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Consultation on Climate-related financial disclosure: exposure draft legislation

We welcome the opportunity to comment on Treasury's consultation *Climate-related financial disclosure: exposure draft legislation* (the Consultation). Our responses to the proposed policy options in the consultation draw on our breadth and depth of expertise.

We support Treasury's commitment in establishing legal requirements in ensuring large businesses and financial institutions provide Australia and investors with greater transparency and more comparable information relating to an entity's climate-related plans, and its exposure to climate risks and opportunities. We commend Treasury's efforts in coming to a policy solution to achieve its objective of establishing a standardised framework for reporting climate-related financial disclosures in Australia while seeking to strike a balance between costs and benefits of these reforms.

We have reviewed the suite of documents included as part of the Consultation, listed below:

- Exposure Draft legislation
- Exposure Draft explanatory materials
- Policy Position Statement
- Policy Impact Analysis

We consider that the Exposure Draft legislation and Exposure Draft explanatory materials in general appropriately reflect and give effect to our understanding of the policy intent outlined in the Policy Position Statement and Policy Impact Analysis, however, we would like to highlight certain key matters for Treasury's consideration below. Our additional detailed observations are included in Appendix A.

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Deferral of Group 1 commencement date

We believe this is primarily a question for preparers, who are best placed to comment given their understanding of their own readiness in a highly resource constrained market. However, we do believe that deferral would allow more lead time to build the capability and skills required to meet mandatory reporting obligations and for the development of supportive tools and guidance by relevant organisations. We believe it is important to balance the need for transparency on this systemic issue with preparer readiness. For organisations to provide complete, reliable and quality information to the market, they will need sufficient time to put in place processes, systems and internal controls, and governance to fulfil their legal responsibility to report reliable information and make disclosures required by the standards. If the commencement date is deferred, we strongly suggest that there is a clear signal from Treasury that the standard is 'available for use' on a voluntary basis for those who wish to early adopt.

Group 3 materiality exemption

While we understand Treasury's intention in limiting Group 3 entity reporting to only those entities with material climate risks in order to substantially reduce the regulatory burden for such smaller entities, we have significant concerns around the operability of this materiality exemption. We believe the material climate risk assessment should be directly performed by entities in accordance with the requirements of the sustainability standards, rather than through the operation of the legislation. Specifically, we have concerns in relation to how this assessment is made in practice by entities in accordance with the legislation and the resulting impacts on assurance. We note that the pathway for assurance over the sustainability reports is to be provided by the Auditing and Assurance Standards Board (AUASB) but we are concerned that the nature of this exemption may provide unforeseen challenges in the provision of assurance and the nature of such assurance. We believe that further discussion and consultation will be required in respect of this exemption to avoid the approach being challenged by investors and civil society groups which take the view that climate is always a material risk for entities.

As the concepts of materiality and proportionality are being addressed by the Australian Accounting Standards Board (AASB) in the draft Australian Sustainability Reporting Standard (ASRS) and on the basis that materiality is proportionate to the size of the entity, we think that an alternative approach to introducing a legislative exemption would be to make the responsibility for the application of these concepts lie with the AASB and AUASB as part of the process for setting Australian-specific sustainability standards. This will ensure that the materiality concept is applied consistently and in line with the AASB's intention. Directly applying the sustainability standards would also align Australian sustainability reporting, and particularly disclosure of climate related risks and opportunities, more closely with international practice. We note that due to climate change having pervasive effects on entities generally, this has resulted in many investors and capital markets participants wishing to understand governance oversight and how risk management processes integrate consideration of climate-related risks and opportunities. Many entities across many industry sectors are likely to identify climate as material risks either quantitatively or qualitatively. For this reason, we support the use of a standards-based approach to support entities in identifying climate-related risks and opportunities.

Given that it is proposed that Group 3 entities will not be required to report until financial years beginning on or after 1 July 2027, we recommend that further consultation be undertaken on application of this exemption and have included additional discussion on this matter in Appendix A.

Alignment with international sustainability reporting standards

We strongly commend the Government's endorsement of full adoption of the ISSB's IFRS S2 *Climate-related Disclosures* standard and IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* in Australia, with modifications limited to those necessary to ensure standards are fit for purpose to meet the needs of Australia. We are strongly of the view that new requirements should reflect full adoption of the IFRS Sustainability Disclosure Standards (ISSB Standards) without modifications.

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We see this as an important milestone in achieving a global baseline of consistent, high quality, and comparable sustainability information addressing the needs of capital markets. Adoption of the standards worldwide is needed to help achieve true harmonisation and avoid the risk of a fragmented approach to regulation. We believe that full adoption of the ISSB Standards without modifications will minimise compliance costs for Australian businesses that operate internationally, and ensure Australia's regime is viewed with credibility by international markets.

In respect of the new requirement for a directors' declaration on whether the sustainability report is compliant with ISSB Standards, we are concerned that should the AASB make ASRSs consistent with its exposure draft, ED SR1, there is the likelihood that it will not be possible for this statement to be made given differences between the AASB's proposals and ISSB Standards. Based on the proposed modifications by the AASB in ED SR1, it may require significant cost and effort for entities to modify their Australian sustainability reports to make them ISSB-compliant. This differs from accounting standards where compliance with Australian Accounting Standards also ensures compliance with International Financial Reporting Standards.

Therefore, we strongly recommend Treasury consider clarifying its intention in making this requirement. We note that our preference for ASRS to reflect full adoption of the ISSB Standards without modifications will allow entities that comply with ASRS to claim compliance with ISSB Standards. If Treasury's intention is that entities will be able to claim compliance with ISSB Standards as issued by the International Sustainability Standards Board, similar to statements of compliance issued with respect to financial reporting, we encourage Treasury to work closely with the AASB such that there is alignment with IFRS S1 and IFRS S2 principles to enable entities to make such a declaration. Understanding that Treasury may want to introduce a directors' declaration for compliance with climate disclosure standards (consistent with the equivalent directors' declaration in respect of compliance with accounting standards), we think that an alternative approach would be for the directors' declaration to state whether the sustainability report is in compliance with ASRSs, rather than ISSB Standards as currently proposed.

With an objective of achieving a global baseline of sustainability reporting, we suggest Treasury also consider introducing flexibility to allow Australian entities to report under the entity's choice of estimation methodologies and frameworks used for Scope 1 and 2 emissions – being the GHG Protocol methodology or the methodologies included in the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*. We believe this pragmatic approach will reduce compliance costs for entities to report a single set of data and further enhance global comparability and contribute to the reliability and comparability of sustainability reporting, benefitting users of sustainability reporting worldwide.

We are aware that the policy position statement states that while Treasury expects the ASRS to include this requirement (Scope 1 and 2 emissions being consistent with NGER legislation), the AASB is the body responsible for the final standards. However, we believe it is an important matter for Treasury to note and we will also provide detailed comments in our submission to the AASB on the draft ASRS.

Furthermore, there is an opportunity for the Clean Energy Regulator (CER) to harmonise Australia's greenhouse gas disclosure requirements with the ISSB Standards including reporting requirements, terminology, methodology, industry classifications and boundaries. This would also allow for minimal duplication in effort and reporting and facilitate increased comparability.

Assurance requirements

Assurance over climate-related financial disclosures is essential to increase confidence in quality, reliability of information and build stakeholder trust. We acknowledge and support the proposal that mandates reasonable assurance be achieved by 2030, with a flexible pathway to achieve this being set by the AUASB. We consider this approach to be appropriate as it provides the AUASB with the flexibility to develop a roadmap to full assurance, ensuring that consideration is given to the international standard on sustainability assurance and the development of market capability. This approach should recognise the lead time necessary to allow capability and capacity uplift in the audit and assurance industry.

We note that s.1705D(1) of the draft legislation states that the AUASB must make auditing standards for review of climate statements and s.1705D(2) of the draft legislation then specifically states that the first such auditing standards must be made before 1 July 2024. Considering that the AUASB is developing assurance standards in line with the International Auditing and Assurance Standards Board's (IAASB) final standard, we believe that the deadline of 1 July 2024 may prove challenging to allow sufficient time for the level of industry consultation necessary given the IAASB's timeline for planned issuance of the final standard in late 2024 and the significant number of submissions already received by the IAASB on the exposure draft. We strongly endorse the alignment of Australia with international practice, including the adoption of Proposed International Standard ISSA 5000 *General Requirements for Sustainability Assurance Engagements* as we believe that a global baseline of sustainability assurance standards will contribute to the reliability and comparability of sustainability reporting, benefitting users of sustainability reporting worldwide.

While the policy position statement discusses the AUASB developing a pathway, it is unclear whether the pathway is to implement the 'two-step' assurance process proposed to be legislated, or whether it is proposing that the assurance requirements are intended to operate on a 'gradual' broadening of scope over time. If Treasury's intention is the latter case (gradual broadening of scope over time), we do not envisage that the AUASB can set the scope of the assurance requirements through assurance standards given the way the legislation is currently drafted (as the draft legislation currently only covers the minimum assurance requirements for each of the 'two-step' assurance processes being limited assurance of Scope 1 and 2 emissions disclosures from 1 July 2024 onwards and assurance of all climate disclosures made from 1 July 2030 onwards). In this case, we suggest Treasury consider the regulations to provide additional assurance requirements to be complied with in periods beginning before 1 July 2030 as this will allow the scope to be expanded by regulation once the AUASB creates or modifies its standards.

We acknowledge and support that assurance over climate-related financial disclosures is to be conducted or led by the financial auditor however, we note that the draft legislation is silent around whether the assurance providers for the sustainability report and the financial report must be the same given the connectivity of information derived from similar systems, internal control and governance processes in preparing connected corporate reports. We recommend Treasury provides clarification in respect of this and consider the implications between 'individual' and 'firm' (e.g., if the assurance provider must be the same, does it need to be the same 'individual' or would it be sufficient for the assurance to be provided by an individual from the same 'firm').

Capital markets place value on assurance. Investors are accustomed to assurance that is provided over financial statements and internal controls over financial reporting (in some jurisdictions). Therefore, any assurance over sustainability-related disclosures should be provided by assurance providers who:

- Have skills and experience in providing assurance,
- Follow established standards in providing assurance,
- Follow established independence and ethics rules and demonstrate professional scepticism,
- Have received and receive continuing professional education to be appraised of the new standards, laws, and regulations, and
- Maintain a system of quality management over the work they do.

It is important for regulators to monitor that assurance reports being issued meet these common stakeholder expectations, including those prescribed by the legislative and regulatory requirements.

We note that there will likely be an increase in assurance reports with modifications or emphasis of matters reported by auditors with the extension of auditor reporting to sustainability reports. This is particularly expected in the early years of a mandatory reporting regime as data reporting systems evolve, reporting skills and experience develop and familiarisation with the disclosure standards grow. Such an increase in modified auditor reporting could have a negative impact on markets and investor perceptions unless the situation is put in the right context by the right players (such as regulators, preparers and assurance standard-setters and assurance providers). We believe regulators have an important role to play in raising awareness of the challenges of transitioning to a new reporting and assurance regime.

Liability Framework – Modified liability for climate disclosure

The draft legislation proposes a modified liability approach will apply for a transitional period to ensure that reporting entities are allowed time to develop experience and practice to report to the required standards. After this period, the existing liability arrangements will apply. Specifically, it is proposed that liability for misleading and deceptive, and other, conduct in relation to the most uncertain parts of a climate statement is temporarily suspended. The most uncertain parts of a climate statement are described as being where the statement relates to scope 3 greenhouse gas emissions and scenario analysis. This limited immunity will apply to statements in sustainability reports prepared for financial years commencing between 1 July 2024 and 30 June 2027 and during this time, only ASIC will be able to take action for misleading and deceptive conduct in relation to these types of disclosures. It is proposed that no legal action is able to be brought against a person or entity in relation to statements made about scope 3 emissions or scenario analysis made in these sustainability reports.
We support the proposed liability framework as we consider that relief provided in this way would encourage best-practice disclosures while assuaging concerns in areas of the disclosure regime that are more uncertain. The relief will allow much needed time for entities to get ready to report on sustainability information considering it would be inevitable that assurance providers will modify their assurance reports to the state of entities' readiness around the new sustainability reporting framework. However, we note that the modified liability approach extends to directors in respect of their reporting obligations but not to assurance providers in respect of any assurance being provided over such disclosures. We encourage Treasury to consider the extension of similar relief to assurance providers on a comparable basis.

Provisions requiring further clarity

From our review of the Consultation, we have noted some provisions that require further clarification by Treasury to ensure that the legislation is applied by entities in the manner intended.

Application of the $5 billion asset test
Regarding Treasury's proposals to add a specific 'assets under management' threshold that would be applied to significant financial institutions, we note that the application of the $5 billion asset test may be subject to potential misinterpretation.

In consideration of the threshold that has been introduced for Group 2 to include asset owners that have more than $5 billion in assets under management, there may be confusion as to whether this test is applied to asset owners as a stand-alone requirement (a new requirement for asset owners where they do not have to apply the size thresholds) or in addition to the size threshold (revenue/asset/employees) test. We believe that the intention of Treasury is for the test to act as a catch-all to ensure that large asset owners that do not otherwise meet the size thresholds will be caught, and suggest Treasury consider clarifying this (and the determination of the value of assets) to avoid any potential misinterpretation.

Other matters
Some of the other matters that require clarification from Treasury (our detailed observations are contained in Appendix A):

- Coverage of climate-related forward-looking statements under modified liability relief – transition planning
- Application of the proposed group provisions in complex group scenarios
- Application of the group provisions to closely held stapled groups
- Determination of amounts (revenue and employees) used in the thresholds for various groups and categories of entities

Given the timeframes for commencement of the proposed legislation, these matters should be actioned as a priority for Treasury to consider providing clarification in the legislation to ensure it is applied in the manner intended.

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Timing of lodgement

The consultation states that the timing of annual report lodgement, including for those required to lodge with Australian Securities and Investment Commission (ASIC), will remain consistent with current requirements under section 319 of the Corporations Act. We recommend that Treasury and other relevant government agencies such as ASIC, work with the ASX in managing investor expectations on the timeliness of climate reporting, particularly in the early years of adoption. In meeting currently proposed reporting deadlines, it is widely acknowledged there will be significant pressure on resources, both in respect of preparers and in the assurance profession, with the introduction of mandatory climate reporting. It is important investors maintain appropriate expectations about the timeliness of reporting.

Equivalence for subsidiaries of foreign owned entities

The use of the ISSB Standards around the world helps build a global baseline of consistent and comparable sustainability information. There has been an encouraging early response in recent months, including the support evidenced during COP 28 (United Nations Climate Change Conference in November–December 2023), for jurisdictional adoption of these standards. While there is also a broad agreement that adoption in full, to which jurisdictions may add requirements as needed to reflect local priorities, is the best way to build the global baseline, we observe that jurisdictions are increasingly introducing their own specific requirements. The requirement for entities operating globally to comply with more than one set of sustainability disclosure requirements increases the reporting burden and costs of compliance, and undermines the objective of consistent and comparable disclosures relevant to investors.

We think that the principle of 'equivalence' could therefore provide a valuable systemic tool to permit foreign filers to comply with various jurisdictional reporting obligations around the world by reporting in accordance with the ISSB Standards. This approach has historically been applied for financial reporting: for example, in the US, foreign filers are permitted to apply International Financial Reporting Standards rather than US GAAP and in Australia the ASX permits foreign entities to lodge financial statements prepared under IFRS and various other GAAPs, such as USA, Hong Kong and Singapore, as alternatives to Australian Accounting Standards. In the case of Australia, to the extent that the standards as issued by the AASB diverge from ISSB Standards such that an entity complying with one could not assert compliance with the other, we strongly encourage Treasury to consider allowing subsidiaries of foreign-owned entities required to report in overseas jurisdictions the opportunity to lodge Australian sustainability reports prepared in accordance with the ISSB Standards as an alternative to ASRS.

Our detailed response to Treasury's policy positions noted in the Policy Position Statement can be found in Appendix A.

In addition to that, our detailed observations around drafting matters of the Exposure draft legislation and Exposure draft explanatory materials can be found in Appendix B.

Thank you for the opportunity to provide our views. Should you wish to discuss the responses within our submission, please reach out to me jogorton@deloitte.com.au.

Yours sincerely

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Appendix A – Detailed responses to the Policy position statement

In addition to our key comments made in our submission we set our detailed observations below. Where we have not commented specifically on a proposal Treasury should assume concurrence with, and support of, the proposal.

Proposal	Deloitte Response

Reporting Entities	**Application of the $5 billion asset test**
	• In consideration of the threshold that has been introduced for Group 2 to include asset owners that have more than $5 billion in assets under management, there may be confusion as to whether this test is applied to asset owners as a stand-alone requirement or in conjunction with the size thresholds (revenue/asset/employees). The two possible views are:
	  o View 1: The 'assets under management' threshold is interpreted as a new requirement for asset owners where they do not have to apply the size thresholds (e.g., this means that a large asset owner would ignore the size thresholds and only apply the $5 billion test)
	  o View 2: The 'assets under management' threshold is in addition to the size threshold test (a catch-all) to ensure that large asset owners that do not otherwise meet the size thresholds will be caught.
	• We believe that the intention of Treasury is more aligned to View 2 (rather than ring-fencing it to only specific types of entities) but this is not clearly reflected in the policy position statement. While the draft legislation uses the term 'or' to make it clear that the requirement is met if any of the tests applies to the entity, the policy position statement can be read differently and suggest Treasury consider clarifying this to avoid any potential misinterpretation.
	• Another clarifying point is around the determination of the value of the assets as that the legislation refers to the value of the assets of the entity (and entities it controls) while the policy position statement refers to 'asset owners' and 'funds under management'. We suggest that Treasury provide clarification to ensure that the legislation accurately reflects its intention on whether the requirements apply to all entities or only specific types of entities. We believe that if the intention is for the value of assets to be represented by the consolidated gross assets determined in accordance with Australian Accounting Standards that an explicit statement is made to this effect.
	
	Application of the proposed group provisions in complex group scenarios
	• We believe that clarification of the proposed group provisions in s.292A(2) is needed to reflect the nature of complex group structures.
	• For instance, where a group head has a controlling interest in a widely held subsidiary (e.g. one listed company having a controlling interest in another listed entity), the existing provisions can be read as only requiring the group head to prepare a sustainability report, even though the stakeholders in the subsidiary listed company could reasonably expect climate-related financial disclosures to be made in the subsidiary's annual report.
	• It is unclear if this is the intended operation of the proposed legislation. We suggest that an additional subparagraph be included in s.292A as follows:

	(2A) *Despite subsection (2), if accounting standards require an entity in the consolidated entity (the* ***sub group head****) to prepare financial statements in relation to a consolidated entity (the* ***sub group consolidated entity****) for the financial year, the sub group head must prepare a sustainability report. The sustainability report must be prepared as if the sub group consolidated entity is a single entity.* *Note: The sustainability report prepared by the sub group entity is in addition to any sustainability report of the group head prepared under subsection (2)(d) and does not alter the consolidated entity for which the group head presents a sustainability report under that subsection.* Application of the group provisions to closely held stapled groups • In our experience, a common structure in infrastructure deals is a stapled fund structure where the financial statements are prepared on a consolidated basis based on the stapling agreement (as opposed to being required to do so under Chapter 2M of the Corporations Act). Often, the stapled group includes a finance company in the stapled structure which is a proprietary company and depending on size, may be required to prepare a financial report under Chapter 2M of the Corporations Act. In these cases where the finance company is the entity in the structure that is caught under the climate reporting requirements, clarification may be required on the application of the proposed group provisions. In other words, is the finance company required to prepare its own sustainability report aligned to its Chapter 2M reporting obligations, or may it use the sustainability report of the consolidated stapled structure prepared in accordance with the requirements of the stapling arrangement? We recommend further consideration is given by Treasury as to where it is appropriate for the stapled group to provide a sustainability report on a consolidated basis (via group head) or if the finance company is required to submit its sustainability report on the individual entity basis (given it is the entity captured under the mandatory climate reporting requirements).
Phasing	Determination of amounts used in the thresholds for various groups and categories of entities *Determination of revenue* • Under the proposed legislation, the amount of revenue used in the various threshold tests in the proposed legislation is determined by reference to accounting standards. The term ‘revenue’ was introduced into the *Corporations Act 2001* for the purposes of the determination of whether a proprietary company is a large or small proprietary company before Australia moved to convergence with IFRS Accounting Standards and was linked to (then) Australian Accounting Standards which had a differing concept of revenue to current Australian Accounting Standards. • These differences, together with the subsequent implementation of Accounting Standard AASB 15 *Revenue from Contracts from Customers* and the *Conceptual Framework for Financial Reporting* by the AASB, have resulted in diversity in practice in how revenue is determined for corporate reporting purposes. For instance, it is unclear if gains and losses on certain transactions should be included in the determination of revenue, and in which circumstances interest and similar amounts should be included. • As this same revenue concept is being applied to a broader group of entities under the proposed legislation, we believe the interpretative issues will significantly expand as public companies not subject to the proprietary company size test in s.45A of the *Corporations Act 2001* tend to have more diverse inflows. For the purposes of the financial statements, whether an amount is determined to be revenue is not significant in the way in which information is disclosed and

	presented in the financial statements. However, because the requirement to prepare a sustainability report is directly linked to the amount of revenue, there is an urgent need for consistency in how amounts are determined. *Counting employees* • Similar issues arise in determining the number of employees to be used in the threshold tests in the proposed legislation. The proposed legislation, consistent with the existing requirements in s.45A, provides that part-time employees are counted as an appropriate fraction of a full-time equivalent but provides no other guidance on how employee count is to be determined. • As noted above, because the employee count will be calculated by a broader range of entities under the proposed legislation, more complex employment arrangements than might be implemented by proprietary companies are expected to arise and give rise to significant interpretative issues. • Importantly, there is no guidance on whether, and if so, how, casual employees are to be counted. As the test is a 'point in time' test, it is unclear whether an average of full-time equivalent hours worked by employees over a period of time should be used to include casual employees, a simple count of casual employees that worked at the end of the financial year, or that some other method should be used. This could also lead to manipulation, with companies close to the threshold shedding employees before the 'point in time' to avoid reporting requirements. *Recommendations* • In order to address this issue, we suggest one of the following approaches: o The introduction of regulations that prescribe how these amounts are to be determined, or o Requesting ASIC to provide explicit guidance on how the amounts are to be determined. • Given the timeframes for commencement of the proposed legislation, this matter should be actioned as a priority. Should Treasury decide to proceed with further consultation, we stand ready to contribute and provide input to an expedited consultation on this matter.
Reporting Content – Group 3 materiality exemption	In addition to our observations in our submission we also note the following: • Given that this is a matter of significant judgement, we have concerns around how this assessment would be made in practice by entities as we believe it is important that a detailed assessment is undertaken by entities before making this statement (as opposed to entities using this to opt out of making the required disclosures without performing an assessment in accordance with the sustainability standards). We also note that in the policy impact analysis, Treasury has significantly reduced the number of entities that will be impacted in Group 3 from 4,555 entities to 278 entities (basis of narrower coverage with Group 3 materiality exemption) – this is based on Treasury's assumption that 5 per cent of companies in Group 3 have material climate risks that they would be required? to disclose against in accordance with the Australian standards. We suggest that Treasury clarify its intention as the decrease of numbers and the 5% assumption may be potentially misinterpreted as implying that a large number of Group 3 entities will not have material climate risks. • Furthermore, ASRS (as currently proposed in the Australian Accounting Standards Board (AASB) Exposure Draft (ED) ED SR1 *Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information*) proposes to include paragraph Aus6.2 in draft ASRS 1 to require that "'if an entity determines that there are no material climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects to disclose this fact and explain how it came to this conclusion". The draft ASRS 1 also carries forward the materiality disclosure exemption from

	IFRS S1 into paragraph B25 of draft ASRS 1 which states that "An entity need not disclose information otherwise required by an Australian Sustainability Reporting Standard if the information is not material. This is the case even if the Australian Sustainability Reporting Standard contains a list of specific requirements or describes them as minimum requirements." In addition to the materiality concept, the draft ASRSs also consider proportionality as evident by draft ASRS 1.B6 and draft ASRS 2.11 that states that an entity shall use information available to it "without undue cost and effort" in identifying the climate-related risks and opportunities. • Given that both materiality and proportionality concepts are being addressed by the AASB and on the basis that materiality is proportionate to the size of the entity, we think the responsibility for the application of these concepts should lie with the AASB and AUASB as part of setting of the Australian-specific sustainability standard, as opposed to being established in legislation. This will ensure that the materiality concept is applied consistently and in line with AASB's intention and allows for the provision of further interpretative or implementation guidance by the AASB and AUASB as appropriate. • In addressing Treasury's concerns around smaller companies not having the resources or in-house capability to confidently disclose climate risk, an option for Treasury to consider is to defer Group 3 to a later stage. This will give Treasury time to assess and monitor the implementation of Group 1 and 2 entities first and then develop and introduce modifications (e.g., concessions) for Group 3 entities at a later stage. Treasury could also consider narrowing the scope of deferral by segregating unlisted and listed entities within Group 3 where the deferral is limited to the unlisted and privately owned companies in Group 3. • In the case where Treasury decides to retain this materiality exemption, we believe that more clarity is required in the legislation to ensure that a detailed assessment is undertaken by entities in accordance with sustainability standards before applying the materiality exemption. We encourage Treasury to continue to work closely with the AASB to align the materiality and proportionality principles to enable the robust and high-quality climate-related disclosure required.
Reporting Content – Interaction with climate disclosure standards	No specific comments in addition to our observations already noted in our submission.
Reporting Framework	No specific comments in addition to our observations already noted in our submission.
Assurance requirements	**Assurance requirements – Whether assurance providers need to be NGER accredited** • We support the proposals of requiring National Greenhouse and Energy Reporting (NGER)-covered entities to report climate-related financial disclosures, however, there is no mention of whether assurance providers need to be NGER accredited. The previous Treasury consultation (June 2023) specifically made mention of assurance requirements where auditors are required to apply for registration as a Greenhouse and Energy Auditor and must demonstrate knowledge of the legislation as well as knowledge of and experience in auditing. It further notes that the Register of Greenhouse and Energy Auditors (established under the NGER Scheme legislation and maintained by the Clean Energy Regulator (CER)) is available to scheme participants to assist in identifying and appointing an auditor and the CER register would be available for the use of climate-related disclosure audits. • We believe it is paramount that climate disclosure assurance providers are appropriately qualified and experienced given the depth and breadth of sustainability reporting. We recommend Treasury provides clarification around this issue – specifically in the case around NGER accreditation of assurance providers, does the requirement for NGER accreditation

	apply to the financial statement auditor or whether the requirement applies to the case where financial auditors leading the climate disclosure assurance engagements are supported by technical climate and sustainability experts who are NGER accredited. We believe Treasury's intention is for NGER accreditation to apply to technical climate and sustainability experts supporting the financial statement auditor leading the climate disclosure assurance engagements, rather than to the financial statement auditor. We suggest Treasury provide clarification on this matter to ensure the legislation is applied in the manner intended. **Assurance requirements – Connectivity of assurance providers between sustainability report and financial report** • No specific comments in addition to our observations already noted in our submission. **Assurance requirements – AUASB assurance pathway** • No specific comments in addition to our observations already noted in our submission.
Liability Framework – Modified liability for climate disclosure	• We support the proposed liability framework as we consider that relief provided in this way would encourage best-practice disclosures while assuaging concerns in areas of the disclosure regime that are more uncertain. We agree with the proposed approach that full liability should be introduced at a later stage when consistent accounting standards are mandated, industry practice is developed, and data quality standards are achieved. **Coverage of climate-related forward-looking statements under modified liability relief** • While we support the proposed modified liability framework for climate disclosure, we would welcome further clarification around the extent of coverage of climate-related forward-looking statements under the modified liability relief. • While the previous Treasury consultation (June 2023) specifically made mention that the modified liability relief will cover disclosures around transition planning, the current consultation is silent on this. The previous Treasury consultation stated that the modified liability relief will apply to disclosures including 'scope 3 reporting, scenario analysis and transition planning' which differs to the Exposure draft legislation and Exposure draft explanatory materials that state that modified liability relief will apply to disclosures relating to 'scope 3 emissions' and 'scenario analysis'. We recommend Treasury revert back to the previous policy position taken to include relief to cover climate-related forward-looking statements in relation to transition plans. • Furthermore, we suggest Treasury consider the appropriate extent of coverage of climate-related forward-looking statements under the modified liability relief and specifically whether the relief should apply to all forward-looking disclosures required under IFRS S2 (in addition to scenario analysis and transition plans) given the high level of measurement uncertainty around such forward-looking disclosures.

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Appendix B – Drafting matters of the Exposure draft legislation and Exposure draft explanatory materials

We set our detailed observations around drafting matters of the Exposure draft legislation below.

Exposure draft legislation	Deloitte Response
292A Who has to prepare annual sustainability reports (1) Subject to subsection (2), an entity must prepare a sustainability report for a financial year if subsection (3), (6) or (7) applies to the entity for the financial year. Note: For financial years commencing before 1 July 2027, only certain entities are required to prepare a sustainability report: see Part 10.75. (7) This subsection applies to an entity for a financial year if the value of assets at the end of the financial year of the entity and the entities it controls (if any) is the following amount or more: (a) the amount determined under subsection (8); (b) if no amount is determined—$5 billion. (9) For the purposes of this section: (a) the question whether an entity controls another entity is to be decided in accordance with accounting standards made for the purposes of paragraph 295(2)(b); and (b) consolidated revenue, the value of consolidated gross assets and the value of assets are to be calculated in accordance with accounting standards in force at the relevant time; (even if the standards do not otherwise apply to the financial year of some or all of the entities concerned).	• In regards to the determination of 'the value of assets' in s.292A(7) and s.292A(9)(b) – This draft legislation refers to the value of the 'assets' of the 'entity' (and entities it controls), while the policy position statement refers to 'asset owners' and 'funds under management'. We suggest that Treasury provide clarification to ensure that the legislation accurately reflects its intention on whether the requirements apply to all entities or only specific types of entity.
292A Who has to prepare annual sustainability reports (3) This subsection applies to an entity for a financial year if it satisfies at least 2 of the following paragraphs: (a) the consolidated revenue for the financial year of the entity and the entities it controls (if any) is the following amount or more: (i) the amount determined under paragraph (4)(a); (ii) if no amount is determined—$50 million; (b) the value of the consolidated gross assets at the end of the financial year of the entity and the entities it controls (if any) is $25 million or more;	• In regard to s.292A(3)(b), we recommend that the $25 million threshold is also subject to regulation. This would then be consistent with the equivalent thresholds for large proprietary companies in s.45A, in which the asset threshold is also subject to change through regulation. • Subsection 292A(3)(b) could be worded as follows: *(b) the value of consolidated gross assets of the entity and the entities it controls (if any) at the end of the financial year is the following amount or more:* *(i) the amount determined under paragraph 4(aa);* *(ii) if no amount is determined – $25 million;* • In addition, subsection 292A(4)(aa) could be added as follows: *(aa) an amount for the purposes of subparagraph (3)(b)(i);*
292A Who has to prepare annual sustainability reports (4) The Minister may, by legislative instrument, determine: (a) an amount for the purposes of subparagraph (3)(a)(i); or (b) a number for the purposes of subparagraph (3)(c)(i).	• To ensure consistency, we suggest Treasury consider amending the wording in s.292A(4) and (8) to conform with that in s.45A for the large/small classification of proprietary companies.

(8) The Minister may, by legislative instrument, determine an amount for the purposes of paragraph (7)(a).	
292A Who has to prepare annual sustainability reports (2) Despite subsection (1), if: (a) the accounting standards require an entity (the ***group head***) to prepare financial statements in relation to a consolidated entity for the financial year; and (b) the group head elects to prepare a sustainability report for the consolidated entity for the financial year; then: (c) the group head is the only entity in the consolidated entity that must prepare a sustainability report for the financial year; and (d) the sustainability report must be prepared as if the consolidated entity is a single entity.	• We note that s.292A(2)(d) requires a consolidated report and suggest Treasury consider how this requirement is expected to interact with the sustainability standards where there may be a conflict.
296A Contents of annual sustainability report *Basic contents* (1) The sustainability report for a financial year consists of: (a) the climate statements for the year; and (b) any notes to the climate statements; and (c) any statements required under subsection (3); and (b) the directors' declaration about the statements and the notes.	• In s.296A(1) "(b) the directors' declaration about the statements and the notes" should be edited to "(d) the directors' declaration about the statements and the notes".
296A Contents of annual sustainability report *Directors' declaration* (6) The directors' declaration is a declaration by the directors of the following: (a) if the entity has included in the notes to the climate statements, in compliance with the sustainability standards, an explicit and unreserved statement of compliance with international sustainability reporting standards—that this statement has been included in the notes to the climate statements;	• If the AASB makes ASRSs consistent with its ED, this statement in s.296A(6)(a) would not be able to be made by entities as there are differences between the AASB's proposals and IFRS Sustainability Disclosure Standards. • As stated in our submission above, we think it would be helpful for Treasury to clarify its intention of including this requirement.

296B Contents of annual sustainability report—statements about having no climate risks or opportunities (1) Despite subsection 296A(2), if, for a financial year: (a) the entity: (i) does not face material climate risks; and (ii) does not have material climate opportunities; and (b) none of subsections (2), (4) and (5) of this section apply to the entity; the climate statements for the year are a statement of the matters mentioned in paragraph (a) of this subsection.	• As stated in our submission above, we have concerns around the operability of this materiality exemption in relation to how this assessment is made in practice by entities, the linkage to the materiality/proportionality concept in ASRS and the flow-on impacts around the audit of this judgement.
296B Contents of annual sustainability report—statements about having no climate risks or opportunities (2) This subsection applies to an entity for a financial year if it satisfies at least 2 of the following paragraphs: (a) the consolidated revenue for the financial year of the entity and the entities it controls (if any) is $200 million or more; (b) the value of the consolidated gross assets at the end of the financial year of the entity and the entities it controls (if any) is $500 million or more; (c) the entity and the entities it controls (if any) have 250 or more employees at the end of the financial year. (5) This subsection applies to an entity for a financial year if the value of assets at the end of the financial year of the entity and the entities it controls (if any) is $5 billion or more.	• We suggest that Treasury consider introducing similar provisions (i.e. regulations overriding legislated amounts) in s.296B(2)(a)-(c) and s.296B(5) to ensure consistency between the amounts across various sections. For instance, subsection (a) could be worded as follows: *(a) the consolidated revenue for the financial year of the entity and the entities it controls (if any) is the following amount or more:* *(i) the amount determined under subsection (8)* *(ii) if not amount is determined – $200 million;* ... And a new subsection 296B(8) introduced, as follows: *(8) The Minister may, by legislative instrument, determine:* *(a) an amount for the purposes of subparagraph (a)(i); or* *(b) an amount for the purposes of subparagraph (b)(i); or* *(c) a number for the purposes of subparagraph (2)(c)* • We note that for the $5b threshold in s.296B(5), this consistency could be achieved by directly referencing the regulations created under s.292A(8). Following is suggested wording: *(5) This subsection applies to an entity for a financial year if the value of assets at the end of the financial year of the entity and the entities it controls (if any) is the following amount or more:* *(a) the amount determined under section 292A(8)* *(b) if no amount is determined – $5 billion.*

<table>
<tr>
<td>
43 Subsection 323(1)
After “has to prepare consolidated financial statements”, insert “or has to prepare climate statements”.

44 At the end of subsection 323(1)
Add “or to prepare the climate statements”.

45 Subsection 323B(1)
After “financial report that includes consolidated financial statements”, insert “or has to prepare a sustainability report as if a consolidated entity is a single entity”.

103 Subsection 323A(1)
After “financial report that includes consolidated financial statements”, insert “or a sustainability report that includes consolidated climate statements”.
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The amendments proposed to subsection 323(1) and subsection 323B(1) are inconsistent with the language used in the Exposure Draft explanatory materials in paragraph 1.60 which refers to ‘consolidated climate statements’. The edits to subsection 323A(1) also uses the term ‘consolidated climate statements’. We suggest Treasury provide edits to ensure consistency of terminology.
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57 After paragraph 1232C(1)(a)
Insert:
(aa) in a case in which subsection 292A(1) requires the CCIV to prepare a sustainability report for a financial year—that subsection requires the CCIV to prepare a sustainability report for each of its sub-funds for the financial year; and

58 Paragraph 1232C(2)(a)
After “financial report”, insert “, a sustainability report”.

59 After paragraph 1232C(2)(b)
Insert:
(c) the documents of which the sustainability report consists under subsection 296A(1);

60 At the end of section 1232D
Add:
(4) A sustainability report for a sub-fund referred to in subsection 1232C(1) must comply with any further requirements prescribed by regulations made for the purposes of this subsection.

61 Subparagraph 1232H(1)(a)(i)
After “financial report”, insert “, sustainability report”.

62 Subparagraph 1232H(1)(a)(ii)
Omit “the auditor’s report on the financial report”, substitute “the auditor’s reports”.
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While s.1232C, s.1232B and s.1232H have been amended (financial reporting in Part 2M.3 that apply to CCIVs are updated to include sustainability reports), only the wording of the requirements is amended but the sub-headings of these sections have not been amended appropriately to include ‘sustainability report’. Some suggested edits are as follows:
<table>
<tr><th>Sub-headings</th><th>Suggested edits</th></tr>
<tr><td>1232C Annual financial reports and directors’ reports for sub-funds—general rules</td><td>After “financial reports”, insert “, sustainability reports”.</td></tr>
<tr><td>1232D Annual financial reports and directors’ reports for sub-funds—special rules for financial reports</td><td>After “financial reports”, insert “, sustainability reports”.</td></tr>
<tr><td>1232H Annual financial reporting to members of sub-funds</td><td>After “financial”, insert “and sustainability”.</td></tr>
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77 Subsection 285(1) (after table item 1A)
Insert:
<table>
<tr><td>1B</td><td>have the sustainability report audited and obtain auditor's report</td><td>s. 301A, 307AB, 309A</td><td>Under s. 312, officers must assist the auditor in the conduct of the audit.
ASIC may use its exemption powers under s. 340 and 341 to relieve large proprietary companies from the audit requirements in appropriate cases (s. 342(2) and (3)).</td></tr>
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<td>
• We suggest that Treasury also include the reference to s.301B in Subsection 285(1) to highlight the assurance pathway where audits of sustainability reports are required by 2030 and only limited assurance is required between 1 July 2024 to 30 June 2030.
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301B Limited assurance of sustainability reports before 1 July 2030
(1) An entity that is required to prepare a sustainability report for a financial year commencing between 1 July 2024 and 30 June 2030 must have the sustainability report for the financial year reviewed.
(2) However, the review is only required to cover contents of the sustainability report that are climate statements relating to scope 1 emissions or scope 2 emissions of greenhouse gases.
Note: A review of a sustainability report must be conducted in accordance with the auditing standards: see section 307AC. An auditor that reviews a sustainability report must report to members: see subsection 309A(3).
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<td>
• As stated in our submission above, we suggest Treasury consider the legislative tool to allow the AUASB assurance “pathway” to be implemented in light of the legislation as the legislation currently drafted in Exposure Draft does not allow that pathway (it only covers the minimum assurance requirements).
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1705D Requirement to make auditing standards for review of climate statements
(1) The AUASB must make auditing standards under section 336 that provide standards for reviews under subsection 301B(1).
(2) The first such auditing standards must be made before 1 July 2024.
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• The amendments proposed to s.1705D are inconsistent with the language used in the Exposure Draft explanatory materials in paragraph 1.123 – Paragraph 1.123 (extract below) refers to ‘companies limited by guarantee’ while s.1705D makes no references to companies limited by guarantee.
1.123 The AUASB must make auditing standards in accordance with the Act that provides standards for reviews for companies limited by guarantee. These auditing standards must be made before 1 July 2024.
[Schedule #, item 129, section 1705D]
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Exposure draft explanatory materials	Deloitte Response
1.35 Calculating consolidated revenue and the value of consolidated gross assets for the purpose of determining if an entity must provide an annual sustainability disclosure report must be done in accordance with the accounting standard in force at the relevant time. This applies even if the standard does not otherwise apply to the financial year or some of the entities concerned. ***[Schedule #, item 22, paragraph 292A(9)(b))]*** **Product disclosure** 1.63 The prospectus for continuously quoted securities or a product disclosure statement relating to a managed investment scheme that is an ED security must inform people of their right to obtain a copy of the most recently lodged sustainability disclosure report if the body has lodged a sustainability report with ASIC. The contents of an offer information statement for the issue of a body's securities must include a copy of the most recent sustainability report prepared. ***[Schedule #, items 48, 49 and 51, subparagraphs 713(4)(a)(ia) 715(1)(ia) and 1013I(3)(a)(ia)]***	• In addition to the above detailed observations around the Exposure draft legislation, we would like to highlight a specific drafting matter of Exposure draft explanatory materials around the use of the terminology 'sustainability disclosure report'. There are many instances where the Exposure draft explanatory materials use the term 'sustainability disclosure report' and in some cases, in conjunction with the term 'sustainability report' in the same paragraph. As the term 'sustainability disclosure report' is not defined or mentioned in the Exposure draft legislation, we suggest Treasury updates the term 'sustainability disclosure report' to 'sustainability report' to maintain consistency across both documents.