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8 February 2024

Director  
Climate Disclosure Unit  
Climate and Energy Division  
Treasury  
Langton Crescent  
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Via email: [ClimateReportingConsultation@treasury.gov.au](mailto:ClimateReportingConsultation@treasury.gov.au)

Dear Sir/Madam

**SUBMISSION – EXPOSURE DRAFT TREASURY LAWS AMENDMENT BILL 2024:  
CLIMATE-RELATED FINANCIAL DISCLOSURE**

We appreciate the opportunity to provide comments on the Exposure Draft *Treasury Laws Amendment Bill 2024: Climate-related Financial Disclosure* and accompanying explanatory materials ('Exposure Draft').

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Overall, we support the Government commitment to improve the quality of climate-related financial disclosures to provide Australians and investors with greater transparency. Our specific concerns on the Exposure draft, where further clarity is required, include:

- Clarity of terminology in with regard to the use of the term "value of assets"
- Clarity on the application of the word "entity" in the legislation
- Clarity on the ability of the Australian Securities & Investments Commission ('ASIC') to take action in respect of the reporting periods from 1 July 2024 to 30 June 2027.
- Clarity on who signs the assurance report on climate-related financial disclosure.

These areas are detailed further in this submission.

However, some of our previous concerns, raised in our submission dated 21 July 2023 remain, which include:

- The breadth of the application of the disclosures particularly to privately held businesses included as Group 3 entities where costs will outweigh any benefits – particularly for tightly held family groups where the costs to record and prepare sustainability information will not produce relevant information to users of the financial statements, as users are limited to family members.

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- The timing of the roll out particularly given concerns about the availability of resources (for example, the relevant standards to be applied will not be released until just prior to the proposed legislation commencing).
- The cost implications of the roll out as provided in the 'policy impact analysis' given concerns about the availability of resources, and the capacity of business to absorb another increase in costs both internal and external given current economic conditions.
- The uncertainty over how this will impact audit quality given concerns about the availability of resources.

Further, given the concerns raised above about resourcing, it is considered that additional time will need to be provided to entities to lodge this information with ASIC, both from a preparer's perspective and an auditors perspective, at least in the first few years of adoption of the new requirements.

Please contact Ms Kerry Hicks, Director – Technical Standards (02 9228 2272 or [kerry.hicks@pitcher.com.au](mailto:kerry.hicks@pitcher.com.au)), or Mr Tim Nesbitt, Director – Technical Standards (03 8612 9596 or [tim.nesbitt@pitcher.com.au](mailto:tim.nesbitt@pitcher.com.au)), in relation to any of the matters outlined in this submission.

Yours sincerely,



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Partner



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Director, Technical Standards



Tim Nesbitt  
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## EXPOSURE DRAFT - TREASURY LAWS AMENDMENT BILL 2024: CLIMATE-RELATED FINANCIAL DISCLOSURE

### Exposure Draft – explanatory memorandum

Reference	Comments
<p>1.2 Climate disclosures will be subject to similar assurance requirements to those currently in the Corporations Act for financial reports and will <b>require entities to obtain an assurance report from their financial auditor</b>. The extent and level of assurance required will be set out in Australian assurance standards for climate disclosures, developed by the AUASB.</p>	<p>We are unclear whether the wording we have bolded in the left-hand column means:</p> <ul style="list-style-type: none"> <li>• that only the Financial Statement Auditor i.e., a Registered Company Auditor, can sign the assurance report on climate related financial disclosure; or</li> <li>• Whether the Assurance report on Climate related financial disclosure could be signed by another Assurance provider from the same firm as the Financial Statement Auditor? If so, would that person be required to be a Registered Company Auditor?</li> </ul> <p>We recommend this is clarified.</p>
<p>1.17 Small and medium entities, below the relevant size thresholds (unless they are NGER controlling corporations) are not required to make climate-related financial disclosures. Neither are entities that are exempt from lodging financial reports under Chapter 2M.</p>	<p>S292A is written in the context of an entity. We are unclear on the definition of the entity since Section 64A defines an entity to include natural persons and trusts.</p> <p>We recommend this requirement is clarified, as we understood the requirements for climate-reporting financial disclosures did not extend beyond those entities required to report under Chapter 2M of the <i>Corporations Act 2001</i>.</p>

Reference	Comments
<p>1.30 Generally, an entity must prepare a sustainability report for a financial year if that entity reports under Chapter 2M and meets any one of the following for a financial year:</p> <ul style="list-style-type: none"> <li>• where the entity meets at least two of the following three criteria (unless other amounts are determined under a legislative instrument by the Minister): <ul style="list-style-type: none"> <li>– the consolidated revenue of the entity (and the entities it controls) is equal to or greater than \$50 million;</li> <li>– the <b>value of the consolidated gross assets</b> at the end of the financial year of the entity (and the entities it controls) is equal to or greater than \$25 million;</li> <li>– the entity (and the entities it controls) have at the end of the financial year, 100 or more employees; or</li> </ul> </li> <li>• if the entity is a registered corporation under the NGER Act or required to make an application to be registered under subsection 12(1) of the NGER Act; or</li> <li>• if the entity is an asset owner where the <b>value of assets</b> at the end of the financial year (including the entities it controls) is equal to or greater than \$5 billion (or the amount determined under a legislative instrument by the Minister).</li> </ul>	<p>The use of the phrase “value of assets” is unclear.</p> <p>Australian Accounting standards require some assets to be at ‘fair value’ and some at ‘amortised cost’. The words ‘value of assets’ seem to require entities to ‘value’ all their assets in contrary to what may be required by Australian Accounting Standards.</p> <p>Further, it is not clear if this requirement relates to ‘total assets’ or ‘net assets’ or ‘consolidated assets’.</p> <p>We recommend this is clarified to mean the carrying value of total assets in the financial statements in accordance with Australian Accounting standards or at least use language with is consistent with that contained in the large proprietary company lodgement thresholds.</p> <p>These statements are repeated in 1.46, 1.50, 1.108, 1.109, 1.113</p>

Reference	Comments
<p>1.115 Under this approach, liability for misleading and deceptive, and other, conduct in relation to the most uncertain parts of a climate statement is temporarily suspended. That is, where the statement relates to scope 3 greenhouse gas emissions and scenario analysis. <b>This limited immunity applies to statements in sustainability reports prepared for financial years commencing between 1 July 2024 and 30 June 2027. During this time, only ASIC will be able to take action for misleading and deceptive conduct in relation to these types of disclosures.</b></p>	<p>We are unclear on the meaning of the words in bold in the left-hand column. Does this mean that ASIC can only take action during that time frame or in relation to the engagements covering that timeframe. As written it could mean ASIC could take action on 1 July 2027 in respect of the reporting for periods from 1 July 2024 to 30 June 2027.</p> <p>Further, while the liability for the directors is limited, there is no limitation for auditors. Given it is ultimately the directors responsibility to prepare the sustainability report, it is iniquitous to provide limited liability for the preparer but not the auditor.</p> <p>We recommend this is clarified, and that the auditors have the same limited liability as directors for the reporting periods in question.</p>
<p>1.121 If ASIC considers that a statement an entity makes in a sustainability disclosure report for a financial year commencing between 1 July 2024 and 30 June 2027 is incorrect, incomplete or misleading in any way, ASIC may direct the entity to confirm to ASIC that the statement is correct or complete, explain the statement to ASIC, and correct, complete or amend the statement in accordance with the direction. The entity must comply with that direction. The penalty for a failure to comply with such direction is 60 penalty units. <b>[Schedule #, items 129 and 130, section 1705C and Schedule 3]</b></p>	<p>We are unclear on the consequences of this requirement on the other information statement in the financial statement audit opinion, and whether this will trigger a restatement of the financial statements.</p> <p>We recommend this is clarified.</p>

## EXPOSURE DRAFT - TREASURY LAWS AMENDMENT BILL 2024: CLIMATE-RELATED FINANCIAL DISCLOSURE

### Draft Legislation

Reference	Comments
<p><b>292A Who has to prepare annual sustainability reports</b></p> <p>(2) Despite subsection (1), if:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) the group head elects to prepare a sustainability report for the consolidated entity for the financial year;</li> </ul> <p>Then:</p> <ul style="list-style-type: none"> <li>(a) The group head is the only entity in the consolidated entity that must prepare a sustainability report for the financial year; and</li> <li>(b) The sustainability report must be prepared as if the consolidated entity is a single entity.</li> </ul>	<p>We are unclear on the operation of subsections (1) and (2) in the circumstance where the group head is a Trust (that does not report under Chapter 2M of the Corporations Act) with companies that are subsidiaries. Where the Trust prepares consolidated financial statements we are uncertain whether it would be acceptable for the Trust to lodge a consolidated sustainability report which would alleviate reports being done at an individual company level.</p> <p>We recommend this is clarified.</p>
<p>(3) This subsection applies to an entity for a financial year if it satisfies at least 2 of the following paragraphs:</p> <ul style="list-style-type: none"> <li>(a) the consolidated revenue for the financial year of the entity and the entities it controls (if any) is the following amount or more: <ul style="list-style-type: none"> <li>(i) the amount determined under paragraph (4)(a);</li> <li>(ii) if no amount is determined—\$50 million;</li> </ul> </li> <li>(b) the <b>value of the consolidated gross assets</b> at the end of the financial year of the entity and the entities it controls (if any) is \$25 million or more;</li> <li>(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: <ul style="list-style-type: none"> <li>(i) the number determined under paragraph (4)(b);</li> <li>(ii) if no number is determined—100.</li> </ul> </li> </ul>	<p>Refer to comments to 1.30 in the explanatory memorandum.</p> <p>Further, we are unclear why sections (a) and (c) provide for a Minister determination made in accordance with section (4) and section (b) does not.</p> <p>We recommend this is clarified.</p>

Reference	Comments
(7) This subsection applies to an entity for a financial year if the <b>value of assets</b> 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	Refer to comments made in s292A(3) above.  We recommend this is clarified.

Reference	Comments
<p><b>296B Contents of annual sustainability report—statements about having no climate risks or opportunities</b></p> <p>(1) Despite subsection 296A(2), if, for a financial year:</p> <p>(a) the entity:</p> <p>(i) does not face material climate risks; and</p> <p>(ii) does not have material climate opportunities; and</p> <p>(b) none of subsections (2), (4) and (5) of this section apply to the entity;</p> <p>the climate statements for the year are a statement of the matters mentioned in paragraph (a) of this subsection.</p>	<p>If the directors conclude that there are no material climate risks or opportunities, the extent of work to be undertaken by the auditor is unclear.</p> <p>In substance this could lead to auditors being required to perform detailed analysis, of the business its strategy and other risk assessment procedures at a minimum to determine if the directors' statement is appropriate. This places a disproportionate burden on the auditor's to perform the assessment rather than the directors.</p> <p>Consequently we would recommend that where the directors make the statement that there are no material climate risks the auditors are not required to form an opinion or provide a conclusion on the directors statement.</p>
<p><b>301A Audit of annual sustainability report</b></p> <p>An entity that is required to prepare a sustainability report for a financial year commencing on or after 1 July 2030 must have the sustainability report audited in accordance with Division 3 and obtain <b>an auditor's report</b>.</p>	<p>The wording of the legislation states the need to obtain "an auditor's" report but does not indicate that it must be signed by the financial statement auditor, or a Registered Company Auditor. Refer comments and questions on 1.2 of the Exposure Draft Explanatory Materials.</p> <p>We recommend this is clarified.</p>



Reference	Comments
<p><b>301B Limited assurance of sustainability reports before 1 July 2030</b></p> <p>(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.</p> <p>(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.</p> <p>Note: A review of a sustainability report must be conducted in accordance with the auditing standards: see section 307AC. <b>An auditor</b> that reviews a sustainability report must report to members: see subsection 309A(3).</p>	<p>We are unclear why the 301 B requirement does not specify the financial statement auditor, but states “an auditor”.</p> <p>We recommend this is clarified.</p>