



Senate Standing Committees on Economics
PO Box 6100
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Canberra ACT 2600

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Submission to inquiry into Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 [Provisions]

About Climate Integrity

Climate Integrity is an initiative working to close the corporate climate integrity gap in Australia, by championing science, transparency and accountability in the transition to zero emission. Climate Integrity convenes experts from a range of disciplines to drive the collaborations needed to raise ambition, increase integrity in the transition, and accelerate business climate action in line with science.

Submission summary

Climate Integrity welcomes the opportunity to respond to the Senate Economics Legislation Committee inquiry into *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 [Provisions]* (the Bill). Climate Integrity recognises the work undertaken to develop this piece of legislation and welcomes efforts to align Australia with global reporting frameworks that will increase transparency and accountability.

Our submission is focused on the changes made from the Exposure Draft to the final Bill that broaden the scope of the modified liability regime to include immunity from legal action by third parties, including investors, in relation to an entity's transition plan.

Recommendations

Ensure third parties retain the right to take legal action against entities for making misleading statements about their climate actions, including transition plans, to ensure accountability and to encourage best-practice, science-based emissions reductions.

1. **Strongly preferred:** The modified liability provisions in s1707D of the bill are removed.
2. **Supported:** The modified liability provisions are reverted to cover Scope 3 emissions and scenario analysis only as outlined in the exposure draft.

Rationale for recommendation

Role of government in climate accountability

For Australia to meaningfully contribute to science-aligned climate action the government must raise the bar on what business is required to do to ensure real progress towards global 2030 emission reduction goals, this includes addressing and removing all opportunities for greenwashing.

Since the Paris agreement there has been a groundswell of voluntary commitments by nations and non-state actors and voluntary pledges now cover over 90% of the global economy¹ and more than 70% of Australia ASX listed companies.

However, analysis shows that most of the voluntary commitments made by businesses fall short of emerging global best practice, such as the standards recommended by the *UN High Level Expert Group Integrity Matters Report*², and that many large emitters have actually expanded their production operations since the Paris Agreement³.

This is why mandatory legislative and regulatory requirements are needed to ensure real emissions cuts are made in line with science.

Greenwashing won't be curbed under this Bill

Greenwashing and misleading the public and investors on climate action is more than a brand and credibility issue, these actions are actively slowing down the transition. Australia is seeing high rates of corporate greenwashing, with over 57% of companies surveyed by the ACCC in 2023 found to be promoting concerning claims about their environmental credentials⁴.

A recent report commissioned by Climate Integrity to assess major Australian companies' net zero pledges and associated transition plans⁵ demonstrated widespread greenwashing risk and showed many of the companies assessed are not on track to meet their own publicly stated emission reductions and net zero commitments. Without strong legislative and regulatory changes these misleading practices will continue.

We are concerned that the Bill provides legal immunity to companies making false or misleading statements. By expanding the scope of the immunity provisions to include transition plans and any forward-looking statements outlined in sustainability reports, the government is providing cover for widespread greenwashing to continue during the first three years of the new disclosures regime.

The right of third parties to hold companies to account for making misleading statements is crucial to the proper functioning of markets, providing accurate information to investors, and is critical in driving public accountability and holding corporate actors responsible for their climate impacts. This last minute legal immunity loophole is bad news for consumers, investors and our climate.

Without the right to take legal action against entities for making misleading statements we are unlikely to see accountability, reporting best-practice, or science-based emissions reductions for another three years.

¹ https://ca1-nzt.edcdn.com/Reports/Net_Zero_Stocktake_2023.pdf?v=1696255114

² https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf

³ *The Carbon Majors Database: Launch Report*, 2024, Influence Map. Accessed at: https://influencemap.org/site//data/000/027/Carbon_Majors_Launch_Report.pdf

⁴ ACCC 'greenwashing' internet sweep unearths widespread concerning claims. Accessed at: <https://www.accc.gov.au/media-release/accc-greenwashing-internet-sweep-unearths-widespread-concerning-claims>

⁵ *Net Zero Integrity: Assessment of the Net Zero Pledges of Australian Companies*. Accessed at: https://climateintegrity.org.au/s/Net_Zero_Integrity_Report_2024.pdf

Modified liability not necessary

The majority companies covered by the proposed modified liability arrangements have voluntarily been reporting on climate related risk⁶ and have had sufficient notice of proposed reporting requirements that a modified liability period is not necessary.

In addition, the 'reasonable grounds' standard contained in misleading or deceptive conduct provisions (under the *Corporations Act 2001*) is sufficiently flexible to accommodate the uncertainties inherent in forward-looking statements⁷.

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⁶ <https://asic.gov.au/about-asic/news-centre/articles/managing-climate-risk-for-directors/>

⁷ See *Bonham atf Aucham Super Fund v Iluka Resources Ltd* (2022)