Friday, 9 February 2024

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

Via Email: ClimateReportingConsultation@treasury.gov.au

Climate-related financial disclosure: exposure draft legislation

As the representatives of over 300,000 professional accountants globally, Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia welcome the opportunity to provide feedback to the exposure draft legislation for Treasury Laws Amendment Bill 2024: Climate-related financial disclosure ("the ED").

We support the Commonwealth Treasury's continued work towards establishing a legal framework for mandatory climate-related disclosures. This key piece of legislation will ensure Australia remains internationally competitive, by setting a robust framework for credible and verifiable climate-related financial information, which continues to be of ever-increasing importance to market participants to support their own decision-making. There are, however, several significant issues relating to assurance, disclosure requirements and liability considerations that we feel could benefit from either clarification or review. These points are explained in the body of our submission, with recommendations provided where appropriate.

We continue to support the Australian Accounting Standards Board's (AASB) remit to develop and maintain Australian Sustainability-related Reporting Standards (ASRS), which align with international sustainability standards and safeguards global comparability of sustainability-related disclosures. We will be providing detailed commentary in response to the to AASB's exposure draft on *ED SR1 Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information* (ED SR1) and will continue to engage with the AASB as part of their ongoing outreach work. However, we note certain conflicts exist between Treasury's Policy Position Statement (policy position statement) and ED SR1 which will need to be reconciled. The existence of these conflicts highlights the current lack of distinction between policy making and standard setting in relation to climate-related disclosures. We strongly recommend greater clarity is provided over the respective roles and responsibilities of those parties involved and the need to work more closely to achieve alignment to reduce confusion and uncertainty for the entities captured by the regime. We will expand on this point in our detailed response in the attachment to this letter.

We are concerned with the delay in the release of the ED. We note that the policy impact analysis was prepared in September 2023. However, the ED and related documents were not released until four months later (on 12 January 2024) with a limited consultation timeframe during a period when many of

CHARTERED ACCOUNTANTS AUSTRALIA + NEW ZEALAND

Chartered Accountants Australia and New Zealand
33 Erskine Street, Sydney, NSW 2000
P: +61 1 9290 1344
W: charteredaccountantsanz.com
ABN: 50 084 642 571

CPA AUSTRALIA

CPA Australia
L20, 28 Freshwater Place, Southbank
Victoria 3006
P: +1300 73 73 73
W: cpaaustralia.com.au
ABN 64 008 392 452

the relevant stakeholders would have been on leave. This causes concern as feedback received may not have the quality and depth needed for the proposals.

We support the proposal to amend the legislation to a 1 January 2025 commencement date as we consider such a deferral will contribute to better quality reporting in Australia and is almost essential to the success of the regime. It would enable proper consideration of feedback from this consultation prior to introducing the legislation to Parliament and provide additional time for standard setters to develop, consult and issue the relevant reporting and assurance standards.

We also note that there is currently no connection between the policy position statement and the recent Treasury consultation on Australia's sustainable finance strategy (the strategy). The strategy indicated Government's intention to expand reporting requirements to other sustainability topic areas, i.e., climate first, not climate only. The ED creates a new "Sustainability report" within Chapter 2M of the Corporations Act and yet the content of the report and the policy position statement are solely focused on climate-related disclosures. A sustainability report should clearly encompass more than just climate. Whilst we support the ED being drafted flexibly to enable expansion to broader sustainability reporting in the future, we are concerned that the policy position statement provides no explanation of this.

Our key areas of focus are outlined below. Detailed comments and minor drafting points are contained in the Attachment to this submission.

Key points

- We continue to be concerned about the adverse cost to benefit ratio for many Group 3 entities and the users of this information. We recommend increasing the reporting threshold and also introducing a reduced disclosure regime for smaller, unlisted entities with assurance requirements proportionate to size.
- We consider that additional clarity is required to support the proposed materiality exemption for Group 3 entities.
- In our opinion, legislation should not contain definitions or excessive detail relating to technical or reporting information, instead this should be determined through the appropriate independent standard setting boards.
- The Auditing and Assurance Standards Board's (AUASB) mandate to "set out a pathway for phasing in assurance requirements over time" has not been provided for in the ED.
- It is not clear, in the ED, who must be appointed as auditor, and we recommend this is clarified in line with the policy position statement.
- We recommend that the modified liability provisions be extended to auditors (assurance practitioners).
- The ED refers to 'entities' which is not in line with the policy position statement which refers to capturing entities required to produce financial statements in line with Chapter 2M of the Corporations Act.

CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

Chartered Accountants
Australia and New Zealand
33 Erskine Street, Sydney, NSW 2000
P: +61 1 9290 1344
W: charteredaccountantsanz.com
ABN: 50 084 642 571

CPA AUSTRALIA

CPA Australia
L20, 28 Freshwater Place, Southbank
Victoria 3006
P: +1300 73 73 73
W: cpaaustralia.com.au
ABN 64 008 392 452

If you have any questions about our submission, please contact Patrick Viljoen (CPA Australia) at patrick.viljoen@cpaaustralia.com.au or Karen McWilliams (CA ANZ) at karen.mcwilliams@charteredaccountantsanz.com.

Sincerely,

Ram Subramanian
Head of Policy and Advocacy
CPA Australia

Simon Grant FCA
Group Executive – Advocacy and International
Chartered Accountants Australia and New Zealand

Attachment

Commencement and phasing

We strongly support the proposed amendment of the legislation to a 1 January 2025 commencement date for Group 1 entities as we consider this would assist in improving the quality of reporting. The delayed commencement would also provide additional time for the AASB to finalise development of the reporting standards and develop supporting guidance. This will also provide a sufficient time frame for the AUASB to consider the Australian application of the forthcoming *ISSA 5000 General Requirements for Sustainability Assurance Engagements* (ISSA 5000) and the potential implications of the two exposure drafts issued recently by the International Ethics Standards Board for Accountants (IESBA), namely the exposure draft on *International Ethics Standards for Sustainability Assurance (including International Independence Standards)* (IESSA) and the exposure draft on *Using the Work of an External Expert.*

Interaction with other legislation

We highlight that the ED does not consider or propose any interaction between climate-related financial reporting requirements and the National Greenhouse and Energy Reporting Act 2007 (NGER Act) reporting deadline of 31 October.

We have also received feedback that there may be conflicts between the requirements under the ED to disclose material climate-related risks and the *Security of Critical Infrastructure Act 2018* (SOCI Act). The SOCI Act protects information about critical infrastructure, which means it is an offence to disclose information about these assets unless the disclosure complies with the SOCI Act. We recommend that clarity is provided as to how disclosures of material climate-related risks relating to critical infrastructure should be treated.

Reporting entities

Paragraph 1.1 of the exposure draft explanatory materials (EM) states that the ED is intended to apply to entities that lodge financial reports under Chapter 2M of the *Corporations Act 2001* (Chapter 2M). However, it is not clear how this is reflected in the ED, as s292A does not appear to include whether an entity lodges a financial report as a threshold to be in scope of sustainability reporting.

Similarly, paragraphs 15 and 18 of the ED use the term 'entity' which according to s64A (of the *Corporations Act 2001*), *'a reference to an entity:*
(a) is a reference to a natural person, a body corporate (other than an exempt public authority), a partnership or a trust; and
(b) includes, in the case of a trust, a reference to the trustee of the trust.'
However, s286 for financial reports specifically excludes the use of 'entity', instead specifying the types of entity to which chapter 2M applies: "*Obligations under this Chapter—companies, registered schemes, registrable superannuation entities, disclosing entities*" and a separate reference to companies limited by guarantee. To avoid confusion, we recommend simply referring to Part 2M entities as defined under s292 (disclosing entities [as defined ins111AC], public companies, large proprietary companies, registered schemes and registrable superannuation entities).

CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

Chartered Accountants
Australia and New Zealand
33 Erskine Street, Sydney, NSW 2000
P: +61 1 9290 1344
W: charteredaccountantsanz.com
ABN: 50 084 642 571

CPA AUSTRALIA

CPA Australia
L20, 28 Freshwater Place, Southbank
Victoria 3006
P: +1300 73 73 73
W: cpaaustralia.com.au
ABN 64 008 392 452

Reflecting on the initial group designations in Treasury's second consultation paper, we note that the requirement for those entities required to report under Chapter 2M set the expectation for those reporting entities. However, with the envisaged addition of asset managers we note a shift in expectation and an increased need for capacity building in that particular sector.

Additionally, foreign companies within the size thresholds but which do not report under Chapter 2M are not captured within the current drafting. We encourage Treasury to consider the application of this regime to foreign companies.

Group 3 threshold

We have continued concerns about the adverse cost to benefit ratio for many unlisted entities within Group 3 and their report users of these requirements. As noted in our previous submission to Treasury, we recommend increasing the reporting threshold to consolidated revenue of A$100 million (for unlisted entities) to align with other similar existing reporting thresholds and also introduce a reduced disclosure regime for smaller, unlisted entities with assurance requirements proportionate to size. We note that page 26 of the policy impact analysis indicates Treasury's assumption that only 5 per cent of companies within Group 3 (278 entities) would have material climate risks. However, the analysis provides no basis for how this has been determined. If this assumption is correct, then we question the basis for including Group 3 entities within the regime if 95 per cent of them are expected to make a statement of immateriality.

We also note a minor inconsistency in the cost analysis as table 12: Adjusted compliance cost for Group 3 lists 228 entities (not 278 entities).

Further, as noted in our recent response to Treasury's consultation paper on the design of climate related financial disclosure, many unlisted entities within Group 3 are able to apply a reduced disclosure regime for financial reporting. We continue to strongly advocate for the levels of disclosure, and assurance, to be proportional to the size and risk of the entity and for a reduced disclosure regime to be considered. We recommend Treasury considers developments in the EU and Malaysia, where voluntary simplified sustainability disclosures are proposed for smaller entities. Although both jurisdictions have considered a broader suite of sustainability reporting than Australia, these jurisdictions are examples of how smaller entities are being considered in the reporting ecosystem whilst considering their scale. The AASB could develop a reduced disclosure regime for unlisted Group 3 entities.

We note that incorporated not-for-profit entities which are not registered charities with the Australian Charities and Not-for-profit Commission (ACNC) and certain public sector entities that report under Chapter 2M, would be caught under the regime. However, we note that although the policy analysis indicates no impact to community organisation, we understand that some of these organisations are companies limited by guarantee and therefore may be captured.

CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

Chartered Accountants
Australia and New Zealand
33 Erskine Street, Sydney, NSW 2000
P: +61 1 9290 1344
W: charteredaccountantsanz.com
ABN: 50 084 642 571

CPA AUSTRALIA

CPA Australia
L20, 28 Freshwater Place, Southbank
Victoria 3006
P: +1300 73 73 73
W: cpaaustralia.com.au
ABN 64 008 392 452

Materiality exemption for Group 3 entities

Paragraph 1.46 in the EM states '*It is intended that extensive climate statements would not be required for smaller entities who do not have material risks and opportunities for the financial year*.' However, as noted in our covering letter, certain conflicts exist between the policy position statement and ED SR1 which will need to be resolved.

The AASB has also specifically addressed this by adding paragraphs in their two draft standards. We reference ED SR1 [draft ASRS 1] paragraph Aus6.2 and [draft ASRS 2] paragraph Aus4.2 which state '*For the purposes of this [draft] Standard, if an entity determines that there are no material climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects, the entity shall disclose that fact, and explain how it came to that conclusion, in its general-purpose financial reports*.' Currently there appears to be duplication and a lack of clarity on the interaction between the materiality exemption within section 296B of the ED and the relevant paragraphs in ED SR1.

We understand the intention as stated within the EM to reduce the obligations on smaller entities to fully consider ED SR1 in its entirety. However, current drafting of s296B(6) would still require the same level of assessment as the relevant sections within ED SR1 and therefore this does not appear to achieve the intended outcome. There is also a risk that current drafting could be interpreted in a way that overrides the AASB's requirement for a materiality assessment and therefore automatically compels all entities in Group 1 and 2 to prepare climate-related disclosures regardless. We also note paragraphs 2, 3, 4 and 5 of s296B are duplicated by s1705A.

Process and statement

We are concerned with the lack of specificity around the due process required to support an entity's assessment of no material climate-related risks and opportunities. Paragraph 296B(1)(b) outlines the requirement for an entity, who has determined there are no material climate risks or opportunities, to simply disclose this. We surmise that an entity would need to have appropriate governance arrangements and undertake a risk identification assessment to determine whether material climate-related risks and opportunities exist. The ED SR1 requirements are currently drafted such that the entity must explain how it came to that conclusion.

We recommend s296B(1)(a) is reworded to state that '*the entity has determined that it*' and to also require the entity to disclose the basis for that determination.

Further, we also note that investors have clearly indicated the importance of climate-related financial information in their decision making. Therefore, we don't consider it appropriate for the materiality exemption to be available to listed entities within Group 3.

Role of auditor

Additionally, clarity is required in the ED as to the role of the auditor, should a non-listed Group 3 entity make such a disclosure. From a practical standpoint, it is important to limit this assessment to a governance/director-led process. Requiring assurance is likely to be impractical for many of the entities within Group 3, particularly those qualifying for this exception, and would be disproportionate from a cost/benefit perspective.

Record keeping requirements

Further, we note that the requirement for entities to keep 'proper' sustainability records within s286A, does not appear to be contingent on the entity having material climate risks and therefore would be applicable to all climate-reporting entities. We consider it appropriate for all entities to retain 'proper' sustainability records.

Asset owners

There should be clarification on the definition of an asset owner for the threshold set for *Asset Owners* for Group 2 reporters. The policy position statement refers to *assets under management* whereas the ED refers to assets that are *controlled*. Further in s.292A(7) the threshold for asset owners refers to the "value of assets" which is inconsistent with terminology used elsewhere in the ED and the Corporations Act of "consolidated gross assets". It is also not clear it is assets under management as opposed to assets of the reporting entity.

We note that Corporate Collective Investment Vehicles (CCIVs) have now been included as reporters. It is important that Treasury actively engages with the sector and asset owners, who have not been considered in the previous two Treasury consultations, to determine the impact on the sector. We note that CCIVs have not been considered within the policy impact analysis.

Assurance requirements

The policy position statement says "the AUASB will also set out a pathway for phasing in [assurance] requirements over time". However, the AUASB does not have the mandate to do so under the current laws and regulations. Typically, the level of assurance, scope and other similar parameters would be set in legislation, meaning the role of the AUASB is confined to setting standards. While we support standard setting as the primary ongoing role of the AUASB, we also recognise the practical reasons for the proposed Policy Position, as a temporary transitional arrangement. It will however be important to provide an appropriate temporary adjustment to the AUASB's mandate in order for it to undertake the role of setting out a pathway to phase in the requirements over time.

Furthermore, the draft legislation locks in a ceiling for the assurance requirements and scope, being limited assurance of only "climate statements relating to scope 1 emissions or scope 2 emissions of greenhouse gases". This significantly impedes the capacity for phasing in the level and scope of assurance.

In our view, it is unnecessary and may cause problems for the legislation to set a deadline for the AUASB to issue the first 'auditing standards' by 1 July 2024 (s1705D(2) of the ED). The proposed legislative deadline could negatively impact the AUASB's ability to follow due process in standard setting, and to achieve internationally equivalent standards given the relevant international standard is currently expected to be approved by the International Auditing and Assurance Standards Board (IAASB) in September 2024.

The policy position statement would "require entities to obtain an assurance report from their financial auditors", however this is not reflected in the draft legislation. We recommend the legislation is clear on who must be appointed as auditor, the individual *auditor* or the *audit firm*. We note that for financial

reports, it is the audit firm that is appointed notwithstanding the requirement for the individual auditor to sign the assurance report in their own name.

Subsection s285(1) (after table item 1A) notes ASIC's exemption powers in relation to audit requirements 'ASIC may use its exemption powers under s340 and 341 to relieve large proprietary companies from the audit requirements in appropriate cases (s342(2) and (3))'. If this power was to be used by ASIC, we consider that transparency will be important to outline why such relief powers were used.

Finally, we note that the terminology used throughout, 'audit' and 'review', have specified meanings in Australian Standards on Auditing relating to audit engagements on financial statements, there are different terms used for non-financial assurance. We recognise that the existing Corporations Act definitions and provisions related to 'audits' and 'reviews' are also an important consideration. We would recommend close liaison with the AUASB in regard to the terminology used to ensure consistency between the Corporations Act and standards.

Industry based metrics

We are aware if the importance of industry-based metrics for investors but acknowledge the lack of availability of relevant metrics for Australian entities. We consider deferring the requirement for entities to disclose such metrics to 1 July 2030, would allow for sufficient time for the necessary metrics to be identified and guidance provided.

Emissions measurement

We note the policy position statement indicated that the estimation methodologies and frameworks used by reporting entities for Australian-based scope 1 and 2 emissions should be consistent with *the National Greenhouse and Energy Reporting (Measurement) Determination 2008* (the Determination). However, the international sustainability standards use the GHG Protocol methodology. We are supportive of this for existing NGER registered entities although we note that all entities would need to use the GHG Protocol for emissions outside of Australia and scope 3 emissions.

However, for entities not currently reporting in line with the NGER Act, we are concerned that this represents a significant additional and unnecessary cost and burden, especially considering the Determination would only apply to scope 1 and 2 emissions within Australia and it is a 494 page document. Additionally, some of these entities are already measuring their emissions in line with the GHG Protocol and may have science-based targets in place and so would need to duplicate their emissions measurement. We also note that many carbon accounting tools and software leverage the GHG Protocol.

We recommend the government provides flexibility to allow Australian entities that are not also NGER registered entities to report under the entity's choice of the GHG Protocol methodology or the methodologies included in the National Greenhouse and Energy Reporting (Measurement) Determination 2008. However, we are very supportive of Government requiring the use of the emissions factors and other data points within the Determination or the relevant National Greenhouse Accounts Factors publication for Australian-based emissions.

CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

Chartered Accountants
Australia and New Zealand
33 Erskine Street, Sydney, NSW 2000
P: +61 1 9290 1344
W: charteredaccountantsanz.com
ABN: 50 084 642 571

CPA AUSTRALIA

CPA Australia
L20, 28 Freshwater Place, Southbank
Victoria 3006
P: +1300 73 73 73
W: cpaaustralia.com.au
ABN 64 008 392 452

The policy position statement indicated that 'market-based (in addition to location based) scope 2 emissions should be disclosed if required under the NGER legislation and no later than financial years commencing on or after 1 July 2027. We understand that currently 'market-based' measures are not required under the NGER legislation. We recommend further clarity to support Government's vision to include market-based emissions disclosures and how Government envisages the interaction of this with ED SR1.

Definitions of emissions

We note that Scope 1 and 2 emissions have been defined in the ED by reference to the NGER Act. Specifically, the definition of Scope 1 emissions in the NGER Act refers to facilities and activities of the entity. However, ED SR1 uses the same definition for Scope 1 and 2 emissions as the ISSB Standard *IFRS S2 Climate-related disclosures.* This defines Scope 1 emissions by reference to ownership or control. We note that facilities and activities are not terms used within ED SR1. Further, Scope 3 emissions has been defined in the ED with reference to the Greenhouse Gas Protocol (GHG).

We do not consider it appropriate for the definition of emission scopes (ED paragraph 3, s9) to be included within the ED. Definitions, such as this, which influence reporting content should be defined and outlined through the independent standard setting process, in this case by the AASB. This is another example of where there is duplication between policy making and standard setting as these definitions unnecessarily duplicate and potentially conflict with the contents of ED SR1. Further, their inclusion in legislation will make it more difficult to update as relevant definitions and terminologies evolve.

Liability framework

In our view, it is critical to clarify that the measures in the draft legislation on 'limited immunity for statements in new sustainability reporting' extend to auditors (assurance practitioners) in addition to directors. Providing a limited immunity to directors but not auditors would potentially undermine the effectiveness of this measure. We note the policy intention for the AUASB to phase in the assurance requirements, not withstanding s301B in the ED. This means that it is highly likely that assurance will be required in areas of the reporting to which the immunity relates.

The coverage of the limited immunity measures has also been narrowed to only cover scope 3 emissions (s1705B(1)(b)(i)) and scenario analysis (s1705B(1)(b)(ii)). It was our understanding that Treasury were receptive to other forward-looking statements such as future cash flows, profit and loss and balance sheet impacts and transition plans. We recommend that other forward-looking statements are included.

We also note that the coverage for the limited immunity 'does not apply to a statement made other than in a sustainability report'. We question how this might work in practice, for example, if an entity is preparing supporting documentation to shareholders for an annual general meeting and references a statement which is included in their sustainability report in the meeting papers. Likewise, if such information is included elsewhere in the reporting suite, such as the financial statement, and cross referenced to the sustainability report.

CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

Chartered Accountants
Australia and New Zealand
33 Erskine Street, Sydney, NSW 2000
P: +61 1 9290 1344
W: charteredaccountantsanz.com
ABN: 50 084 642 571

CPA AUSTRALIA

CPA Australia
L20, 28 Freshwater Place, Southbank
Victoria 3006
P: +1300 73 73 73
W: cpaaustralia.com.au
ABN 64 008 392 452

Further, as expressed in our previous submission, we consider it inequitable for the limited immunity measures to only apply for the first three years of the regime. The limited immunity measures as currently drafted in the ED will only apply to Group 1 entities for their first 3 years and Group 2 entities for their first year. Such measures should be available for entities in all three groups for their first three years respectively. Whilst we appreciate the challenges with drafting the necessary legislation to give effect to this, we don't consider this to be an appropriate basis for Group 2 and 3 entities to miss out on these measures.

Reporting framework

We have received mixed feedback from our members in relation to the location of the annual sustainability report. Some members have expressed concern that adding a fourth report will substantially increase an entity's annual reporting package and have questioned its additional value. Others have highlighted the importance of integrating climate-related disclosures within existing reports, specifically the Operating and Financial Review (OFR) to have real value to users. Many have stressed the importance of enabling the cross referencing of information and connectivity of statements through a summary/highlights index or table. This feedback highlights the existing slightly different approaches entities take for annual reporting and the need for this legislation to provide the necessary flexibility.

Costings

Due to the limited consultation period, we have not had the opportunity to fully consider the costings in the Policy Impact Analysis, particularly the UK Impact Analysis on which they have been based. We note there is a significant difference in the estimated costs for Group 1 and 2 entities ($1.3m transitional and $681k recurring under Option 1b) compared to $45k transitional cost and $37k ongoing for Group 3. Therefore, this would indicate a wide range in the anticipated costs for entities within each group. For certain entities, we expect this could have a significant impact on their financial position.

As noted above, there is an assumption that only 5% of Group 3 entities will have material climate risk but this is not substantiated within the document.

Additionally, we note the 'flow on effects' section on page 30 of the Policy Impact Analysis does not appear to consider the impact on small and medium entities. Whilst outside the regime, these entities will be expected to provide information through their value chain to inform the disclosures of reporting entities and therefore we anticipate financial implications for them. These costs could be minimised if Government plays a role in coordinating such information requests to minimise unnecessary duplication.

Finally, the cost estimates do not appear to include assumptions around the cost associated with building the necessary skills and capability for this regime.

Capacity Building

We note the Policy Impact Analysis considers the supply of skills as part of the 'flow on effects' section on page 30, noting the gap between demand and supply is expected to close slowly over the medium term. However, Treasury's Policy Position Statement does not appear to indicate the support Government will provide to close this gap fast enough to ensure reporting entities are able to access sufficient resources to fulfil the requirements and build capacity within the assurance profession. Although Group 3 entities have a later commencement date, we are particularly concerned at the ability of those entities to access expertise, given its limited availability, within the assumed cost estimates.

Review of climate-related financial disclosure requirements

We support a post-implementation review of climate-related financial disclosure requirements in 2028-29.

Restructure of the standard setting boards

Treasury will need to consider the legislative implications for both sustainability reporting and assurance ahead of the proposed changes in 2026 to the standard setting architecture foreshadowed in the Streamlining financial reporting architecture announcement published on 21 November 2023.

Minor drafting points on the Exposure Draft (ED)

Part 1: Sustainability reporting requirements

- ED paragraph 1. Suggest the proposed amendment to the ASIC Act is contained directly after Para (b) such that the ordering is consistent with the listing per the Corporations Act.
- ED paragraph 3. The proposed changes incorporate sustainability reports or sustainability records, but only climate statements are defined. We require clarity on how the two definitions would be tied together.
- ED paragraph 13. Adds a new line 4 to the existing table to address those companies limited by guarantee that should also prepare a sustainability report. However, line 3 of existing table has not be consequently amended to be mutually exclusive to the new line 4 and refer to those with revenue >1 million but which do not meet the s292A thresholds.
- ED paragraph 15. s286A(1)(c) refers to s292A(1)(c). We suggest that this should be s296A(1)(c).
- ED paragraph 22. s292A(1) – We suggest that this section should refer to 'prepare a sustainability report for each financial year', rather than 'a' financial year for consistency with s292.
- ED paragraph 22. s292A(4) – It is unclear why the minister may only determine an amount for consolidated revenue and the number of employees, but not consolidated gross assets.
- ED paragraph 23. s296A – We note that it is unlikely that there will be 'climate statements' or 'notes' in the same way as there are financial statements and separate notes. Whilst we note that

a climate statement is clearly defined in the ED, we are concerned that the separate reference to notes may result in confusion.

- S296A(6)(a). We recommend the director's declaration is revisited for wording clarity and purpose. Furthermore, if it is intended to be a statement of compliance with IFRS S1 and S2, we note that ED SR1 requires an 'explicit and unreserved statement of compliance with ASRS Standards' and compliance with ED SR1 would not result in compliance with IFRS S1 and S2. We also note that "international sustainability reporting standards" doesn't appear to be defined.
- S296D. We consider this section is unnecessary as the disclosures are included in the AASB's envisaged climate-related standards and international standards they are aligning with. We suggest instead ensuring the ED includes a clear definition in the AASB's climate-related standards and signposting in an appropriate manner. Taking this approach, we suggested that s296C would sufficiently cover the intent of s296D as it stands.
- The Ministerial powers as defined under s292A(4) and (8), s296A(3) and (5) and s296(C) are broader than the standard Office of Parliamentary Council (OPC) wording in paragraph 24 of the OPC's Drafting Direction No 3.8. These sections appear to give the Minister broad unrestricted discretion to determine thresholds for the application of climate reporting, and to introduce new reporting requirements on subjects "relating to a matter concerning environmental sustainability. We would seek clarity on the rationale for this broader definition having been adopted.

Part 2: Audit and assurance

- We have concerns around the inconsistent use of audit / audit standards and assurance / assurance standards within the ED. These should be used consistently throughout the legislation and align with the AUASB Glossary.
- ED paragraph 77. We suggest this line item is moved to be 3A after line item 3 rather than 1B.
- ED paragraph 85. s307AB. We suggest that this should also include a statement around books and records equivalent to section307(c).
- ED paragraph 88, 90, 91 and 92. The insertions should refer to 'a' financial year not 'the' financial year.
- ED paragraph 95. s309A. This appears unnecessary as the audit of sustainability report must be conducted in accordance with auditing standards, as per s307AC, and the auditing standards prescribe the requirements for the auditor's report.

Part 3: Sustainability and auditing standards

- ED paragraph 124. s336A(1). For consistency with amendments paragraph 120 and 122, the sentence should reference the ASIC Act as well. We also suggest including as s334A, after accounting standards.
- ED paragraph 125, 126 and 127 would read 'accounting, auditing and sustainability standards' which is inconsistent with ED paragraph 118, Part 2M.5 (heading); 'Accounting, sustainability and auditing standards'.

Part 4: Application

- ED paragraph 129. We suggest Part 10.75 be titled 'Transitional provisions' for consistency with other parts in the chapter.
- S1705(5) in the ED references the NGER Act applicable threshold for registered group corporations within s13(1). Treasury's policy position statement indicates that NGER reporting entities above the *publication threshold* are in Group 1 and all others are in Group 2. However, we note the reference to a publication threshold is contained within limitations outlined in s24(1B) of the NGER Act. Whilst according to the Clean Energy Regulator's website[1][2], these thresholds (reporting and publication) currently appear to be the same, we recommend consistent references across the ED, Treasury's policy position statement and references made to the NGER Act to ensure clarity around the regime's application.

[1] National Greenhouse and Energy reporting – what data is published and why
[2] National Greenhouse and Energy reporting – Key steps in reporting your obligations

CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

Chartered Accountants
Australia and New Zealand
33 Erskine Street, Sydney, NSW 2000
P: +61 1 9290 1344
W: charteredaccountantsanz.com
ABN: 50 084 642 571

CPA AUSTRALIA

CPA Australia
L20, 28 Freshwater Place, Southbank
Victoria 3006
P: +1300 73 73 73
W: cpaaustralia.com.au
ABN 64 008 392 452