Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

Justice and International Mission Cluster
29 College Crescent
Parkville Victoria 3052
Telephone: (03) 9340 8807
jim@victas.uca.org.au

Climate Disclosure Unit
Market Conduct and Digital Division
The Treasury
Langton Crescent
PARKES ACT 2600
E-mail: climatereportingconsultation@treasury.gov.au

Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the 'Climate-related financial disclosure. Consultation Paper'.

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The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to provide a submission on the 'Climate-related financial disclosure. Consultation Paper.'

The Uniting Church in Australia has had a long-standing concern for living in harmony with our natural environment and, more recently, taking action to address climate change.

The Synod strongly supports the aim of the Paris Agreement to strengthen the global response to climate change, including setting a collective goal to keep the global temperature increase to well below 2^{o}C and pursue efforts to keep warming below 1.5^{o}C above pre-industrial levels.

The Synod supports the reform principles in the Consultation Paper.

The Synod supports the thresholds and phasing for reporting entities proposed in the Consultation Paper. The Commonwealth Government will face the challenge of making reporting entities aware that they need to report. The task seems achievable with an adequate allocation of resources to alert reporting entities of their obligations given the implementation timeframes.

There will be an additional challenge for the Commonwealth Government to know if certain entities meet the thresholds, especially if they just cross one of the thresholds. Thus, it is expected that some entities will be able to avoid reporting, and their non-compliance will remain undetected.

The Synod supports the proposal in the Consultation paper of companies being required to disclose information about governance processes, controls and procedures used to monitor and manage climate-related financial risks and opportunities from commencement.

The Synod supports the alignment of Australia's mandatory climate-related financial risk disclosure with the International Sustainability Standards Board (ISSB) standards as the emerging minimum global reporting framework. However, the ISSB standards do not yet align with the Global Reporting Initiative (GRI) framework or the Taskforce on Nature-related Financial Disclosures framework. Thus, while not perfect, we believe the ISSB standards will give the most significant international alignment, while still being adequate in what must be disclosed.

The Synod supports from commencement,

- that reporting entities be required to use qualitative scenario analysis to inform their disclosures, moving to quantitative scenario analysis by end state;
- reporting entities would be required to disclose climate resilience assessments against at least two future states, one of which must be consistent with the global temperature goal set out in the *Climate Change Act 2022;*
- transition plans would need to be disclosed, including information about offsets, target setting and mitigation strategies;
- all entities would be required to disclose information about any climate-related targets (if they have them) and progress towards these targets. The disclosure should include how the entities chosen target compares to the global temperature goal set out in the *Climate Change Act 2022* and Australia's nationally determined contribution;
- entities must disclose information about material climate-related risks and opportunities to their business and how the entity identifies, assesses and manages risk and opportunities. The disclosure should include where risks and opportunities are concentrated in the entity's supply chain, the anticipated time horizon and metrics that help investors understand the scale and impact of risks and opportunities;
- scope 1 and 2 emissions for the reporting period be required to be disclosed; and,
- disclosure of material scope 3 emissions be required for all reporting entities from their second reporting year onwards.

The Synod believes the proposed protection from false and misleading representation claims from private litigants concerning forward-looking statements for the first three years should not apply where false or misleading information has been provided intentionally with knowledge it is false or misleading. Such a limited avenue for litigation offers a disincentive for wilfully false and misleading disclosures while giving confidence to entities not setting out to deceive deliberately. Cases of deliberate and wilful false and misleading disclosures are only likely to come to light through whistleblowers inside the entity in question.

The Synod supports that by end state, reporting entities would be required to have regard to disclosing industry-based metrics, where there are well-established and understood metrics available for the reporting entity.

Concerning assurance of disclosure reporting, the assurance should be carried out by a qualified and experienced independent provider that is independent of any business or individual that provided consultancy advice to the reporting entity on its disclosure reporting. Such a requirement creates an additional safeguard of independence of the assurance being provided.

The Synod supports that climate-related financial disclosure requirements would be subject to civil penalty provisions in the *Corporations Act*. The regulator must have access to meaningful infringement notices to enable the regulator to provide a swift response to non-compliance with the obligations.

For penalties to be effective, they need to be:[1]

- Proportionate
- Fair;
- Swift;
- Certain;
- Memorable;
- Cost-effective; and,

[1] Chris Leech, 'Detect and deter or catch and release: Are financial penalties an effective way to penalise deliberate tax evaders?', Tax and Transfer Policy Institute, Australian National University, Working Paper 6/2018, April 2018, 40.

- Incentivise and provide a pathway back into compliance.

If there is a delay between the offending behaviour and the application of the penalty, the effectiveness of the penalty is reduced.[2]

Memorable means that when a penalty is applied, it needs to be publicised to the wider body of reporting entities to provide greater general deterrence.[3] Studies have shown that naming and shaming can increase compliance when carefully administered. However, shaming offenders without giving them a chance to restore their reputation can hurt their future compliance.[4] Where stigmatisation of an offender becomes attached to their identity, it can drive them to on-going non-compliance.[5]

Penalties that are too soft do not work as effective general deterrence.[6]

There needs to be a high recovery of fines issued, otherwise, introducing fines that can be ignored is probably worse for compliance rates than not having fines at all. When entities either can't or won't pay fines, the fines become ineffective. Fines become a meaningless sanction that can ultimately lead to contempt for the law.[7]

Financial penalties appear to have many advantages over other types of penalties (such as criminal ones) because they are quick, easy to administer and can be scaled to be proportionate to the level of culpability. However, research has shown there is a critical problem with financial penalties, as there is a massive gap between those that are issued and those that get paid.[8] A review by the Australian Law Reform Commission in 2002 found that payment of financial penalties to some regulators at the state level were as low as 30%.[9] The Victorian Sentencing Advisory Council found that in 2014, payment of infringement notices was at 66% and more than 50% of fines levied by a magistrate were paid.[10] The Council observed that the reason for non-payment of fines ranged from "the most compelling of mitigating circumstances to wilful disregard of the law."[11] In 2017, the director of South Australia's Fines Enforcement Recovery Unit gave evidence to a parliamentary committee that in some states up to 40% of fines will never be recovered, while in South Australia it was 20 to 25%.[12] The US customs authority only collected 31% of outstanding financial penalties from 1997 to 2000.[13]

The Inspector General of Taxation reported that the ATO had found the probability of recovering debts, both unpaid taxes and unpaid fines is approximately 2% after they have aged more than a year.[14]

The application of penalties can also have a diminishing effect in terms of specific deterrence. A 2001 study into the prosecution of non-lodgers of tax returns in Australia found that those who had been prosecuted previously were less likely to comply in response to a second prosecution.[15]

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[2] Ibid., 41-42.
[3] Ibid., 42.
[4] Ibid., 81.
[5] Ibid., 82.
[6] Ibid., 41.
[7] Ibid., 28.
[8] Ibid., 6-7.
[9] Ibid., 24.
[10] Ibid., 24.
[11] Ibid., 25.
[12] Ibid., 25.
[13] Ibid., 26.
[14] Ibid., 27.
[15] Ibid., 38.

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[redacted]
Senior Social Justice Advocate
Synod of Victoria and Tasmania
Uniting Church in Australia
[redacted]