

24 March 2026

Director
Labelling and Disclosure Unit
Climate and Energy Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: climatereportingconsultation@treasury.gov.au

Dear Director

Sustainable Investment Product Labelling regime

1. This submission has been prepared by the Financial Services Committee of the Business Law Section (**FS Committee**) and the Superannuation Committee of the Legal Practice Section (**Superannuation Committee**) of the Law Council of Australia in response to the consultation paper issued by the Treasury on 13 February 2026 relating to the Sustainable Investment Product Labelling regime (**Consultation Paper**).

Background

2. The FS Committee and the Superannuation Committee (jointly, the **Committees**) made a submission on 17 September 2025 in response to the consultation paper that the Treasury released on 18 July 2025 with respect to sustainable investment product labels (**2025 Submission**). The Committees acknowledge the work that the Treasury has done over the past six months, including the research conducted to better understand the retail investor market.
3. The Committees appreciate Treasury's early public engagement on this matter during the legislative design process, and are pleased to continue to be involved in the development of the future regulatory framework.

Submissions

4. The Committees have prepared responses on Consultation Paper questions relating to matters within the scope of members' expertise. Where relevant, this submission cross-refers to the 2025 Submission.

Element 1: Scope of Sustainable Investment Product Labelling— what products will be included?

- 1) **Is the definition of financial product in the Corporations Act appropriate as the basis for the kinds of investment products captured by this regime?**
 - a. **Should the scope be narrowed to certain types of financial products (such as products with an investment component e.g. superannuation or managed investment schemes), and if so, on what basis?**
 - b. **Should there be any exclusions of types of financial products?**
 - c. **Conversely, does this approach miss any financial products that should be captured by the regime?**

5. The Committees consider that the definition of “financial product” in Part 7.1 of the *Corporations Act 2001* (Cth) is the appropriate basis, and that it is appropriate for any product issuer who offers a product which uses the relevant label and meets the relevant legislative criteria to be subject to the same product labelling regime. The Committees note that it is likely that financial products with an investment component, such as managed investment schemes and superannuation funds, are the kinds of products which are most likely to be promoted as “sustainable”, and there is a range of other investment products which can also be marketed as having sustainability objectives, such as fixed income products (which may be marketed as “green bonds”) and structured products (which may be marketed as having “sustainability credentials”).
6. While financial products which do not have an investment component (such as risk life insurance and general insurance) typically are not promoted under “sustainable” labels, if a product issuer did propose to market non-investment products in this way, the same labelling regime should apply.

- 2) **Is the approach of using a non-exhaustive list of ‘sustainability’ terms appropriate for this regime?**

7. The Committees agree that there should be a non-exhaustive list of “sustainability” terms. The list should be non-exhaustive to allow for flexibility, as language and customs can evolve over time. However, this approach also has the potential to cause application inconsistency and, ultimately, confusion, and therefore the Committees recommend careful consideration and drafting of criteria for terms to be included within the scope of “sustainability”, noting that this too may need to evolve over time. The Committees also consider that there should be clarity as to what the relevant terms are taken to mean under the regime, with clear definitions provided wherever possible.

3) Should terms relating to the governance and social elements of ESG be in the scope of this regime? Why?

8. The Committees consider that there is now a reasonably sophisticated and well recognised measurement framework for environmental impact against which claims about “sustainability” may be verified.
9. Measurement of governance and social elements could be more challenging in some respects. With respect to the “social” aspect, exposure to investments in particular industries such as weapons, tobacco or alcohol production or the gambling sector may be readily quantifiable and, because of the wide use of social elements in sustainability claims, the Committees consider that some social elements ought to be covered in the labelling regime.
10. However, governance criteria tend to be more commonly evaluated in a qualitative rather than a quantitative manner. This could make comparison between products that make governance claims more difficult and complex as compared with products which make environmental or social claims, and accordingly developing a widely acceptable definition for some terms may be challenging.
11. The Committees also note that taking into consideration the existing ESG related reporting regime in Australia and standards globally, it is important to reduce the risk of inconsistent and overlapping regulatory regimes (including voluntary schemes), particularly in financial services and banking, where regulatory compliance costs are already high. It is important for there to be clarity as to precedence regarding interconnectedness of ESG regimes and standards. The Committees note in particular that mandatory Climate-related Financial Disclosures (**CRFD**) obligations have now commenced for Group 1 entities, and in future will apply to further entities (including registered managed investment schemes and registrable superannuation entities above relevant thresholds). Any sustainable product labelling regime should be designed with care to avoid unnecessary inconsistency with the CRFD framework and ASIC’s developing regulatory guidance under that framework.

4) Are there any terms in the non-exhaustive list that create unintentional consequences and should not be included? Are there any terms missing?

12. The Committees have reviewed the list set out in Box 1 within the Consultation Paper, and consider that the following terms could be construed in a number of ways, some of which are not necessarily associated exclusively with sustainability:
 - Future;
 - Equity; and
 - Socially aware and/or conscious.

13. The Committees note that the following terms could be construed in a number of ways, but because they are widely used, consider that there is merit in attempting to develop consistent definitions for them:
- Ethical;
 - Impact;
 - Responsible; and
 - ESG.
14. The Committees also consider that the terms “Carbon Reduction” and “Carbon Neutral” might also fall within the scope of a non-exhaustive list of sustainability-related terms.

Element 2: Consumer-facing disclosures

5) Do you support the introduction of mandatory consumer-facing disclosure (CFD) obligations?

15. In principle, the Committees support a set of disclosure principles and benchmarks that would need to be addressed by issuers of products which come within the remit of the regime. The Committees consider that the disclosure principles and benchmarks need not be enshrined in the legislation and should instead be developed by ASIC in consultation with industry (and updated as and when appropriate, as industry standards and investor expectations continue to evolve).
16. The Committees note that:
- paragraph 1013D(1)(I) of the Corporations Act already requires the issuer of a financial product with an investment component to include information in the Product Disclosure Statement (**PDS**) about “the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment”; and
 - section 1013DA of the Corporations Act allows ASIC to develop guidelines that must be complied with where a PDS makes any claim that labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment. Until recently (December 2025), these guidelines were set out in ASIC Regulatory Guide 65 *Section 1013DA disclosure guidelines*. ASIC’s guidelines on sustainability-related PDS disclosure now appear in ASIC Regulatory Guide 168 *Product Disclosure Statements: Disclosure and other obligations*.
17. In the 2025 Submission, the Committees recommended that these provisions be replaced by a set of “sustainability” disclosure requirements that apply where sustainability related terms are used, which could cover matters such as:
- climate related considerations in investment decision making—risks and opportunities;
 - stewardship activities relating to investments held;

- screens, exclusions and limits on investment holdings at asset or sector level; and
- supply chain labour standards risks (under modern slavey reporting obligations).

18. The Committees submit that it would be undesirable to introduce a new set of separate disclosure obligations while leaving sections 1013D(1) and 1013DA in their current form, as this could create unnecessary duplication, overlap and uncertainty for product issuers.

6) How could voluntary templates achieve the policy objectives?

19. The Committees consider that it would be helpful to develop industry standard templates which would be used to address disclosure principles and benchmarks, in a similar manner to the target market determination templates developed by the Financial Services Council which have been widely adopted.
20. Ideally, industry and ASIC should agree on the standard form voluntary templates to be used, and those templates should evolve over time to reflect improvements in best practice.

7) Which of the above design options do you support, and why?

- a. If you support a prescriptive approach, what specific elements of the CFD should be mandated?**
- b. If a principles-based approach is preferred, what should be included in the principle-based template for CFD requirements?**

21. The Committees consider that Option 3 (the hybrid approach) would be preferable—where only a small set of core disclosures—such as the product’s sustainability objective, key sustainability metrics, top holdings and any explicit targets—are disclosed in a fixed format, with the remainder left to product issuers’ discretion.
22. This approach would enable product issuers to better contextualise the sustainability objectives of the relevant product in terms of the overall investment strategy and the manner in which the sustainability criteria are implemented. Also see the Committees’ responses to questions 9 and 10 below.

8) Would you support mandating that product issuers disclose their direct and indirect investment exemptions in the CFD requirement?

a. Does the exclusions list featured in Box 2 (p.13) capture an appropriate range of companies, industries, or activities?

23. The Committees consider that it is appropriate for product issuers to explain to potential investors what their intended investment exclusions are, the relevant threshold above which the exclusion applies (unless it is zero), and any specific targets for inclusion of asset types. This should include indirect investments, where the product issuer's strategy seeks to extend the relevant exclusions to indirect exposures. The hybrid approach (Option 3) above would allow for limitations, such as the degree of control of the product issuer over indirect investments, to be explained to investors.
24. The Committees believe that the list in Box 2 of types of information that could be required in a consumer facing disclosure requirement are broadly appropriate, and it is expected that appropriate criteria for each sustainability label can be worked out with industry.

9) What are other considerations should the Government consider if it progresses with the introduction of mandatory CFD obligations?

25. The Committees note that investment monitoring involves costs, which can adversely impact investor returns. If monitoring expectations are set too high under legislation, compliance could become so expensive that only larger players in the market may be able to afford to offer financial products with sustainable investment strategies. Industry would benefit from some clarity about what would constitute "reasonable steps" to ascertain whether there is any investment exposure to an excluded industry.
26. ASIC's successful "greenwashing" cases against Vanguard¹ and Mercer² set the required standard of scrutiny of underlying activities at quite a high bar and the penalties imposed were significant. In the more recent decision against Active Super,³ the Court took a granular approach, considering how each representation would have been understood by the "ordinary and reasonable consumer". In designing the labelling requirements, the Committees suggest that Treasury take into account these decisions and consider how they will interact with any new labelling requirements.
27. As noted in the 2025 Submission, the product issuer will often not have direct control of the assets in which investors' funds are invested, which means adherence to a threshold or proportionate allocation requirement can become challenging.

¹ *Australian Securities and Investments Commission v Vanguard Investments Australia Ltd* (No 2) [2024] FCA 1086.

² *ASIC v Mercer Superannuation (Australia) Limited* [2024] FCA 850.

³ *ASIC v LGSS Pty Ltd* [2024] FCA 587.

28. Matters outside the product issuer's control which could impact the proportion of the portfolio allocated to assets which meet the relevant sustainability criteria include:

- material changes in asset prices and values due to market forces which affect the percentage of asset allocations;
- merger and acquisitions activity;
- inflows and outflows of investor capital;
- liquidity constraints;
- debt facility terms imposed by external financiers; and
- temporary allocations to cash in the period between the disposal of an asset and the acquisition of a suitable replacement asset.

29. The Committees suggest the following approaches to manage this factor:

- prescribed disclosures should allow for the product issuer to include an explanation of the circumstances when the product might not meet the sustainability criteria, and outline what action the product issuer would take if and when this happens; and
- prescribed criteria should allow for a reasonable period (for example, 6 months or 12 months) for the product issuer to address the temporary departure from the relevant threshold or proportionate allocation, before the issuer can no longer use the relevant label for their product.

10) Should separate CFD requirements be developed for different types of financial products (i.e. non-fund products)?

30. The Committees consider that there should be a core set of requirements that apply to all types of financial products and, where necessary, supplementary requirements for particular kinds of products can be developed, having regard to the features generally associated with that product type.

31. For example, the fiduciary and statutory duties of responsible entities and trustees of managed funds and superannuation funds, including the duty to act in the best interests of their members, must be considered. Sustainable product labelling laws should not seek to force responsible entities and trustees to behave in a manner which is incompatible with the fulfilment of their fiduciary and statutory duties, the purpose of which is to protect their members' interests.

32. The Committees also consider it important that the CFD mechanism does not include prescribed disclosures which over-emphasise a product's sustainable investment objectives. For example, exclusions criteria may capture a relatively small proportion of a fund's overall investment universe.

33. For managed funds and superannuation products, it is important to note that responsible entities and trustees must administer investment portfolios consistently with members' best interests. It is well-established that trustees need to consider the financial interests of the trust's beneficiaries (*Cowan v Scargill* [1985] Ch 270) and for superannuation trustees this is a covenant deemed to be included in the fund's governing rules under paragraph 52(2)(c) of the *Superannuation Industry*

(*Supervision*) Act 1993 (Cth). Trustees are also subject to the annual performance test which measures returns of a product against prescribed benchmarks. Product issuers need to be able to include an explanation of the circumstances when the sustainably labelled product might not meet the prescribed criteria because of decisions the trustee makes to meet other obligations.

11) When and how should the CFD be provided to the client/potential client?

34. The Committees submit that this should be a component of PDS disclosure for prospective investors, and that website (or equivalent) disclosure available to both existing and prospective investors would also be appropriate. The website disclosure could be updated more frequently and include more specific up to date detail about the assets held at a particular time, and readers of the PDS could be directed to look at the website. The Committees note that this would be consistent with the approach taken by ASIC in Regulatory Guide 46 *Unlisted property schemes: Improving disclosure for retail investors*, which is now a well settled regime adhered to by the unlisted property funds industry.
35. As noted in the Committees' response to question 5, it is important for any CFD obligations not to be developed in isolation from the existing disclosure regime, and the Committees consider that the existing regime should be revisited to incorporate the CFD proposals. This would be preferable to producing a separate regime, potentially resulting in overlapping, inconsistent obligations for product issuers.

Element 3—Thresholds

12) Should a threshold be prescribed (option 1) or only require there to be disclosure (option 2)?

- a. Which option best ensures the credibility of the labelling regime?**
- b. If option 1 is adopted what is the appropriate threshold in the Australian context?**

36. The Committees do not seek to comment on options in relation to thresholds, as we consider product issuers are better placed to suggest approaches that align with current practice. The Committees suggest however that, for some labels, a prescribed threshold may be appropriate, while for others, a disclosure regime may be more appropriate, depending on the extent to which the label is already associated with usual or widely used thresholds.

13) How should a threshold be calculated under option 1 and 2?

a. What assets should contribute to threshold, and how should the different impacts that investments could have on sustainability be considered?

37. The Committees consider that product issuers are best placed to suggest approaches to calculation of a threshold that align with current practice.

14) If either option 1 or 2 are adopted, what are the practical administrative considerations that need to be resolved during implementation?

38. The Committees suggest that implementation of either option will need a reasonable transition period for product issuers to update their disclosure, and/or restructure the investments in the sustainability labelled products, in order to meet the labelling regime. The Committees would not expect all products which are currently using the labels to immediately meet the criteria that are eventually settled on.

15) Should direct and indirect investments be treated differently for the purposes of the thresholds?

a. How would compliance with thresholds be evidenced in regard to indirect investments?

39. The Committees note that portfolio visibility can be challenging, and submit that product issuers should not be unfairly penalised for not being aware of matters about which they could not reasonably be expected to have known.

40. Even where a product issuer invests directly, they will need to rely to some extent on the reporting they receive from the investee entity, and from time to time they could unknowingly receive inaccurate or incomplete information which they may then proceed to rely on in assessing their portfolio against the relevant requirements.

41. This risk is heightened with indirect investments. Obtaining access to relevant information may be particularly challenging where there is investment exposure to assets in countries which do not have comparable regulation on these kinds of matters.

42. Therefore, it is important for there to be a “reasonable steps” obligation and a clear understanding as between the industry and ASIC about what taking “reasonable steps” entails in the context of direct and indirect investments.

- 16) Is there a role to adopt a mechanism which governs the assets not contributing to the threshold (sub option a)?**
- a. What are the advantages and disadvantages of adopting the UK's criteria?**
 - b. What are the advantages and disadvantages of specifying classes of investment as being ineligible for products covered by the labelling framework similar to the EU's proposed framework?**
 - c. Which option should be preferred?**

43. The Committees consider that product issuers are best placed to suggest approaches that align with current practice.

Element 4—Evidentiary Assessments

44. While the Committees agree that evidentiary assessments will play an important role in a sustainable product labelling regime, the Committees have not sought to answer questions 17 to 20 as these matters fall outside the scope of Committee members' expertise.

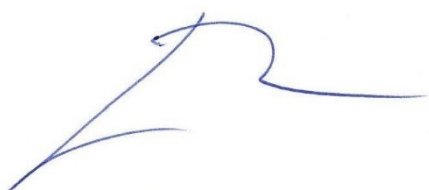
45. The Committees note, consistently with the 2025 Submission, that if evidentiary requirements are to be developed, the role of independent third-party certification should be considered. The Committees would support a cost-benefit analysis being conducted to weigh the potential economic impact on those required to obtain any such certification against any potential regulatory benefit, including by reference to the CRFD audit assurance model.

Conclusion and further contact

46. The Committees would be pleased to discuss any aspect of this submission with Treasury and participate further in the policy development and legislative design process in both formal and informal ways.

47. Please contact Celeste Norman, Funds and Wealth Management Lead of the FS Committee [REDACTED] and/or Nathan Hodge, Chair of the Superannuation Committee [REDACTED] if you would like to do so.

Yours sincerely



James Popple
Chief Executive Officer