

2022–2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT BILL 2024: CLIMATE-RELATED
FINANCIAL DISCLOSURE

EXPOSURE DRAFT EXPLANATORY MATERIALS

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
AASB	Australian Accounting Standards Board
AGM	Annual general meeting
AUASB	The Auditing and Assurance Standards Board
Bill	TBC
Corporations Act	<i>Corporations Act 2001</i>
IAASB	International Auditing and Assurance Standards Board
ISSB	The International Sustainability Standards Board
NGER	National Greenhouse and Energy Reporting
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007</i>

Chapter 1: Climate-related financial disclosure

Outline of chapter

- 1.1 Schedule # to the Bill requires entities that lodge financial reports under Chapter 2M of the Corporations Act, meet certain minimum size thresholds, and/or have emissions reporting obligations under the NGER scheme, to make disclosures relating to climate in accordance with sustainability standards made by the AASB. The amendments phase in the new obligations over a period of four years.
- 1.2 Climate disclosures will be subject to similar assurance requirements to those currently in the Corporations Act for financial reports and will require entities to obtain an assurance report from their financial auditor. The extent and level of assurance required will be set out in Australian assurance standards for climate disclosures, developed by the AUASB.
- 1.3 These amendments ensure that relevant entities disclose their climate- related plans, financial risks and opportunities, in accordance with sustainability standards made by the AASB. The new requirements build on the existing financial reporting framework through inclusion of a new ‘sustainability report’ that is required to be prepared for certain entities.
- 1.4 Businesses, investors, regulators and the public will have a clear and common understanding of obligations for entities to disclose climate-related financial risks and opportunities, in line with international standards.
- 1.5 All legislative references in this Chapter are to the Corporations Act unless otherwise specified.

Context of amendments

- 1.6 Climate change is recognised internationally as presenting material risks to the global financial system – risks which need to be managed by capital markets, regulators and corporations. These include physical risks of climate change and the transition risks associated with the market, regulatory and technological changes brought on by efforts to mitigate climate change.
- 1.7 Improving climate-related financial disclosures will support regulators to assess and manage systemic risks to the financial system as a result of climate change and efforts taken to mitigate its effects. In-scope entities will be required to disclose information about their climate-related financial risks and

opportunities in line with AASB sustainability standards in the annual financial report.

- 1.8 The ISSB has developed a global baseline for sustainability and climate-related financial disclosure reporting standards, which aims to improve consistency and comparability across entities reporting. Climate-related disclosure standards are outlined in IFRS S2 Climate-related Disclosures, which was issued for consultation in 2022. The ISSB released its final standards (S1 and S2) in June 2023, with further ISSB guidance released throughout the second half of 2023.
- 1.9 The proposed AASB sustainability standards are intended to align with the ISSB standards as much as possible, with modifications where necessary to apply these standards in the Australian context. For example, incorporating Australia’s national greenhouse gas emissions estimation methodologies and international climate change commitments.

Summary of new law

- 1.10 The amendments set out new climate-related financial reporting requirements for entities, leveraging the existing financial reporting regime under Chapter 2M of the Corporations Act. Chapter 2M provides for record-keeping, financial reports and audit. Part 2M.3 covers financial reporting including who must prepare annual financial reports and the contents of those annual financial reports.
- 1.11 The amendments include a new ‘sustainability report’ for a financial year which entities will need to prepare in addition to financial statements, notes to financial statements and a director declaration which form part of an annual financial report.
- 1.12 The sustainability report for a financial year consists of:
- the climate statement for the year;
 - notes to the climate statement;
 - any statements prescribed by the regulations for the year; and
 - the directors’ declaration about the compliance of the statements with the relevant sustainability standards.
- 1.13 The climate statements are prepared in line with the relevant sustainability standards issued by the AASB.
- 1.14 A phased-in approach is used for the obligation to prepare a sustainability report, starting with a relatively limited group of very large entities that expands to apply to progressively smaller large entities.

- 1.15 The size thresholds that determine the year in which entities are required to commence climate reporting are based on existing concepts in the Corporations Act and Regulations. That is, consolidated gross assets, consolidated revenue and employee thresholds which apply to the company or entity and any entities it controls at the end of the financial year.
- 1.16 In addition, NGER entities are required to make climate-related financial disclosures based on the publication threshold which determines whether the Clean Energy Regulator publishes emissions data about reporters.
- 1.17 Small and medium entities, below the relevant size thresholds (unless they are NGER controlling corporations) are not required to make climate-related financial disclosures. Neither are entities that are exempt from lodging financial reports under Chapter 2M.
- 1.18 A modified liability approach will apply for a transitional period to ensure that reporting entities are allowed time to develop experience and practice to report to the required standards. After this period, the existing liability arrangements will apply.

Detailed explanation of new law

Part 1 – Climate-related financial disclosures

New reporting requirements

- 1.19 To support the amendments, the following definitions are included in the Corporations Act:
- ‘climate statements’ refer to annual climate statements under section 296A;
 - ‘greenhouse gas’ has the same meaning as in the NGER Act;
 - ‘scope 1 emission’ of greenhouse gas has the same meaning as in the NGER Act;
 - ‘scope 2 emissions’ of greenhouse gas has the same meaning as in the NGER Act;
 - ‘scope 3 emissions’ has the same meaning as in the Corporate Value Chain (Scope 3) Accounting and Reporting Standard, as existing on the commencement of this definition;
 - ‘sustainability records’ includes records that contain and explain the methods, assumptions and evidence to support the sustainability report; and

- ‘sustainability report’ refers to an annual sustainability report prepared under Chapter 2M (see section 296A regarding contents of this report).

[Schedule #, item 3, section 9]

1.20 The definition of ‘scope 3 emissions’ is incorporated by reference to the Corporate Value Chain (Scope 3) Accounting and Reporting Standard (‘the standard’). This incorporation is by reference to the document at the time the definition commences. The Scope 3 Calculation Guidance (‘the guidance’) accompanies the standard, making it easier to understand. The standard and guidance are freely available and accessible online, with links in the table below. This replicates the approach to scope 3 emissions in the global standard *IFRS S2 Climate-related disclosure*, released by the ISSB in June 2023.

<i>Document</i>	<i>Link</i>
Corporate Value Chain (Scope 3) Accounting and Reporting Standard	https://ghgprotocol.org/corporate-value-chain-scope-3-standard
Scope 3 Calculation Guidance	https://ghgprotocol.org/scope-3-calculation-guidance-2

1.21 The amendments ensure that sustainability reports may be considered as part of an AGM. Therefore, the note to subsection 250N(3) which explains the requirement for an AGM to be held in addition to other meetings is updated to reflect the introduction of the sustainability report. Similarly, the business of an AGM may include the consideration of a sustainability report as well as the annual financial report in light of the amendments.

[Schedule #, items 4 and 5, note 1 to subsection 250N(3) and paragraph 250R(1)(a)]

1.22 Broadly, companies, registered schemes, registrable superannuation entities and disclosing entities that prepare annual financial reports under Chapter 2M must also prepare annual sustainability reports, and keep records, if they meet certain size thresholds.

[Schedule #, items 6 to 21, heading to Chapter 2M, subsection 285(1), heading to table under subsection 285(1), table items 1A, 4, 5, and 6 of the table under subsection 285(1), table item 4 to table under subsection 285A, section 286A, subsections 287(1), 287(2) and 288(1), heading to section 289, section 289A, subsections 290(1) and (2), heading to Part 2M.3, heading to Division 1 of Part 2M.3]

1.23 The overview of reporting obligations includes the requirement to prepare a sustainability report and references section 296A which contains details of the contents of sustainability reports. The amendments reflect that the sustainability report includes the climate statement, in addition to the standard disclosures and notes, and directors’ declaration.

- 1.24 The amendments also update the table summarising reporting obligations for companies limited by guarantee. The update inserts a new item in this table. The item concerns companies limited by guarantee with annual revenue, or if part of a consolidated entity with an annual consolidated revenue, of \$1 million or more which meets the sustainability reporting thresholds. The item stipulates that such a company must prepare a financial report and sustainability report, which must be audited. They must also provide a director's report, which can be less detailed than typically required of other companies. All three reports must be provided to members who choose to receive them. References to the relevant sections are included.
[Schedule #, item 13, table item 4, table under section 285A]
- 1.25 The policy intention is to improve the quality and comparability of disclosures of material climate-related financial risks and opportunities within the financial reporting framework. This will ensure Australians and investors are provided with greater transparency of an entity's climate-related plans and strategies. Improved climate disclosures will also support regulators to assess and manage systemic climate-related risks to the financial system.

Record-keeping requirements

- 1.26 An entity required to prepare a sustainability report is also required to keep records that correctly explain and record its preparation of the statements in the report for 7 years. These sustainability records include documents and working papers that explain the methods, assumptions and evidence from which the statements are made up. Consistent with existing rules about record-keeping for financial reports, a failure to maintain records for 7 years is an offence of both fault-based and strict liability, mirroring the offences relating to the obligation to keep financial records.
[Schedule #, items 14 to 19, heading to Part 2M.2, section 286A, subsections 287(1), 287(2) and 288(1), heading to section 289, section 289A, and subsections 290(1) and 290(2)]
- 1.27 Breach of the fault-based offence has a maximum penalty of two years imprisonment, while breach of the strict liability offence has a maximum penalty of 60 penalty units.
- 1.28 In support of these amendments, consequential amendments are made to the ASIC Act and Corporations Act to extend the meaning of 'books' to cover sustainability reports and records.
[Schedule #, items 1 and 2, section 5 of the ASIC Act and section 9]

Who has to prepare annual sustainability reports

- 1.29 Under the amendments, the requirement to prepare a sustainability report will be progressively phased in for different cohorts, generally based on the size of

the entity. An explanation of this phased-in approach is explained in Part 4 of this Chapter, regarding application provisions.

- 1.30 Generally, an entity must prepare a sustainability report for a financial year if that entity reports under Chapter 2M and meets any one of the following for a financial year:
- where the entity meets at least two of the following three criteria (unless other amounts are determined under a legislative instrument by the Minister):
 - the consolidated revenue of the entity (and the entities it controls) is equal to or greater than \$50 million;
 - the value of the consolidated gross assets at the end of the financial year of the entity (and the entities it controls) is equal to or greater than \$25 million;
 - the entity (and the entities it controls) have at the end of the financial year, 100 or more employees; or
 - if the entity is a registered corporation under the NGER Act or required to make an application to be registered under subsection 12(1) of the NGER Act; or
 - if the entity is an asset owner where the value of assets at the end of the financial year (including the entities it controls) is equal to or greater than \$5 billion (or the amount determined under a legislative instrument by the Minister).

[Schedule #, item 22, subsections 292A(1), (3), (4), (6), (7) and (8)]

- 1.31 To avoid doubt, where an entity is not covered by the criteria above (e.g. not generally required to report under Chapter 2M, or does not meet the above tests), they are not required to prepare a sustainability report for a financial year.
- 1.32 Part 4 of this Chapter explains the application of the law with respect to the phased-in approach for financial reporting years commencing between 1 July 2024 to 30 June 2027 (inclusive).

General rules

- 1.33 When counting employees, part-time employees should be taken into account as an appropriate fraction of a full-time equivalent.
[Schedule #, item 22, subsection 292A(5)]
- 1.34 To determine whether an entity controls another entity in relation to sustainability reports, reference is made to the accounting standards made for financial statements, even if these standards do not apply to the entity.
[Schedule #, item 22, paragraph 292A(9)(a)]

- 1.35 Calculating consolidated revenue and the value of consolidated gross assets for the purpose of determining if an entity must provide an annual sustainability disclosure report must be done in accordance with the accounting standard in force at the relevant time. This applies even if the standard does not otherwise apply to the financial year or some of the entities concerned.
[Schedule #, item 22, paragraph 292A(9)(b)]

Consolidated reporting for sustainability reports

- 1.36 If the entity is required to prepare financial statements on a consolidated basis, it may choose to prepare a sustainability report on a consolidated basis (as the group head). This provision is intended to streamline general reporting requirements and treat the two reporting requirements (sustainability and financial) in a consistent manner. Where this occurs, each individual entity that is otherwise required to prepare a sustainability report would not need to, if the group head's sustainability report covers those individual entities in the consolidated sustainability report.
[Schedule #, item 22, subsection 292A(2)]
- 1.37 Determining if one entity controls another must be in accordance with the accounting standards for financial statements in relation to consolidated entities. This reduces unnecessary duplication and inefficiency in reporting and reflects the fact that other entities within the same corporate group may be better placed to consolidate information.
- 1.38 Whether an entity may choose to prepare a sustainability report on a consolidated basis is dependent on whether the entity prepares a financial statement on a consolidated basis.

The new sustainability report

- 1.39 An annual sustainability report for a financial year consists of:
- the climate statement;
 - notes to the climate statement (if any);
 - any statements required a legislative instrument by the Minister relating to matters concerning environmental sustainability; and
 - the directors' declaration about the statements and notes.

[Schedule #, item 23, subsections 296A(1) and (3)]

Climate statements

- 1.40 The climate statement of a sustainability report must be prepared in a manner consistent with the relevant sustainability standards.
[Schedule #, item 23, subsection 296A(2)]

1.41 The climate statement must include the following disclosures for the financial year, which is expected to be covered by the sustainability standards that relate to climate:

- material climate-related financial risks and opportunities the entity faces;
- any metrics and targets of the entity related to climate, including scope 1, 2 and 3 emissions of greenhouse gas; and
- any governance or risk management processes, controls and procedures of the entity related to these matters.

[Schedule #, item 23, section 296D]

1.42 Whether something is a material risk or opportunity is determined in accordance with the sustainability standards.

[Schedule #, item 20, subsection 296D(2)]

1.43 Disclosure of the quantity of scope 3 emissions do not apply to the first year an entity is required to prepare climate statements.

[Schedule #, item 20, subsection 296D(3)]

Other statements relating to matters concerning environmental sustainability

1.44 As part of sustainability reporting, the Minister may make rules to require other statements relating to environmental sustainability-related financial matters to be included as part of the sustainability report. These rules may also prescribe for statements to be prepared on a consolidated basis.

[Schedule #, item 23, subsection 296A(3)]

Notes to climate statements

1.45 The notes to a climate statement must include all of the following:

- any disclosures required by a legislative instrument of the Minister regarding the preparation of, and contents of the climate statement, and other matters concerning environmental sustainability;
- any notes required by the sustainability standards in relation to the preparation of, and contents of the climate statement, and other matters concerning environmental sustainability; and
- any notes containing other information necessary to ensure that the statement and notes together meet the requirements under new section 296D.

[Schedule #, item 23, subsections 296A(4) and (5)]

Where there are no material climate-related financial risks or opportunities for smaller entities for a financial year

- 1.46 It is intended that extensive climate statements would not be required for smaller entities who do not have material risks or opportunities for the financial year. If an entity required to prepare a climate statement does not have material climate risks or opportunities for the financial year, the entity's climate statement will only include a statement to that effect, made in accordance with the sustainability standards that relate to climate. This rule applies only if the following do not apply to the entity:
- where the entity meets at least two of the following three criteria:
 - the consolidated revenue of the entity (and the entities it controls) is equal to or greater than \$200 million;
 - the value of the consolidated gross assets at the end of the financial year of the entity (and the entities it controls) is equal to or greater than \$500 million;
 - the entity (and the entities it controls) have at the end of the financial year, 250 or more employees; or
 - if the entity is a registered corporation under the NGER Act or required to make an application to be registered under subsection 12(1) of the NGER Act; or
 - if the entity is an asset owner where the value of assets at the end of the financial year (including the entities it controls) is equal to or greater than \$5 billion.

[Schedule #, item 23, subsections 296B(1), (2), (4) and (5)]

- 1.47 For clarity, if an entity is required to prepare a sustainability report and does meet those above thresholds, the entity cannot rely on new subsection 296B(1) to only prepare a climate statement to the effect that they have no material climate-related risks or opportunities for the financial year.

General rules

- 1.48 When counting employees, part-time employees should be taken into account as an appropriate fraction of a full-time equivalent.
Schedule #, item 23, subsection 292B(3)]
- 1.49 To determine whether an entity controls another entity in relation to sustainability reports, reference is made to the accounting standards made for financial statements, even if these standards do not apply to the entity.
[Schedule #, item 23, paragraph 292A(7)(a)]
- 1.50 Calculating consolidated revenue and the value of consolidated gross assets for the purpose of determining if an entity must provide an annual sustainability disclosure report must be done in accordance with the accounting standard in force at the relevant time. This is even if the standard does not otherwise apply

to the financial year or some of the entities concerned.
[Schedule #, item 23, paragraph 292A(7)(b)]

Notes to the statements

1.51 Further, the notes to statements under the sustainability report also generally mirror the provisions dealing with annual financial reporting under section 295. In particular, the notes to these statements must include:

- disclosures required by a legislative instrument; and
- notes required by the sustainability standards, if any.

[Schedule #, item 23, subsection 296A(3)]

Directors' declaration

1.52 The directors' declaration is a declaration by the directors of their opinion on whether the statements are in accordance with the Corporations Act, including in compliance with the relevant sustainability standards (i.e. whether the climate statement is in compliance with the sustainability standards that relate to climate). These declarations must be made with a resolution of the directors, dated, and signed.

[Schedule #, item 23, subsections 296A(6) and (7)]

1.53 The climate statements in the sustainability report must comply with the sustainability standards and any other further requirements in a legislative instrument.

[Schedule #, item 23, section 296C]

1.54 Alongside the requirements to provide the financial report, directors' report and auditor's report for a financial year to members, the reporting entity must also provide the sustainability disclosure report to members. Where a concise report is provided to members, concise report must contain the full sustainability report.

[Schedule #, items 24 to 30, headings to Division 4 of Part 2.3M and section 314, subparagraph 314(1)(a)(ia), paragraphs 314(2)(aa) and 314AA(1)(aa), and subsections 316(1) and (3)]

1.55 The amendments update the annual reporting requirements to members of a company limited by guarantee by specifying when a sustainability report must be shared with each voting member and the specific time frames. These are consistent with the existing timing obligations for the sharing of financial reports, directors' reports, and auditor's reports (earlier of 21 days after the AGM or 4 months after the end of the financial year). Minor amendments are made to the numbering of these obligations in the Act accordingly.

[Schedule #, items 31 and 32, subsections 316A(3) and 316A(5)]

1.56 An entity must make its sustainability disclosure report publicly available on its website the day after the report is lodged with ASIC if it is required to

- prepare such a report and not required to disclose this report to its members.
[Schedule #, item 33, section 316B]
- 1.57 Similar to financial reports, directors' reports and auditor's reports, the directors of a public company that is required to hold an AGM must also lay the sustainability disclosure report before the AGM.
[Schedule #, item 34, paragraph 317(1)(aa)]
- 1.58 Similar to financial reports, directors' reports and auditor's reports, a company or disclosing entity that was a borrower in relation to debentures at the end of a financial year must give a copy of the sustainability disclosure report to the trustee for debenture holders. A debenture holder may ask the company or disclosing entity that issued debentures for copies of a sustainability report if one was required to be prepared.
[Schedule #, items 35 and 36, subsection 318(1) and paragraph 318(2)(b)]
- 1.59 Consequential amendments are also made regarding relodgment if sustainability disclosure reports are amended after lodgment, in a manner consistent with the relodgment of financial reports and director's reports.
[Schedule #, items 37 to 34, headings to section 322 and subsection 322(1), subsection 322(1), heading to subsection 322(2A), and paragraph 322(2A)(a)]
- 1.60 Specific provisions about consolidated financial statements are updated to incorporate climate statements. Directors and officers of controlled entities must give the controlled entity all information requested that is necessary to prepare the consolidated financial statements or to prepare consolidated climate statements.
- 1.61 Controlled entities must allow the auditor for the controlling company, scheme or entity access to its books and give the auditor any information, explanation or assistance necessary if it must prepare an annual report including consolidated financial statements or climate statements.
- 1.62 The requirement of directors and officers of controlled entities to give information, the auditor's power to obtain information from the controlled entity and the controlled entity's obligation to assist the auditor applies to the preparation of sustainability disclosure reports if the entity's reports are being prepared or audited.
[Schedule #, Part 1, items 42 to 47, heading to Division 6 of Part 2M.3, subsections 323(1) and 323B(1), and section 323C]

Product disclosure

- 1.63 The prospectus for continuously quoted securities or a product disclosure statement relating to a managed investment scheme that is an ED security must inform people of their right to obtain a copy of the most recently lodged sustainability disclosure report if the body has lodged a sustainability report with ASIC. The contents of an offer information statement for the issue of a

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- body's securities must include a copy of the most recent sustainability report prepared.
[Schedule #, items 48, 49 and 51, subparagraphs 713(4)(a)(ia) 715(1)(ia) and 1013I(3)(a)(ia)]
- 1.64 However, for continuously quoted securities that are not securities of a notified foreign fund passport, the information is not required to be included in the Product Disclosure Statement if the issuer of the product has lodged a sustainability report with ASIC that contains the information.
[Schedule #, item 50, subparagraph 1013FA(2)(a)(ia)]
- 1.65 Issuers for superannuation products relating to a registrable superannuation entity must give a concerned person a copy of the sustainability disclosure report the entity has prepared for the financial year if the concerned person made the request in writing. The term 'concerned person' is defined in subsection 1017C(9). This requirement already applies to the financial report, directors' report, and auditor's report on the financial report, of the entity for a specified financial year.
[Schedule #, item 52, paragraph 1017C(3AA)(a)(aa)]
- 1.66 Consequential amendments relating to corporate finance and financial reporting for CCIVs are updated to support the new sustainability reporting requirements.
[Schedule #, items 53, 54, 56, headings to Part 8.4B, Division 4 of Part 8B.4, and Subdivision C of Division 4 of Part 8B.4]
- 1.67 Financial reporting in Part 2M.3 that apply to CCIVs are also updated to include sustainability reports. This means if a CCIV meets the thresholds for sustainability reports (see above in paragraph 1.30 of this explanatory memorandum). The remaining provisions relating to financial reporting requirements of Division 1 of Part 2M.3 also apply to CCIVs in relation to sustainability reports and the documents of which a sustainability report consists in the Act.
[Schedule #, items 55, 57, 58 and 59, subsection 1232C(1) and paragraphs 1232C(1)(aa), 1232C(2)(a) and 1232(c)]
- 1.68 A sustainability disclosure report for a sub-fund must comply with further requirements prescribed by regulations made for the purposes of annual financial reports and directors reports for sub-funds in CCIVs.
[Schedule #, item 60, subsection 1232D(4)]
- 1.69 Annual financial reporting requirements for companies, registered schemes and disclosing entities apply to a retail CCIV in relation to each of its sub-funds as if the requirement were a requirement to report to members of the sub-fund for the year. The requirement to report must provide a sustainability disclosure report as well as a financial report and director's report and the auditor's report on the financial report. The amendment reflects the fact the auditor reports on the financial report itself.
[Schedule #, items 61 and 62, subparagraphs 1232H(1)(a)(i) and (ii)]

- 1.70 Requirements to reodge if a financial statement or directors' report relating to a sub-fund is amended after lodgement also applies to sustainability disclosure reports.
[Schedule #, items 63 and 64, heading to section 1232M and section 1232M]
- 1.71 Consequential amendments are made to Schedule 3 which list the penalty provisions under the amendments in Part 1, specifically, in relation to the obligation to keep sustainability records (subsections 286A(3), 286A(4), 289A(2) and 289A(5)), and the obligation to make sustainability reports publicly available (subsection 316B(1)).
[Schedule #, items 65 and 66, table items in Schedule 3 and table item under Schedule 3 dealing with subsections 316A(3) and (4), column headed "Provision"]

Part 2 – Audit and assurance

- 1.72 Climate disclosures will be subject to similar assurance requirements to those currently in the Corporations Act, which require entities to undertake mandatory audit and assurance of financial reports. The sustainability disclosure report would be audited by the auditor of the financial report supported by technical climate and sustainability experts where appropriate. AUASB will develop assurance standards in line with the IAASB final standard. The AUASB will also set out a pathway for phasing in requirements over time, which would commence with assurance of Scope 1 and 2 emissions disclosures from 1 July 2024 onwards and end with assurance of all climate disclosures made from 1 July 2030 onwards.
- 1.73 Details of the amendments are set out below.
The definitions of 'audit' and 'auditor's report' in section 9 of the Act are replaced with new definitions to include references to an audit of a sustainability report in addition to a financial report.
[Schedule #, items 67 and 68, section 9]
- 1.74 The overview of annual financial reporting obligations for companies, registered schemes, registrable superannuation entities and disclosing entities now include the requirements to have a sustainability disclosure report audited and to obtain an auditor's report. The overview references the relevant provisions for ease of navigation.
[Schedule #, item 77, table item 1B of the table under subsection 285(1)]
- 1.75 Under the amendments, an entity required to prepare a sustainability disclosure report for a financial year must have the sustainability disclosure report audited and obtain an auditor's report in accordance with the Act.
[Schedule #, item 81, section 301A]
- 1.76 The amendments provide for a transitional period where only limited assurance of sustainability reports is required for reports prepared between 1 July 2024

and 30 June 2030. The auditor's review is limited to the climate statements relating to scope 1 or 2 emissions of greenhouse gases.

[Schedule #, item 81, section 301B]

- 1.77 Consequential amendments update various references to reflect the additional sustainability reporting requirements, including updates from the singular 'auditor's report' to 'auditor's reports'. The amendments also include the business of an AGM to consider relevant reports so an 'auditor's reports' are included instead of a single auditor's report. A similar update is made in the table providing the overview of financial reporting obligations for companies, registered schemes, registrable superannuation entities and disclosing entities. ***[Schedule #, items 69 to 76, 78, 79, 80 and 82, note 1 to subsection 250N(3), paragraphs 250R(1)(a), 250RA(1)(a) and 250RA(3)(c), subparagraphs 250T(1)(a)(i), (ii), (iii), and (iv), table items 4, 5 and 6 of the table under subsection 285(1), and headings to Division 3 of Part 2M.3 and section 307B]***
- 1.78 Further amendments clarify existing provisions for audits of financial reports.. ***[Schedule #, items 83 and 84, headings to sections 307 and 307A]***
- 1.79 An auditor who conducts an audit of the sustainability disclosure report for a financial year must form an opinion on whether the sustainability report complies with the Corporations Act and if the auditor has given all information, explanation and assistance necessary of the conduct of the audit. ***[Schedule #, item 85, section 307AB]***
- 1.80 If an individual auditor or company conducts an audit or review of the sustainability disclosure report the individual or company must conduct the audit in accordance with auditing standards. The lead auditor of the firm or audit company conducting a review must ensure the audit or review is conducted in accordance with the standards. Contravention of this requirement is both a fault based offence (with a penalty of 2 years imprisonment) and one of strict liability (with a penalty of 50 penalty units). ***[Schedule #, item 85, section 307AC]***
- 1.81 In line with the requirements for financial reports, an auditor contravenes the retention requirements for audits of sustainability reports if they do not retain all audit working papers prepared by or for, or considered or used by, the auditor in accordance with the requirement of the working standards at the end of 7 years after the report or an earlier date ASIC would determine. Contravention is an offence of strict liability. If audit working papers are in electronic form they are taken to be retained if they are convertible into a hard copy. ***[Schedule #, items 87 and 88, subparagraphs 307B(1)(b)(ii) and (iii)]***
- 1.82 A person contravenes this retention requirement if they were a member of the audit firm at the time it contravened its obligations in relation to the document retention period. Contravention is an offence of strict liability. However, under existing section 307B(5), a member of an audit firm does not commit an

offence if the member did not know at the time of the circumstances there was a contravention or knew of the circumstances at the time, but took all reasonable steps to correct the contravention as soon as the member became aware of the circumstances.

[Schedule #, items 89 and 90, subparagraphs 307B(3)(a)(ii) and (iii)]

- 1.83 An individual auditor auditing the sustainability report must give directors of the entity a written declaration that to the best of the individual auditor's knowledge, there have been no contraventions of auditor independence requirements of this Act in relation to the audit or review, and no contraventions of any applicable code of professional conduct in relation to the audit. Otherwise, the auditor must provide a written declaration that to the best of their knowledge and belief, the only contraventions are contraventions which are set out in the declaration. Not providing a declaration is an offence of strict liability. The same requirements apply to the lead auditor of an audit firm or company conducting an audit of a sustainability report.

[Schedule #, items 91 to 94, paragraphs 307C(1)(ba) and 307C(3)(ba), subsection 307C(5A) and paragraph 307C(5A)(c)]

- 1.84 An auditor who audits the sustainability report for a financial year must report to members on whether the auditor is of the opinion that the report aligns with the Act, including whether it complies with the sustainability standards (section 296C) and the climate statement disclosures (section 296D) requirements. If not, the auditor must specify why. The auditor's report must describe any defect or irregularity and deficiencies, failures or shortcomings that may have arisen if they were not given the information, explanation and assistance necessary to complete the audit. The auditor's report must include statements or disclosure required by the auditing standard and a report must specify the date on which it is made. If the sustainability report includes any additional information under paragraph 296A(4)(c), which concerns the inclusion of notes, 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.

[Schedule #, item 95, subsection 309A]

- 1.85 Contravention of subsections 309A(1) (relating to reporting to members as to whether the audit is in compliance with the sustainability standards and the climate statement disclosures) and 309A(3) (relating to reporting to members on whether the sustainability report is otherwise non-compliant) are offences of strict liability.

[Schedule #, item 95, subsection 309A(8)]

- 1.86 An entity must report to members for a financial year by providing an auditor's report on the sustainability report for the year (in addition to the financial report, director's report and auditor's report on the financial report). Under section 314AA, a company may instead provide a concise report to satisfy this requirement. An amendment is made to ensure the concise report includes the auditor's report on the sustainability report.

[Schedule #, items 96 and 97, subparagraph 314(1)(a)(iv) and paragraph 314(2)(da)]

- 1.87 Similarly, a registrable superannuation entity must report to members by providing an auditor's report on the sustainability report for the year (in addition to the financial report, director's report and auditor's report on the financial report).
[Schedule #, item 98, paragraph 314AA(1)(d)]
- 1.88 If a company limited by guarantee obtains an auditor's report on the sustainability report, the company must send a copy of the report to each member who has made an election for that year. The report must be sent the earlier of 21 days before the next AGM after the end of the financial year, or 4 months after the end of the financial year. The copy of the report must be free of charge for members. Contravention is an offence of strict liability. The penalty amount for this offence is set at 30 penalty units through an amendment to Schedule 3 which sets out penalties.
[Schedule #, item 99 and 100, subsections 316A(3B) and 316A(5)]
- 1.89 The amendments update consideration of reports at AGMs and additional reporting by debenture issuers by changing the singular term 'report' into a plural, reflecting the addition of the auditing of sustainability reports.
[Schedule #, items 101 and 102, paragraphs 317(1)(c) and 318(2)(b)]
- 1.90 The auditor's power to obtain information from a controlled entity is updated to include the power to obtain sustainability reports including consolidated climate statements. Auditing standards are also updated to apply to sustainability reports. If the AUASB makes an auditing standard and the standard applies to sustainability reports in relation to particular periods and an auditor is conducting an audit of a sustainability report in relation to a period occurring before the start of the earliest of those periods, the auditor may elect to apply the auditing standard to that audit unless the standard says otherwise. The election must be recorded in the auditor's report.
[Schedule #, items 103, 104 and 105, subsections 323A(1), 336(3) and 336(5)]
- 1.91 Issuers of financial products that are superannuation products relating to registrable superannuation entities must, on written request from a concerned person, give the person a copy of the auditor's report for the financial year and a copy of the auditor's report on the sustainability report.
[Schedule #, item 106, paragraphs 1017C(3AA)(c) and (d)]
- 1.92 The requirement to audit a financial report applies to CCIVs in relation to sustainability reports for each sub-fund. Subject to modifications relevant to CCIVs, Division 3 of Part 2M.3 applies to sub-funds of retail CCIVs and in relation to sustainability disclosure reports for CCIVs.
[Schedule #, items 107, 108 and 109, subsection 1232D(2A), paragraph 1232(1)(aa) and subparagraph 1232H(1)(a)(ii)]

- 1.93 Several new strict liability offences are added to support the new auditing and assurance requirements, as outlined above. Strict liability is appropriate in these circumstances, as it is necessary to strongly deter misconduct that can cause serious detriment to investors and regulators relying on auditors' declarations. Further the specialised role of auditors means that it is appropriate for a person to be penalised if they contravene these requirements by not complying with the strict requirements to conduct an audit in line with relevant standards, not retaining audit records as required or not providing the necessary declarations in relation to auditor independence requirements or adherence to codes of professional conduct. Additionally, the strict liability offences mirror similar offences relating to financial record-keeping.
- 1.94 The strict liability offences in this Schedule meet all the conditions listed in the Attorney-General's Department's *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. For example, the fines for the offences do not exceed 60 penalty units for persons other than a body corporate or 300 penalty units for a body corporate.
- 1.95 The application of strict liability, as opposed to absolute liability, preserves the defence of honest and reasonable mistake of fact. The application of strict liability, as opposed to absolute liability, preserves the defence of honest and reasonable mistake of fact.
- 1.96 Schedule 3 sets out penalties for offences in the Act. Schedule 3 of the Act is updated to reflect the addition of the new offences relating to the new requirements for auditing and assuring sustainability reports. The fine for all the new strict liability offences is set at 50 penalty units, except for contraventions relating to an auditor's independence declaration.
[Schedule #, items 110 and 111, table items in Schedule 3 and table item under Schedule 3 dealing with subsections 316A(3) and (4), column headed "Provision"]

Part 3 – Sustainability and auditing standards

- 1.97 Schedule # to the Bill amends the ASIC Act to empower the AASB to make sustainability standards under section 336A. These sustainability standards are given legal effect by amendments to the Corporations Act.
[Schedule #, items 112 to 115, paragraphs 227(1)(ba) and 227(1)(ca) of the ASIC Act, notes 2 and 3 to subsection 227(1) of the ASIC Act, and note 1 to subsection 227B(1) of the ASIC Act]
- 1.98 The sustainability standards, similar to accounting standards, are legislative instruments. These standards are limited in scope as they must not be inconsistent with the Corporations Act or the regulations.
[Schedule #, item 124, subsection 336A(1)]
- 1.99 Consistent with the policy outcomes of the amendments under Schedule 2 to the *Treasury Laws Amendment (2023 Measures No. 1) Act 2023* which

provided the AASB the function to formulate sustainability standards, Schedule # to the Bill formalises those standards and ensures reporting under those standards.

- 1.100 The amendments leverage the AASB’s experience to facilitate the development of sustainability-related and climate-related financial disclosure standards and to, as much as is practicable, align with the global baseline standards released by ISSB (*IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information* and *IFRS S2 Climate-related Disclosures*) in June 2023 (with further ISSB guidance released throughout the second half of 2023).
- 1.101 In support of the amendments, the definition of ‘commencement’ in relation to an accounting standard or sustainability standard is replaced in light of the amendments and is defined as either of the following:
- In the case of an accounting standard or sustainability standard as originally in effect – the time when the accounting standard or sustainability standard took effect;
 - In the case of an accounting standard or sustainability standard as varied by a particular provision of an instrument – the time when the provision took place.

[Schedule #, item 116, section 9]

- 1.102 To support the amendments, the term ‘sustainability standard’ means a standard in force under section 336A of the Act or a provision of such a standard as it so has effect.

[Schedule #, item 117, section 9, definition of ‘sustainability standard’]

- 1.103 Consequential amendments are made to include sustainability standards after accounting standards. References to the ASIC Act are also inserted in provisions concerning accounting standards and auditing standards to ensure compliance with both Acts.

[Schedule #, items 118 to 123, heading to Part 2M.5, subsections 334(1) and 336(1), and section 336]

- 1.104 These standards apply to periods that end after the standard commences or at a later period or date as specified in the standard. Companies, registered schemes, registrable superannuation entities or disclosing entities can also elect to apply sustainability standards earlier in writing by directors, unless restricted by the relevant standard.

[Schedule #, item 124, subsections 336A(2) and (3)]

- 1.105 Provisions relating to the text and interpretation of accounting standards and auditing standards are extended to also apply to sustainability standards.

[Schedule #, items 125 to 128, heading to section 337, section 337, heading to section 338, paragraph 338(1)(a)]

Part 4 – Application

- 1.106 The amendments modify existing liabilities and offences that apply generally to corporate reporting for a transitional period. This provides entities time to adjust and build capability in relation to the new reporting requirements to disclose information relating to climate-related financial risks and opportunities in line with the relevant sustainability standards.
- 1.107 Under the transitional rules, entities required to prepare sustainability reports are separated into three groups and their obligations are generally phased-in across a number of financial years, generally dependent on size:
- Entities that are in Group 1 must prepare an annual sustainability report for the financial year that commences between 1 July 2024 and 30 June 2025; and between 1 July 2025 and 30 June 2026 (reflective of paragraph 1705(1)(a));
 - Entities that are in Group 2 must prepare annual sustainability reports for the financial year that commences between 1 July 2026 and 30 June 2027 (reflective of paragraph 1705(1)(b));
 - All entities to which the new requirements apply (see Part 1 of this explanatory memorandum, under ‘Who has to prepare annual sustainability reports’) must prepare an annual sustainability report for each financial year that commences on or after 1 July 2027 (reflective of paragraph 1705(1)(c)).

[Schedule #, item 129, section 1705]

- 1.108 A Group 1 entity is any of the following:
- an entity that meets at least two of the following three criteria:
 - the consolidated revenue of the entity (and the entities it controls) is equal to or greater than \$500 million;
 - the value of the consolidated gross assets at the end of the financial year of the entity (and the entities it controls) is equal to or greater than \$1 billion;
 - the entity (and the entities it controls) have at the end of the financial year, 500 or more employees; or
 - an entity that is a registered corporation under the NGER Act or required to make an application to be registered under subsection 12(1) of the NGER Act and that meets a publication threshold in subsection 13(1) of the NGER Act.

[Schedule #, item 129, subsections 1705(1), (3) and (5)]

- 1.109 A Group 2 entity is any of the following:
- an entity that meets at least two of the following three criteria:

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- the consolidated revenue of the entity (and the entities it controls) is equal to or greater than \$200 million;
 - the value of the consolidated gross assets at the end of the financial year of the entity (and the entities it controls) is equal to or greater than \$500 million;
 - the entity (and the entities it controls) have at the end of the financial year, 250 or more employees; or
 - an entity that is a registered corporation under the NGER Act or required to make an application to be registered under subsection 12(1) of the NGER Act; or
 - an entity that is an asset owner where the value of assets at the end of the financial year (including the entities it controls) is equal to or greater than \$5 billion.

[Schedule #, item 129, subparagraph 1705(1)(b)(iii)]

1.110 The thresholds for each group of entities (Group 1, Group 2 and all relevant entities) that is required to report are progressive. Therefore the entities in Group 2 are a subset of those generally required to report; and the entities in Group 1 are a subset of the entities in Group 2.

General rules

1.111 When counting employees, part-time employees should be taken into account as an appropriate fraction of a full-time equivalent.

[Schedule #, item 129, subsection 1705(4)]

1.112 To determine whether an entity controls another entity in relation to sustainability reports, reference is made to the accounting standards made for financial statements, even if these standards do not apply to the entity.

[Schedule #, item 129, subsection 1705(6)(a)]

1.113 Calculating consolidated revenue and the value of consolidated gross assets for the purpose of determining if an entity must provide an annual sustainability disclosure report must be done in accordance with the accounting standard in force at the relevant time. This is even if the standard does not otherwise apply to the financial year or some of the entities concerned.

[Schedule #, item 129, subsection 1705(6)(b))]

1.114 New subsection 296B(1) generally allows for smaller entities to make a limited disclosure where they have no material climate-related risks or opportunities for the financial year. However, as the transitional provisions would only require these smaller entities to prepare sustainability reports if their financial year commences on or after 1 July 2027, for clarity, subsection 296B(1) does not apply for financial years commencing between 1 July 2024 and 30 June 2027.

[Schedule #, item 129, section 1705A]

Modified liability

- 1.115 Under this approach, liability for misleading and deceptive, and other, conduct in relation to the most uncertain parts of a climate statement is temporarily suspended. That is, where the statement relates to scope 3 greenhouse gas emissions and scenario analysis. This limited immunity applies to statements in sustainability reports prepared for financial years commencing between 1 July 2024 and 30 June 2027. During this time, only ASIC will be able to take action for misleading and deceptive conduct in relation to these types of disclosures.
[Schedule #, item 129, section 1705B]
- 1.116 No action, suit or proceeding (collectively ‘legal action’) is able to be brought against a person or entity in relation to statements about scope 3 emissions or scenario analysis made in those sustainability reports. However, this does not prevent criminal proceedings.
[Schedule #, item 129, subsection 1705B]
- 1.117 The most common legal actions likely to be affected are proceedings for misleading or deceptive conduct. For example, proceedings under sections 1041E or 1041H. Alleged breaches of directors’ duties are also protected (for example, actions under section 344).
- 1.118 The protection applies generally and extends to other forms of alleged misconduct in making climate-related disclosures related to scenario analysis or scope 3 emissions including actions such as negligent misstatement, breach of statutory duty and breach of fiduciary duties.
- 1.119 This protection does not apply to legal actions that are civil actions brought by ASIC relating to contraventions of provisions with a fault element and/or where the remedy sought by ASIC is an injunction or declaration. This ensures that any contraventions that are not strict liability offences, or where ASIC does not seek more serious outcomes, can still proceed despite the limited immunity provided in subsection 1706AA(1A). The policy intention is to ensure that during the transitional period, ASIC can undertake a role that promotes education about compliance with the new reporting regime and deter behaviour and reporting practice that is contrary to the policy position.
- 1.120 Accordingly, ASIC may still pursue actions under various sections, including section 1041E (false or misleading statements which include a fault element), but during the transitional period, the remedies available to ASIC are limited to declarations and injunctions. The approach balances the needs of investors through preservation of ASIC’s ability to pursue litigation to ensure disclosures are accurate and to drive broader compliance with requirements with the needs of the needs of reporting entities adjusting to the new requirements by providing reassurance that entities will not face full financial penalties if disclosures are made with best efforts but prove inaccurate.
[Schedule #, item 129, subsection 1705B(3)]
- 1.121 If ASIC considers that a statement an entity makes in a sustainability disclosure report for a financial year commencing between 1 July 2024 and

30 June 2027 is incorrect, incomplete or misleading in any way, ASIC may direct the entity to confirm to ASIC that the statement is correct or complete, explain the statement to ASIC, and correct, complete or amend the statement in accordance with the direction. The entity must comply with that direction. The penalty for a failure to comply with such direction is 60 penalty units.

[Schedule #, items 129 and 130, section 1705C and Schedule 3]

- 1.122 Allowing ASIC to rectify these errors in reports during the transitional period will enable entities to understand and rectify errors, whilst ensuring that information made available in these reports is correct and complete. This also provides ASIC with appropriate oversight over reports as entities must comply with directions to publish accurate information, or justify the accuracy of statements to ASIC and encourages compliance with the new requirements.

Auditing and assurance standards

- 1.123 The AUASB must make auditing standards in accordance with the Act that provides standards for reviews for companies limited by guarantee. These auditing standards must be made before 1 July 2024.

[Schedule #, item 129, section 1705D]

Review of laws

- 1.124 To ensure sufficient Ministerial and Parliamentary oversight of this legislation which implements new obligation and reports on a significant cohort of entities, Schedule # must undergo a review.
- 1.125 As soon as practicable after 1 July 2028, a review of the legislation and written report of the outcomes must be prepared. After the report is provided to the Minister, it must be tabled in each House of the Parliament within 15 sitting days of that House.
- [Schedule #, item 129, section 1705E]*
- 1.126 This review form an integral piece in ensuring that new legislation and frameworks are operating effectively and in accordance with the intended outcomes. It provides an opportunity for further refinement of legislation where recommendations are provided, and Parliamentary oversight of the process.

Commencement, application, and transitional provisions

- 1.127 [Schedule # to the Bill commences the day after Royal Assent.](#)

- 1.128 Under the amendments, the requirement to prepare a sustainability report will be progressively phased in for different cohorts, generally based on the size of the entity. An explanation of this phased-in approach is explained in Part 4 of this Chapter, regarding application provisions.