capabilities	
Priority 5: Enhancing market supervision and enforcement	We support the enhancement of market supervision and enforcement, and the acceleration of ASIC's work in 2023-2024. We consider that Australia's existing corporations and financial services laws are sufficiently flexible to address greenwashing (and we note that the legislation of climate-related financial disclosures and creating a robust taxonomy will assist in reducing the risk of misrepresentation of sustainability credentials). In parallel to increased enforcement action, we encourage ASIC to provide specific and actionable guidance to help organisations navigate risks around greenwashing (i.e. building off the guidance provided in ASIC Information Sheet 271). This is particularly important as new investment opportunities (e.g. in relation to nature/ bio-diversity initiatives) are increasing, and consumer demand is growing. Likewise, we recommend that ASIC provides ongoing guidance for company directors (particularly in light of the new Hartford-Davis & Bush Opinion), to ensure directors across sectors are aware that climate (and nature related) risks warrant special and ongoing attention by boards, in light of their magnitude and dynamic nature – including emerging standards, heightened expectations from regulators and investors/ consumers and a rapidly changing policy landscape (internationally and domestically).
Priority 6: Identifying and responding to potential systemic financial risks	We support the aim of improving the understanding of climate-related financial impacts across government and regulators (including nature related risks). We would encourage the government to leverage the development of a sustainable finance taxonomy to ensure that regulators use common language and that a whole-of-government approach is adopted when identifying and assessing financial risks associated with sustainability and regulatory objectives.
Priority 7: Addressing data and analytical challenges	We agree that remedying the deficiencies in sustainability-related data is critical and should be of utmost priority. The lack of consistent and comparable data is one of the most significant barriers to responsible investment practice. The government has a significant role to play in supporting the development of the ESG or impact information architecture that will support a better allocation of resources from health, wellbeing and economic and environmental perspectives – recognising that every consumption and investment decision has positive and negative impacts and many of these are not captured in value chains and are therefore externalities. Better information systems enable better design value capture models and therefore better resource allocation – including by government who are major procurers of goods and services and set the rules for the private sector. Specifically, we suggest that the following should be prioritised: a) Commitment towards creating consistent tools and standards for data collection and reporting practices; b) Development of robust sector and Australia specific decarbonisation scenarios; c) Creation of a centralised repository of climate-related data for corporate use; d) Access to reliable and comparable data beyond emissions (e.g. physical climate impacts on nature-related risks and impact); and e) Dedicating resources towards assisting organisations to estimate scope 3 emissions in large and complex supply chains or sectors.

Priority 8: Ensuring fit for purpose regulatory frameworks	We support the continuing work of government and financial regulators to mainstream sustainability considerations. We consider that current corporate governance obligations (e.g. directors' duties to exercise care and diligence) are sufficient to support the integration of sustainability related issues in financial decision making. However, we would encourage the government and regulators to ensure that resources and guidance is provided to assist directors to properly assess sustainability-related risks (in particular risks beyond climate) and to help directors prepare for new obligations around climate and nature-related financial disclosure regimes (e.g. building on the LEAP Guidance[4] prepared by TNFD, encouraging directors to 'Locate', 'Evaluate', 'Assess' and 'Prepare'). On the issue of governments and social procurement and regulatory frameworks, it is worth considering the role of the government as a significant purchaser of goods and services, including long duration infrastructure, where design and whole of life costing and value for money considerations should fully consider climate and nature related risks and opportunities. In addition, this will flow into a focus on holistic outcomes and social procurement, where contracts can be structured around measured outcomes – particularly, as the government seeks to implement its $100m Outcome Payments Fund. Another consideration should be around waste management (including use of the tax system) and product stewardship models to encourage better design and waste management and more circular economic models.
Pillar 3: Australian Government leadership and engagement	
Priority 9: Issuing Australian sovereign green bonds	We agree that Australia is well placed to join other jurisdictions such as NZ and the UK in issuing sovereign green bonds. Issuing sovereign green bonds will be catalytic in a market making sense and establish rate benchmarks and significantly increase opportunities for investment from both domestic and international investors, and will assist in achieving Priority 12 (positioning Australia as a global sustainability leader). Like the social bonds issued by Housing Australia, this would enable the development of institutional and retail markets. Care needs to be taken to ensure that this crowds in investment, rather than crowding out private sector participants. To ensure transparency and consistency, we recommend that Australia's green bond program is aligned with internationally recognised green bond programs, such as the Green Bond Principles developed by the International Capital Market Association (**ICMA**) or the Climate Bonds Standard developed by the Climate Bonds Initiative (as has been the case in relation to some Australian states that have developed green bond programs, e.g. NSW, Victoria, Queensland and most recently Western Australia).
Priority 10: Catalysing sustainable finance flows and markets	We support the acceleration of the Clean Energy Finance Corporation's (**CEFC**) work and welcome the government's plan to increase engagement with domestic and international investors to encourage the mobilisation of 'catalytic capital'. The CEFC has $40B+ across a number of initiatives designed to catalyse and crowd in private capital – including for reconstruction, regional development, innovation, transmission grid, hydrogen and other initiatives. We support the expanded use of such measures to prove markets and unlock investment to accelerate the net zero transition – this should also recognise the social considerations associated with the just transition. As well as focusing on the role of CEFC and green bonds, we encourage the government to consider how it can engage with the private sector to incentivize: a) Sustainability linked loans (which the CEFC has already successfully used to support organisations and projects to achieve sustainability goals). Organisations such as ICMA, Loan Market Association, Loan Syndications & Trading Association and the Asia Pacific Loan Market Association have published guidelines and principles that direct proper structuring features, reporting and assurance requirements for sustainable and green financial instruments; and

[4] Taskforce on Nature-related Financial Disclosures, *Guidance on the identification and assessment of nature-related issues: the LEAP approach*, https://tnfd.global/publication/additional-guidance-on-assessment-of-nature-related-issues-the-leap-approach/, last accessed 27 November 2023.

	b) Impact investment in line with frameworks provided by the Global Impact Investing Network and Operating Principles for Impact Management. We also note that much of the spend will need to be front loaded and a clear focus needs to made on not just upscaling new zero or low emission technology (which can be financed using green financing techniques), but also to support – to the extent possible – the progressive lowering of emissions in high emitting, hard to abate sectors (e.g. oil, gas, iron, steel, aviation and shipping).
Priority 11: Promoting international alignment	As noted throughout our response, we strongly support the international interoperability of sustainable finance strategy – across financial disclosure regimes, taxonomies, labelling and the net zero transition. Financial capital is largely agnostic to geography and many Australian banks and businesses are heavily reliant on international capital sources and many will have international operations where they will need to comply with international carbon and sustainable finance regulations, so harmonisation wherever possible will assist with the reduction of friction and transaction costs on capital flows and red or 'green' tape. We note there may be instances where approaches need to be localised, to take into account Australia's unique position (e.g. the combination of abundant renewable energy resources, economic reliance on fossil fuels, presence of remote communities across vast geography and particular vulnerability to some kinds of natural disasters (e.g. drought, bushfires and flooding)).
Priority 12: Position Australia as a global sustainability leader	We support the government's aim to position Australia as a global sustainability leader. The legislation of climate-related financial disclosures and nature-related financial disclosures (as international standards emerge), will assist with this positioning. We encourage the government to consider how Australia can model the importance of ensuring the participation of First Nations communities in developing a sustainable finance strategy, given the importance of promoting social and economic outcomes for First Nations people during the decarbonisation process. Likewise, we encourage the government to consider how it can champion investment in First Nations led sustainable development projects and conservation efforts (which would in turn contribute to the richness of carbon and bio-diversity offset markets and assist in achieving a just transition). We note that the Australian Sustainable Finance Roadmap published by ASFI contains 37 recommendations in relation to aligning Australia's financial system with the principles of sustainability, resilience and prosperity.[5] The Roadmap also contains valuable insights into how financial institutions can engage with First Nations people to ensure the inclusive design and delivery of financial services and build genuine partnerships with First Nations communities as part of transition planning.

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[5] Australian Sustainable Finance Initiative, *Australian Sustainable Finance Roadmap,* Australian+Sustainable+Finance+Roadmap+–+Recommendations.pdf (squarespace.com), last accessed 27 November 2023.