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By email

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Dear Claire and team,

HSF Submission on Consultation Paper 380: Sustainability reporting

Scope of this submission

This submission is made by Herbert Smith Freehills (**HSF**) in relation to 'Consultation Paper 380 Sustainability reporting' (**CP 380**).

Our submission is based on client feedback on CP 380, as well as our own experience acting as legal advisors to approximately 55% of the ASX20 and approximately 50% of the ASX100 in respect of corporate governance, including annual reporting and sustainability disclosure matters.

Key recommendations in response to CP 380

Our commentary on the specific questions in the Consultation Paper are set out in Attachment 1. However, for ease of reference, we have set out our key recommendations below:

- **Labelling:** We have serious concerns relating to the practical application of 'clear labelling' of voluntary versus mandatory information and, particularly for multinational reporting entities subject to other overseas reporting regimes, we expect that this will not be achievable in practice without significant duplication;
- **Interoperability between the OFR and the Sustainability Report:** Ideally, there would be no need to include duplicate information in the Sustainability Report that is already included elsewhere (for example, in the Operating and Financial Review (**OFR**) or remuneration report) – while the content on cross-referencing is intended to achieve this, some aspects of the guidance are not entirely aligned with that approach;
- **AASB S1:** We have concerns that requiring relevant disclosures of sustainability-related financial information to 'consider, and be informed by' AASB S1 may be an onerous obligation for entities given the granularity of AASB S1 and the fact it is currently voluntary; and
- **Selective reproduction:** Further guidance would be useful on the level of detail that is required to maintain the 'balance, tenor and prominence' of information reproduced outside the sustainability report.

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Further questions and clarifications

If you have any questions or comments about our submissions, please contact [REDACTED]
[REDACTED] or [REDACTED] ([REDACTED]).

Yours sincerely

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Attachment 1

HSF submissions on the consultation questions

Consultation question	HSF commentary and recommendations
Preparing a sustainability report	
Entities that must prepare a sustainability report	
B1Q1 Do you agree with our proposed guidance?	No specific comment.
B1Q2 What further guidance could we provide to help entities determine whether they are required to prepare a sustainability report?	No specific comment.
B1Q3 What additional guidance should we provide to clarify how the s292A thresholds apply to RSEs, registered schemes and retail CCIVs?	No specific comment.
Sustainability records, directors' duties and modified liability	
B2Q1 Does our proposed guidance help you understand the sustainability records that must be kept?	The forms of sustainability records provided in RG 000.46 are generally helpful, but more specific examples (e.g. a break-out box giving some 'real world' examples) would help

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	<p>companies understand more granularly what sort of records are expected. The current categories are quite broad and fairly generic.</p> <p>We submit that the final guidance should continue to frame this list as examples, rather than expectations, of 'sustainability records' as each entity will need the flexibility to determine the 'sustainability records' that best suit their business and best substantiate the disclosures.</p> <p>We also submit that the expectation that sustainability records "document matters of fact and matters of judgement" in RG 000.47 is susceptible to different interpretations and this should be qualified by e.g. "<i>material</i> matters of fact and matters of judgement" or "<i>significant</i> matters of fact and matters of judgement".</p>
<p>B2Q2 What further guidance should we provide on keeping sustainability records?</p>	<p>See our response to B2Q1 above.</p>
<p>B2Q3 Does our proposed guidance help you understand our expectations for directors in complying with their sustainability reporting requirements?</p>	<p>It would be helpful for ASIC to provide further guidance in relation to how directors will be "well positioned" to make directors' declarations in respect of a sustainability report (RG 000.58). For example, the guidance reflects that directors should "engage in a robust process of identifying, assessing, prioritising and monitoring any material climate-related risks", which perhaps does not fully explain the practical ways directors may do these things, and how they can engage with and rely on management in doing so as well.</p> <p>Separately, the guidance in RG 000.52 states that directors should be regularly informed about the extent that any material risk or opportunity may reasonably affect the reporting entity's prospects on an ongoing basis (and not just confined to the annual reporting season) is a significant expectation. It would be helpful for ASIC to clarify whether this can be satisfied through delegations to a board committee; or to otherwise explain the extent to which this expectation goes beyond directors' existing duties and obligations under the Corporations Act, common law and the ASX listing rules.</p>

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<p>B2Q4 Are there any aspects of the sustainability reporting requirements where further ASIC guidance would be helpful for directors?</p>	<p>See our response to B2Q3 above.</p>
<p>B2Q5 Does our proposed guidance on the modified liability settings clarify how these settings apply to statements made in sustainability reports and other documents or communications?</p>	<p>RG 000.63 notes that the modified liability settings apply outside the sustainability report when a protected statement is required to be made under a Commonwealth law. In our experience, determining when (and the extent to which) a statement is “required to be made” is subjective and may not be clearcut in practice.</p> <p>For example, we expect that reporting entities would include certain protected statements in their OFR relating to climate-related matters that are material business risks. However, if the disclosures go beyond describing the ‘material business risk’ (eg providing additional context or factual information beyond that required by law), it is unclear whether the modified liability settings would apply to all of the relevant content provided in the OFR (ie is the disclosure only be protected to the extent of the minimum content needed for strict OFR compliance?).</p> <p>Another example would be a company which is responding to a shareholder requisitioned resolution in relation to its climate disclosure or transition plan (or even voluntarily putting an advisory ‘Say on Climate’ vote). In its response in the explanatory notes to the Notice of Meeting, the Board must provide all information material to members’ decision on how to vote in relation to the proposal. However, the extent to which particular climate information is “required to be made” is unclear in that context.</p> <p>We suggest further guidance be provided by ASIC with respect to the extent of the modified liability settings (ie is it just the minimum ‘legally required’ content that is protected and how does that work when there judgements of materiality or relevance involved?).</p> <p>For completeness, we note that we maintain reservations about the limitations set out in RG 000.65. Our view is that voluntary sustainability-related disclosure (which essentially replicates or updates/corrects ‘protected statements’ made in the sustainability report) in materials such as investor presentations and voluntary engagement with stakeholders on sustainability-related matters should be encouraged, as it furthers the policy objectives of the disclosure regime to enhance the transparency and comparability of disclosures. We note that, at RG 000.100, ASIC states that it supports the preparing of voluntary climate statements and voluntary sustainability statements where the information supports confident</p>



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	and informed investors and the entity determines that it is in the interests of its stakeholders to make such statements. In our view, the limitations set out in RG 000.65 are inconsistent with this aim.
B2Q6 What further guidance should we provide about the modified liability settings?	See our response to B2Q5 above.
Content of the sustainability report (specific issues)	
Statements about no climate risks or opportunities	
C1Q1 Are there other issues relevant to reporting entities' assessment of whether there are no material financial risks or opportunities?	No specific comment.
C2Q1 Do you agree with our proposed guidance? If not, why not?	No specific comment.
Statements with forward-looking climate information	
C3Q1 Do you agree with our proposed guidance?	The guidance in RG 000.78 that reporting entities that are disclosing entities must comply with their continuous disclosure obligations in relation to forward-looking information "when relevant facts or circumstances change" would benefit from further clarification as to the

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circumstances where a change in “relevant facts or circumstances” may reasonably require disclosure.

We recognise that materiality assessments under the regime are not strictly quantitative. In practice, knowing what qualitative information will have a material effect on the price or value of securities is very difficult given the diversity of investor expectations and viewpoints. Applying a materiality assessment to climate-related information is not straight-forward, and without specific guidance in Guidance Note 8, disclosing entities will look to Regulatory Guide 000 for relevant considerations and expectations.

C3Q2 Should we issue more guidance about the facts or circumstances that are more likely to constitute reasonable grounds for forward-looking information in climate statements? If you consider that we should issue more guidance, please explain:

(a) what it should cover beyond the application guidance in Appendix D of AASB S2;

(b) how you consider that guidance would impact information disclosed under the sustainability standards in Australia, compared to information disclosed under the comparable international standards; and

(c) if there is any resultant inconsistency, how this can be reconciled with the context and purpose of the reforms, which cite international alignment of sustainability reporting to be a key priority.

In our view it is very difficult to provide meaningful guidance in this area without consideration of a specific company's circumstances and the specific statement being made. To the extent that ASIC provides guidance in this area, we would strongly recommend that it be process-based (eg “ASIC would usually consider that a company has established that there are reasonable grounds for a statement where it....”).

In this regard, ASIC may wish to consider the factors outlined in [“Principles for setting climate targets: A guide for Australian boards”](#) (published by HSF and the Australian Institute of Company Directors in August 2024). Some examples of prompts that we sometimes provide to clients to help them determine whether they have reasonable grounds for targets in particular include:

- Does the target align to/fit within your strategy and business plans?
- Is it being pursued in practice? (ie not a plan for a plan)
- Are the capital and resources needed available/being deployed/factored into your forward plans?
- To what extent is it dependent on technology and does it currently exist?
- To what extent is it dependent on the actions of others and can we expect to influence them?
- Is the pathway dependent on Government policy or action and is that realistic?

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Cross-referencing in a sustainability report	
<p>C4Q1 Do you agree with our proposal? If not, why not?</p>	<p>We strongly support the proposal in RG 000.79 (reflecting the underlying standards) which allows for sustainability reports to cross-reference to information in another document. However, we would respectfully suggest that it would be appropriate to revisit cross-referencing rules in other aspects of the annual report to ensure they are aligned, flexible, and do not require significant duplication of information. Notably, the OFR and remuneration report do not have the same flexibility. In our view the information should be disclosed in the place which makes the most logical sense for readers to find and understand it, and current cross-referencing rules for the broader annual report are convoluted and do not support this aim.</p> <p>RG 000.80 strongly encourages reporting entities to lodge cross-referenced document(s) with their sustainability report. We query whether, in practice, lodgement with ASIC would be necessary where cross-referenced documents are readily available (for example, published on the reporting entity's website). For example, it has become common market practice to prepare and disclose climate transition plans on a three-year cycle. To the extent that the information remains relevant and accurate, we expect that under the new regime reporting entities will cross-refer back to the transition plan in sustainability reports prepared in intervening years. In this case, it would not be practical, nor helpful, for a reporting entity to re-lodge the climate transition plan with ASIC each year.</p> <p>We submit that where the sustainability report provides a direct link to the supporting document, that document does not need to be lodged with ASIC. In the alternative, further guidance as to ASIC's expectations would be helpful.</p>
Labelling	
<p>C5Q1 Do you agree with our proposal to encourage specific labelling for sustainability-related financial disclosures?</p>	<p>We have serious concerns relating to the practical application of RG 000.82-000.89 to large, multinational reporting entities which are subject to multiple sustainability-related disclosure regimes (where information which is not mandatory for the Australian regime is still required</p>

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	<p>for another regime) – in that context, we do not consider it would be practicable to separately label information which is ‘mandatory’ (for the Australian regime) as compared to information which is ‘voluntary’ (from an Australian perspective). In particular, we are concerned there would be significant duplication of information as topics/areas cannot be readily ‘separated’ in this way when companies need to report against multiple regimes.</p> <p>More generally, we would also respectfully suggest that the labelling proposal cuts across ability of companies to evolve their disclosures to meet investor demands over time by voluntarily including additional information expected/requested/sought by the market.</p> <p>In our view, users of reporting do not care whether information is being voluntarily provided or not – they are principally focused about whether they are getting the information that they need and whether it is of an appropriate standard. We would respectfully suggest that ASIC removes the proposal and encourages companies to focus on the disclosure more holistically.</p> <p>Alternatively, the draft guidance could clarify that “clear labelling” can be satisfied by structuring the sustainability report in a way that clearly identifies where the information required by s296A of the Corporations Act is located (e.g. by way of an index table or headings).</p>
<p>C5Q2 If not, what guidance (if any) should we provide to:</p> <p>(a) ensure that users of sustainability-related financial information are not misled by unhelpful or inappropriate labels; and</p> <p>(b) support investor comprehension and the consistency of information provided across the market?</p>	<p>See our response to C5Q1 above.</p>
<p>C5Q3 If you currently prepare voluntary reports covering sustainability, are there other ways to achieve the outcomes our guidance seeks to achieve?</p>	<p>See our response to C5Q1 above.</p>



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Notes to climate statements	
C6Q1 Do you agree with our proposed guidance? If not, why not?	We agree with the proposed guidance.
Proportionality mechanisms and exceptions under AASB S2	
C7Q1 Do you agree with our proposed guidance? If not, why not?	RG 000.94 notes that reporting entities should take particular care to ensure adequate sustainability records are kept in relation to the application of proportionality mechanisms and exceptions, and that ASIC will scrutinise the approach of reporting entities in this area. Given the subjectivity of reporting entities' approaches, it would be useful for ASIC to provide further guidance on what would constitute "adequate" sustainability records.
Sustainability-related financial disclosures outside the sustainability report	
Sustainability-related financial disclosures outside the sustainability report	
D1Q1 Do you agree with our proposed guidance? If not, why not?	The guidance in RG 000.98 that all entities should consider, and be informed by, the sustainability standards when preparing climate- and sustainability-related financial information outside the sustainability report could be read to apply to disclosures in annual reports, disclosure documents, PDSs and investor presentations. In our view, the implication that these disclosures should be "informed by" AASB S1 does not reflect its status as a voluntary standard and may be an overly onerous obligation for entities, particularly in the early years of the sustainability reporting regime.

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	<p>If retained, it would be useful for ASIC to explain how it expects disclosures to be “informed by” AASB S1 in practice, and whether the analysis applied will be different to that applied in respect of AASB S2.</p> <p>In addition, it would be useful for ASIC to provide further guidance relating to how it expects reporting entities to avoid summarising information from the sustainability report in a manner that “distorts the balance, tenor or prominence” of the information (RG 000.105). For example, where a climate-related target is used in the headline of an investor presentation, would a cross-reference or hyperlink to the sustainability report be sufficient to maintain the “balance, tenor or prominence” of the target, or would further disclosure of the target’s accompanying inputs, assumptions and contingencies in the presentation itself be required? It would be useful for ASIC to provide further clarification on the circumstances where the “balance, tenor or prominence” of information will (or will not) be maintained.</p>
<p>D1Q2 Does our proposed guidance strike the right balance between facilitating other sustainability-related disclosures, especially while sustainability reporting requirements are being phased in for reporting entities?</p>	<p>See response to D1Q1 above.</p>
<p>Sustainability-related financial information in the OFR</p>	
<p>D2Q1 Do you agree with our interpretation of s299A(1)? If not, why not?</p>	<p>We have some reservations that ASIC’s interpretation of the OFR requirements in relation to its role ‘supplementing’ and ‘situating’ the sustainability reporting and financial reporting, appears to go beyond the legislative requirements for the OFR and does not align with market practice at present. See further below.</p> <p>Clearly, the OFR is required to set out companies’ organisation-wide strategy and prospects for future financial years (including risks and opportunities) – inclusive of any material climate or broader sustainability matters. However, anything beyond that is not required by section 299A(1) and we have some concerns that an ‘expansive’ view of the OFR will result in ‘hollowing out’ the sustainability report (in a way that makes it less meaningful), superfluous</p>

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	<p>detail in the OFR (eg issues with balance and emphasis), duplication of information and/or reduced flexibility.</p>
<p>D2Q2 Do you agree with our proposed regulatory guidance? If not, why not?</p>	<p>Interoperability between sustainability report and OFR</p> <p>The interoperability between the sustainability report and OFR is an area of concern for us and our clients. Ideally, there would be no need to include duplicate information in the sustainability report that is already included elsewhere in a reporting entity's annual report (for example, in the OFR or remuneration report). RG 000.113 states that the sustainability report is "a separate report to both the directors' report and annual financial report" and cannot form part of the directors' report, including the OFR. This indicates that information relevant to both the OFR and the sustainability report must be duplicated across both sections of the annual report or, potentially, included in the sustainability report by way of cross-reference (to part of the OFR where the full information is set out). This duplication and need for extensive cross-referencing may potentially undermine the usability of the sustainability report.</p> <p>We also note that the guidance relating to disclosure of climate-related strategies, risks and opportunities in the OFR may not align with current market practice regarding the contents of the OFR which is more tightly focused on the strict requirements of section 299A(1) (see above).</p> <p>RG 000.117-000.120 also clarifies ASIC's perspective on how the OFR can be used to contextualise the climate-related financial disclosures in a reporting entity's sustainability report within its overall corporate strategy and prospects for future financial years. However, where climate-related strategies are not key to a reporting entity's overarching business strategies, however, extensive disclosure "situating" these strategies in the reporting entity's corporate strategy and prospects for future years may be confusing or unhelpful for users of the annual report.</p> <p>Consideration of AASB S1</p> <p>RG 000.112 states that, if disclosure of sustainability-related financial information is required in the OFR, a listed entity should "consider, and be informed by" both AASB S1 and AASB S2</p>

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in disclosing that information. As set out further in response to question D1Q1, our view is that this substantially adds to entities' reporting obligations, given AASB S1 is currently a voluntary sustainability standard and requires very comprehensive disclosures. We would suggest deleting this text or, as an alternative, providing more specific guidance in relation to the meaning of "informed by" and ASIC's expectations in practice.

Sustainability-related financial information in disclosure documents under Ch 6D

D3Q1 Do you agree with our proposal? If not, why not?

While providing an "overarching narrative and analysis" of sustainability-related financial information in the investment overview section of an s710 prospectus is likely to be important for many issuers (RG 000.126(c)), we query whether doing so may overstate the importance of the sustainability-related financial information to the business for other issuers (particularly where the business model of the issuer is not significantly affected by these matters).

Similarly, RG 000.126(d) states that issuers should consider disclosing sustainability-related financial disclosures in the business model and investment risk sections of an s710 prospectus. In our view, not every issuer will require disclosure around sustainability-related financial disclosures in the business model section, particularly where the business model of the issuer is not significantly affected by these matters.

In light of these considerations, it will be important to ensure that the proposed guidance is not treated as a 'tick-a-box' exercise where disclosures are included on these matters merely to show that they have been addressed, as this may well result in the inclusion of generic disclosures that increase the length of the prospectus but are not necessary or relevant to an investor's decision whether to invest in the issuer's securities. In this regard, we consider that it should be made clear in the guidance that the extent to which issuers are required to meet the guidance will largely depend on the nature of the issuer's business. Furthermore, we would trust that ASIC will consider the nature of the issuer's business in evaluating the extent to which the guidance is applicable during its review of s710 prospectuses. We note that ASIC has already started querying climate-related disclosures in s710 prospectuses. In our view, any queries around an issuer's approach to addressing the proposed guidance should

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	<p>be tailored to the industry and business model of the issuer, and should take into account whether sustainability-related financial disclosures are genuinely relevant to investors.</p> <p>We note that special care will need to be taken in the context of s710 prospectuses where the sustainability-related financial information disclosed is forward-looking financial information. All assumptions underlying these forward-looking disclosures will need to be set out in the prospectus. The guidance should make it clear that forward-looking sustainability related financial information is only required to be included where the issuer has a reasonable basis to do so.</p> <p>Noting that ASIC is considering updating RG 228, we are interested to see how the proposed guidance detailed above will be reflected in RG 228.</p>
<p>D3Q2 Are there any practical problems associated with our proposal? If so, please provide details.</p>	<p>See our response above to D3Q1.</p>
<p>D3Q3 What reasonable expectation are investors and other professional advisers likely to have about the disclosure of climate-related financial information if required by s710?</p>	<p>In our experience, investors are interested in seeing additional climate-related financial disclosures in s710 prospectuses. However, the exact nature of those disclosures will ultimately depend on the nature of each issuer. For example, energy and resources businesses will find disclosures relating to greenhouse gas emissions more relevant than food retailers, which may find disclosures relating to sustainable packaging more relevant.</p>
<p>Sustainability-related financial information in PDSs</p>	
<p>D4Q1 Do you agree with our guidance? If not, why not?</p>	<p>The same considerations apply as per s710 prospectuses.</p>

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D4Q2 Are there any practical problems associated with our proposal? If so, please provide details.	See our response above to D4Q1.
D4Q3 What reasonable expectation are retail investors likely have about the disclosure of climate-related financial information if required by s1013D and s1013E?	See our response above to D4Q1.
ASIC's administration of the sustainability reporting requirements	
Guidance on how we will approach sustainability reporting and audit relief	
E1Q1 Does our proposed guidance help you understand how we will approach and assess an application for relief from the sustainability reporting and audit requirements?	<p>Overall, the proposed guidance on how ASIC will approach and assess an application for relief from sustainability reporting and audit requirements provides practical and helpful guidance for reporting entities. However, ASIC should consider including specific information in the Regulatory Guide on how it will apply its discretion to grant sustainability reporting and audit relief where:</p> <ul style="list-style-type: none"> • Australian entities have a foreign parent that already prepares (or will soon prepare) a global consolidated sustainability report that complies with global sustainability-reporting frameworks (eg IFRS S1 and S2; CSRD); • National Greenhouse and Energy Reporting (NGER) registered companies are appointed as a manager / operator of an underlying asset, but do not have the rights to the underlying asset or an obligation for the liabilities relating to the underlying asset; and • disclosures do not include recently acquired assets or companies in the context of M&A activity (for example, if a company acquires a substantial asset towards the end of its reporting period and does not have the data available to prepare sustainability-related

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disclosures in accordance with the regime, will relief be required? Or can entities rely on the proportionality mechanisms under the regime?).

This information could be included in the “Specific considerations for some applications” section of the guidance.

Australian companies that have a foreign parent

Several of our clients have sought advice and are considering the likelihood of relief on the basis that global consolidated sustainability reporting provides decision-useful information to primary users of the report, and any reporting at an Australian-level would be entirely new and unreasonably burdensome in the context of limited users of the reporting (ie, where the parent entity’s reporting is more meaningful given it drives the governance, strategy, risk management and targets/metrics on climate change).

These companies are considered “reporting entities” under the Australian regime but typically have a foreign parent that already prepares (or will soon be preparing) a global consolidated sustainability report (which includes information on the Australian company), for example, under the International Sustainability Standards Board’s standards IFRS S1 and S2). The preparation of a sustainability report requires significant resources (human; capital; technological), particularly for entities that are considered ‘Group 1’ on a consolidated basis, but have no existing systems and processes in place (given their reliance on group-wide equivalents; and without large operational footprints in Australia).

As a result, these companies are exploring whether to seek ASIC relief from their own Australian sustainability reporting and to instead lodge (and publish on their website) their foreign parent’s global consolidated sustainability report on the basis that preparing an Australian sustainability report would impose unreasonable burdens and that the information needs of primary users are already (and better) served by group-level reporting.

NGER registered companies

NGER registered companies are considered to be “reporting entities” under the Australian regime. It is common in some industries (for example, the mining industry) for there to be joint arrangements where two or more entities have “joint control” of a business activity (for example, a mining operation). These entities therefore have the rights to the underlying asset

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	<p>and an obligation for the liabilities relating to the underlying asset. These entities may then appoint an incorporated entity (which may be the NGER registered company) as the manager / operator of the underlying asset.</p> <p>Some of our clients who are NGER registered companies that have been appointed as the manager / operator of an underlying asset are looking to apply for ASIC relief on the basis that preparing a sustainability report disclosing the material climate-related financial risks and opportunities etc would impose unreasonable burdens because they do not own the underlying asset or have an obligation for the liabilities relating to the underlying asset. Instead, it would be more appropriate for the entities who have "joint control" of the business activity (assuming they are "reporting entities") to include the material climate-related financial risks and opportunities etc associated with the asset in their sustainability reports.</p> <p>Recently acquired assets or companies in the context of a merger and acquisition</p> <p>In the context of M&A activity in a reporting year, the nature and timing of the transaction could significantly impact the sustainability reporting and audit requirements (for example, materiality assessments, scenario analysis, financial projections and reporting thresholds could be altered). There may be insufficient time to adequately incorporate the acquired asset or company into the reporting entity's climate strategy or to obtain accurate or meaningful climate-related data about the acquired asset or company.</p> <p>In light of this, we recommend that ASIC provides guidance on whether reporting entities will be provided with an exemption to disclose information about that acquired asset or company in the first reporting year following the acquisition in these circumstances.</p>
<p>E1Q2 Do you have any feedback about any aspect of our proposed guidance on relief?</p>	<p>See our response above to E1Q1.</p>
<p>E1Q3 Are there additional policy considerations that we should address in our guidance to help entities understand when we are likely to exercise or not exercise ASIC's power to grant relief?</p>	<p>See our response above to E1Q1.</p>



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E1Q4 Are there any specific areas or kinds of relief that you anticipate will be commonly sought from the sustainability reporting and audit requirements? If so, please inform us what, if any, relief topics or types of applications we should provide further guidance on.	See our response above to E1Q1.
E1Q5 What additional guidance, if any, would help you: (a) consider whether to apply for relief from the sustainability reporting and audit requirements; (b) prepare applications for relief; and (c) understand how to lodge an application for relief?	See our response above to E1Q1.
Relief for stapled entities	
E2Q1 Do you agree with our proposal that, for a stapled entity to rely on ASIC Instrument 2023/673, a sustainability report must be prepared on behalf of all members of the stapled group, even if one or more of the stapled entities in the stapled group is not required to prepare a sustainability report under s292A?	No specific comment.
E2Q2 We are proposing that relief is available only where the sustainability report is prepared as if all members of the stapled group were a single entity. Do you agree with this proposal? Does this proposal for preparation and presentation raise any issues?	No specific comment.

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E2Q3 If you consider that an alternative basis for the preparation or presentation of sustainability reports for stapled groups is more appropriate, please explain how. Please also explain why this would be more decision useful for users of the sustainability report.	No specific comment.
E2Q4 If relief for stapled entities should be provided on an alternate basis, please explain: (a) how the relief should apply; and (b) the basis for that relief, considering: (i) the statutory preconditions for relief in s342; and (ii) the policy objectives of the sustainability reporting regime.	No specific comment.
Wholly-owned companies	
E3Q1 What issues or challenges should ASIC be cognisant of, in relation to the intersection between the sustainability reporting requirements and ASIC Instrument 2016/785?	No specific comment.
Extending the relief in other ASIC instruments	



Consultation question	HSF commentary and recommendations
<p>E4Q1 Do you consider that we should extend the relief in any of the instruments listed in proposal E4 so that it applies to sustainability reporting or the audit requirements for a sustainability report? Please provide submissions about:</p> <p>(a) why the relief is necessary;</p> <p>(b) how one of the statutory preconditions for providing relief in s342 would be satisfied in relation to the relevant sustainability reporting requirements;</p> <p>(c) any relevant aspects of the relief, or relevant conditions—for example, if we extended the relief in ASIC Instrument 2015/839, how should climate statements of the related schemes be presented in the sustainability report?</p>	<p>We agree with the proposed extensions of relief under proposal E4. We submit that the relief available under <i>ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191</i> should also be extended to sustainability reporting:</p> <p>(a) given the clear linkages between climate-related and financial disclosures (balance sheets; financial statements and notes; and remuneration disclosures), the relief in this instrument should be extended to cover related disclosures in the sustainability report for consistency across the reporting framework;</p> <p>(b) it would be an unreasonable burden to explain the differences in amounts between the sustainability report as compared to the equivalent rounded amount elsewhere in an entity's reporting and it would jeopardise the accuracy of reporting, and related investor, lender and/or creditor decisions; and</p> <p>(c) the application of this relief instrument to sustainability reporting would require the sustainability report to be listed as an 'eligible report'.</p>
<p>E4Q2 Are there any other legislative instruments that should be amended to extend relief so that it applies to sustainability reporting requirements? If so, please provide details, including:</p> <p>(a) which of the statutory preconditions for providing relief in s342 would be satisfied in relation to the relevant sustainability reporting requirements, and why; and</p> <p>(b) why there is a current need for the relief to be extended to those requirements.</p>	<p>No specific comment.</p>
Use of ASIC's directions power	

Consultation question	HSF commentary and recommendations
E5Q1 Does our proposed guidance clarify how we may exercise ASIC's directions power under s296E? If not, why not?	We are supportive of ASIC's guidance on the exercise of its directions power under section 296E (specifically RG 000.195, which provides an opportunity for a reporting entity to appear, or be represented, at a private hearing before ASIC and to make submissions to ASIC before any direction to correct, complete, or amend a statement, or to publish or provide that statement to specified persons). We consider this to be consistent with ASIC's proposed 'pragmatic and proportionate' enforcement approach.
Other issues regarding disclosure of sustainability-related information	
Determining revenue, employees and assets for the purposes of applying the sustainability reporting thresholds	
F1Q1 Do you require guidance on how to determine revenue, employees and assets, for the purposes of applying the sustainability thresholds?	No specific comment.
F1Q2 Do you consider that there are uncertainties or potential inconsistencies in how these tests might be applied in practice? What are they and how could they be addressed through guidance?	No specific comment.
Other areas where we can support the transition to sustainability reporting	
F2Q1 Are there any other areas of concern or uncertainty about complying with the sustainability reporting	We are supportive of ASIC's guidance in RG 000.29 (External advice) which endorses reporting entities to seek professional advice beyond advice from the entity's auditor. A common concern among clients is auditor capability, and particularly in the initial years of the

Consultation question	HSF commentary and recommendations
requirements that you consider ASIC could address through regulatory guidance? If so, please provide details.	<p>regime, as auditors are still building internal capability, reporting entities may need to source assurance from specialist climate assurance providers with additional expertise.</p> <p>In our experience, obtaining specialist climate-related assurance is established practice among ASX listed companies (eg for NGERs reporting) and should be facilitated under the regime and ASIC's related guidance. For further clarity, we submit that Regulatory Guide 000 should include an express approval of this arrangement.</p>
F2Q2 Are there any other issues or additional information that you consider should be explained in draft RG 000 or future guidance? If so, please provide details.	No specific comment.
F2Q3 Are there any other areas where we could help reporting entities develop their capabilities to meet the sustainability reporting requirements?	See our response to F2Q1.