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9 February 2024

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

[ClimateReportingConsultation@treasury.gov.au](mailto:ClimateReportingConsultation@treasury.gov.au)

Dear Sir / Madam,

**Australian Custodial Services Association Submission on disclosure of climate-related risks**

The Australian Custodial Services Association (ACSA) is the peak industry body representing members of Australia's custodial and investment administration sector. Our mission is to promote efficiency and international best practice for members, our clients, and the market. Members of ACSA include NAB Asset Servicing, J.P. Morgan, HSBC, State Street, BNP Paribas Securities Services, Bank of New York Mellon, Bank of America, Citi, Clearstream, Netwealth and The Northern Trust Company.

Collectively, the members of ACSA hold securities and investments in excess of AUD \$4.3 trillion in value in custody and under administration for Australian clients comprising institutional investors such as the trustees of major industry, retail and corporate superannuation fund, life insurance companies, responsible entities and trustees of wholesale and retail investment funds, and various forms of international investors into Australia.

ACSA welcomes Treasury's legislation and takes the view that disclosure of climate-related risks in a sustainability report will benefit users and stakeholders of disclosing entities. Custodians currently prepare financial statements for many registered schemes and registrable superannuation and anticipate playing a role in generating sustainability reports for our clients.

ACSA is seeking clarification of the scope of the legislation and the reference in the explanatory memorandum to "asset owners". We are also seeking to clarify a number of matters in relation to the implementation of the legislation, in particular how it interacts with requirements for financial statement reporting. Further details are set out in the attached appendix.

Thank you again for the opportunity to participate in this consultation. Please contact me if you have any comments about this submission.

Yours sincerely



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**About ACSA**

[www.acsa.com.au](http://www.acsa.com.au)

Custodians provide a range of institutional services, with clients typically favouring a bundled approach to custody and investment administration. Solutions may include traditional custody and safekeeping, investment administration, foreign exchange, securities lending, tax and financial reporting, investment analytics (risk, compliance and performance reporting), investment operations middle office outsourcing and ancillary banking services.

These services represent key investment back-office functions – often representing the client’s asset book of record and essential source data in relation to the investments they hold.

The key sectors supported by ACSA members include large superannuation funds and investment managers, as well as other domestic and international institutions.

ACSA works with peer associations, regulators and other market participants on a pre-competitive basis to encourage standards, promote consistency, market reform and operating efficiency.

Note: The views expressed in this letter are prepared by ACSA for the purposes of consideration by Treasury in response to climate related financial disclosures and should not be relied upon for any other purpose. The comments in this letter do not comprise financial, legal or taxation advice and should not be regarded as the views of any particular member of ACSA.

## Appendix – Submission Detail

### 1. Asset owners

1.1 There is a lack of clarity around the definition of ‘asset owner’.

- (a) The ‘Exposure Draft – explanatory memo’ at paragraph 1.30 refers to ‘asset owner’: “...if the entity is an asset owner where the value of assets at the end of the financial year (including the entities it controls)...”.
- (b) The ‘Exposure Draft – legislation’ does not use this term at all, instead stating at section 296B(5) “ 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)...”.
- (c) The ‘Policy impact analysis’ states “Size thresholds proposed would not be applicable to some financial institutions, for example in the superannuation industry, and specific thresholds may be needed for asset owners to give effect to the Government’s policy intent to cover financial institutions.”
- (d) The ‘Policy statement’ has 2 different references:
  - “Asset owners (such as registrable superannuation entities and registered schemes) will be considered large if funds under management are more than \$5 billion.”
  - The table on page 2 uses the threshold “\$5 billion assets under management or more”.

#### **Primary recommendation – Simplify the legislation by removing reference to the new ‘asset owner’ term**

If the policy intention of introducing the ‘asset owner’ term is to require registrable superannuation entities (RSEs) and registered schemes to prepare a sustainability report irrespective of size thresholds such as their employee number or revenue, then we recommend removing the term ‘asset owner’ and updating 292A (7) as follows: “This subsection applies to RSEs or registered schemes for a financial year if the value of assets at the end of the financial year...”

#### **Alternate recommendation – retain the ‘asset owner’ term and include a definition in the legislation**

If the policy intention of introducing the ‘asset owner’ term is to require certain entities generally required to report under Chapter 2M beyond solely RSE’s and registered schemes, we recommend that the term ‘asset owner’ be defined in the legislation and then used consistently throughout relevant documents to prevent confusion.

1.2 If the alternate recommendation above is adopted, we recommend that clarity be provided specifying that custodians are not captured within the definition of ‘asset owner’ or otherwise within the scope of section 292A(8). This is for the following reasons:

- (a) Custodians do not own or manage the assets held in custodian. Assets are held / safekept on behalf of our clients in a bare trust relationship
- (b) Custodians do not control the assets under custody

- (c) Custodians do not manage the climate risk associated with the assets held under custody – this risk is managed by the Responsible Entity (RE) or Registrable Superannuation Entity (RSE).
- (d) It would be challenging for custodians to access the information required.
- (e) This would result in duplicate reporting as the RE / RSE would also be required to report on the same assets.

## 2. Group 2 entities

2.1 There is confusion as to whether an ‘asset owner’ with the “value of assets at the end of the financial year of the entity and the entities it controls (if any)” of \$5 billion or more would be in group 2 even if they otherwise would meet the size threshold to be in group 1. Clarity regarding this would be welcome.

## 3. Annual Threshold

Section 292A(1) specifies that a sustainability report must be prepared where thresholds are met in a particular financial year. Where the threshold was previously met but is not met in the current financial year, is it necessary to prepare a sustainability report in the current financial year?

## 4. Revenue

Further clarity regarding what should be included as revenue would be welcome. There is uncertainty including the following:

- (a) In the Wealth and Asset Management industry, it is common practice to include ‘net change in fair value of investments’ as part of income on the income statement. This would include unrealised and realised gains and losses.
- (b) In the Banking industry, it is common practice to include ‘net interest’ as part of income on the income statement.

## 5. Directors Declaration

The draft legislation refers at section 296A to a directors’ declaration being a declaration by the directors of the following:

- (a) the 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;
- (b) whether, in the directors’ opinion, the climate statements, the statements mentioned in paragraph (1)(c), and the notes to the climate statements are in accordance with this Act, including sections 296C (compliance with sustainability standards etc.) and 296D (climate statement disclosures).

Section 298 Corporations Act already defines an Annual directors’ report in reference to the financial statements of an entity. There is some confusion about the use of the term directors’ report for climate statements and whether it is the same report, expanded to include as references to climate statements or a separate directors’ declaration contained within the sustainability report.

## **6. Annual Report Booklets**

ASIC Corporations (Related Scheme Reports) Instrument 2015/839 dated 18 September 2015 issued by ASIC allows the financial report to include multiple registered schemes where certain conditions are met.

6.1 Will the Instrument be updated to allow multiple registered schemes to be included in a single sustainability report?

## **7. Adoption date**

The Exposure Draft requests views on postponing the implementation date to years beginning on or after January 1, 2025. While we support mandatory disclosure on a timely base to provide the information necessary to transition to a lower carbon environment, we support the deferral to January 1, 2025. This will allow final legislation, accounting standards and assurance standards to be in place well prior to implementation, allowing sufficient time for systems changes to accommodate the changes.