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8 February 2024

Climate Disclosure Unit
Climate & Energy Division
The Treasury
by email: climatereportingconsultation@treasury.gov.au

Dear Climate Disclosure Unit,

***Feedback on exposure draft of climate disclosure legislation***

The Centre for Policy Development congratulates the team at Treasury on the draft legislation to mandate strong climate-related financial disclosures from both listed and unlisted companies. We believe the policy is suitably ambitious, responds to different market needs, and has good alignment with international standards. CPD is glad to see many of our recommendations reflected in this exposure draft.[1]

CPD is an independent policy institute that focuses on critical long-term policy challenges, including climate risk governance. For several years – starting with a legal opinion from Noel Hutley SC in 2016 – CPD has been at the forefront of thinking about corporate disclosure and management of climate risks in Australia.[2]

This submission covers both the logistics of coverage and roll-out as well as the content of the required disclosures. We broadly agree with the current draft legislation, however advise the Treasury to: (1) mandate that all Group 3 entities must, as a baseline, disclose their Scope 1 and 2 emissions to support the reporting of other entities; (2) use a broader threshold beyond being an NGER controlling corporation to identify economic exposure of a reporting entity to carbon-intensive processes; and (3) provide a central scenario that reporting entities may use in their disclosures.

We strongly support the direction of the Treasury's draft legislation. The following features should not be compromised, as they constitute a comprehensive, coherent, and transformative reform:

- most importantly, both listed and unlisted companies must make disclosures, as well as carbon-exposed entities that are not covered by Chapter 2M of the *Corporations Act 2001*;
- an ambitious but phased approach to rolling out the requirements, commencing in FY2024-25 with a first tranche of particularly large and carbon-exposed firms;

[1] See our prior submissions: T Phillips and M Hammerle, *Mandatory climate-related financial disclosure: Response to Commonwealth Treasury consultation paper*, CPD, 2023; and T Phillips, *Feedback on proposed climate-related financial disclosure framework: Submission to Treasury*, CPD, 2023.

[2] N Hutley SC and S Hartford-Davis, *Climate change and directors' duties: Memorandum of opinion*, CPD and The Future Business Council, 2016; N Hutley SC and S Hartford-Davis, *Climate change and directors' duties: Supplementary memorandum of opinion*, CPD, 2019; N Hutley SC and S Hartford-Davis, *Climate change and directors' duties: Further supplementary memorandum of opinion*, CPD, 2021; A Dibley, N Young and T Phillips, *Raising the bar: Managing climate change risk in public authorities*, CPD, 2022.

- assurance requirements will ramp up for each of the three groups in Treasury's proposed sequencing over a number of years, allowing the framework to mature over time; and
- companies must base their disclosures on standards developed by the Australian Accounting Standards Board, which in turn are based on the work of the ISSB, with modifications where necessary to meet the needs of Australian stakeholders. Alongside other considerations, the draft AASB standards means the following are achieved through the policy:
  - all three scopes of emissions (Scopes 1, 2, and 3) are included in mandatory reporting;
  - teporting entities will need to disclose transition plans detailing their strategy and decision-making; and
  - there is a clear framework around how to report the use of offsets.

**Notes on coverage and roll-out:**
The current draft legislation requires Group 3 entities to only make climate-related financial disclosures if they face material climate-related risks or opportunities for the financial reporting period. We do not believe this degree of flexibility is necessary, or would lead to a good outcome for the financial system as a whole. Instead, we recommend that, at a minimum, all Group 3 entities should disclose their Scope 1 and 2 emissions – disclosures that are necessary for other companies to understand and report their own Scope 3 emissions.

If flexibility is required for Group 3 entities, then this flexibility can come through a materiality exemption for reporting Scope 3 emissions and information about their transition planning strategy and decision-making.

**Recommendation 1:** As a minimum baseline for reporting, Group 3 should be required to disclose Scope 1 and 2 emissions.

As for Group 1, the types of carbon-exposed entities in this group should go beyond NGER controlling corporations. The important aspect for investors to understand risk exposure is less about direct emissions and more about economic exposure of entities to carbon-intensive businesses. NGER focuses on Scope 1 and 2 emissions, however entities can also be carbon-exposed if they have high Scope 3 emissions. Besides being an NGER controlling corporation, the Government should also consider the inclusion of entities with:

- a significant ownership stake in, but not control of, an NGER controlling corporation;
- significant downstream emissions from the immediate use of their products – e.g. companies in certain sectors, or where, for example, over 10% of their revenue comes from selling fossil fuels; or
- business structures that rely on highly carbon-intensive immediate inputs – e.g. companies in certain sectors (e.g. construction) or that use more than a specified amount of inputs such as steel, cement, aviation services (air travel), and aluminium.

**Recommendation 2:** Inclusion of entities in Group 1 based on carbon exposure should extend beyond the currently proposed NGER threshold.

**Notes on the use of comparable scenarios:**
The draft AASB standards do not prescribe specific scenarios that entities must assess in their disclosures, beyond requiring disclosure against at least two possible future states, one of which must align with the global temperature goal in the *Climate Change Act 2022* ("well below 2°C"). In contrast, we believe there is value in having at least one central scenario that reporting entities use

in their analysis, as this would enable easier comparison of disclosures by investors. It is of little use to investors and markets if entities pick and choose scenarios to generate flattering results. This defeats the purpose of mandating disclosure. The publication of a central scenario would achieve provision of information that is well-understood and consistent across disclosures.

A central scenario does not have to be mandated by the AASB standards – Treasury could publish or recommend a scenario as a norm-setting exercise.

If the only guidance remains that one scenario must be consistent with "well below 2°C", then an entity's second chosen scenario should be materially different to "well below 2°C", not only marginally different. For instance, the New Zealand External Reporting Board requires disclosures to analyse a 1.5° world, a 3° world, and a third scenario of the entity's choosing.[3]

**Recommendation 3:** The government should publish at least one central scenario that reporting entities are encouraged to (or must) disclose against.

**Recommendation 4:** An entity's second chosen scenario should be materially different from the required "well below 2°C" scenario.

We thank the Treasury for conducting a thorough consultation process with many opportunities to contribute, both at the point of this exposure draft and the several opportunities over the last year. We wish the Treasury the best of luck with implementing this important policy reform.

Regards,

**Mara Hammerle**
Policy Adviser

**Toby Phillips**
Program Director

[3] *Aotearoa New Zealand Climate Standard 1 climate-related disclosures*, NZ External Reporting Board, 2022.