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### Climate-related financial disclosures: exposure draft legislation

The Financial Services Council (FSC) is a peak body which develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, and superannuation funds.

The FSC is supportive of the climate-related financial disclosure regime. It is appropriate that fund managers and superannuation funds are required to prepare climate-related financial disclosures given their importance to stewarding the savings of millions of Australians. It is also important that members of these funds understand the climate-related risks and opportunities to their portfolios.

The key issues for FSC members with the current exposure draft are:

- (i) the draft Bill does not give effect to the intention set out in the explanatory materials that entities that are exempt from lodging financial reports are also exempt from lodging sustainability reports (that is, only Chapter 2M reporting entities are within scope); and
- (ii) the **application of thresholds to entities that are required to lodge a sustainability report** is not clear in the context of a funds management or superannuation business. The current draft Bill does not make clear which threshold is to apply at the **entity level** (the Responsible Entity (RE) or the Registrable Superannuation Entity licensee (RSEL)) and which is to apply at the **fund level** (the Managed Investment Scheme (MIS) or the Registrable Superannuation Entity (RSE)).

This submission proposes minor changes to the drafting of the Bill to make these two issues clear and to achieve the policy intent set out in the explanatory materials. The proposal would apply the following thresholds at these levels:

- **Entity level** (RE and RSEL): consolidated revenue, consolidated gross assets and employee thresholds.
- **Fund level** (MIS and RSE): assets under management.

Further, this submission also covers the following issues for consideration:

- (iii) **Consolidated reporting:** While the draft Bill appears to allow for consolidated reporting, greater clarity is needed for fund managers and superannuation funds that have a variety of corporate structures. Generally, there should be flexibility to allow an RSEL and RE to report on behalf of their underlying RSEs and MISs in consolidated reports. Where an Australian parent corporation has several RSEs and REs underneath it, the corporate group should be able to produce consolidated

reports for the parent entity and its RE and RSEL subsidiaries and their underlying MISs and RSEs. This will help to reduce compliance cost.

- (iv) **Financed emissions boundaries for choice platform providers:** The applicability of the regime and scope 3 emissions reporting should be considered for choice platform providers who perform an administration service and do not make investment decisions. Clarity is also needed on the interpretation of financed emissions organisational boundaries for fund managers and superannuation funds.
- (v) **Reporting requirements for Scope 3 financed emissions:** Clarity is needed regarding the additional reporting obligations for asset management businesses under AASB ASRS2 B61.1 and how this should be applied to superannuation and funds management businesses.
- (vi) **Phasing and timing:** We are supportive of a 1 January 2025 commencement to provide companies additional time to uplift their capabilities and processes. We submit that REs and RSEs, and the underlying MISs and RSEs should be phased in together in Group 2, so that all the reporting obligations of an entity commence at the same time. This would be more logical, given RSEs and REs rely on data from the underlying RSEs and MISs to report their climate risks and opportunities. However, in the current draft legislation, RSEs and REs are reporting first.
- (vii) **Liability:** We note Treasury's position on a modified liability regime with regulator only action permitted for a period of three years. While we have previously called for the law to explicitly state that reporting is undertaken with the available data at the time, we support the AASB standard's reflection of this principle that the entity will use all reasonable and supportable information available to it at the reporting date without undue cost or effort.

If you have any questions about this submission, please do not hesitate to contact me.

Sincerely,

**Chaneg Torres**  
Policy Director  
Investments & Funds Management

**Appendix A – Climate Related Financial Disclosures Drafting Proposals**

a) **Clarity on asset managers and superannuation funds as reporting entities and clarity on phasing**

A significant concern for asset managers and superannuation funds is **continued uncertainty around the applicability of the regime at the entity and the fund level, and the potential mismatch in phasing for funds management and superannuation businesses.**

To begin with first principles, climate-related financial reporting for REs and RSEs should occur in this way; the RE or RSEL should consider their material climate risks and opportunities. In considering their material climate risks and opportunities, regard should be had to the assets under management and how climate risk might affect the entity's prospects. Climate-related financial disclosures for an RE and RSEL will therefore also include both entity level disclosures and MIS or RSEs level disclosures. The RE or RSE licensee should determine the form of disclosure that makes sense for its business. We have previously suggested that this may look like:

- Entity or RE/RSEL level: The focus at the entity level would be on the climate-related risks and opportunities to fees earned and any impact on assets under management. Certain disclosures which would be consistent across the entity and all its underlying funds could include the scenario analysis applied, transition plan, governance, risks and opportunities.
- Fund or MIS/RSE level: The focus at the fund level would be on the climate-related risks and opportunities to the value of portfolio companies/value of the total assets under management and the returns paid to members/investors. Disclosures specific to the underlying fund could focus on portfolio metrics, for example, reporting on the scope 1, and 2 emissions of portfolio companies.

We note the International Sustainability Standards Board (ISSB) standards make allowance for both entity level and fund level disclosures and provides guidance on the disclosures to be made at an entity and fund level.<sup>1</sup>

We set out below the issues which require clarification within the draft Bill and our minor suggested drafting changes to achieve that clarity. The effect of these changes is that at an entity level (RE and RSEL) it will be clear that the consolidated revenue, consolidated gross assets and employee thresholds apply, and that at the fund level (MIS and RSE) the assets under management threshold is applied.

**Recommendation 1:**

- Amend section 292A(1) to clarify that entities that are exempt from lodging financial reports are not required to prepare sustainability reports.
- Simplify the drafting by creating a 'reporting asset owner' definition, defined as 'a registered scheme or registrable superannuation entity'.
- Amend section 292A so that section 292A(3) only applies to entities that are not 'reporting asset owners'. That is, the consolidated revenue, consolidated gross assets and employee thresholds only apply to disclosing corporate entities, public companies and large proprietary companies (including at the RE and RSE licensee level).

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<sup>1</sup> See IFRS S2 Accompanying Guidance, IE25-IE38

- Amend section 292A so that section 292A(7) only applies to entities that are ‘reporting asset owners’. That is, the \$5 billion assets under management threshold only applies to ‘registered schemes’ (MISs) and RSEs.
- Amend section 1705 of the phasing of the requirements to make explicit that corporate groups that include REs and RSEs are excluded from 1705(1)(a) (Group 1) and fall under 1705(1)(b) (Group 2), allowing RSEs/REs and the underlying RSEs and MISs to commence reporting at the same time.

Policy Intention	Reference	Drafting flaw	Drafting proposal
Entities that are exempt from lodging financial reports are not required to prepare sustainability reports.	Para 1.1, 1.17, 1.22, 1.30 and 1.31 of the EM  First paragraph beneath the heading ‘Who will be included’ in the policy position statement.	<p>The draft legislation introduces a new section 292A titled ‘Who has to prepare annual sustainability reports’.</p> <p>Proposed section 292A sets out that entities that meet the size thresholds under subsections (3), (6) or (7) must prepare sustainability reports.</p> <p>However, proposed section 292A does not exclude entities that are “not generally required to report under 2M” (see para 1.31 of the EM).</p> <p>Under the current draft section 292A, an entity that meets the size thresholds will be required to report even if it is not required to prepare a financial report for that financial year under section 292 (titled ‘who has to prepare annual financial reports and directors’ reports’).</p> <p>There do not appear to be any other draft provisions that operate to exclude these entities.</p>	<p>We propose that section 292A is revised to clearly implement Treasury’s intention that an entity must prepare a sustainability report for a financial if both</p> <p>(a) the entity must prepare an annual financial report and directors’ report under section 292 for the financial year; <b>and</b></p> <p>(b) the entity meets an applicable size threshold.</p> <p>Refer to our drafting proposal in section 292A(1).</p>

		For example, under the proposed draft legislation, there is no provision that would operate to exclude an unregistered wholesale trust with assets over \$5b from the sustainability reporting requirements even though such an entity may not be required to prepare a financial report under Chapter 2M.	
Entities that are 'asset owners' (such as registrable superannuation entities and registered schemes) must apply an alternative 'value of assets' threshold.	<p>Para 1.30, 1.46, 1.109 of the EM</p> <p>Second paragraph beneath the heading 'Who will be included' in the policy position statement.</p> <p>Table set out within the section titled 'Phasing' in the policy position statement which sets out asset owners distinctly from other large entities and NGER reporters.</p>	<p>The draft legislation introduces the \$5b 'value of assets' threshold in the following places:</p> <ul style="list-style-type: none"> <li>- section 292A(7)</li> <li>- section 296B(5)</li> </ul> <p>Section 296B(5) is also referenced in section 1705(1)(b)(iii) in relation to phasing.</p> <p>However, the draft legislation does not specify that the 'value of assets' threshold is an alternate test for asset owners that applies <i>instead of</i> the size or NGER thresholds. Instead, the 'value of assets' threshold is an <i>additional</i> test with the effect that:</p> <ul style="list-style-type: none"> <li>• the size thresholds that seem intended to apply only to large entities may also apply to asset owners, and</li> <li>• the 'value of assets' threshold that seems intended to apply only to asset owners</li> </ul>	<p>To give effect to the stated intention, we have proposed a new defined term of 'reporting asset owner' to be inserted in section 9 (see Item 3 of the draft legislation) and includes registered schemes and registrable superannuation entities.</p> <p>We have also proposed changes to sections 292A, 296B and 1705 to clarify that the size thresholds do not apply to asset owners and the value of assets threshold only applies to asset owners. Taking this approach, the term 'applicable entity' which is defined in subsection 1705(2) is no longer necessary and consequential changes have been made to remove this term.</p>

		<p>may also apply to other entity types.</p> <p>Whilst the explanatory memorandum refers to 'asset owners' and suggests that this includes registrable superannuation entities and registered schemes, the term is not defined or used in the legislation.</p>	
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#### **b) Consolidated reporting**

We reiterate the need to provide flexibility for funds that rely on group level reporting to ensure that unnecessary regulatory costs are not incurred. While section 292A(2) allows for the sustainability report to be prepared on a consolidated basis where the group parent company is required to prepare consolidated financial statements across its subsidiary entities, the legislation should make clear that consolidated reporting is also permitted for consolidated groups that include an RE or RSEL and can include the asset owners for which they provide investment management and/or trustee services to. This will allow REs and RSEs to undertake sustainability reporting in a way that makes most sense for their business and the primary users of the financial reports.

**Recommendation 2:** In order to alleviate undue cost and effort and unnecessary duplication:

- Amend the legislation to allow an RE and RSEL the option to report on behalf of the underlying RSEs and MISs in consolidated reports that can be referenced in the MIS and RSE financial statements and in the PDS of associated ED securities.
- Corporate parent entities who are required to prepare consolidated financial statements with subsidiary RSEL and RE entities under 292A(2) should also be provided the option to produce one consolidated report across all underlying RSEs, REs, RSEs and MISs. This will alleviate undue cost and effort spent on producing a range of sustainability reports in locations that would not be helpful to the users of general-purpose financial reports.

Policy Intention	Reference	Drafting flaw	Drafting proposal
Allow superannuation and funds management businesses the ability to consolidate reporting at an entity level to reduce compliance costs and support the policy intention to provide climate disclosures in a format that aids decision	Para 1.36-1.38 of the EM	It is not clear whether RSEs, REs, RSEs and MISs may also be provided the option to report on a consolidated basis.	<p>Add an additional clause under 292A (2):</p> <p>Responsible entities or registrable superannuation entity licensees may consolidate reporting for related reporting asset owners of which they provide investment management or</p>

making of primary users of general-purpose financial reports.			trustee services to. Where there is a corporate holding company for the registrable superannuation entity licensee and/or the responsible entity, the corporate group head may also have the option to produce a consolidated report.
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**c) Scope 3 reporting boundaries for choice platform providers**

We have previously submitted the need to clarify the applicability of the climate-related financial disclosure regime to choice-based investment platforms, particularly with regard to the disclosure of scope 3 emissions.

Choice-based investment platforms provide investment administration services for clients to invest their funds into their choice of a range of pooled investment options. Typically, there are thousands of investment options on these investment platforms. Clients may independently direct their investments or do so through a financial advisor. As such, the platform is not involved in the investment decision. The clients who make investment decisions will hold vastly different portfolios, and accordingly, aggregated reporting on the scope 3 emission profile on a platform level is of little utility.

The platform entity through its administrators and custodian acquires or disposes of specific investments in accordance with instructions provided by investors or their financial advisor. Any gains or losses are quarantined within each member's account. The platform operator charges the client an administration fee only (not an investment management fee).

When it comes to the proposed mandatory climate reporting regime, the corporate entity of these platforms would generally report under Chapter 2M and some would be of a size to be included in Group 1.

FSC members consider that funds on choice-based investment platforms would *not* fall within the boundaries of Scope 3 for the purposes of financed emissions reporting as these funds are considered 'funds under administration' not 'funds under management' as explained above. The FSC seeks clarity from Treasury that these funds may be excluded for the purposes of climate reporting, though the FSC notes that ambiguity also stems from relevant international standards, which also do not provide clarity for choice platforms (GHG Protocol, Corporate Value Chain Reporting Standard, and PCAF Financed Emissions Standard). We also note that some members will have RSEs that are platform-based. Clarity is needed on how platform-based RSEs should report with regards to their underlying investments.

This can be achieved through clarification by the AASB on how the GHG protocol should be interpreted for those businesses, clarifying that capturing scope 3 emissions should only be necessary in instances of control of the investment decision making process where the entity itself benefits (or accrues losses) directly as a result of the outcomes of those investments. A provision could specify that 'assets under management' means assets where the trustee exercises control over the investment decisions pertaining to the underlying assets.

Separately, but in a similar vein, we expect that scope 3 reporting for separately managed accounts (SMA)

(one type of investment option referred to above) will be of limited use to clients. Clients can select from a variety of different model portfolios within an SMA. Aggregated scope 3 reporting at the SMA level would therefore be of limited usefulness. Flexibility in the AASB standards to address this issue would be welcome.

**Recommendation 3:** The regime should provide certainty for platform providers and the disclosure of scope 3 emissions, recognising that platforms do not exercise investment decisions with regard to the funds on their investment menu.

**d) Reporting requirements for scope 3 financed emissions**

We believe that the regime as it stands, read together with the AASB standards, allows for confidence in the reporting of scope 3 emissions, recognising that it will take time for the quality and the availability of data to develop. We would welcome greater clarity as to how the reporting requirements for Scope 3 reporting at the entity level and the fund level connect with the requirements under the AASB standards. That is, clarity should be provided as to what is mandatory or optional.

Section 31.1 of draft ASRS2 makes it mandatory for an entity to disclose Scope 3 emissions. B37 also states that an entity that participates in activities ‘associated with asset management...shall disclose additional information about financed emissions associated with those activities as part of the entity’s disclosure of its scope 3 greenhouse gas emissions’. However, the Corporate Value Chain methodology states that for ‘managed investments and client services’ which includes ‘investments managed by the reporting company on behalf of clients or services provided by the reporting company to clients including investment and asset management’, that companies **may** account for emissions from managed investments in scope 3 (investments). B61.1 states that an entity that participates in ‘asset management’ ‘**shall consider** disclosing...’ This implies that for fund managers and superannuation funds, disclosure of financed emissions, which is Scope 3 for MISs and RSEs, is optional.

It is also not clear how an entity that participates in asset management activities or asset management is to be understood, and as noted above, we consider platforms as engaged in ‘asset administration’ rather than ‘asset management’. While this may be primarily a matter for the AASB, we encourage Treasury to communicate with the AASB to flow through any clarification of ‘asset owner’ in the legislation as we have suggested in this submission onto the AASB standards.

**Recommendation 4:** We support the flexibility provided by the regime for the reporting of scope 3 emissions. Greater clarity around the boundaries for scope 3 reporting for fund managers and superannuation funds is needed.

**e) Timing of the regime**

We have previously raised the need to ensure appropriate timing in the regime for asset managers, given that asset managers who fell under phase 1 would have to report their scope 3 emissions early on without being able to rely on the reports of many underlying companies, creating a significant timing mismatch. Any extra timing to allow reporting entities to prepare is welcome and we would support a 1 January 2025 commencement. If a 1 January 2025 commencement is agreed to, clarification would be welcome around the expectation for reporting entities given only half of the year’s data would be available for FY25 reporting.



We welcome the exposure draft providing that scope 3 emissions would only apply from the second reporting year onward for an entity. The FSC's concerns about phasing would be further addressed if REs and RSEs were clearly phased in under phase 2 (from 1 July 2026 onward under the current draft) to commence at the same time as the underlying RSEs and MISs. The issue of a mismatch in phasing for asset managers and superannuation funds is also addressed by the allowance of estimates under the AASB standards. We note the standards explicitly recognize that a reporting entity may have a different reporting period from some or all of the entities in its value chain, and the entity is therefore only expected to use information that it can obtain without undue cost or effort. (ASRS2 B19)

**Recommendation 5:** We support a 1 January 2025 commencement. We also submit that consolidated corporate groups that contain funds management and superannuation entities and their underlying funds should report together in Group 2.

**f) Liability regime**

In order for companies to be confident in providing climate-related financial disclosures with more detail there should be flexibility with the regime's liability provisions. We have previously submitted that the legislation should clearly state that reporting entities should do everything reasonably possible to comply with the reporting regime or explain the reasons why they are unable to meet certain obligations (such as lack of data availability or reliable estimates). The law should also explicitly state that reporting is undertaken with the available data at the time.

We welcome the exposure draft's limitation of litigation in the first three years to regulator only action for certain forward-looking statements. We also note that the AASB does appear to reflect the principle we have proposed by stating in several provisions including scope 3 emissions and scenario analysis that the entity will use ***'all reasonable and supportable information available to it at the reporting date without undue cost or effort.'***

**Recommendation 6:** We support the flexibility provided by the AASB standards. This can be bolstered by greater certainty provided in the legislation.

EXPOSURE DRAFT

EXPOSURE DRAFT

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Inserts for  
**Treasury Laws Amendment Bill 2024:**  
**Climate-related financial disclosure**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule #	The day after this Act receives the Royal Assent.	

# EXPOSURE DRAFT

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## Schedule #—Amendments

### Part 1—Sustainability reporting

#### *Australian Securities and Investments Commission Act 2001*

##### **1 Section 5 (after paragraph (c) of the definition of *books*)**

Insert:

(ca) sustainability reports or sustainability records, however compiled, recorded or stored; and

#### *Corporations Act 2001*

##### **2 Section 9 (after paragraph (c) of the definition of *books*)**

Insert:

(ca) sustainability reports or sustainability records, however compiled, recorded or stored; and

##### **3 Section 9**

Insert:

*climate statements* means annual climate statements under sections 296A and 296B.

*greenhouse gas* has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

*reporting asset owner* means a [registered scheme or registrable superannuation entity \(and for the avoidance of doubt includes a disclosing entity that is also a registered scheme\)](#).

*scope 1 emission* of greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

*scope 2 emission* of greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

*scope 3 emissions* has the same meaning as in the Corporate Value Chain (Scope 3) Accounting and Reporting Standard, published by the World Business Council for Sustainable Development and the World Resources Institute, as existing on the commencement of this definition.

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Note: The standard could in 2023 be viewed on the Greenhouse Gas Protocol website (<https://ghgprotocol.org>).

*sustainability records* includes documents and working papers needed to explain the methods, assumptions and evidence from which climate statements, notes to climate statements, and statements mentioned in paragraph 292A(1)(c) are made up.

*sustainability report* means an annual sustainability report required under section 292A.

Note: Sections 296A and 296B deal with the contents of annual sustainability reports.

## 4 Subsection 250N(3) (note 1)

After “annual financial report,” insert “sustainability report,”.

## 5 Paragraph 250R(1)(a)

After “financial report,” insert “sustainability report,”.

## 6 Chapter 2M (heading)

After “Financial reports”, insert “, sustainability reports”.

## 7 Subsection 285(1)

Repeal the subsection (not including the table), substitute:

*Obligations under this Chapter—companies, registered schemes, registrable superannuation entities and disclosing entities*

(1) Under this Chapter:

- (a) all companies, registered schemes, registrable superannuation entities and disclosing entities must keep financial records (see sections 286 to 291); and
- (b) some must keep sustainability records (see section 286A); and
- (c) some must prepare financial reports and sustainability reports.

All those that have to prepare financial reports or sustainability reports have to prepare them annually; disclosing entities have to prepare half-year financial reports as well.

(1AA) The following table sets out what is involved in annual financial and sustainability reporting:

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## 8 Subsection 285(1) (table heading)

After “annual financial”, insert “and sustainability”.

## 9 Subsection 285(1) (after table item 1)

Insert:

1A	prepare sustainability report	s. 296A, 296B	The sustainability report includes the following: <ul style="list-style-type: none"><li>• climate statements;</li><li>• disclosures and notes;</li><li>• statements required by legislative instrument;</li><li>• directors’ declaration.</li></ul>
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## 10 Subsection 285(1) (table item 4, column headed “steps”)

After “financial report”, insert “, sustainability report”.

## 11 Subsection 285(1) (table item 5, column headed “steps”)

After “financial report”, insert “, sustainability report”.

## 12 Subsection 285(1) (table item 6, column headed “steps”)

After “financial report”, insert “, sustainability report”.

## 13 Section 285A (at the end of the table)

Add:

4	Company limited by guarantee with annual revenue or, if part of a consolidated entity, annual consolidated revenue of \$1 million or more and which meets sustainability reporting thresholds in section 292A.	Must prepare a financial report. Must prepare a sustainability report. Must prepare a directors’ report, although less detailed than that required of other companies. Must have financial report and sustainability report audited.	Sections 292, 292A, 296A, 296B, 298, 300B, 301, 301A, 307AB, 316A
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Must give reports  
to any member who  
elects to receive  
them.

## 14 Part 2M.2 (heading)

After “Financial”, insert “and sustainability”.

## 15 After section 286

Insert:

### 286A Obligation to keep sustainability records

- (1) If an entity must prepare a sustainability report for a financial year, the entity must keep written sustainability records that correctly explain and record its preparation of the following parts of the sustainability report:

- (a) the climate statements;
- (b) any notes to the climate statements;
- (c) any statements mentioned in paragraph 292A(1)(c).

Note: Section 9 defines *sustainability records*.

*Period for which records must be retained*

- (2) The sustainability records must be retained for 7 years after the sustainability report to which the records relate is completed.

*Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## 16 Subsections 287(1) and (2) and 288(1)

After “financial”, insert “and sustainability”.

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## 17 Section 289 (heading)

Before “records”, insert “financial”.

## 18 After section 289

Insert:

### 289A Place where sustainability records are kept

- (1) An entity may decide where to keep the sustainability records.

#### *Records kept outside this jurisdiction*

- (2) If sustainability records about particular matters are kept outside this jurisdiction, sufficient written information about those matters must be kept in this jurisdiction to enable sustainability statements that make the disclosures required by section 296D to be prepared. The entity must give ASIC written notice in the prescribed form of the place where the information is kept.

- (3) ASIC may direct an entity to produce specified sustainability records that are kept outside this jurisdiction.

- (4) The direction must:

- (a) be in writing; and
- (b) specify a place in this jurisdiction where the records are to be produced (the place must be reasonable in the circumstances); and
- (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

- (5) The entity must comply with the direction.

#### *Offences*

- (6) An offence based on subsection (2) or (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## 19 Subsections 290(1) and (2)

After “financial”, insert “and sustainability”.

## 20 Part 2M.3 (heading)

After “Financial”, insert “and sustainability”.

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## 21 Division 1 of Part 2M.3 (heading)

After “Annual financial reports”, insert “, sustainability reports”.

## 22 After section 292

Insert:

### 292A Who has to prepare annual sustainability reports

~~(1)–(4)~~ Subject to subsection (2), an entity must prepare a sustainability report for a financial year if:

~~(a) –the entity must prepare an annual financial report and directors’ report under section 292 for the financial year; and~~

~~(b) if:~~

~~(i) the entity is not a reporting asset owner, subsection (3) or; (6) or (7) applies to the entity for the financial year; or~~

~~(ii) the entity is a reporting asset owner, subsection (6) or (7) applies to the entity for the financial year ;~~

Note: For financial years commencing before 1 July 2027, only certain entities are required to prepare a sustainability report: see Part 10.75.

~~(2)–(2)~~ Despite subsection (1)

~~(a) Responsible entities or registrable superannuation entities may consolidate reporting for related reporting asset owners. Where there is a corporate holding company for the registrable superannuation entity licensee and/or the responsible entity, the corporate group head may also have the option to produce a consolidated report.~~

~~if:~~ ~~(b)~~ Despite subsection (1) if

~~(ia)~~ the accounting standards require an entity (the *group head*) to prepare financial statements in relation to a consolidated entity for the financial year; and

~~(iib)~~ the group head elects to prepare a sustainability report for the consolidated entity for the financial year;

then:

~~(iiie)~~ the group head is the only entity in the consolidated entity that must prepare a sustainability report for the financial year; and

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(ivd) the sustainability report must be prepared as if the consolidated entity is a single entity.

## *Thresholds for sustainability reports*

- (3) This subsection applies to an entity for a financial year if it satisfies at least 2 of the following paragraphs:
- (a) the consolidated revenue for the financial year of the entity and the entities it controls (if any) is the following amount or more:
    - (i) the amount determined under paragraph (4)(a);
    - (ii) if no amount is determined—\$50 million;
  - (b) the value of the consolidated gross assets at the end of the financial year of the entity and the entities it controls (if any) is \$25 million or more;
  - (c) the entity and the entities it controls (if any) have the following number of employees or more at the end of the financial year:
    - (i) the number determined under paragraph (4)(b);
    - (ii) if no number is determined—100.
- (4) The Minister may, by legislative instrument, determine:
- (a) an amount for the purposes of subparagraph (3)(a)(i); or
  - (b) a number for the purposes of subparagraph (3)(c)(i).
- (5) In counting employees for the purposes of subsection (3), take part-time employees into account as an appropriate fraction of a full-time equivalent.
- (6) This subsection applies to an entity for a financial year if it is:
- (a) a registered corporation under the *National Greenhouse and Energy Reporting Act 2007* at the end of the financial year; or
  - (b) required to make an application to be registered under subsection 12(1) of that Act in relation to the financial year.
- (7) This subsection applies to an entity for a financial year if the value of assets at the end of the financial year of the entity and the entities it controls (if any) is the following amount or more:
- (a) the amount determined under subsection (8);
  - (b) if no amount is determined—\$5 billion.

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- (8) The Minister may, by legislative instrument, determine an amount for the purposes of paragraph (7)(a).

*Matters worked out in accordance with standards*

- (9) For the purposes of this section:
- (a) the question whether an entity controls another entity is to be decided in accordance with accounting standards made for the purposes of paragraph 295(2)(b); and
  - (b) consolidated revenue, the value of consolidated gross assets and the value of assets are to be calculated in accordance with accounting standards in force at the relevant time; (even if the standards do not otherwise apply to the financial year of some or all of the entities concerned).

## 23 After section 296

Insert:

### 296A Contents of annual sustainability report

*Basic contents*

- (1) The sustainability report for a financial year consists of:
- (a) the climate statements for the year; and
  - (b) any notes to the climate statements; and
  - (c) any statements required under subsection (3); and
  - (b) the directors' declaration about the statements and the notes.

*Climate and other statements*

- (2) Subject to section 296B, the climate statements for the year are the climate statements in relation to the entity required by the sustainability standards.
- (3) For the purposes of paragraph (1)(c), the Minister may, by legislative instrument, require a sustainability report to include statements relating to matters concerning environmental sustainability.

*Notes to climate statements*

- (4) A sustainability report must include the following notes to the climate statements:

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- (a) any disclosures required under subsection (5);
- (b) any notes required by the sustainability standards in relation to:
- (i) the preparation of the climate statements; or
  - (ii) anything included in the climate statements; or
  - (iii) other matters concerning environmental sustainability;
- (c) notes containing any other information necessary to ensure that the climate statements and notes together make the disclosures required by section 296D.

- (5) The Minister may, by legislative instrument, require a sustainability report to include specified disclosures in relation to:
- (a) the preparation of the climate statements; or
  - (b) anything included in the climate statements; or
  - (c) other matters concerning environmental sustainability.

## *Directors' declaration*

- (6) The directors' declaration is a declaration by the directors of the following:
- (a) if the entity has included in the notes to the climate statements, in compliance with the sustainability standards, an explicit and unreserved statement of compliance with international sustainability reporting standards—that this statement has been included in the notes to the climate statements;
  - (b) whether, in the directors' opinion, the climate statements, the statements mentioned in paragraph (1)(c), and the notes to the climate statements are in accordance with this Act, including sections 296C (compliance with sustainability standards etc.) and 296D (climate statement disclosures).
- (7) The declaration must:
- (a) be made in accordance with a resolution of the directors; and
  - (b) specify the date on which the declaration is made; and
  - (c) be signed by a director.

Note: Section 1228 deals with directors' resolutions for CCIVs.

## **296B Contents of annual sustainability report—statements about having no climate risks or opportunities**

- (1) Despite subsection 296A(2), if, for a financial year:

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- 1 (a) the entity:
- 2 (i) does not face material climate risks; and
- 3 (ii) does not have material climate opportunities; and
- 4 (b) if:
- 5 (i) the entity is not a reporting asset owner, none of
- 6 subsections (2) ~~or~~ (4) ~~and (5)~~ of this section apply to
- 7 the entity; or
- 8 (i) the entity is a reporting asset owner, none of
- 9 subsections (4) or (5) of this section apply to the entity;
- 10 the climate statements for the year are a statement of the matters
- 11 mentioned in paragraph (a) of this subsection.
- 12 *Entities to which subsection (1) does not apply*
- 13 (2) This subsection applies to an entity for a financial year if it satisfies
- 14 at least 2 of the following paragraphs:
- 15 (a) the consolidated revenue for the financial year of the entity
- 16 and the entities it controls (if any) is \$200 million or more;
- 17 (b) the value of the consolidated gross assets at the end of the
- 18 financial year of the entity and the entities it controls (if any)
- 19 is \$500 million or more;
- 20 (c) the entity and the entities it controls (if any) have 250 or
- 21 more employees at the end of the financial year.
- 22 (3) In counting employees for the purposes of subsection (2), take
- 23 part-time employees into account as an appropriate fraction of a
- 24 full-time equivalent.
- 25 (4) This subsection applies to an entity for a financial year if it is:
- 26 (a) a registered corporation under the *National Greenhouse and*
- 27 *Energy Reporting Act 2007* at the end of the financial year;
- 28 or
- 29 (b) required to make an application to be registered under
- 30 subsection 12(1) of that Act in relation to the financial year.
- 31 (5) This subsection applies to an entity for a financial year if the value
- 32 of assets at the end of the financial year of the entity and the
- 33 entities it controls (if any) is \$5 billion or more.
- 34 (6) For the purposes of this section, the question whether an entity
- 35 does or does not face material climate risks or have material
- 36 climate opportunities for a financial year is to be decided in
- 37 accordance with the sustainability standards.
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(7) For the purposes of this section:

- (a) the question whether an entity controls another entity is to be decided in accordance with accounting standards made for the purposes of paragraph 295(2)(b); and
  - (b) consolidated revenue, the value of consolidated gross assets and the value of assets are to be calculated in accordance with accounting standards in force at the relevant time;
- (even if the standards do not otherwise apply to the financial year of some or all of the entities concerned).

## **296C Compliance with sustainability standards etc.**

- (1) The climate statements, the notes to the climate statements and the statements mentioned in paragraph 292A(1)(c) must comply with:
  - (a) the sustainability standards; and
  - (b) any further requirements determined under subsection (2) of this section.
- (2) For the purposes of paragraph (1)(b) of this section, the Minister may, by legislative instrument, determine requirements in relation to climate statements, notes to climate statements or statements mentioned in paragraph 292A(1)(c).

## **296D Climate statement disclosures**

- (1) The climate statements for a financial year, and the notes to the climate statements, must together disclose all of the following:
  - (a) the material climate risks the entity faces and the material climate opportunities the entity has for the financial year (if any);
  - (b) any metrics and targets of the entity for the financial year related to climate that are required to be disclosed by the sustainability standards, including metrics and targets relating to scope 1, 2 and 3 emissions of greenhouse gas;
  - (c) any governance policies of the entity related to the matters mentioned in paragraphs (a) and (b) (if any) that are required to be disclosed by the sustainability standards;
  - (d) the quantity of scope 3 emissions for the entity for:
    - (i) if the sustainability standards specify a period for the purpose of this paragraph in relation to the climate statements—that period; or
    - (ii) otherwise—the financial year.

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Note: If the climate statements and notes prepared in compliance with the sustainability standards would not require these disclosures, additional information must be included in the notes to the climate statements under paragraph 296A(4)(c).

(2) For the purposes of this section, the question of whether something is a material climate risk the entity faces or a material climate opportunity the entity has is to be worked out in accordance with the sustainability standards.

(3) Paragraph (1)(d) does not apply if the financial year is the first financial year for which the entity is required to prepare a sustainability report.

(4) This section does not apply if subsection 296B(1) applies for the financial year.

## **24 Division 4 of Part 2M.3 (heading)**

After “**Annual financial**”, insert “**and sustainability**”.

## **25 Section 314 (heading)**

After “**Annual financial**”, insert “**and sustainability**”.

## **26 After subparagraph 314(1)(a)(i)**

Insert:

(ia) the sustainability report for the year;

## **27 After paragraph 314(2)(a)**

Insert:

(aa) the sustainability report for the year; and

## **28 After paragraph 314AA(1)(a)**

Insert:

(aa) if the registrable superannuation entity is required to prepare a sustainability report for the year—the sustainability report;

## **29 Subsection 316(1)**

After “full financial report”, insert “, sustainability report (if one is required to be prepared)”.

## **30 Subsection 316(3)**

After “full financial report”, insert “, sustainability report”.

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## 31 After subsection 316A(3)

Insert:

(3A) If the company prepares a sustainability report for a financial year, the company must send a copy of the report, free of charge, to each member who has made an election for that financial year by the earlier of:

- (a) 21 days before the next AGM after the end of the financial year; and
- (b) 4 months after the end of the financial year.

Note: For the deadline for holding an AGM, see section 250N.

## 32 Subsection 316A(5)

After “subsection (3)”, insert “, (3A)”.

## 33 After section 316A

Insert:

## 316B Annual sustainability reporting to the public by other entities

(1) If:

- (a) an entity is required to prepare a sustainability report for a financial year; and
  - (b) the entity is not required by this Division to provide the sustainability report to members;
- the entity must make the sustainability report publicly available on the entity’s website on the day after the report is lodged with ASIC under section 319.

(2) An offence based on subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## 34 After paragraph 317(1)(a)

Insert:

- (aa) the sustainability report (if one is required to be prepared); and

## 35 Subsection 318(1)

After “annual financial report”, insert “, sustainability report (if one is required to be prepared)”.

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## 36 Paragraph 318(2)(b)

After “financial report”, insert “, sustainability report (if one was required to be prepared)”.

## 37 Section 322 (heading)

Omit “financial statements”, substitute “financial reports, sustainability reports”.

## 38 Subsection 322(1) (heading)

After “*Financial reports*”, insert “, *sustainability reports*”.

## 39 Subsection 322(1)

After “financial report”, insert “, sustainability report”.

## 40 Subsection 322(2A) (heading)

After “*financial report*”, insert “, *sustainability report*”.

## 41 Paragraph 322(2A)(a)

After “financial report”, insert “, sustainability report”.

## 42 Division 6 of Part 2M.3 (heading)

After “financial”, insert “and climate”.

## 43 Subsection 323(1)

After “has to prepare consolidated financial statements”, insert “or has to prepare climate statements”.

## 44 At the end of subsection 323(1)

Add “or to prepare the climate statements”.

## 45 Subsection 323B(1)

After “financial report that includes consolidated financial statements”, insert “or has to prepare a sustainability report as if a consolidated entity is a single entity”.

## 46 Section 323C

After “preparation or audit of a financial report”, insert “or sustainability report”.



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## 47 Section 323C

Omit “whose financial report is being prepared or audited”, substitute “whose reports are being prepared or audited”.

## 48 After subparagraph 713(4)(a)(i)

Insert:

- (ia) if the body has lodged with ASIC a sustainability report—the most recently lodged sustainability report;

## 49 After paragraph 715(1)(i)

Insert:

- (ia) if the body has prepared a sustainability report—include a copy of the most recent sustainability report;

## 50 After subparagraph 1013FA(2)(a)(i)

Insert:

- (ia) if the issuer of the product has lodged with ASIC a sustainability report—the most recently lodged sustainability report;

## 51 After subparagraph 1013I(3)(a)(i)

Insert:

- (ia) if the scheme has lodged with ASIC a sustainability report—the most recently lodged sustainability report;

## 52 After paragraph 1017C(3AA)(a)

Insert:

- (aa) if the entity prepared a sustainability report for a specified financial year—a copy of the sustainability report; and

## 53 Part 8B.4 (heading)

Omit “and financial reporting”, substitute “, financial reporting and sustainability reporting”.

## 54 Division 4 of Part 8B.4 (heading)

After “Financial reports”, insert “, sustainability reports”.

## 55 Subsection 1232(1)

After “financial reports”, insert “, sustainability reports”.

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## 56 Subdivision C of Division 4 of Part 8B.4 (heading)

After “financial”, insert “and sustainability”.

## 57 After paragraph 1232C(1)(a)

Insert:

(aa) in a case in which subsection 292A(1) requires the CCIV to prepare a sustainability report for a financial year—that subsection requires the CCIV to prepare a sustainability report for each of its sub-funds for the financial year; and

## 58 Paragraph 1232C(2)(a)

After “financial report”, insert “, a sustainability report”.

## 59 After paragraph 1232C(2)(b)

Insert:

(c) the documents of which the sustainability report consists under subsection 296A(1);

## 60 At the end of section 1232D

Add:

(4) A sustainability report for a sub-fund referred to in subsection 1232C(1) must comply with any further requirements prescribed by regulations made for the purposes of this subsection.

## 61 Subparagraph 1232H(1)(a)(i)

After “financial report”, insert “, sustainability report”.

## 62 Subparagraph 1232H(1)(a)(ii)

Omit “the auditor’s report on the financial report”, substitute “the auditor’s reports”.

## 63 Section 1232M (heading)

Omit “financial statements”, substitute “financial reports, sustainability reports”.

## 64 Section 1232M

After “financial report”, insert “, sustainability report”.

## 65 In the appropriate position in Schedule 3

Insert:

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Subsection 286A(3)	2 years imprisonment
Subsection 286A(4)	60 penalty units
Subsections 289A(2) and (5)	60 penalty units
Subsection 316B(1)	30 penalty units

**66 Schedule 3 (table item dealing with subsections 316A(3) and (4), column headed “Provision”)**  
After “(3)”, insert “(3A)”.

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## Part 2—Audit and assurance

### *Corporations Act 2001*

#### **67 Section 9 (definition of *audit*)**

Repeal the definition, substitute:

*audit* means:

- (a) an audit conducted for the purposes of this Act; or
- (b) without limiting paragraph (a)—a review of the following conducted for the purposes of this Act:
  - (i) a financial report for a financial year or a half-year;
  - (ii) a sustainability report for a financial year.

#### **68 Section 9 (at the end of the definition of *auditor's report*)**

Add:

; or (c) an auditor's report on an annual sustainability report required by section 301A.

#### **69 Subsection 250N(3) (note 1)**

Omit “auditor's report”, substitute “auditor's reports”.

#### **70 Paragraph 250R(1)(a)**

Omit “auditor's report”, substitute “auditor's reports”.

#### **71 Paragraph 250RA(1)(a)**

Omit “the auditor's report”, substitute “an auditor's report”.

#### **72 Paragraph 250RA(3)(c)**

Omit “the auditor's report”, substitute “an auditor's report”.

#### **73 Subparagraph 250T(1)(a)(i)**

Omit “the audit”, substitute “audits”.

#### **74 Subparagraph 250T(1)(a)(ii)**

Omit “report”, substitute “reports”.

#### **75 After subparagraph 250T(1)(a)(iii)**

Insert:

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(iiia) the policies adopted by the company in relation to the preparation of any sustainability reports the company is required to prepare; and

## **76 Subparagraph 250T(1)(a)(iv)**

Omit “the audit”, substitute “audits”.

## **77 Subsection 285(1) (after table item 1A)**

Insert:

1B	have the sustainability report audited and obtain auditor’s report	s. 301A, 307AB, 309A	Under s. 312, officers must assist the auditor in the conduct of the audit.  ASIC may use its exemption powers under s. 340 and 341 to relieve large proprietary companies from the audit requirements in appropriate cases (s. 342(2) and (3)).
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## **78 Subsection 285(1) (table item 4, column headed “steps”)**

Omit “auditor’s report”, substitute “auditor’s reports”.

## **79 Subsection 285(1) (table item 5, column headed “steps”)**

Omit “auditor’s report”, substitute “auditor’s reports”.

## **80 Subsection 285(1) (table item 6, column headed “steps”)**

Omit “auditor’s report”, substitute “auditor’s reports”.

## **81 At the end of Division 1 of Part 2M.3**

Add:

### **301A Audit of annual sustainability report**

An entity that is required to prepare a sustainability report for a financial year commencing on or after 1 July 2030 must have the sustainability report audited in accordance with Division 3 and obtain an auditor’s report.

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## 301B Limited assurance of sustainability reports before 1 July 2030

(1) An entity that is required to prepare a sustainability report for a financial year commencing between 1 July 2024 and 30 June 2030 must have the sustainability report for the financial year reviewed.

(2) However, the review is only required to cover contents of the sustainability report that are climate statements relating to scope 1 emissions or scope 2 emissions of greenhouse gases.

Note: A review of a sustainability report must be conducted in accordance with the auditing standards: see section 307AC. An auditor that reviews a sustainability report must report to members: see subsection 309A(3).

## 82 Division 3 of Part 2M.3 (heading)

Repeal the heading, substitute:

## Division 3—Audits and auditor's reports

### 83 Section 307 (heading)

Repeal the heading, substitute:

### 307 Audit of financial report

### 84 Section 307A (heading)

Repeal the heading, substitute:

### 307A Audit of financial report to be conducted in accordance with auditing standards

### 85 After section 307A

Insert:

### 307AB Audit of sustainability report

An auditor who conducts an audit of the sustainability report for a financial year must form an opinion about:

- (a) whether the sustainability report is in accordance with this Act, including sections 296C (compliance with sustainability standards etc.) and 296D (climate statement disclosures); and

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- (b) whether the auditor has been given all information, explanation and assistance necessary for the conduct of the audit.

Note: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232G.

## **307AC Audit of sustainability report to be conducted in accordance with auditing standards**

- (1) If an individual auditor, or an audit company, conducts an audit or review of the sustainability report for a financial year, the individual auditor or audit company must conduct the audit or review in accordance with the auditing standards.
- (2) If an audit firm, or an audit company, conducts an audit or review of the sustainability report for a financial year, the lead auditor for the audit or review must ensure that the audit or review is conducted in accordance with the auditing standards.

### *Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

### *Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **86 Section 307B (heading)**

Repeal the heading, substitute:

## **307B Working papers for audit of financial or sustainability report to be retained for 7 years**

## **87 Subparagraph 307B(1)(b)(ii)**

Omit “and”, substitute “or”.

## **88 At the end of paragraph 307B(1)(b)**

Add:

- (iii) an audit or review of the sustainability report for the financial year; and

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## 89 Subparagraph 307B(3)(a)(ii)

Omit “and”, substitute “or”.

## 90 At the end of paragraph 307B(3)(a)

Add:

- (iii) an audit or review of the sustainability report for the financial year; and

## 91 After paragraph 307C(1)(b)

Insert:

- or (ba) an audit or review of the sustainability report for the financial year;

## 92 After paragraph 307C(3)(b)

Insert:

- or (ba) an audit or review of the sustainability report for the financial year;

## 93 Subsection 307C(5A)

After “financial report for a financial year or half-year”, insert “, or in relation to a sustainability report for a financial year,”.

## 94 Paragraph 307C(5A)(c)

After “financial report”, insert “or sustainability report”.

## 95 After section 309

Insert:

## 309A Auditor’s report on sustainability report

*Audit of sustainability report*

- (1) An auditor who audits the sustainability report for a financial year must report to members in accordance with subsections (2), (5), (6) and (7) on whether the auditor is of the opinion that the sustainability report is in accordance with this Act, including:

- (a) section 296C (compliance with sustainability standards etc.);
  - and

- (b) section 296D (climate statement disclosures).

If the auditor is not of that opinion, the auditor’s report must say why.



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- (2) The auditor's report must describe:
- (a) any defect or irregularity in the sustainability report; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307AB(b).

## *Review of sustainability report*

- (3) An auditor who reviews the sustainability report must report to members in accordance with subsections (4), (5), (6) and (7) on whether the auditor became aware of any matter in the course of the review that makes the auditor believe that the sustainability report does not comply with Division 1.

- (4) A report under subsection (3) must:
- (a) describe any matter referred to in subsection (3); and
  - (b) say why that matter makes the auditor believe that the sustainability report does not comply with Division 1.

## *Requirements for reports*

- (5) The auditor's report must include any statements or disclosures required by the auditing standards.
- (6) If the sustainability report includes additional information under paragraph 296A(4)(c), the auditor's report must also include a statement of the auditor's opinion on whether the inclusion of that additional information was necessary to make the disclosures required by section 296D.
- (7) The auditor's report must specify the date on which it is made.

## *Offences*

- (8) An offence based on subsection (1) or (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **96 At the end of paragraph 314(1)(a)**

Add:

- (iv) the auditor's report on the sustainability report for the year;

## **97 After paragraph 314(2)(d)**

Insert:

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(da) the auditor's report on the sustainability report for the year;  
and

## **98 At the end of subsection 314AA(1)**

Add:

; (d) the auditor's report on the sustainability report.

## **99 After subsection 316A(3A)**

Insert:

(3B) If the company obtains an auditor's report on the sustainability report, the company must send a copy of the report, free of charge, to each member who has made an election for that financial year by the earlier of:

(a) 21 days before the next AGM after the end of the financial year; and

(b) 4 months after the end of the financial year.

Note: For the deadline for holding an AGM, see section 250N.

## **100 Subsection 316A(5)**

Before "or", insert ", (3B)".

## **101 Paragraph 317(1)(c)**

Omit "report", substitute "reports".

## **102 Paragraph 318(2)(b)**

Omit "auditor's report", substitute "auditor's reports".

## **103 Subsection 323A(1)**

After "financial report that includes consolidated financial statements", insert "or a sustainability report that includes consolidated climate statements".

## **104 Subsection 336(3)**

After "financial reports", insert "or sustainability reports".

## **105 At the end of section 336**

Add:

(5) If:

(a) the AUASB makes an auditing standard; and

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- 1 (b) the standard applies to sustainability reports in relation to  
2 particular periods under subsection (3); and  
3 (c) an auditor is conducting an audit of a sustainability report in  
4 relation to a period that occurs before the start of the earliest  
5 of those periods;  
6 the auditor may elect to apply the auditing standard to that audit  
7 unless the standard says otherwise. The election must be recorded  
8 in the auditor's report.

9 **106 Paragraph 1017C(3AA)(c)**

10 Repeal the paragraph, substitute:

- 11 (c) a copy of the auditor's report on the financial report; and  
12 (d) a copy of the auditor's report on the sustainability report.

13 **107 After subsection 1232D(2)**

14 Insert:

- 15 (2A) Despite subsection 1232C(2), subsection 301A(1) applies to a  
16 CCIV referred to in subsection 1232C(1) in relation to the  
17 sustainability report for each of its sub-funds.

18 **108 After paragraph 1232G(1)(a)**

19 Insert:

- 20 (aa) a sustainability report prepared as described in  
21 subsection 1232C(1);

22 **109 Subparagraph 1232H(1)(a)(ii)**

- 23 Omit "the auditor's report on the financial report", substitute "the  
24 auditor's reports".

25 **110 In the appropriate position in Schedule 3**

26 Insert:

27

Subsection 307AC(3)	2 years imprisonment
Subsection 307AC(4)	50 penalty units
Subsections 309A(1) and (3)	50 penalty units

28 **111 Schedule 3 (table item dealing with subsections 316A(3)**  
29 **and (4), column headed "Provision")**

- 30 Before "and", insert ", (3B)".
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## Part 3—Sustainability and auditing standards

### *Australian Securities and Investments Commission Act 2001*

#### **112 After paragraph 227(1)(b)**

Insert:

- (ba) to make sustainability standards under section 336A of the Corporations Act for the purposes of the corporations legislation (other than the excluded provisions); and

#### **113 Paragraph 227(1)(ca)**

After “sustainability standards”, insert “for other purposes”.

#### **114 Subsection 227(1) (notes 2 and 3)**

Repeal the notes, substitute:

- Note 2: The standards mentioned in paragraphs (b) and (ba) are made and have legal effect under the Corporations Act. The standards mentioned in paragraphs (c) and (ca) do not have legal effect under the Corporations Act but may be applied or adopted by some other authority.

#### **115 Subsection 227B(1) (note 1)**

Repeal the note, substitute:

- Note 1: The standards mentioned in paragraph (a) are made and have legal effect under the Corporations Act. The standards mentioned in paragraph (b) do not have legal effect under the Corporations Act but may be applied or adopted by some other authority.

### *Corporations Act 2001*

#### **116 Section 9 (definition of *commencement*)**

Repeal the definition, substitute:

***commencement***, in relation to an accounting standard or a sustainability standard, means:

- (a) in the case of an accounting standard or a sustainability standard as originally in effect—the time when the accounting standard or sustainability standard took effect; or
- (b) in the case of an accounting standard or a sustainability standard as varied by a particular provision of an instrument made under section 334 or 336A—the time when that provision took effect.

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## 117 Section 9

Insert:

*sustainability standard* means:

- (a) a standard in force under section 336A; or
- (b) a provision of such a standard as it so has effect.

## 118 Part 2M.5 (heading)

After “Accounting”, insert “, sustainability”.

## 119 Subsection 334(1)

After “purposes of this Act”, insert “or the ASIC Act”.

## 120 Subsection 334(1)

After “inconsistent with this Act”, insert “, the ASIC Act”.

## 121 Subsection 336(1)

After “purposes of this Act”, insert “or the ASIC Act”.

## 122 Subsection 336(1)

After “inconsistent with this Act”, insert “, the ASIC Act”.

## 123 Section 336

After “financial” (wherever occurring), insert “or sustainability”.

## 124 After section 336

Insert:

### 336A Sustainability standards

- (1) The AASB may, by legislative instrument, make sustainability standards for the purposes of this Act or the ASIC Act. The standards must not be inconsistent with this Act, the regulations or a legislative instrument made under this Act.
  - (2) A sustainability standard applies to:
    - (a) periods ending after the commencement of the standard; or
    - (b) periods ending, or starting, on or after a later date specified in the standard.
  - (3) A company, registered scheme, registrable superannuation entity or disclosing entity may elect to apply the sustainability standard to
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1 an earlier period unless the standard says otherwise. The election  
2 must be made in writing by the directors.

3 **125 Section 337 (heading)**

4 Omit “accounting and auditing”, substitute “accounting, auditing  
5 and sustainability”.

6 **126 Section 337**

7 Omit “accounting or auditing”, substitute “accounting, auditing or  
8 sustainability”.

9 **127 Section 338 (heading)**

10 Omit “accounting standard or auditing”, substitute “accounting,  
11 auditing or sustainability”.

12 **128 Paragraph 338(1)(a)**

13 Omit “334 or 336”, substitute “334, 336 or 336A”.

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## Part 4—Application

### *Corporations Act 2001*

#### 129 In the appropriate position in Chapter 10

Insert:

## Part 10.75—Application provisions relating to Schedule # of the Treasury Laws Amendment Act 2024

### 1705 Application of amendments—sustainability reporting

(1) Section 292A, as inserted by Part 1 of Schedule # to the *Treasury Laws Amendment Act 2024*, applies to a person for a financial year if:

(a) all of the following subparagraphs apply:

(i) the financial year commences between 1 July 2024 and 30 June 2026;

(ii) the person is ~~an applicable entity~~ not a reporting asset owner; and

(iii) subsection (3) or (5) of this section applies to the person for the financial year; or

(b) all of the following subparagraphs apply:

(i) the financial year commences between 1 July 2026 and 30 June 2027; and

(ii) if:

(A) the person is not a reporting asset owner, subsection 296B(2) or (4) applies to the person for the financial year; or

(A) the person is ~~an applicable entity~~ a reporting asset owner subsection 296B(4) or (5) applies to the person for the financial year; and

(B) ~~(iii)~~ subsection 296B(2), (4) or (5) applies to the person for the financial year; or

(c) the financial year commences on or after 1 July 2027.

~~(2) For the purposes of this section, an *applicable entity* is a company, disclosing entity, registered scheme or registrable superannuation entity.~~

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*Applicable entities with new reporting for a financial year  
commencing between 1 July 2024 and 30 June 2026*

- (3) This subsection applies to an ~~applicable~~ entity for a financial year if it satisfies at least 2 of the following paragraphs and is not an entity that is part of a corporate group with reporting asset owners:
- (a) the consolidated revenue for the financial year of the ~~applicable~~ entity and the entities it controls (if any) is \$500 million or more;
  - (b) the value of the consolidated gross assets at the end of the financial year of the ~~applicable~~ entity and the entities it controls (if any) is \$1 billion or more;
  - (c) the ~~applicable~~ entity and the entities it controls (if any) have 500 or more employees at the end of the financial year.
- (4) In counting employees for the purposes of subsection (3), take part-time employees into account as an appropriate fraction of a full-time equivalent.
- (5) This subsection applies to an ~~applicable~~ entity for a financial year if:
- (a) it is:
    - (i) a registered corporation under the *National Greenhouse and Energy Reporting Act 2007* at the end of the financial year; or
    - (ii) required to make an application to be registered under subsection 12(1) of that Act in relation to the financial year; and
  - (b) its group meets a threshold for the financial year within the meaning of subsection 13(1) of that Act.

*Matters worked out in accordance with standards*

- (6) For the purposes of this section:
- (a) the question whether an ~~applicable~~ entity controls another entity is to be decided in accordance with accounting standards made for the purposes of paragraph 295(2)(b); and
  - (b) consolidated revenue and the value of consolidated gross assets are to be calculated in accordance with accounting standards in force at the relevant time;
- (even if the standards do not otherwise apply to the financial year of some or all of the entities concerned).



# EXPOSURE DRAFT

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## 1705A Application of amendments—material climate risks and opportunities

Subsection 296B(1) does not apply to an entity for a financial year commencing between 1 July 2024 and 30 June 2027.

## 1705B Application of amendments—limited immunity for statements in new sustainability reporting

(1) No action, suit or proceeding lies against a person in relation to a statement:

(a) made in a sustainability report for a financial year commencing between 1 July 2024 and 30 June 2027 for the purpose of complying with a sustainability standard; and

(b) about any of the following:

(i) scope 3 emissions;

(ii) scenario analysis (within the meaning given by the sustainability standards for the purposes of this subparagraph).

Note: This subsection does not apply to a statement made other than in a sustainability report (even if such a statement is also made in a sustainability report).

(2) Subsection (1) does not apply to an action, suit or proceeding if it is criminal in nature.

(3) Subsection (1) does not apply to an action, suit or proceeding (the **legal action**) if all of the following are satisfied:

(a) the legal action is civil in nature;

(b) the legal action is brought by ASIC;

(c) either or both of the following are satisfied:

(i) the legal action relates to alleged contravention of a provision of a law of the Commonwealth that has a fault element;

(ii) the only remedy sought in connection with the legal action is an injunction or declaration.

# EXPOSURE DRAFT

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## 1705C Application of amendments—ASIC directions

### *Giving directions*

- (1) If ASIC considers that a statement made by an entity in a sustainability report for a financial year commencing between 1 July 2024 and 30 June 2027 is:
- (a) incorrect; or
  - (b) incomplete; or
  - (c) misleading in any way;
- ASIC may, by written notice given to the entity, direct the entity to do any of the following:
- (d) confirm to ASIC that the statement is correct or complete;
  - (e) explain to ASIC the statement;
  - (f) correct, complete or amend the statement in accordance with the direction.
- (2) The entity must comply with the direction.
- (3) Before giving a direction under subsection (1), ASIC must:
- (a) hold a hearing with the entity; and
  - (b) give a reasonable opportunity to the entity to make oral or written submissions to ASIC on whether the direction should be given.

### *Varying and revoking directions*

- (4) ASIC may vary a direction given under subsection (1) in like manner and subject to like conditions.
- (5) ASIC may revoke a direction given under subsection (1) by written notice given to the entity.

### *Offences*

- (6) An offence based on subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## 1705D Requirement to make auditing standards for review of climate statements

- (1) The AUASB must make auditing standards under section 336 that provide standards for reviews under subsection 301B(1).

# EXPOSURE DRAFT

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1 (2) The first such auditing standards must be made before 1 July 2024.

2 **1705E Review of operation of laws**

3 (1) The Minister must cause a review of the operation of the  
4 amendments made by Schedule # of the *Treasury Laws*  
5 *Amendment Act 2024* to be conducted.

6 (2) The review must be conducted as soon as practicable after 1 July  
7 2028.

8 (3) The Minister must cause a written report of the review to be  
9 prepared.

10 (4) The Minister must cause a copy of the report to be tabled in each  
11 House of the Parliament within 15 sitting days of that House after  
12 the report is given to the Minister.

13 **130 In the appropriate position in Schedule 3**

14 Insert:

15

Subsection 1705C(2)

60 penalty units

16