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Re: Climate-related financial disclosure: exposure draft legislation consultation

BHP welcomes the opportunity to provide feedback on consultation regarding the exposure draft legislation for climate-related financial disclosures (the **exposure draft legislation**). BHP is pleased to have provided feedback to previous consultations in the development of the Commonwealth's policy settings to enable climate-related financial disclosures, along with Treasury's consultation to inform Australia's Sustainable Finance Strategy.

BHP supports the Government's efforts to improve the quality and usefulness of climate-related financial disclosures and enhance transparency and comparability of information. As a global resources company, BHP is conscious of policy developments across multiple jurisdictions regarding climate-related disclosures, and we support the Australian Government's efforts to enable international alignment and interoperability.

Given the breadth of the proposed climate-related financial disclosures, and their interaction across multiple legislative frameworks and aspects of company reporting, we further highlight the criticality of incorporating stakeholder feedback to develop practical requirements that elicit decision-useful reporting.

Again, we welcome the opportunity to participate in this consultation.

About BHP

BHP is a global resources company. We have an extensive presence in Australia, including iron ore and nickel assets in Western Australia, copper assets in South Australia and metallurgical coal assets in Queensland. Our total economic contribution in Australia was A\$60 billion in FY2023, which included the payment of wages and benefits to around 50,000 employees and contractors.

BHP supports the aims of the Paris Agreement to limit the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the increase to 1.5°C, and the 2030 and 2050 greenhouse gas (**GHG**) emission reduction targets of the Australian Government. BHP acknowledges the exposure draft legislation is part of a broader suite of reforms underway in Australia regarding climate change and economic policy supporting Australia's role in achieving the aims of the Paris Agreement and the transition to net zero GHG emissions.

Considerations for the exposure draft legislation

We provide the following feedback in response to the exposure draft legislation and associated documentation released by Treasury on 12 January 2024. Our feedback outlines several elements of the exposure draft legislation and aspects within the related policy settings and documentation that we believe are important to ensure the new reporting requirements are both effective and feasible.

- **Commencement date** – BHP strongly supports amending the commencement date for Group 1 entities so that the first sustainability report would be required for annual reporting periods starting on or after 1 January 2025 (and an equivalent adjustment to the modified liability framework – see ‘Liability and enforcement’ below). We note the importance of the reform agenda in supporting Australia’s role in achieving the aims of the Paris Agreement and the transition to net zero GHG emissions. However, enacting policy reforms must occur at a pace practicable for affected stakeholders. This includes sufficient time to incorporate stakeholder feedback in policy design and enactment, and to allow stakeholders to understand, adjust, and implement relevant changes and could improve the quality of reporting during the transition year

The requirements outlined in the exposure draft legislation and the associated Australian Sustainability Reporting Standards (**ASRS**) to be issued by the Australian Accounting Standards Board’s (**AASB**) regarding climate-related financial disclosures that entities will be required to make, along with the surrounding governance, assurance, and record-keeping aspects, represent a significant adjustment of company reporting and associated practices. This applies even for companies already voluntarily reporting against frameworks such as the Taskforce on Climate-related Financial Disclosures recommendations given the additional scope, differences and more specific prescriptions under both the new International Sustainability Standards Board (**ISSB**) standards and the approach proposed to their implementation in Australia.

Further, multiple jurisdictions globally are developing climate-related disclosure and reporting requirements based on the ISSB’s IFRS S1 and S2 standards that are likely to commence from 2025 or later. For example, the United Kingdom Government will only publish its endorsement decision of IFRS Sustainability Disclosure Standards by July 2024. As BHP has noted in our previous submissions, it is imperative timeframes for Australian reporting requirements align with those occurring internationally to minimise the burden on reporting entities and maximise the benefit to users from comparability.

- **Finalisation of ASRS requirements and assurance standards** – Linked to the need to amend the commencement date, BHP notes that for a 1 July 2024 start date the exposure draft legislation is likely to need to be put before Parliament prior to (or at best concurrently with) the finalisation of the ASRS for climate-related disclosures and the first set of assurance standards from the Australian Auditing and Assurance Standards Board (**AUASB**) (on which consultation has yet to begin). This misalignment of timing may result in passage of legislation requiring companies to make decisions and take steps essential to prepare for mandatory climate-related financial reporting and related processes before the specific disclosure and assurance requirements are finalised. Underpinning systems and processes need to be in place from the start of the first annual reporting period (not just at the time of disclosure).

The ASRS, assurance standards and exposure draft legislation are inextricably linked and need to be considered as such, especially regarding commencement of reporting requirements. It is essential the relevant ASRS and assurance standards (which will inform the design of a reporting entity’s data / information integrity and record-keeping processes) are finalised prior to the commencement of reporting obligations. This further supports amendment of the commencement date to 1 January 2025.

- **Further statements relating to matters concerning environmental sustainability** – BHP notes the exposure draft legislation contains provisions for the Minister, by legislative instrument, to require a sustainability report to include statements, notes or other specified disclosures relating to “matters concerning environmental sustainability”, which must then form part of the sustainability report for a financial year (refer proposed subsections 296A(1)(c), (3), and (5) of the *Corporations Act 2001*). Clarification of what may constitute these matters and the process by which stakeholders will be consulted (if at all) is required. For example, BHP notes additional sustainability matters are under consideration for disclosure requirements and standards internationally (e.g. by the ISSB and under the European Union Corporate Sustainability Reporting Directive (**EU CSRD**)).

We encourage the Government to provide clarity on the intent of the proposed provisions enabling change by legislative instrument. If they are intended only to enable the currently proposed requirements for climate-related financial disclosures to be updated or supplemented over time, it would be helpful to refer instead to “other matters concerning climate-related financial disclosure”, or similar. If, however, these provisions are intended to allow the Minister to introduce reporting requirements for matters concerning environmental sustainability beyond climate-related financial disclosures (such as additional topics under ISSB S1 or EU CSRD), BHP is supportive of broader sustainability disclosures provided a full and detailed consultation process is undertaken with affected stakeholders prior to the introduction of such requirements. This may be best achieved by requiring relevant legislation to be amended by

Parliament, rather than enabling mandatory disclosures to be expanded by legislative instrument. It is also important to recognise that there are a wide range of elements that could be considered under the aegis of sustainability. In many cases, the metrics and methodologies for reporting these are significantly less mature than those related to climate change risk and performance. As such, there has been less time for industry standards to emerge or for companies to develop practices and processes for data collection, validation, and reporting on some areas of sustainability other than climate change. We would encourage the Government to consider the relative levels of definition and maturity as it considers timing of any further sustainability reporting requirements.

- **The sustainability report** – The exposure draft legislation contains the requirement for relevant companies to prepare a sustainability report which includes climate statements, disclosures and notes, statements required by legislative instrument and a directors' declaration. The table within proposed section 285A of the *Corporations Act 2001* and the sections referenced therein could be interpreted to require the report to be its own self-contained section, distinct from the financial and other reports within what we refer to as the 'Annual Report' and/or to disallow cross-referencing to documents outside the Annual Report.

BHP notes that [draft] ASRS 2 and IFRS S1 and S2 are not as prescriptive about where the disclosures are located and allow for cross-referencing where reasonable and practicable for stakeholders. As a company that currently discloses climate-related financial information within the notes to our financial statements, and in other sections of our Annual Report to ensure we present an integrated picture (for example, describing our material climate and non-climate-related risk factors in the same section), the requirement to have a standalone sustainability report would result in duplication and may make our disclosures less usable..

Given the multi-faceted nature of climate-related risks, impacts and opportunities to a company's business model and financial position, it is reasonable to expect requirements from the [draft] ASRS 2 will be disclosed in both sustainability and financial reports and this integration reflects the intention of the integrated sustainability and financial risk management. We recommend Treasury consider including an explicit reference similar to that in the European Union's Corporate Sustainability Reporting Directive (Section 9.1 Incorporation by reference) to allow for flexibility in the location of relevant disclosures and permit cross-referencing (consistently with conditions in the draft ASRS). This should make clear that the sustainability report can be comprised of different sections across a single document (such as the reporting entity's Annual Report) and/or may incorporate by reference all or part of another document (such as a Climate Transition Action Plan).

Further, we encourage clarity with respect to those climate statements that must be published annually, as opposed to content that does not need to be repeated annually where there has been no year-on-year change. This is consistent with IFRS S2 which stipulates that an activity does not have to be performed annually. For example, an entity is permitted to update its climate-related scenario analysis in line with its strategic planning cycle, which could be on a longer than annual cycle.

- **Reporting entities** - We welcome the exposure draft legislation's provision for an entity that would otherwise be required to prepare an annual sustainability report to be exempted if it will be part of a sustainability report prepared by a group head on a consolidated entity basis (proposed section 292A of the *Corporations Act 2001*). However, we have identified an apparent (and presumably unintentional) gap that would need to be resolved to give full effect to this logical and efficient exemption.

Registered corporations under the National Greenhouse and Energy Reporting (**NGER**) legislation are one of the categories of entities that would be required to prepare sustainability reports; and these corporations are identified based on the principle of "operational control" (as defined in the NGER legislation) over NGER facilities. Joint arrangements where two or more entities have joint control of business activities (e.g. a mining operation) are common in the resources industry and may be structured so that the participants have rights to the underlying assets and obligations for the liabilities relating to the arrangement but appoint an incorporated entity as the manager / operator (which may be jointly owned by the participants). Under the NGER principle of operational control, this entity may be the NGER registered corporation, however, it may produce standalone financial statements which are not consolidated into the financial statements of the group head of either joint participant (which instead account for their respective interest in those consolidated statements as a joint operation). The NGER registered corporation would therefore be ineligible for relief from the requirement to prepare a sustainability report in the current exposure draft legislation.

It would be both onerous and misaligned with the intention of climate-related financial disclosures for an NGER registered corporation that does not own the assets and is not exposed to the liabilities of an operation to be the entity required to prepare a sustainability report disclosing the material climate-related financial risks and opportunities etc. for the operation. We invite Treasury to consider options to resolve this gap in the exemption, for example by extending proposed section 292A to give relief from the requirement to prepare an annual sustainability report to an NGER registered corporation if the accounting standards (AASB 11 *Joint Arrangements*) require the underlying assets and liabilities etc. for the NGER facility(ies) to be accounted for by participants in a joint arrangement (or their respective group heads). This would appear to be consistent with the AASB's intended approach, noting [draft] ASRS 2 requires all participants in a joint arrangement to disclose climate-related information regardless of operational control in some instances (e.g. [draft] ASRS 2 paragraphs 31.1(d) and 35(c)(i)).

We are available to meet to explain this issue further in the context of a practical example, and discuss potential solutions, if this would assist Treasury.

- **Directors' declaration** – Proposed section 296A(6) of the *Corporations Act 2001* would require directors to make declarations of compliance from the outset, without a progressive implementation timeline as is proposed for the external assurance requirements. As the required uplift in internal governance frameworks to support the directors' declarations will be similar to that required to prepare for external assurance, we recommend Treasury considers having the legislation phase in the requirement for the directors' declaration in lockstep with the phasing in of the assurance framework.
- **Record-keeping requirements** – The exposure draft legislation introduces the requirement for entities to keep written sustainability records for seven years (see proposed sections 286A(1) and (2) of the *Corporations Act 2001*). Sustainability records are described as including documents and working papers needed to explain the methods, assumptions and evidence from which climate statements, notes to climate statements, and statements mentioned in paragraph 292A(1)(c) are made up.

While entities are likely accustomed to statutory record-keeping requirements for financial information, record-keeping for sustainability information in order to comply with the proposed new strict liability requirement represents a new and unfamiliar area. What might be suitable and sufficient record-keeping with respect to a diverse and broadly-based set of climate statements and notes (particularly in relation to risks and opportunities) is likely to be subjective and context-specific. BHP suggests further guidance on the nature of record-keeping for sustainability statements is required to support reporting entities to comply, facilitate appropriate assurance requirements, and minimise the administrative burden.

- **Liability and enforcement** – The modified liability framework is an important recognition of inherent challenges associated with certain disclosures and we recommend several modifications to its application to ensure it achieves its objective.

Timeframe: As outlined above, BHP strongly supports amending the commencement date for Group 1 entities so that the first sustainability report would be required for annual reporting periods starting on or after 1 January 2025. Therefore, as a starting point, the modified liability framework would need to be extended for three years from the reporting due date for FY2025 to have the intended effect of the current proposal. We also recommend extending the limited immunity beyond the first three years so that it would continue to cover all sustainability reports for which there is no requirement for full reasonable assurance. At a minimum, we recommend that the modified liability settings for reporting Scope 3 emissions should remain in place until a global ecosystem of emission data reporting across the value chain develops to enable a reporting entity to obtain accurate data from third parties. There does not appear to be a policy logic for an arbitrary period (such as three years) where the reporting entity cannot control the accuracy and completeness of the data it must report.

Coverage: We note the modified liability framework as outlined in the exposure draft legislation has been limited to Scope 3 emissions and just one category of forward-looking statements, scenario analysis. Other key categories such as a reporting entity's climate-related targets and goals and adaptation strategy, which are also highly dependent on long-dated external parameters and future states that are subject to uncertainty, are no longer proposed to be protected. These significant omissions do not seem consistent with Treasury's policy objective to encourage best-practice disclosures while assuaging concerns in areas of the disclosure regime that are more uncertain (and note, additionally, that the *Policy Impact Analysis* proposes (at p. 29) that the relief apply to Scope 3 emissions and [all] forward-looking statements, and the *Policy position statement* refers (at p. 4) to "certain climate-related forward-looking statements", not just scenario analysis). We strongly recommend the proposed limited immunity be extended also to cover statements of or about a reporting entity's climate-related: (i) risks and

opportunities; (ii) strategy; (iii) direct and indirect greenhouse gas emission mitigation plans and efforts (including any targets or goals); (iii) direct and indirect plans and efforts (including any targets or goals) with respect to adaptation and opportunities for climate resilience; and (iv) transition plan (for any additional content to paragraphs (i)-(iii)), in each case to the extent that they are forward-looking statements.

Third-party data: We note the challenges that reporting entities face in producing disclosures that inherently rely on estimates or data that are outside the entity's control. Reflecting this, we suggest the proposed modified liability settings should be broadened beyond Scope 3 emissions to apply to any third-party sourced or derived data or other information where clearly identified as such.

Application beyond the sustainability report: The scope of the proposed modified liability framework (extended to include the above feedback) should be expanded, or parallel accommodations made, to provide equivalent protections for circumstances where statements required to be disclosed in the sustainability report are otherwise reasonably expected to be made or repeated. Specifically, we suggest that there should be express provision for the modified liability framework to apply to (a) any parts of the sustainability report referenced from the directors' report; and (b) fundraising documents. Additionally, it does not seem logical or aligned with the objectives of enhanced climate-related financial reporting to exclude a reporting entity's repetition of a statement made in the sustainability report from the proposed limited immunity just because it is stated outside the sustainability report - the effect of the current proposed section 1705B of the *Corporations Act 2001*, as explained in its note¹. A reporting entity may seek to enhance the visibility and understanding of its annual sustainability report for its shareholders and other stakeholder by, example, presenting some of its content in investor presentations and/or on its website. Provided this occurs concurrently with or subsequent to release of the sustainability report, and the content substantially mirrors the statement(s) within the sustainability report, we recommend the modified liability framework be extended to statements made by the reporting entity other than in a sustainability report.

- **Miscellaneous** – In addition to the more substantive issues above, we note an area of potential inconsistency between the legislation and ASRS, as currently proposed, and a few points in relation to the definition of terms:
 - Disclosure of commercially sensitive climate opportunities – Proposed section 296D(1) of the *Corporations Act 2001* appears to require disclosure of material climate opportunities for the financial year even if they are commercially sensitive / disclosure would be prejudicial. This differs from the proposed ability under paragraph B34 in Appendix B to [Draft] ASRS 1 to exclude commercially sensitive information about a climate-related opportunity from the sustainability report. While proposed section 296D(2) says that material climate opportunities are to be determined under the ASRS, that may not be sufficient for the ASRS carve-out of commercially sensitive information to override an express and unqualified requirement of the Corporations Act. It would be helpful for section 296D(1) to explicitly carve-out commercially sensitive information and disclosures that would be prejudicial or acknowledge that it is subject to any provision the ASRS may make to that effect.
 - Scope 3 emissions definition - The proposed definition under section 9 of the *Corporations Act 2001* would not allow for changes made from time to time to the Corporate Value Chain (Scope 3) Accounting and Reporting Standard to be incorporated automatically. This risks creating a material misalignment and inconsistency of disclosure requirements across jurisdictions. We recommend that a provision be included in the legislation to allow for periodic updates to the Corporate Value Chain (Scope 3) Accounting and Reporting Standard reference. Alternatively, the contents of the Corporate Value Chain (Scope 3) Accounting and Reporting Standard could be incorporated into the ASRS standards, which could itself be updated periodically.
 - 'International sustainability reporting standards' undefined – While used in proposed section 296A(6) of the *Corporations Act 2001*, there is no definition provided for 'international sustainability reporting standards' in either the exposure draft legislation or the draft ASRS. Given the impact of the Directors' declaration requirements, it would be important to be clear and specific about what is intended by this reference.
 - Consistent description of climate disclosures - The proposed amendments to introduce the sustainability report requirements into the *Corporations Act 2001* refer to "climate statements" as required by the "sustainability standards" (i.e. [draft] ASRS 1 and [draft] ASRS 2 and any further statements required by the Minister or the AASB by legislative instrument). However, "climate statements" is not a term used in [draft] ASRS 1 or [draft] ASRS 2, which instead refer variously to

¹ "Note: This subsection does not apply to a statement made other than in a sustainability report (even if such a statement is also made in a sustainability report)."

'climate-related financial information' and 'climate-related financial disclosures'. It would be helpful for the terminology to match so that what is considered a "climate statement" is beyond doubt.

Thank you again for the opportunity to contribute to consultation regarding the exposure draft legislation for climate-related financial disclosures. If you have any questions relating to this submission, please do not hesitate to contact me using the details below.

Yours sincerely

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