

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

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

Department: Department of the Treasury
Topic: Immunity period
Reference: Written
Senator: Nick McKim

Question:

1. There is currently public interest litigation on foot against fossil fuel companies (Santos) and banks (ANZ) that would not be able to be issued under this legislation during the period of the immunity. Can Treasury confirm whether or not passage of this bill will impact or provide immunity to matters that have already been filed and are currently before the courts?
2. Can Treasury point to the relevant legislative provision or case law that demonstrates how these existing matters will not be affected?
3. What will be the legal status of the proposed scenario planning (for instance against 1.5 degrees) which is not included in the legislation, only in government consultation documents?
4. What will be the process for Minister, AASB or AUASB in relation to implementing, amending or withdrawing these scenario planning requirements at some point in the future?

Answer:

1. Treasury can confirm the Bill will not provide immunity against litigation already on foot.
2. The proposed provisions in 1707D establish the statements to which immunity will apply through the definition of a *protected statement*. Provisions 1707D(3) and 1707D(4) make it clear that protected statements must be either:
 - In a sustainability report or auditor's report for a year commencing during the first three years after the start date; and about
 - scope 3 greenhouse gas emissions; or
 - scenario analysis; or
 - a transition plan; or
 - In a sustainability report or auditor's report for a financial year commencing in the first year after the start date and relating to climate and about the future.

Limited additional immunity applies to statements made outside the auditor's or sustainability report if that statement is required to be made under a Commonwealth law and is the same as the protected statement or is different only because it updates or corrects the protected statement.

Matters already on foot will not receive immunity as the statements or claims referred to in those matters cannot by definition be protected statements.

3. The requirements for scenario analysis will be established in the standards set by the Australian Accounting Standards Board (AASB). The exposure draft standard is available at https://www.aasb.gov.au/admin/file/content105/c9/AASBED_SR1_10-23.pdf.

Draft paragraph Aus22.1 includes the requirement for resilience against at least two relevant scenarios to be disclosed, one of which is consistent with the most ambitious global temperature goal set out in the *Climate Change Act 2022* (i.e. 1.5 degrees).

4. The Government's policy is that scenario analysis requirements will be implemented through the Australian sustainability standards established by the AASB. The implementation and maintenance of Australian sustainability standards is a matter for the AASB. The AASB is independent and cannot be directed by the Minister.

Proposed provision 296A(4) allows the Minister to make a disallowable legislative instrument requiring the sustainability report to include specified disclosures in relation to the preparation or contents of climate statements, in addition to the requirements in the sustainability standards. At this time there is no intention to make use of this provision.