Deloitte Touche Tohmatsu
ABN 74 490 121 060
Quay Quarter Tower
50 Bridge Street
Sydney NSW 2000

Phone: +61 2 9322 7000

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Claire LaBouchardiere
Senior Executive Leader
Companies & Small Business
Australian Securities and Investments Commission
Melbourne VIC 3001

via email: sustainable.finance@asic.gov.au

ASIC Consultation Paper 380: *Sustainability reporting*

Deloitte welcomes the opportunity to respond to the Australian Securities and Investments Commission's (ASIC) Consultation Paper 380: *Sustainability reporting* (CP 380). Our responses to the proposals in CP 380 draw on the breadth and depth of expertise across our firm, including acting as assurance providers and auditors, management consultants, financial advisors, and legal advisors.

We commend ASIC for its timely work in developing regulatory guidance to assist entities in complying with the sustainability reporting requirements and proposing relief for stapled entities. Given Australia is in its initial stage of mandatory sustainability reporting, we believe it is important for ASIC to provide guidance to ensure that sustainability reporting requirements are applied consistently across regulated entities and in line with ASIC's interpretation of the legislation, and anticipate this guidance will be refined as sustainability reporting practice matures.

Overall, we consider that CP 380 and the related attachments will assist regulated entities in applying the sustainability reporting requirements, and anticipate that extending the relief under existing *ASIC Corporations (Financial Reporting by Stapled Entities) Instrument 2023/673* to sustainability reporting will provide relief for stapled entities. In relation to the regulatory guidance, however, we note that there are certain matters which we believe would benefit from further clarification.

We have highlighted matters of key importance below and have included detailed discussion of these, and some further matters, in Appendix A:

- Specific application matters of the consolidation relief in section 292A(2)
- Application of the Assets Owner threshold in section 292A(6)
- Labelling and distinguishing mandatory from voluntary sustainability information
- Determination of revenue and employees

Additionally, in Appendix B, we have identified some minor drafting edits for your consideration.

The implementation of mandatory sustainability reporting in Australia is a significant development. Preparers, assurance providers and users will benefit from ASIC's ongoing communication of its findings and observations as sustainability reporting develops and matures. We encourage ASIC to develop further guidance periodically as practical experience develops.

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Thank you for the opportunity to provide our views. Should you wish to discuss the responses within our submission, please reach out to me [redacted].

Yours sincerely

[redacted]

Jacques Strydom

National Professional Practice Director
Deloitte Touche Tohmatsu

APPENDIX –Responses to the specific proposals and questions

We set out our detailed observations below. Where we have not commented specifically on a proposal, ASIC should assume concurrence with, and support of, the proposal.

Terms which are capitalised but not defined in this document have the meaning given to those terms in Attachment 1 to CP 380: Draft regulatory guide.

B1. Entities that must prepare a sustainability report
Q1. Do you agree with our proposed guidance?
We agree with the proposed guidance, with the exception noted below. The first row of Table 2 of RG 000.33 currently states that entities, other than registered schemes, RSEs or retail CCIVs, that meet the following requirements are included as a Group 1 reporting entity: • registered corporations under the NGER Act or required to make an application to be registered under section 12(1) of the NGER Act; and • meet a publication threshold in section 13(1) of the NGER Act. We consider that the reference to section 13(1) of the NGER Act noted above should instead be a reference to section 13(1)(a) of the NGER Act, to align with the reference in section 1707B(4)(b) of the *Corporations Act 2001*. This distinction is important as it narrows the criteria which applies in assessing which NGER entities are included in Group 1 to those only based on exceeding the greenhouse gas emission threshold, as opposed to other criteria based on energy consumption and production thresholds.
Q2. What further guidance could we provide to help entities determine whether they are required to prepare a sustainability report?
We consider that ASIC should clarify the application of the consolidation relief provisions in section 292A(2) of the *Corporations Act 2001* in relation to the following: (a) Relief for entities preparing non-statutory financial statements We recommend that ASIC provide guidance on the application of section 292A(2) in the circumstances of consolidated financial reporting that occurs outside Chapter 2M . Section 292A(2) of the *Corporations Act 2001* applies where 'the accounting standards require an entity (the parent) to prepare financial statements in relation to a consolidated entity for the financial year' and 'the parent elects to prepare a sustainability report for the consolidated entity for the financial year'. The definition of 'entity' in section 64A of the Corporations Act 2001 includes 'a partnership or a trust.' We note that certain entities (such as partnerships and trusts that are not disclosing entities) are not required by Chapter 2M of the Corporations Act 2001 to prepare financial statements. However, some of these entities nonetheless prepare a consolidated financial statement with respect to the entities they control, as governing documentation (such as a trust deed) requires that entity to prepare financial statements in accordance with the accounting standards. We further note that AASB 10 *Consolidated Financial Statements* (AASB 10) outlines the circumstances where a consolidated financial statement is required, but does not differentiate between entities that are following the accounting standards because Chapter 2M of the Corporations Act 2001 requires them to, and entities that are following the accounting standards for a different reason.

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Accordingly, we consider that ASIC should clarify whether an entity can rely on section 292A(2) to elect to prepare a sustainability report for the consolidated entity for the financial year in the following circumstances:

(i) That entity is not a Chapter 2M reporting entity (and is not required by section 292A to itself prepare a sustainability report); and

(ii) That entity is required by its own governing documentation (such as a trust deed) to prepare financial statements in accordance with the accounting standards; and

(iii) The accounting standards require that entity to prepare a consolidated financial statement in relation to a consolidated entity for the financial year.

(b) Parent entity reporting election

We believe that s292A(2) provides a parent entity (who meets the criteria in that section) the optionality to either prepare a consolidated sustainability report on behalf of the consolidated entity, or otherwise elect to prepare a separate sustainability report for the parent, in which case subsidiary entities would not obtain relief. We believe that, in general, it is best practice for sustainability reports to be prepared for the same reporting entity as for the related financial statements. We are concerned that, where financial reports are prepared on a consolidated basis for controlled entities, but sustainability reports are prepared on a separate basis by the parent, this could create inconsistencies between financial and sustainability disclosures, and misalign with global requirements.

Whilst we acknowledge that ASIC is not responsible for the development of AASB S2, we consider it would be beneficial for ASIC to provide guidance on the connections that should be drawn to related financial statements, in circumstances where consolidated financial reports are prepared, but sustainability reports are prepared on a separate basis by the parent. This could be done through the provision of examples. Further, we consider it would be beneficial for ASIC to indicate its expectations for sustainability reporting in these situations. For instance, we consider that, where a parent prepares a separate sustainability report, the entity disclosures should nonetheless discuss how it manages climate-related risks and opportunities concerning its investments in subsidiaries, and explain the rationale for why the entity elected to prepare a separate sustainability report.

(c) Subsidiaries of investment entities under AASB 10

Under AASB 10, entities which meet the definition and criteria of an 'investment entity' do not consolidate subsidiaries (unless those subsidiaries are 'service entities'). Investments in subsidiaries that are not consolidated are accounted for as financial assets at fair value through profit or loss. Our interpretation of section 292A(2) is that subsidiaries of investment entities who are not consolidated are not able to rely on the section 292A(2) relief, and therefore would be required to prepare their own sustainability reports if they meet any of the size thresholds in s292A(3) – (6).

We consider it would be beneficial for ASIC to provide guidance on its interpretation on the above (for example, whether it agrees or disagrees with our interpretation).

(d) 'Asset owners' parent with Group 1 subsidiaries that are not 'asset owners'

'Asset owners' (i.e. registrable superannuation entities, registered schemes and retail CCIVs) that are classified as Group 2 entities and do not qualify as Group 1 entities due to their status as 'asset owners' may face challenges when they have 'large' subsidiaries that are not 'asset owner' entities. Our interpretation of the legislation is that, if such a subsidiary triggers the Group 1 size thresholds (based on revenue, assets, and employee numbers) prior to the commencement of Group 2 reporting, it will be required to prepare a sustainability report.

This would be the case even if the ‘asset owner’ parent intends to apply the consolidation relief in section 292A(2) in the following year (if the parent falls within Group 2). In this scenario, it could be seen as punitive to the subsidiary to require the subsidiary to prepare a separate sustainability report for the period of time before it is included in the consolidated sustainability report of its ‘asset owner’ parent. We consider it would be beneficial if ASIC clarified whether any form of relief can be provided in the circumstances described above, for example, under Part 2M.6 of the *Corporations Act 2001*.’’
Q3. What additional guidance should we provide to clarify how the s292A thresholds apply to RSEs, registered schemes and retail CCIVs?
We consider that the term ‘assets under management’ referred to in the draft regulatory guidance in RG 000.32, RG 000.34 (and related footnote), RG 000.35 and RG 000.37 could create confusion. We note that the language used in section 292A(6)(b) of the *Corporations Act 2001* is ‘the value of assets at the end of the financial year of the entity and the entities it controls (if any)’, and that consistent language is used in the Explanatory Memorandum (for example, paragraph 4.68). In contrast, the term ‘assets under management’ is commonly understood to represent the total value of investments managed by a person or entity on behalf of investors. This is different to the concept of assets and entities that are controlled by an entity and, as a result, are included in the total assets of that entity on the balance sheet, in accordance with the requirements of accounting standards. For example, many fund managers have assets under management (AUM) that are not controlled or consolidated. Accordingly, we consider it would be beneficial for RG 000.32, RG 000.34 (and related footnote), RG 000.35 and RG 000.37 to be amended to the reflect the language used in section 292A(6)(b) of the *Corporations Act 2001*, to avoid any such confusion.
B2. Sustainability records, directors’ duties and modified liability
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?
We note that RG 000.65 provides the following example: ‘where a protected statement is reproduced, quoted, or summarised in an investor presentation or in promotional material, it will not be covered by the modified liability settings, unless disclosure is required under a Commonwealth law such as under s674 or 675’. Our interpretation of the relevant legislative provisions, combined with the above guidance, is that a simple and direct cross reference to a protected statement on its own (for example, a note in an investor presentation to refer the reader to the protected statement in the sustainability report), but that does not reproduce, quote, or summarise the protected statement, is outside the category of a voluntary statement that is not covered by the modified liability settings. Put another way, the applicability of the modified liability protections to a protected statement would remain in force if a simple cross reference to the protected statement was made in another document (but without reproducing, quoting, or summarising the protected statement). We consider it would be beneficial for ASIC to provide guidance on its interpretation on the above (for example, whether it agrees or disagrees with our interpretation) and to provide guidance (for example through a case study) where a protected statement would retain the benefit of the modified liability regime.

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C1. Statements about no climate risks or opportunities
Q1. Are there other issues relevant to reporting entities' assessment of whether there are no material financial risks or opportunities?
We agree with the proposed guidance on section 296B(1) of *Corporations Act 2001*. We note, however, that there could be some ambiguity when determining 'material financial risks relating to climate' and 'material financial opportunities relating to climate' for the purposes of section 296B(1). This is because the language used in AASB S2 differs to the wording of section 296B(1), as it requires entities to disclose information about 'climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects.' This distinction is also clarified in the recently released ISSB educational material on materiality, which clarifies that the assessment of 'materiality' as defined is not an attribute of the identification of climate-related risks and opportunities, but is, instead, an attribute of the information about these risks and opportunities which should be disclosed. Whilst we acknowledge that ASIC is not responsible for the development of AASB S2, we consider it would be beneficial for ASIC to provide guidance on the assessment of 'material financial risks relating to climate' and 'material financial opportunities relating to climate' in the context of section 296B(1), given the differing language used in AASB S2.
C5. Labelling
Q1. Do you agree with our proposal to encourage specific labelling for sustainability-related financial disclosures?
We note that RG 000.82 to RG 000.89 include provisions that only sustainability reports prepared under section 292A of the *Corporations Act 2001* can be labelled as a 'sustainability report', and any other voluntary reports (including those under AASB S1) should not be labelled a sustainability report. Whilst we understand the benefits of clear labelling to users, we query whether this promotes progressive sustainability disclosure, particularly for those entities seeking to achieve IFRS compliance without the burden of additional labelling, separate reporting on non-climate related sustainability issues or index tables. Additionally, we consider there is some ambiguity as to whether industry metrics would be considered voluntary and, therefore, required to be part of a voluntary separate report under the current proposals. Specifically, Appendix D to AASB S2 (part D49) states that 'if an entity discloses a metric taken from a source other than Australian Sustainability Reporting Standards, the entity shall identify the source and the metric taken.' As such, it is not clear whether any industry metrics that an entity chooses to report on are included in the regulated sustainability report by virtue of the general requirements of IFRS S1 that appear in Appendix D, or whether industry guidance is viewed by ASIC as not mandatory due to its explicit exclusion from the core standard of AASB S2, and therefore outside of what should be included in the regulated 'sustainability report.' Further, in cases where a reporting entity chooses to provide additional disclosures on industry-based metrics in accordance with IFRS S2.28(b) [which has been removed in AASB S2], this may present challenges in distinguishing between voluntary industry-based metrics and mandatory cross-industry metrics.
E4. Extending the relief in other ASIC instruments
Q2. 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: (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 (b) why there is a current need for the relief to be extended to those requirements.
We believe *ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument* 2016/191 should be amended so that it applies to sustainability reporting requirements. This would be consistent with the approach followed for financial reporting, noting that AASB 101, paragraphs 51 and 53, also explicitly contemplate rounding, allowing entities to make financial statements more understandable, provided the level of rounding does not omit material information and is clearly disclosed.

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F1. Determining revenue, employees and assets for the purposes of applying the sustainability reporting thresholds
Q1. Do you require guidance on how to determine revenue, employees and assets, for the purposes of applying the sustainability thresholds? Q2. 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?
Whilst we note that the accounting standards cover the application of some of these concepts and that it is not ASIC's role to interpret accounting standards, we consider it would be beneficial for ASIC to clarify or otherwise provide guidance on how ASIC will enforce the application of these thresholds when ensuring regulated entities are applying the thresholds in accordance with legislation. (a) Determination of revenue On the determination of revenue, we believe diversity in practice may arise in respect of the treatment of the following: (i) *Gains/losses on financial and non-financial assets recognised in profit or loss* – There is diversity in views as to whether these items would be included in 'revenue' and whether or not the assessment would differ when investing in these assets and resulting income forms part of the entity's ordinary/main business activities. This could include fair value gains and losses on financial assets (either in profit or loss or other comprehensive income), fair value gains and losses on investment property and fair value gains and losses on inventory held by commodity broker-traders who measure their inventory at fair value less costs to sell. (ii) *Share of profit of equity accounted investments* – Whilst equity accounted share of profit may not immediately be considered as 'revenue', would these be considered as 'revenue' when the investment of equity accounted investments is an entity's ordinary/main business activity? In this respect, we note that AASB 18.75 (the new Accounting Standard on Presentation and Disclosure in Financial Statements) specifically requires disclosure of share of profit or loss of associates as a separate line item distinct from revenue. AASB 18.53-55 also requires income and expenses from equity-accounted investments to be classified in the investing category rather than the operating category in the statement of profit or loss (regardless of whether it invests in associates and joint ventures as a main business activity). (b) Determination of number of employees) Similar issues arise in determining the number of employees to be used in the threshold test in sections 292A(3)(c) and 292A(4) of the *Corporations Act 2001*. Whilst this is consistent with the existing requirements in section 45A(5) of the *Corporations Act 2001*, which provides that part-time employees are counted as an appropriate fraction of a full-time equivalent, it provides no other guidance on how employee count is to be determined. Importantly, there is no guidance on whether, and if so, how, casual employees are to be counted. As the test is a 'point in time' test, it is unclear whether an average of full-time equivalent hours worked by employees over a period of time should be used to calculate casual employees, whether a simple count of casual employees that worked at the end of the financial year should be used, or whether some other method should be utilised. Given the commencement date for Group 1 entities is fast approaching, we consider that this matter should be actioned as a priority. Should ASIC decide to proceed with further consultation, we stand ready to contribute and provide input to an expedited consultation on this matter.

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F2. Other areas where we can support the transition to sustainability reporting
Q2. 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.

We consider the below areas should be further clarified by ASIC:

(a) Draft guidance in paragraph RG 000.29

We note the draft guidance in paragraph RG 000.29 advises that entities should, where required, consider seeking professional advice to ensure compliance with the sustainability reporting requirements under the *Corporations Act 2001*. This paragraph is footnoted to comment that the reporting entity auditor should not provide this advice. We consider it would be more appropriate for the footnote to refer the auditor to the relevant professional standards, currently APES 110, and that the auditor should consider section 600 when requested to provide non-assurance services. We have included the relevant sections of the guidance to which we refer below:

(i) *600.1 Firms are required to comply with the fundamental principles, be independent, and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to Independence.*

(ii) *600.2 Firms and Network Firms might provide a range of non-assurance services to their Audit Clients, consistent with their skills and expertise. Providing non-assurance services to Audit Clients might create threats to compliance with the fundamental principles and threats to Independence.*

The standards require that, before the auditor accepts an engagement to provide a non-assurance service to an audit client, a determination shall be made as to whether providing such a service would create a threat to independence. In evaluating the significance of any threat created by a particular non-assurance service, consideration shall be given to any threat that the audit team has reason to believe is created by providing other related non-assurance services. If a threat is created that cannot be reduced to an acceptable level by the application of safeguards, the non-assurance service shall not be provided.

We acknowledge that the relevant standards may change and/or evolve over time. For this reason, we recommend that the footnote is deleted as the assurance provider is required to comply with relevant professional standards, including those covering independence.

(b) Draft guidance in paragraph RG 000.78

RG 000.78 speaks to ASICs expectation in relation to the impact of forward-looking information in the climate statement on continuous disclosure obligations for disclosing entities. The drafting of "reporting entities that are not disclosing entities should also provide an update to the market when these relevant facts or circumstances change" appears to introduce a similar continuous disclosure regime to entities that are not disclosing entities. Generally reporting for entities that are not disclosing entities in Australia is on an annual basis in line with the lodgement of financial statements under the *Corporations Act 2001*. Extending continuous disclosure obligations to entities that are not disclosing entities would be a significant expansion of continuous disclosure requirements as well as a significant expansion in reporting obligations for these entities.

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Appendix B: Minor drafting edits

Reference	Current wording	Proposal
RG 000.41	In certain circumstances, a subsidiary that is part of a consolidated entity or an entity that is part of a stapled group is not ~~be~~ required to prepare a sustainability report. This applies when:	In certain circumstances, a subsidiary that is part of a consolidated entity or an entity that is part of a stapled group is not required to prepare a sustainability report. This applies when: