

29 April 2024

[economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

The Committee Secretary  
Senate Economics Legislation Committee  
Parliament House  
CANBERRA ACT 2600

**RE: Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 (Bill)  
– Response to Questions on Notice**

This response addresses Senator Bragg's Questions on Notice.

1. *You mentioned in your evidence that there was confusion amongst you members of the use of the term 'sustainability report', perhaps instead of the more common terminology, 'mandatory climate-related financial disclosures'. What do you imagine the Government's intent may have been in choosing the terminology it did?*

Many companies currently produce 'sustainability reports'. These reports typically cover a much broader range of issues than climate for example: environmental impact, people, diversity and inclusion, reconciliation, health, safety and wellbeing, human rights and ethical sourcing, community or product quality. The matters reported on will vary depending on the nature of the business concerned. Companies also use a range of frameworks to report on these issues including the Global Reporting Initiative, the International <IR> Framework, the standards formerly issued by the Sustainability Accounting Standards Board, the Carbon Disclosure Initiative, the Principles for Responsible Investment, the United Nations Global Compact or standards issued by the International organization for standardisation. The wide variety of frameworks and standards in use and the difficulty of making comparisons across companies and sectors was a major driver of the development of internationally comparable standards under the International Sustainability Standards Board. The Government is on record as 'consistent with global practice ... adopting a climate first' approach.<sup>1</sup>

While our members acknowledge that broader sustainability-related financial disclosure standards will be introduced over time, they consider given the current widespread use of the term 'sustainability report' and the broad variety of issues encompassed by these reports it is preferable to use another term in the Bill. Our members support the comments made by Herbert Smith Freehills in their Submission to the Committee:

*The requirement for a separate, identifiable "sustainability report" implies that the report would include all information related to an entity's sustainability-related disclosures. The "sustainability report" label risks confusing the scope of the content, which initially is only required to cover climate-related financial disclosures. We submit there should be flexibility for reporting entities to choose to label the report as a "climate report" or similar instead of only a "sustainability report". This will mitigate the risk of*

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<sup>1</sup> See for example [Sustainable Finance Strategy Consultation Paper](#), Treasury November 2023 at page 5.

*confusion and avoid duplication for larger entities that already prepare voluntary disclosures in the form of a "sustainability report" which sits outside of the annual report.<sup>2</sup>*

The December 2022 Treasury Consultation Paper on the introduction of the climate-related financial disclosure standards referred to 'developing climate reporting requirements that are adaptable enough to accommodate future global developments in nature and other sustainability reporting'.<sup>3</sup> The use of the term 'sustainability report' in the legislation is presumably intended to accommodate the introduction of broader sustainability reporting. While our members support the introduction of globally aligned sustainability reporting standards in Australia, they consider the term 'sustainability report' at this stage is potentially confusing. They also noted that the purpose of the mandatory climate-related financial disclosure is to make decision useful information available to investors, whereas sustainability reports are typically addressed at a broader audience.

2. *You mentioned concern amongst members about the minister's discretion under the draft legislation. Are there any particular concerns your members have about how this discretion could be exercised? Are your members concerned, for instance, that the minister could use his or her discretion to roll this measure out to a wider group of businesses?*

The latest report by the Australian Law Reform Commission [Confronting Complexity: Reforming Corporations and Financial Services Legislation](#), found the *Corporations Act* is no longer fit for purpose, unnecessarily complex, shrouded in obfuscation, obscure, convoluted, and like a maze – 'anything could be anywhere'. The proliferation of powers, including Ministerial instruments, was identified as a particular problem. While the concern referred to in the question is not an express concern of our members it is a conceivable outcome if such a broad discretion is included in the legislation. While there is a formal process for disallowance of legislative instruments, in practice this process is used infrequently. Given the broad range of issues to be covered under sustainability-related financial disclosure our members consider there is a need for the Ministerial discretion to be subject to a more express requirement for consultation. Absent such a requirement there is a risk of scope creep on climate and sustainability reporting obligations without proper industry consultation.

We also refer you to the matters raised by the Law Council of Australia and the Herbert Smith Freehills in their submissions to the Committee.<sup>4</sup>

3. *Can you describe how you imagine mandatory disclosures will affect business productivity across Groups 1 to 3?*

While it is difficult to predict how mandatory disclosures will affect overall business productivity across the various Groups, the September 2023 Treasury Impact Analysis (Analysis) examined the costs of implementation of the various policy proposals across the Groups.<sup>5</sup> While the costs for Groups 1 and 2 are not insignificant, given they are larger organisations the increase in cost is less likely to be 'material' for these entities. For Group 3 companies, the costs will be proportionately larger.

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<sup>2</sup> See [Submission on Schedule 4 to the Treasury Laws Amendment \(Financial Market Infrastructure and Other Measures\) Bill 2024](#), Herbert Smith Freehills, 11 April 2024.

<sup>3</sup> See [Climate-related financial disclosure Consultation Paper](#), Treasury, December 2022 at page 8.

<sup>4</sup> See the Submission referred to in Note 2 above at page 3 and [Inquiry into the Treasury Laws Amendment \(Financial Market Infrastructure and Other Measures\) Bill 2024](#), Law Council of Australia, 16 April 2024 at paragraphs 19 – 21.

<sup>5</sup> See [Policy Impact Analysis Climate-related financial disclosures](#), September 2023, Treasury.

One area where we consider there is likely to be an increase in costs and workload is for Group 3 companies. The Analysis indicates that 278 (five per cent), at a minimum, of the approximately 4,555, at a minimum, companies in Group 3 are likely to have material climate-related risks or opportunities and be required to make climate-related financial disclosures. A climate statement for the larger portion of Group 3 entities is to consist of a statement to this effect which must be subject to assurance. As noted in our Submission to the Committee our members consider the consultation material considerably underestimates the cost of this 'audit' which our members report would be somewhere between \$20,000 to \$40,000. This significantly increases the size of their audit costs, particularly in the first year. This issue has been raised in other Submissions to the Committee.<sup>6</sup> There is also likely to be significant demand for the services of assurance providers to this sector, which is highly likely to outstrip supply, particularly in the early years of the regime. Group 3 entities also include not-for-profits. This sector is resource constrained and frequently relies on time poor volunteers to carry out various functions. The imposition of an audit requirement on this sector is likely to redirect valuable resources away from fulfilling their mission.

**4. *What about profitability for those businesses?***

At this point it is difficult to assess the impact on profitability for these business although we would note the impact on Group 3 entities referred to above. Profitability is contingent on a number of factors, and we are not in a position to provide specific comments on this question.

**5. *Are your members concerned about having to pass the cost of compliance with this regime onto consumers?***

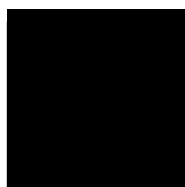
As noted above it is difficult to provide specific comments on this question but would consider it will be a matter for individual businesses. We would however consider that in the not-for-profit sector there would be a reluctance to pass costs on, particularly to consumers of a not-for-profit's services.

**6. *Are there any particular concerns your members have about how the ministerial discretion could be exercised? Are your members concerned, for instance, that the minister could use his or her discretion to roll this measure out to a wider group of businesses?***

See the Response to Question 2 above.

Please contact me or Catherine Maxwell, GM Policy and Research if you have any questions in connection with this letter.

Yours faithfully,



Megan Motto

CEO

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<sup>6</sup> See the Submissions of Chartered Accountants Australia and New Zealand and Nexia Australia.