Law Council
OF AUSTRALIA

Business Law Section

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The Treasury
1 Langton Crescent
PARKES ACT 2600

By email: climatereportingconsultation@treasury.gov.au

Dear Sir/Madam

Improving the efficiency of climate-related financial disclosures

Introduction

1. The Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to make this submission to the Australian Treasury (**Treasury**) in response to the consultation paper on mandatory climate-related financial disclosures (**Consultation Paper**).

2. The Committee acknowledges and supports the policy objectives underpinning the introduction of mandatory climate-related financial disclosures in Australia, including the promotion of transparency, informed capital allocation, and consistency with Australia's international commitments. *The Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024* (Cth) (**Amending Act**) represented a significant step towards aligning Australia's corporate disclosure framework with international best practice, including the standards promulgated by the International Sustainability Standards Board (**ISSB**).

3. Notwithstanding this support, the Committee has identified a number of areas in which the current framework, as implemented through the *Corporations Act 2001* (Cth) (**Corporations Act**) and the Australian Sustainability Reporting Standards (**ASRS**) issued by the Australian Accounting Standards Board (**AASB**), gives rise to significant legal, practical, and policy concerns. These concerns, if not addressed, risk undermining the integrity of the disclosure framework and imposing disproportionate burdens on reporting entities and their directors.

Executive Summary

4. The Committee supports the objectives of mandatory climate-related financial disclosures and welcomes the Consultation Paper's focus on efficiency, consistency and international alignment. This submission responds directly to Proposals 1 to 3, Opportunities 1 and 2, and Questions 1 to 23, while maintaining that reforms must preserve disclosure quality, reduce unnecessary compliance costs, minimise disruption and remain aligned with AASB S2 and IFRS S2.

5. On Proposal 1, the Committee prefers Option 1c. Reasonable assurance should apply to Scope 1 and Scope 2 metrics, which are mature and capable of being assured, while Scope 3 disclosures should remain subject to limited assurance because the underlying information is inherently uncertain and cannot be assured to a reasonable standard. The modified directors' attestation should be retained until reasonable assurance is available across all disclosure categories.

6. On Proposal 2, the Committee supports additional practical guidance on the proportionality mechanisms in AASB S2 and on conclusions that an entity has no material climate-related risks or opportunities. Guidance should be developed with legal practitioners and industry bodies. This would be a welcome short-term measure, but cannot by itself resolve the structural issues arising from Scope 3 assurance issues and duplicative reporting.

7. On Proposal 3, the Committee supports Option 3b and proposes that this be implemented through a federally funded, centralised database for Scope 3 emissions data and domestic emissions factors. Option 3a guidance would be useful as an interim and supplementary measure, but guidance alone is insufficient. Individual entities should not be required to generate and self-report Scope 3 data that is inherently uncertain, exposes directors to legal risk, and imposes disproportionate demands on small and medium-sized enterprises in value chains.

8. On Opportunity 1, the Committee strongly supports alignment between the National Greenhouse and Energy Reporting (**NGER**) scheme and the sustainability reporting framework. Entities should be permitted to incorporate NGER Scope 1 and Scope 2 data by reference, methodologies and reporting periods should be aligned, and a single regulator interface should be developed in the longer term.

9. On Opportunity 2, the Committee supports recognising relevant sustainability assurance engagements for Registered Company Auditor (**RCA**) practical experience purposes. This would help develop the sustainability assurance market and enlarge the pool of qualified practitioners, provided that appropriate competency, supervision, quality and independence requirements are maintained.

10. The recommendations below are intended to operate consistently with the four principles in Box 1 and with the role of the 2028–29 statutory review in examining more systemic issues.

Proposal 1: Adjusting assurance settings (options 1a, 1b and 1c)

11. The Committee response to Questions 1 to 7 is below. In our view, the approach taken should reduce unnecessary compliance costs without sacrificing confidence in mature metrics, preserve Australia's international alignment, minimise disruption, and give reporting entities and assurance providers a clear and stable path for implementation.

Preferred option: Option 1c—tiered assurance

12. The Committee supports Option 1c as it calibrates the level of assurance to the maturity of the underlying metric. Reasonable assurance should apply to Scope 1 and Scope 2 emissions disclosures, which generally draw on an entity's own

operational and energy data, are more comparable across reporting entities, and are capable of being tested against established systems and controls. Scope 3 disclosures should remain subject to limited assurance only until such time as that data is more reliable and advanced.

13. For Option 1c to operate predictably, the defined baseline standard should include reliable and sufficiently available underlying data, stable measurement methodologies, documented reporting boundaries, effective internal controls, and adequate assurance-provider capacity. The baseline should be assessed by reference to the particular metric and sector, rather than by assuming that every category of sustainability information will mature at the same rate.

14. A targeted reasonable assurance requirement would improve confidence in Scope 1 and Scope 2 information and support informed investment and lending decisions, while avoiding the cost of applying the most intensive assurance procedures to information that cannot support them. It would also provide an incentive for reporting entities to maintain robust systems for data that can be measured with greater reliability.

15. Scope 3 information is materially different. It commonly depends on third-party estimates, industry averages, assumptions, projections and allocation choices across a value chain. Those features make the information inherently uncertain and incapable of being assured to a reasonable standard in the same manner as Scope 1 and Scope 2 information. Limited assurance is therefore the appropriate mandatory setting for Scope 3 until such time as Scope 3 information is more mature, and should not be treated as a certification that the underlying estimate is precise or complete.

16. The principal costs of a blanket transition to reasonable assurance would include developing and testing data systems and controls, sourcing and validating primary and secondary data, engaging technical specialists, documenting judgements, and expanding assurance-provider capability. These costs would be incurred by reporting entities, assurance firms and data-service providers. Option 1c directs the most intensive expenditure to metrics for which it can produce a corresponding improvement in reliability.

17. Investors and other users may value reasonable assurance for information that is sufficiently mature to support a positive assurance conclusion. That does not justify applying the same requirement to all sustainability disclosures. A differentiated model would provide meaningful assurance where it can be delivered credibly while preserving decision-useful information about Scope 3 through appropriately qualified limited assurance and transparent disclosure of uncertainty.

18. In our view, permanent limited assurance could be understood by some users as a signal that the framework does not contemplate further improvement in reliability. That may affect confidence, access to capital and international comparability over time. Option 1c avoids that risk for mature metrics without requiring a premature or unachievable reasonable assurance conclusion for Scope 3.

Interaction with modified directors' attestation

19. The modified directors' attestation regime should be retained until reasonable assurance is available across all categories of climate-related financial disclosures required under the ASRS. The timing of its removal should be linked to the actual availability of a credible assurance framework, rather than to a fixed date or to the maturity of only selected metrics.

20. The AUASB's work on Australian sustainability assurance standards, informed by the International Standard on Sustainability Assurance 5000 (**ISSA 5000**), and the phased assurance approach reflected in the Australian framework demonstrate that capability is still developing. The staged movement from limited to reasonable assurance is intended to allow reporting entities, assurance providers and data systems to mature. The modified attestation should operate consistently with that staged approach.

21. Premature removal would expose directors to unreasonable liability risk under sections 295A and 344 of the *Corporations Act 2001* (Cth). Directors could be required to attest to the accuracy and completeness of information based on estimates, assumptions and third-party data that they cannot independently verify and that cannot yet be subjected to meaningful reasonable assurance.

22. That exposure would be particularly problematic for non-executive directors and could have a chilling effect on board composition. Qualified individuals may be less willing to accept appointments if they face personal exposure for disclosures they did not prepare and cannot test directly. This would be contrary to the public interest and could weaken, rather than strengthen, corporate governance.

23. It would also undermine confidence in the disclosure framework. An attestation is unlikely to command confidence if directors are required to provide a full assurance-like declaration in circumstances where the underlying information cannot be assured. Investors, analysts and other users may reasonably question the value of an attestation that exceeds the reliability of the data to which it relates.

Proposal 2: Improving consistency in application of existing requirements

24. In our view, additional guidance is a constructive and proportionate short-term measure. It should improve consistency and implementation certainty without converting the principles-based requirements of AASB S2 into rigid rules that cannot accommodate different sectors and circumstances.

Proportionality guidance

25. The Committee supports practical guidance on what constitutes reasonable and supportable information available without undue cost or effort. The guidance should explain how an entity may assess the availability, reliability, cost and decision-usefulness of information, and how it should record the judgement reached. It should make clear that the mechanism is a substantive proportionality safeguard, not merely a documentation requirement.

26. Guidance should also explain how reporting is to be commensurate with the skills, capabilities and resources available to the entity. This is particularly important where

a reporting entity depends on smaller value-chain partners or where the entity has limited internal climate expertise. Worked examples should show how an entity can reach and support a proportionate conclusion without being required to undertake open-ended investigations.

27. The Committee also supports guidance on the circumstances in which an entity may conclude that it has no material climate-related risks or opportunities. The guidance should identify proportionate evidence, governance processes, materiality considerations and appropriate records for that conclusion, while recognising that the analysis will depend on the entity's business, industry, geography and value chain.

28. Assurance guidance should explain how practitioners should evaluate an entity's application of proportionality mechanisms and its conclusion that no material climate-related risks or opportunities exist. It should distinguish assurance over the process, evidence and governance supporting the judgement from assurance over an assertion that no risk or opportunity exists in an absolute sense.

29. In our view, the most useful resources would combine concise fact sheets, detailed worked examples, sector-specific case studies, educational modules, workshops and webinars. The material should be accessible to reporting entities and value-chain partners, including SMEs, and should explain how the guidance interacts with existing ASIC, AASB and AUASB materials.

30. Ideally, guidance would be developed in consultation with legal practitioners, industry bodies, reporting entities, assurance providers and representatives of smaller businesses. Legal input is important because the guidance will shape the evidence and governance processes used to support statutory disclosures and directors' decisions. Industry input is necessary to ensure that examples provide meaningful assistance across different business models without creating de facto mandatory requirements.

31. However, guidance alone will not resolve the fundamental structural concerns identified in this submission. In particular, it cannot make inherently uncertain Scope 3 data capable of reasonable assurance or eliminate the duplication created by parallel NGER and sustainability reporting. It should therefore be treated as a welcome implementation measure, not as a substitute for the targeted reforms recommended under Proposals 1 and 3 and Opportunity 1.

32. Overall, the Committee supports the additional guidance contemplated by Proposal 2. Properly designed, it would reduce uncertainty and unnecessary compliance costs, maintain international alignment and minimise disruption, while leaving the 2028–29 review to consider systemic issues that cannot be resolved through guidance alone.

Proposal 3: Setting clearer boundaries on value-chain information requests

33. The Committee view is that value-chain information requests should be proportionate, predictable and supported by reliable secondary data. The framework should not require reporting entities to impose open-ended requests on suppliers in

order to produce Scope 3 estimates that remain inherently uncertain and incapable of reasonable assurance.

Option 3b and a centralised Scope 3 database

34. The Committee supports Option 3b. Publicly accessible, credible domestic emissions factors would reduce reliance on primary data collection, assist reporting entities in difficult-to-trace sectors, and reduce the pressure placed on resource-constrained SMEs to calculate granular emissions data for corporate customers.

35. The Committee proposes that Option 3b go further through a federally funded, centralised database that collects, maintains and publishes Scope 3 emissions data and domestic emissions factors. The database could be administered by the Clean Energy Regulator or another appropriate Commonwealth agency, drawing on the institutional model and public reporting infrastructure established under the NGER scheme. It should provide transparent methodologies, sector-specific factors, uncertainty information and regular updates.

36. Scope 3 data depends on estimates, assumptions and information supplied by parties outside the reporting entity's control. Requiring an entity to present that information with a degree of precision that the evidence cannot support creates a risk of misleading or deceptive conduct under section 1041H of the *Corporations Act 2001* (Cth) and section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) which we do not believe is proportionate in this case.

37. A centralised source would also reduce directors' unnecessary exposure under sections 295A and 344 of the *Corporations Act*. Directors should not be placed in the position of approving and attesting to a self-generated Scope 3 figure that cannot be independently verified and cannot be subjected to meaningful reasonable assurance. Central data would not remove the need for judgement, but it would provide a more defensible and consistent evidentiary foundation for disclosures.

38. The practical burden of entity-level Scope 3 reporting is disproportionate, particularly for SMEs in supply chains. A single supplier may receive repeated requests from several customers or third-party data providers, despite lacking the systems, expertise or resources to produce reliable primary data. A public repository would reduce those requests and allow suppliers to participate in the system without bearing the cost of bespoke calculations for each customer.

39. Central collection should also improve data quality by applying consistent methodologies and would reduce duplication across supply chains. It should make uncertainty visible through published assumptions and ranges, rather than allowing multiple entities to produce materially different estimates of the same underlying activity. Reporting entities could continue to use more granular primary data where it is genuinely available and material, but the central dataset should be the reliable default where it is not.

Option 3a—additional guidance

40. The Committee also supports Option 3a as an interim and supplementary measure. Guidance and sector-specific examples should explain how to define a value chain, how to apply the reasonable and supportable information test, when secondary estimates may be used, and what information requests are reasonable in light of a supplier's resources. This would improve consistency and reduce unnecessary or duplicative requests.

41. However, Option 3a alone is insufficient. Guidance cannot cure the fundamental uncertainty of Scope 3 data, prevent inconsistent methodologies across entities, or remove the legal and compliance risks of requiring each reporting entity to self-report. Nor should guidance be used to legitimise repeated or disproportionate primary-data requests where credible secondary information is available.

42. Entity specific primary data may be valuable in limited circumstances where it is reliable, material and capable of informing a decision about a particular exposure or opportunity. For broad value-chain foot printing, however, consistently calculated emissions factors, industry averages and other secondary data may be sufficient and may be more useful than a patchwork of incomparable estimates. The framework should recognise that distinction.

43. Domestic emissions factors would be particularly useful in fragmented or difficult-to-trace sectors, including road freight, specialised manufacturing, agriculture and commercial construction. The database should prioritise sectors in which SMEs commonly lack the technical capacity to calculate granular emissions data and should allow factors to be refined as better information becomes available.

44. However, the Committee does not support a rigid, universal form that would require every value-chain participant to provide the same information in every circumstance. A common set of principles and minimum fields may improve predictability, but reporting entities must retain flexibility to obtain information that is genuinely material and relevant to their particular facts and circumstances.

45. The Government should monitor and support industry-led standards and common practices that improve the consistency of information requests. Such initiatives could complement, not replace, a public repository of domestic emissions factors and should not become a means of transferring the cost of developing the national data infrastructure to SMEs.

46. While a centralised database is being developed, Option 3a guidance should set clear interim boundaries. Scope 3 reporting should use credible secondary data as the default where primary information is unavailable or disproportionate, and an entity should not be penalised for declining a request that exceeds what is reasonable and supportable without undue cost or effort.

Opportunity 1: Alignment between domestic frameworks and AASB S2 requirements

47. The Committee view is that alignment between domestic frameworks should be pursued as a priority. It would reduce duplication and inconsistency while preserving the usefulness and international comparability of disclosures, provided that any differences in period, methodology or boundary are made transparent.

NGER and AASB S2 alignment

48. The *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**) provides an established framework for collecting and disseminating greenhouse gas and energy information. Many entities subject to sustainability reporting also report under the NGER scheme, and the Scope 1 and Scope 2 information substantially overlaps. The Committee strongly supports using that established framework rather than requiring the same information to be recreated under a separate process.

49. The sustainability reporting framework should permit incorporation by reference of an entity's NGER Scope 1 and Scope 2 data as reported to the Clean Energy Regulator. The sustainability report should identify the relevant NGER report, reporting entity, period, boundaries and location of the data, but should not require the underlying figures to be reproduced in full. This would preserve accessibility for users while removing unnecessary duplicate preparation and lodgement.

50. The AASB, Treasury, the Clean Energy Regulator and other relevant agencies should align the methodologies, boundaries and definitions used for Scope 1 and Scope 2 information under the ASRS and the NGER scheme to the greatest extent practicable. A single, clearly documented dataset should be capable of satisfying both regimes, subject to any necessary explanation of differences required to preserve alignment with AASB S2 and IFRS S2.

51. Reporting periods should also be aligned. Where a reporting entity's financial year does not end on 30 June, the framework should either align the applicable periods or provide an express rule allowing the entity to use NGER data for the corresponding reporting period without unnecessary adjustment. Any unavoidable difference should be disclosed clearly, rather than requiring a second data-collection exercise.

52. The existing flexibilities in AASB S2 and the ability of assurance providers to use specialists may assist entities in managing period differences, but they do not eliminate the duplicated collection, reconciliation, review and assurance effort. A solution that relies on each entity and assurance provider to manage the mismatch separately is less efficient and less predictable than aligning the frameworks at the source.

53. In our view, the alignment of Scope 1 and Scope 2 periods with NGER periods should not materially reduce the usefulness of the information if the relevant period and any difference from the financial year are stated clearly. Investors generally benefit more from a consistent, verifiable and comparable dataset than from figures that purport to match the financial year but require additional estimates or reconciliations.

54. Further, duplicative reporting creates unnecessary compliance costs, increases the risk of inconsistent figures and exposes entities to avoidable regulatory scrutiny. The Committee has not identified a corresponding benefit to users in requiring Scope 1 and Scope 2 information already collected and made available through the NGER scheme to be separately recreated in the sustainability report.

55. In the longer term, the Government should develop a single regulator interface through which an entity can submit emissions information that satisfies both NGER and sustainability reporting requirements. A common portal, data taxonomy and validation process would reduce repeated lodgement and create a clearer audit trail without preventing the relevant agencies from exercising their distinct statutory functions.

Opportunity 2: RCA Practical Experience Requirements

56. The Committee view is that relevant sustainability assurance engagements should be recognised for RCA practical experience purposes. The recognition should be carefully designed so that it expands capability and availability without treating sustainability assurance as requiring no distinct skills or safeguards.

57. Recognising suitable sustainability assurance work would help develop the sustainability assurance market and increase the pool of qualified practitioners. It could reduce disincentives for individuals working towards RCA registration to undertake sustainability engagements and, over time, improve the availability and cost of services for reporting entities.

58. In our view, sustainability engagements appropriately draw on internal and external specialists for matters such as emissions modelling, data systems and climate scenario analysis. The RCA framework should recognise that expertise while ensuring that the lead practitioner retains responsibility for the engagement and can demonstrate appropriate supervision, evaluation and professional judgement.

59. Any revised pathway should specify appropriate qualifications, skills and experience, including knowledge of AASB S2 and relevant emissions-accounting methodologies, experience applying sustainability assurance standards, competence in evaluating estimates and uncertainty, and training in climate-related risks and opportunities. Experience should be obtained under suitable supervision and quality-management arrangements.

60. However, recognition must not dilute the quality or independence of assurance. It should not allow experience that is purely advisory, lacks an assurance conclusion, or is performed without appropriate ethical, independence and quality-control requirements to count in the same way as qualifying assurance work. The framework should permit specialist participation while maintaining a clear distinction between assurance and consulting services.

61. In our view, specialist sustainability expertise is important to investor confidence because sustainability information includes complex non-financial data and significant estimates. Investors should be able to rely on an assurance engagement led and supervised by a practitioner with both assurance competence and access to the necessary technical expertise.

Interaction Of Proposals

62. The Committee view is that the proposals should be implemented as a coherent package rather than as isolated amendments. Their interaction should be assessed against disclosure quality, international alignment, implementation certainty and the four principles in Box 1.

63. In our view, the combination of Option 1c, Option 3b supplemented by the centralised Scope 3 database, and NGER alignment would deliver the greatest improvement in efficiency relative to implementation effort.

64. The reforms would also reinforce one another. Better domestic emissions factors would improve the quality of information subject to limited assurance, while targeted reasonable assurance for Scope 1 and Scope 2 and NGER alignment would strengthen the most mature part of the reporting framework. Proposal 2 guidance would provide the practical boundaries and records needed to implement the package consistently.

65. We are aware that risks could include an underdeveloped central database, outdated or overly general emissions factors, inconsistent transition arrangements, and any unintended reduction in international comparability. However, those risks can be mitigated through transparent methodologies, governance by relevant technical agencies, regular review and updating of data, clear period and uncertainty disclosures, staged implementation and continued monitoring through the 2028–29 review.

66. The Committee would welcome the opportunity to discuss these recommendations with Treasury and to contribute to the further development of Australia's climate-related financial disclosure framework.

67. Please contact Philippa Stone, Chair of the Committee [redacted] if you would like to discuss this submission with representatives of the Committee.

Yours sincerely



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