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Climate Disclosure Unit
Climate & Energy Division
Treasury
Langton Cres
Parkes ACT 2600

9 February 2024

Dear Sir

TREASURY LAWS AMENDMENT BILL 2024: CLIMATE-RELATED FINANCIAL DISCLOSURE

Thank you for the opportunity to comment on the Australian Government's proposal to mandate sustainability reporting in Australia.

While we support the proposed phasing in of reporting over four years, we recommend that the mandatory reporting and assurance for Group 1 entities be delayed by one year because the relevant Australian sustainability reporting standards, global and Australian assurance standards, and global and Australian independence standards have not been finalised and are not expected to be finalised by 1 July 2024 (the proposed mandatory effective date for Group 1 entities). In particular:

- The Australian Sustainability Reporting Standards have not yet been finalised (consultation on draft proposals close 1 March 2024). Further, the Australian Accounting Standards Board's (AASB's) current [Work Program](#) (December 2023) shows this project as 'ongoing' and has no set deadline. Even if completed before 30 June 2024, this leaves Group 1 entities limited time to capture the relevant data from 1 July 2024.
- Group 1 entities would also prefer a choice between applying the Scope 1 and Scope 2 emissions measurement methodologies set out in either the Greenhouse Gas (GHG) Protocol or the *National Greenhouse and Energy Reporting Act 2007* (NGER). This is because they may be required to prepare emissions data using GHG Protocol if they have operations outside Australia, and using the GHG Protocol will also better facilitate international comparability of emissions data. Given that the expected date for final sustainability reporting standards is not known, such entities would have to potentially capture two sets of data until a final decision is made on whether NGER measurement methodology will prevail in Australia.
- The International Auditing and Assurance Standards Board (IAASB) is not expected to have finalised the International Standard on Sustainability Assurance Engagements before 1 July 2024, which is the date nominated in section 1705D(2) as being the date by which the Australian Auditing and Assurance Standards Board (AUASB) must make the first such auditing standards. We note that Australia's general approach to assurance standard setting is to align with international

standards, so releasing domestic standards before the international standards are finalised runs the risk of Australian sustainability assurance standards being out-of-step with international standards.

- The International Ethics Standards Board for Accountants (IESBA) only published its Exposure Draft for an international standard on ethics for sustainability assurance on 29 January 2024, with comments due by 10 May 2024. It is therefore unlikely that such a standard will be ready to commence assurance engagements by 1 July 2024.
- The 1 July 2024 start date means that our clients and the firm's partners and staff need to be upskilled in a very short period of time on legislation and standards that are not yet finalised. It will be very difficult to ensure clients and audit teams have the necessary knowledge and experience prior to this date.

We do not propose a change to the timeline for Group 2 and Group 3 entities.

We also draw your attention to the following key areas for improvement in the legislation.

1. Entities required to prepare sustainability reports only if they lodge a financial report

Both the [Second Treasury Consultation Paper](#) (Consultation Paper) and the [Explanatory Memorandum](#) refer to an entity only having to prepare a sustainability report if it is also required to lodge a financial report under Chapter 2M of the *Corporations Act 2001*. We do not believe that the drafting in the [Exposure Draft](#) achieves this outcome as there is no link in Division 1 of Chapter 2M between section 290 (who must prepare financial statements) and section 292A (who must prepare sustainability reports). In other words, section 292A does not include whether an entity lodges a financial report as a threshold for the test for sustainability reporting.

2. Which entities are required to prepare a sustainability report?

We also note that the Chapter 2M sustainability reporting requirements apply to an 'entity' rather than to a company, disclosing entity, registered scheme or registrable superannuation entity. 'Entity' is defined in section 64A very broadly, and could encompass entities that are not required to prepare financial reports under Chapter 2M. Refer to Appendix 1 - section 14 for more information.

3. Asset owners

The 'asset owners' test set out in the [Policy Statement](#) for Group 2 entities is not consistent with section 292A(7). Refer to Appendix 1 - section 3 for more information.

4. Audit firm or individual auditor

It is not clear whether the auditor of the sustainability report must be the same person (individual partner) who signs the audit report on the financial report. We recommend that the legislation clarify that two different individuals (partners) in the audit firm or company are able to sign the financial report and the sustainability report respectively.

5. Phasing in of assurance

Page 25 of the [Consultation Paper](#) outlines the roadmap from limited assurance (review engagement) to reasonable (audit) assurance. This phasing timeline has not been incorporated into section 301B(2). Section 301B(2) requires a review engagement on the Scope 1 and 2 emissions only. No limited

assurance is required on other aspects of the sustainability report until 2030, when the entire report must be audited. We recommend the final legislation specifically outline expected timelines for assurance (review or audit) as this will assist audit firms and entities to develop capabilities in a timely fashion, and thereby reduce the risk of greenwashing. Refer Appendix 1 - section 11 for more information.

6. Phasing in of the scenario analysis from qualitative to quantitative over a period of time

The proposal to permit a phasing approach to the scenario analysis from the [Consultation Paper](#) has not been followed through in either the [Explanatory Memorandum](#) or the [Exposure Draft](#). Refer to Appendix 1 - section 15 for more information.

7. Modification of liability

If review requirements for Scope 3 emissions and scenario analysis are phased in earlier than currently stated in the [Exposure Draft](#), we recommend that the proposals for limited immunity for directors be extended to auditors as well. Refer to Appendix 1 - section 13 for more information.

8. Preference for choice of emissions measurement methodologies

As noted above, we are concerned that imposing NGER measurement methodologies on all Australian reporters creates an onerous burden because some entities with operations outside Australia may be required to report twice: once applying NGER for Australian purposes, and again applying the GHG Protocol internationally. We recommend the Government adopts a flexible approach to allowing entities a choice between NGER and GHG protocol.

Please also refer to Appendix 1 for our detailed comments on the proposed sustainability reporting legislation contained in the *Treasury Laws Amendment Bill 2024: Climate-related financial disclosure*.

If you have any comments regarding this request, please do not hesitate to contact me.

Yours faithfully



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APPENDIX 1

1. Item 13 - Insertion of table item 4 in section 285A (reporting by companies limited by guarantee)

Proposed table item 4 requires a company limited by guarantee to prepare a sustainability report only if both of the following apply:

- Annual consolidated revenue is \$1 million or more, and
- Sustainability reporting thresholds in s292A are met.

This means that if consolidated revenue is less than \$1 million, a sustainability report is never required. While expected to rarely occur, it is possible to have situations where no sustainability reports are required for companies limited by guarantee because their consolidated revenue is less than \$1 million, despite:

- The asset and employee thresholds in s292A(3) being met, or
- The asset owner threshold of \$5 billion is met.

BDO comments

The Explanatory Memorandum does not elaborate on whether it was intended that companies limited by guarantee meeting one of the thresholds in section 292A be exempt from sustainability reporting because consolidated revenue is less than \$1 million.

While section 285A (table item 4) appears to limit sustainability reporting to companies limited by guarantee that must prepare financial reports, section 292A does not facilitate this. That is, section 292A(1) requires the preparation of a sustainability report if either of the following apply:

- Section 292A(3) - two out of three of the assets, revenue and employee thresholds
- Section 292A(6) - NGER reporting
- Section 292A(7) for asset owners - applies regardless of whether the thresholds in s292A(3) are met.

In other words, section 292A applies to all entities, regardless of type. It is therefore not clear how the new table item 4 to section 285A is able to limit the scope of section 292A for companies limited by guarantee (section 285A being a roadmap only to relevant applicable financial and sustainability reporting sections in Chapter 2M).

2. Item 18 - Insertion of section 289A

The offences outlined in section 289A(6) are stricter than those in place for section 289 (place where the financial records are kept):

- Regarding the place where financial records are to be kept, section 289(2A) only applies an offence of strict liability to section 289(2)

- Regarding the place where sustainability records are kept, section 289A(6) applies an offence of strict liability to section 289A(2) - *this is the equivalent of section 289(2)* - as well as section 289A(5), which relates to the entity complying to an ASIC direction to produce records kept outside the jurisdiction.

BDO comments

We are unsure why the liability offence is more onerous for complying with an ASIC direction for sustainability records.

3. Item 22 - Insertion of section 292A - Definition of 'asset owners'

The Policy Statement refers to Group 2 entities being 'asset owners' with \$5 billion assets under management or more.

BDO comments

We note an inconsistency in terminology used in the Exposure Draft, which does not define the term 'asset owner', nor does section 292A(7) refer to 'assets under management'. Section 292A(7) refers to assets controlled by the entity. We recommend clarification on this point in the final legislation.

4. Item 22 - Insertion of section 292A - Assets of asset owners

Section 292A(7) requires an entity to prepare a sustainability report for a financial year if 'the value of assets at the end of the financial year of the entity and the entities it controls' is \$5 billion or more.

BDO comments

We note an inconsistency in terminology within Chapter 2M which could result in different determination of asset values when determining if an entity meets one of the reporting tests. For example:

- (a) Section 292A(3)(b) refers to the 'value of consolidated gross assets at the end of the financial year of the entity and the entities it controls (if any)'
- (b) Section 292A(7) refers to the 'value of assets at the end of the financial year of the entity and the entities it controls (if any).'

The criteria noted in (a) above requires asset values to be determined on a consolidated basis in accordance with AASB 10 *Consolidated Financial Statements* (refer section 292A(9)(b)). However, criteria in (b) suggests an 'aggregation basis which could produce a different result. Terminology should be made consistent between these two sections.

5. Item 22 - Insertion of section 292A - Consolidated sustainability reports

Section 292A(2) permits a consolidated sustainability report to be prepared for a consolidated group, if accounting standards requires the preparation of consolidated financial statements.

BDO comments

There may be groups operating in Australia that do not have an ultimate Australian holding company (referred to as multiple entry consolidated groups, or MEC groups for tax purposes). Where these groups essentially operate as one business, and do not qualify for class order relief as a small foreign controlled proprietary company, we recommend that they have an option to also prepare a consolidated sustainability report.

Note: The definition of a ‘large group’ in [Legislative Instrument 2017/204](#) works in a similar fashion to MEC groups for tax purposes. All ‘corresponding’ (sibling) entities are essentially included in assessing whether a group is small for the purposes of financial reporting exemptions. If a group is ‘large’, we believe it should have the option to present one sustainability report.

6. Item 22 - Insertion of section 292A - Increase in thresholds by the Minister

Section 292A(3) sets out the thresholds for sustainability reports that will apply once the sustainability reporting regime is fully operational (i.e. for Group 3 entities). The thresholds are the same as those prescribed for large proprietary companies in section 45A(3). However, section 292A(4) gives the ‘Minister’ the power, by legislative instrument, to determine a higher or a lower amount of gross revenue (section 292A(3)(a)) and numbers of employees (section 292A(3)(c)).

BDO comments

We are unsure why it is envisaged that only the consolidated revenue and number of employees may increase over time, but not the gross assets. With high inflation, if this threshold is not aligned with thresholds set in the regulations for section 45A(3), some large proprietary companies will be required to prepare a sustainability report, even though they have no requirement to prepare a financial report under section 292(1)(c). We recommend that the Minister also be given the ability to increase the asset threshold over time.

7. Item 23 - Insertion of section 296A - Contents of a sustainability report

The sustainability report will include ‘any statements required under subsection (3)’. This is in addition to the climate statements required by subsection (2), which refers to sustainability standards approved by the Australian Accounting Standards Board (AASB) - currently exposed and expected to be an Australian equivalent to IFRS S2 on climate reporting.

BDO comments

Subsection (3) appears to give the Minister discretion to require additional statements in the sustainability report concerning environmental sustainability. The term ‘environmental sustainability’ is referred to three times in section 296A but is not defined. It is not clear how this would apply in practice. Is it envisaged that the Minister could require additional information regarding environmental sustainability from other regulators which is not approved by the AASB? For example, the European Sustainability Reporting Standards, ESRS E1 to E5 dealing with pollution, marine resources, biodiversity and ecosystems, and resource use and circular economy?

8. Item 23 - Insertion of section 296A - Notes to climate statements

In addition to notes required by the sustainability standards, subsection (4)(c) requires notes containing any other information necessary to ensure that the climate statements and notes together make the disclosures required by section 296D.

Section 296D includes a list of additional disclosures, which mainly are a repetition of what will be required by sustainability standards (i.e. subsection (1) and (2)).

BDO comments

We recommend that subsections (1), (2) and (4) be removed in their entirety as they are merely a repetition of what will be required by the sustainability standards.

It appears that this section has been included to enable the deferral of disclosure of Scope 3 emissions by one year (refer subsection (3)). We recommend section 296D be deleted in its entirety and the deferral if Scope 3 emissions be included elsewhere.

If section 296D is deleted in its entirety:

- Section 296A(4)(c) should be deleted
- Reference to section 296D in subsection (6)(b) should be deleted
- Reference to section 296D in section 307AB(a) should be deleted
- Section 309A(1)(b) and section 309A(6) should be deleted
- Section 289A(2) will also need to be amended to refer to ‘..enable sustainability reports required by section 292A to be prepared’.

9. Item 23 - Insertion of section 296C - Compliance with sustainability standards

Section 296C(2) cross-references to paragraph 292A(1)(c).

The definition of ‘sustainability records’ also references to paragraph 292A(1)(c).

BDO comments

Section 292A(1) does not contain a subsection (c). It would appear that this reference should be changed to section 296A(1)(c).

10. Item 77 - Amendment to table in section 285(1) for audit requirements of sustainability reports

Item 77 proposes to insert a summary of the audit requirements for sustainability reports as 1B.

BDO comments

We recommend that this additional line be inserted as line 3A. Line 1A (inserted) relates to the preparation of the sustainability report (refer Item 9), and follows line 1 which relates to preparation

of the financial report. Additional proposed line in Item 77 for the sustainability report to be audited is better placed as line 3A as it follows the requirement to have the financial report audited.

11. Item 81 - Insertion of section 301B - Limited assurance of sustainability reports before 1 July 2030

For financial years beginning between 1 July 2024 and 30 June 2030, section 301B requires that the ‘sustainability report’ be reviewed. This implies that the whole sustainability report must be reviewed. However, section 301B(2) then notes that the review only covers the content of the sustainability report that relates to Scope and Scope 2 emissions. This suggests that the governance, strategy and risk management sections will not be subject to review, nor will Scope 3 emissions be subject to review until 2030. This proposal is not consistent with the proposed assurance roadmap contained on page 25 of the [Second Treasury Consultation Paper](#).

BDO comments

Section 301B(2) should be consistent with the Government’s plans for a phasing in as noted in the [Second Treasury Consultation Paper](#).

12. Item 107 - Financial and sustainability reporting and audit of CCIVs

New section 1232D(2A) refers to section 301A(1) which does not exist in the Exposure Draft.

BDO comments

Reference to section 301A(1) should be amended to section 301A.

13. Item 129 - Insertion of application provisions - New section 1705B

New section 1705B provides for limited immunity for directors regarding statements about Scope 3 emissions and scenario analysis in sustainability reports for financial years commencing up to 30 June 2027.

BDO comments

If the final legislation provides for phasing in of review requirements in the first three years as per page 25 in the [Second Treasury Consultation Paper](#), we recommend that auditors be provided with similar immunity.

For example, page 25 shows that Group 1 entities would be required to have their Scope 3 emissions and scenario analysis reviewed for the year ended 30 June 2026 and 2027.

14. Use of ‘entity’ rather than ‘company, registered scheme, registrable superannuation entity or disclosing entity’

Most financial reporting requirements set out in Chapter 2M refer to the ‘company, registered scheme, registrable superannuation entity or disclosing entity’. However, sections 286A, 289A, 292A, etc refer

to the 'entity'. 'Entity' is defined in section 64A as including 'a natural person, a body corporate (other than an exempt public authority), a partnership or a trust...'

BDO comment 1

It therefore appears that a broader group of 'entities' will be required to prepare a sustainability report under Chapter 2M than those required to prepare financial reports. That is, under section 319, such 'entities' will lodge a sustainability report without a financial report.

This is not consistent with the [Second Treasury Consultation Paper](#) which proposes regarding reporting entities:

'Proposal: that all entities that meet prescribed size thresholds and that are required to lodge financial reports under Chapter 2M of the Corporations Act 2001 (Cth) (Corporations Act) would be required to make climate-related financial disclosures.'

BDO comment 2

The definition of 'entity' in section 64A is also not aligned with the transitional requirements in section 1705(1), which set out the transition roadmap for the Group 1, 2 and 3 entities. Section 1705(2) notes section 1705(1) as applying to 'applicable entities', defined as 'a company, disclosing entity, registered scheme or registrable superannuation entity'. This suggests that the Chapter 2M requirements for sustainability reports apply only to companies, disclosing entities, registered schemes or registrable superannuation entities.

We recommend that the definition of 'entity' be clarified to clear up these two inconsistencies.

15. Scenario analysis pathway

The [Second Treasury Consultation Paper](#) proposes a pathway to quantitative scenario analysis.

BDO comments

The Exposure Draft makes no provision for a pathway to quantitative scenario analysis, resulting in this having to be prepared from the first year of mandatory sustainability reporting. The transitional provisions contained in section 1705 should be expanded to allow this pathway.

16. Entities exempt from lodging financial reports under Chapter 2M

The Explanatory Memorandum, paragraph 1.17 notes that entities that are exempt from lodging financial reports under Chapter 2M are not required to make climate-related financial disclosures.

A similar comment in the second bullet point of the exemptions in the Policy Statement notes that entities that are exempt from lodging financial reports under Chapter 2M of the Corporations Act will not be required to make climate-related financial disclosures. This includes where lodgement exemptions have been made through ASIC class orders or where the entity is registered with the ACNC (Note: Lodgement exemption for ACNC registered entities is made via ASIC - see <https://asic.gov.au/for-business/running-a-company/charities-registered-with-the-acnc/corporations-act-provisions-that-no-longer-apply-to-charities-registered-with-the-acnc/>).

BDO comments

We are unable to ascertain how the draft legislation gives effect to the above assertions that entities exempt from lodging financial reports are exempt from preparing sustainability reports.

Firstly, section 292A does not link the requirement to prepare a sustainability report to the requirement to prepare (and therefore lodge) a financial report (contained in section 292).

Secondly, section 319(1) requires a company, registered scheme, registrable superannuation entity or disclosing entity that has to prepare or obtain a report for a financial year under Division 1 to lodge the report with ASIC. Division 1 has been amended to include sustainability reports. Previously section 319 only referred to financial reports. This means that if an entity must prepare a sustainability report under section 292A, it must also lodge it with ASIC under section 319 (together with the annual financial report). Section 319 therefore also does not specifically link the lodgement requirement for a sustainability report to the lodgement requirement of a financial report.

If the above statements referred to in the Explanatory Memorandum and Policy Statement are not referring to the issue of linking section 292 and section 292A, but rather merely to cases where lodgement exemption has been provided under a class order, or by ASIC to ACNC-registered entities, we have the following comments:

1. Lodgement exemption provided to specific entities for lodgement relief under section 340 - we can see how the statements above could be true
2. Wholly-owned subsidiaries class order - no sustainability report would be required if the group head elects to prepare a consolidated financial report (section 292A(2))
3. Where ASIC makes specific determination about scoping out sections of the Corporations Act relating to ACNC-registered entities, we can see how the statements above could be true.