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Ashurst submission on climate-related financial disclosure: exposure draft legislation

Ashurst Australia welcomes the opportunity to make a submission to Treasury's consultation on the exposure draft legislation for climate-related financial disclosure, Treasury Laws Amendment Bill 2024: Climate related financial disclosure (**Draft Bill**).

The introduction of climate-related financial disclosure in Australia is a significant development with equally significant impacts on the resources and operations of reporting entities and the professional services industry providing assurance to entities who will be required to comply with the Draft Bill.

1. **Group 1 requires at least 18 months to prepare for compliance**

Ashurst Australia supports delaying the commencement date for the first cohort of reporting entities (**Group 1**). We submit that Group 1 entities should have until the financial year commencing after 31 December 2025 to prepare and lodge their sustainability reports.

Anecdotally, we are aware that it takes even experienced large entities at least 18 months to be able to collect the data required to properly report on their emissions – this has proven to be the case in England and in the European Union. Any report produced prior to this time is likely to suffer from poorer quality (whilst relevant reporting systems are set up and data collected) and will also set an unhelpful precedent for Group 2 and Group 3 entities who will likely look to Group 1 entities for guidance.

Allowing a longer time period for preparation will also allow the professional services industry to upskill and develop the necessary specialised advisers for sustainability reporting and assurance.

2. **Unaudited sustainability reports and directors' declarations**

Sensibly, the Draft Bill requires sustainability reports to be subject to limited assurance only for financial years commencing before 1 July 2030.

We presume that the grace period for full assurance is to allow the assurance industry to develop the necessary expertise to audit sustainability reports. However directors are required to provide unqualified declarations on sustainability reports from the first year of compliance (reports commencing before 1 July 2030) in the absence of independent assurance.

Directors have not had sufficient opportunity to upskill and develop a proper understanding of the core requirements of sustainability reporting, particularly if the Draft Bill becomes law from 1 July 2024. Directors may also find it difficult to rely on section 189 of the Corporations Act 2001 (Cwlth) in this context as the industry lacks the technical climate and sustainability experts needed.

As such, we submit that directors should only be required to provide declarations in relation to the matters the subject of the limited assurance until 2030 – that is contents of the sustainability report that are climate statements relating to scope 1 emissions or scope 2 emissions of greenhouse gases only.

3. **Extended immunity from suit**

The scope of immunity from suit is limited to a three-year fixed period for statements relating only to Scope 3 emissions and scenario analysis. For reports issued between 1 July 2025 and 30 June 2028, only ASIC will be able to bring an action. We submit that the immunity from suit relating to sustainability reports should be a full immunity for a rolling 3 year period for each Group, other than in relation to climate statements relating to scope 1 emissions or scope 2 emissions of greenhouse gases. Only once full assurance is provided should the immunity be completely lifted.

There are a number of issues with the current proposal:

- (a) Directors are being required to provide declarations on a broad range of forward-looking statements from the first year of reporting and these are not currently being included in the immunity provisions. There is heightened concern in the director community about the extent of forward-looking statements which will be required to be made particularly given the a significant number of disclosures which will require prediction or estimation over long (5 to

10 year+) time horizons and be subject to constantly changing assumptions due to changes in decarbonisation trajectories, technological development and changing government regulation. This coupled with a limited assurance approach and a lack of established principles and conventions results in an additional and burdensome risk for directors.

- (b) Representations as to future matters will be deemed to be misleading or deceptive if, as at the time they are made, there were not reasonable grounds for making them. However, there is currently no legislative formula for what 'reasonable grounds' look like in the context of climate.

4. **Minister's powers to include other statements**

The Draft Bill provides the Minister with explicit powers to require reporting entities to make additional disclosures relating to any financial matters concerning environmental sustainability. This means that the Minister could require additional disclosures at any time. Given the substantial impact climate-related financial disclosures and reporting will have on company resources and the assurance industry, we submit that the Minister's powers should be unable to be exercised until full assurance is required.



Ashurst Australia