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Claire LaBouchardiere, Senior Executive Leader
Companies & Small Business
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email only: sustainable.finance@asic.gov.au

Dear Claire

Submission on ASIC Consultation Paper 380 Sustainability reporting

The Property Council of Australia (the Property Council) welcomes the opportunity to respond to the Australian Securities and Investments Commission's (ASIC) consultation paper on sustainability reporting, including proposals to issue a regulatory guide for entities required to prepare a sustainability report under Ch 2M of the Corporations Act (the Act).

The Property Council is the peak body for owners and investors in Australia's $670 billion property industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private.

The introduction of climate-related financial disclosures is a step change for sustainability reporting in Australia, with businesses across the economy challenged to build internal capability and expertise to deliver high quality reports, including the property industry.

We welcome ASIC's role as regulator to administer and monitor sustainability reporting, as a central stakeholder in ensuring disclosures are useful, consistent and comparable by investors and users of that information.

In response to the consultation paper and draft Regulatory Guide 000: Sustainability reporting (RG 000), the Property Council has a number of priorities for ASIC to consider or investigate further.

Our priorities

1. Further guidance for consolidated sustainability reporting commencement

We welcome ASIC's proposal to allow consolidated sustainability reporting relief, both through allowing a parent entity to elect to prepare a sustainability report for a consolidated entity, and to enable a stapled entity to prepare a report for all stapled group members under the existing instrument (RG 000.41).

Further guidance is required for determining when a consolidated entity satisfies the relevant thresholds, particularly for either Group 1 or Group 2. Whilst Table 2 of RG 000 states the criteria to determine consolidated revenue, value of assets and number of employees is the entity *and* the entity/entities it controls, there are examples of where the secondary entity is better placed to report on its own circumstances, rather than at the group or parent level.

For these entities, if the controlled or stapled entity chooses to report on its own rather than at the group or parent level, then it or its parent or stapled entity may fall below thresholds listed in Table 2.

To allow flexibility, the consolidated reporting, relief should go both ways: up to the parent entity or staple, or down to the controlled entity level or secondary staple. The capacity for entities to report according to their particular circumstances would be beneficial and prevent uncertainty, particularly in avoiding requests for individual sustainability reporting relief (RG 000.160).

The regulatory guide would benefit from some further guidance, including some worked examples, of these situations to ensure reporters are aware of which group they fall into, and therefore their commencement date.

2. Extension of modified liability exemptions

The Property Council welcomes the introduction of modified liability settings for certain statements made in the sustainability report or the auditor's report, including disclosures relating to Scope 3 emissions, scenario analyses and transition plans from 1 January 2025 to 31 December 2027, and all forward-looking statements relating to climate from 1 January 2025 to 31 December 2025.

Further consideration should be given to the circumstances in which modified liability will apply, that is only to protected statements made in either the sustainability report or the auditor's report.

The modified liability settings do not apply to statements made voluntarily outside the report, for example where it is reproduced, quoted or summarised in an investor presentation, or promotional material (RG 000.65). Members have raised concerns with this restriction, particularly as that interacts with the objective of sustainability reporting.

As outlined by ASIC, the objective of sustainability reporting is, in part, to provide users of that information with confidence and to make informed decisions about the credentials or suitability of an investment or entity (RG 000.11). The inability for an entity to speak to its own sustainability report, and simply refer people back to the report, would hinder this capability.

In order to achieve the objective outlined in the *Australian Securities and Investments Commission Act 2001*, which states that reporting should "...allow users to make an evaluate decisions....facilitate comparability, and is readily understandable", ASIC should consider whether modified liability could be extended to more circumstances.[1]

Further clarity would be welcome for protected statements made outside the sustainability report, such as those made at an Annual General Meeting (AGM), and ASIC should consider providing case studies and examples to further demonstrate their application.

3. Clarify statements of no financial risks or opportunities

The Property Council supports the inclusion of a mechanism to allow for statements of no financial risks or opportunities relating to climate for Group 3 entities, however further guidance should be provided by ASIC for entities preparing such statements.

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[1] *Australian Securities and Investments Commission Act 2001* (Cth)

The consultation paper states that ASIC may provide additional guidance as market practice develops, and we would support the inclusion of guidance within the regulatory guide before Group 3 entities are required to report from 1 July 2027.

A determination that no financial risks or opportunities are present for an entity still requires a detailed assessment that must be adequately recorded and substantiated, as such Group 3 entities will require appropriate guidance well in advance as they look to established robust processes, and can ensure they can determine as soon as possible whether they will be required to lodge a climate statement or a statement of no financial risks or opportunities.

We would welcome consultation on draft guidance prior to the reporting date for Group 3 entities from 1 July 2027.

4. Allowing the use of hyperlinking in cross-referencing
The Property Council supports ASIC's interpretation of AASB S2 (and its Appendix D) in relation to cross-referencing, insofar as encouraging entities to lodge their documents together and ensure they are available on same terms (such as on an entities' website)

Further guidance should be provided to clarify the role of hyperlinking between documents will be considered sufficient, or if a full webpage Uniform Resource Locator (URL) or other details will be required.

5. Clarify any conflicts between materiality assessments in the OFR and the sustainability report
Members have raised questions about potential conflicts between materiality assessments made in the substantial sustainability report and an entities' operating and financial review (OFR).

The regulatory guide outlines the expanded role of the OFR to "[situate] the specific climate-related strategies…risks…and opportunities" (RG000.18) within an entities' broader corporate and financial strategy, however it sets a different standard for materiality.

AASB S2 Appendix D defines materiality as "information…that could reasonably be expected to affect the entity's prospects", which must be reflected in the sustainability report.[2]

ASIC's guidance (RG000.19) however states that when preparing the OFR, in reference to displaying information that "…while these matters may be material, they may not be the most critical factors relevant to the listed entity's prospects, when balanced against other strategies, risks and opportunities for the listed reporting entity."

This sets two standards for materiality of climate information, either its materiality to include in the sustainability report, or whether it should be displayed in the OFR. This conflict between standards could impact on an entity's directors' duties and obligations.

ASIC should further investigate this potential conflict and provide further advice to either align the standard of materiality or clearly define a different standard between the two reports.

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[2] Australian Accounting Standards Board (AASB). (2024). *AASB S2 Climate-related Disclosures*. https://standards.aasb.gov.au/aasb-s2-sep-2024

6. ASIC's supervision and enforcement priorities

The Property Council welcomes the acknowledgement by ASIC of the challenging transitionary period that entities are facing in building their capability and processes to meet their sustainability reporting obligations.

The consultation paper notes that ASIC will take a proportional and pragmatic approach to supervision and enforcement during the transition period, which we welcome.

Rather than focusing on entities with a good track record and making a meaningful attempt at disclosing high quality sustainability information, during the transition period there may be entities who are misrepresenting their products or investment strategies by way of greenwashing, or by not engaging with their disclosure obligations at all.

These entities should be the focus of ASIC's supervision and enforcement powers, whilst industry's processes and capabilities mature.

The Property Council would welcome the opportunity to discuss this submission in more detail. Please contact [redacted], Policy Manager at [redacted] to arrange a meeting.

Yours sincerely

[redacted]

Antony Knep
Executive Director – Capital Markets