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Director
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Climate & Energy Division
Treasury
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Online submission: ClimateReportingConsultation@treasury.gov.au

Climate-related financial disclosure: exposure draft legislation (January 2024)

Dear Sir / Madam,

I am pleased to make this submission on the *Climate-related financial disclosure: exposure draft legislation* (January 2024).

I have extensive experience in accounting advice on Australian Accounting Standards and International Financial Reporting Standards across a wide range of clients, industries and issues in the for-profit, not-for-profit, private and public sectors.

My clients have included listed companies, unlisted and private companies, charitable and not-for-profit organisations, federal, state and local government departments and agencies in the public sector, and government owned corporations (government business enterprises).

I discuss:

Yours sincerely,

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1) Phasing - Start date – Should be deferred at least 6 months

The legislation should be deferred for at least 6 months. It is only a few months until the proposed 1 July 2024 start date, and many of the low emitting companies (those that are not NGERs reporters) are not ready for even limited Scope 1 and Scope 2 emissions disclosure.

Also, the auditing standard for limited assurance focusing on sustainability reports will not be ready.

While the legislation requires the AUASB to issue a limited assurance standard by 30 June 2024, that does not mean the international assurance standards setter will issue a version of an expected international standard focused on sustainability before then. Requiring the AUASB to issue 'something' before 30 June 2024 will mean that we are likely to get something that is not specific to sustainability reporting, or something that is not an equivalent international auditing standard.

2) What does Scope 1 and Scope 2 disclosures mean?

The legislation restricts the auditor's scope (between 1 July 2024 and 30 June 2030) to "scope 1 or 2 emissions of greenhouse gases".

I interpret this as being related to only the amount of the Scope 1 and Scope 2 emissions (similar to that reported under NGERs reporting). However, it could be interpreted as being wider to include governance, strategy and risk management relating to Scope 1 and Scope 2 emissions.

I agree with restricting the auditor's scope only to the more limited absolute Scope 1 and Scope 2 emissions. This should be clarified.

Background:

Under the EM:

1.76 The amendments provide for a transitional period where only limited assurance of sustainability reports is required for reports prepared between 1 July 2024 and 30 June 2030. The auditor's review is limited to the climate statements **relating to scope 1 or 2 emissions of greenhouse gases**. (emphasis added)

Under the Legislation:

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.** (emphasis added)

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).

3) Flexible pathway for assurance

The Policy Position Statement states that the AUASB will determine a pathway for assurance. It is not clear what this means, for example, requiring auditors to provide (limited or reasonable) assurance on more and more disclosures – as proposed in the Secondary Consultation paper.

The AUASB is not a regulator. It sets auditing and assurance standards that are imposed by regulators.

This “pathway” needs to be clarified. I agree with restricting the auditor’s scope only to the more limited absolute Scope 1 and Scope 2 emissions until 2030 (as discussed above).

Extract from Policy Position Statement:

> In particular, the AUASB will also set out a pathway for phasing in requirements over time, which would commence with assurance of Scope 1 and 2 emissions disclosures from years commencing 1 July 2024 onwards and end with assurance of all climate disclosures made from years commencing 1 July 2030 onwards.

Explanatory Memorandum:

> Part 2 – Audit and assurance
>
> 1.72 … AUASB will develop assurance standards in line with the IAASB final standard. The AUASB will also set out a pathway for phasing in requirements over time, which would commence with **assurance of Scope 1 and 2 emissions disclosures** from 1 July 2024 onwards and end with assurance of all climate disclosures made from 1 July 2030 onwards.
> (emphasis added – see discussion above on what the emphasized words mean)

4) Scenario analysis

The Policy Position Statement states “Entities should be permitted to commence with qualitative scenario analysis, with quantitative analysis required for financial years commencing on or after 1 July 2027”.

I could not find where this policy is implemented in the legislation. The only references to scenario analysis I could identify related to the liability relief.

5) Scope 3 – Reporting without undue cost or effort, and no additional cost burden on suppliers and customers

The Policy Position Statement and Policy Impact Analysis expresses the view that Scope 3 reporting is undertaken without undue cost or effort, and does not involve additional costs on suppliers or customers.
They do this with the Policy Position Statement stating:

- Scope 3 emissions (i.e. emissions that occur up or down their supply chain and emissions associated with their financing or investment activities) will be required from the second year of reporting. Scope 3 disclosures would represent information that is available at the reporting date without undue cost or effort.

and by the Policy Impact Analysis only including costs for the reporting businesses. No additional costs are included for other businesses, or other individuals, community organisations (and implicitly no additional costs for commonwealth, state or local government agencies).

There is currently confusion in the public with some advisers and consultants referring to how businesses will have to collect data from their suppliers and customers. As noted above, this is clearly not the policy. The final legislation should make it abundantly clear that Scope 3 reporting can be undertaken without undue cost or effort, and does not require any additional cost burdens on suppliers and customers.

Scope 3 reporting, that includes activities in the 'value chain', i.e. suppliers and customers, is not consistent with usual accounting reporting. Usual accounting reporting involves the reporting entity, or consolidated reporting entity. Consequently, usual accounting reporting does not include results of suppliers or customers that are not controlled.

The costs on business (particularly small business), and government agencies, of Scope 3 reporting advocated by many advisers and consultants would be very significant. Not only would 'value chain' suppliers and customers be required to report their Scope 1 and Scope 2 emissions (information they are likely not to collect), but such entities are also required to report their 'Scope 3' emissions. Which, then of course, would force additional costs onto their 'value chain' suppliers and customers.

This would result in enormous and unnecessary costs. The costs are unnecessary as each business should be responsible for what it controls.

6) Scope 3 disclosures should not be required by legislation (or accounting standards)

Scope 3 should not be required by the legislation and does not provide useful information. Coles Group reported Scope 3 emissions in its 2022 Sustainability Report of "approximately 21m tCO2-e in FY21" (because at the time of reporting it was still finalising FY22). What does 21 million tonnes CO2 equivalent mean? How is Coles Group impacted by this? Yes, it will be impacted by the higher electricity prices we are encountering moving to Net Zero, but what does it mean in practice? How much of the 21m tCO2-e is affected by higher electricity prices, and how does that feed into higher prices for their goods, and the effect on sales and profits?

However, if Scope 3 is required, as noted above, the final legislation should make it abundantly clear that Scope 3 reporting can be undertaken without undue cost or effort, and does not require any additional cost burdens on suppliers and customers.

7) Scope 3 – If cost burden imposed on suppliers and customers

If Scope 3 is applied per the advisers and consultants (contrary to the policy noted above), what is intended in future sustainability standards?

Will there be 'Scope 3' type reporting with reporting entities being attributed a share of the costs of the destruction and damage of natural habitat and farmland, and modern slavery issues, to users of renewable energy, and users of electric vehicles? For background, refer to:

> Rachel Williamson, "Modern slavery: The grim problem facing Australia wind, solar and battery supply chains", Renew Economy, Nov 29, 2022
> https://reneweconomy.com.au/modern-slavery-the-grim-problem-facing-australia-wind-solar-and-battery-supply-chains/

This approach would similarly to Scope 3 emissions result in enormous and unnecessary costs. The costs are unnecessary as each business should be responsible for what it controls.

If there are no 'Scope 3' disclosures planned for other sustainability issues, then why are they required for only emissions. As I stated above, Scope 3 should not be required by the legislation.

8) Scope - Group 3 – Entities should not be included in the scope of the legislation

The Policy Impact Analysis states that it is expected that "5 per cent" of Group 3 companies would have material climate risks (and opportunities). Therefore, 95% of the Group 3 would be provided relief. However, the relief is not an exemption, as a statement stating that there are 'no material climate-related risks (and opportunities)' would have to be audited.

While the relief is welcomed, it would be much easier and less costly to simply exclude these entities from the legislation.

Large emitters are already included with the NGER reporters. It is not necessary to include other entities.

9) Scope - Group 1 and Group 2 – Only large emitters should be included

As stated above, only large emitters (NGER reporters) should be included in the scope of the legislation. It is not necessary to include other entities.

10) Drafting – Reference to assets Section 296B(5)

The reference to assets in section 296B(5) is different to that used elsewhere in the legislation, for example, earlier in the section being 296B(2)(b).

The differences relate to section 296B(2)(b) referring to gross assets, and also to consolidated assets.

(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.

(2)(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) 27 is $500 million or more;

11) Drafting – Consolidated sustainability reports – Section 292A(2)

Section 292A(2) uses similar wording as Corporations Act 295(2)(b), along the lines of the entity is required to prepare consolidated financial statements.

This wording fails to deal with the problems encountered under the existing legislation when an entity is not required to prepare consolidated financial statements, but voluntarily chooses to prepare consolidated financial statements. Because preparation is 'voluntary', and not 'required', the 'required' requirement is not met and therefore the provisions do not apply.

An example of voluntary preparation is an intermediate holding company that is given an exemption under accounting standards to prepare consolidated financial statements.

Consequently, the drafting does not implement the policy of allowing a company to prepare a consolidated sustainability report covering its controlled entities, should it choose to do so.

292A
(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
 (emphasis added)

12) Drafting - Thresholds 292A(3) – ability to change

There is a drafting error in section 292A(3) that does not permit all the thresholds to be increased by the Minister. Only revenue and employees can be changed. Not assets. This is different to that used in the large proprietary company definition under the Corporations Act section 45A(3).

Thresholds for sustainability reports
(3) This subsection applies to an entity for a financial year if it satisfies 20 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;
 (c) the entity and the entities it controls (if any) have the following number of employees or more at the end of the financial year:
  (i) the number determined under paragraph (4)(b);
  (ii) if no number is determined—100.

Large proprietary company
(3) A proprietary company is a large proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:

(a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is $25 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(a), or more;

(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is $12.5 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(b), or more;

(c) the company and the entities it controls (if any) have 50, or any other number prescribed by the regulations for the purposes of paragraph (2)(c), or more employees at the end of the financial year.