

About the Maritime Union of Australia (MUA)

The Maritime Union of Australia (MUA) represents approximately 14,000 workers in the shipping, stevedoring, offshore oil and gas, port services and commercial diving sectors of the Australian maritime industry.

The MUA is an active affiliate of the International Transport Workers Federation (ITF) which represents over 18 million workers worldwide that are involved in the shipping, ports, rail, road, airline and logistics components of global supply chains.

The MUA and ITF are active participants in delivery of the global workers capital agenda through both the Australian Council of Trade Unions (ACTU) and Global Unions Committee on Workers Capital (CWC), a committee of the International Trade Union Confederation (ITUC).

The National Secretary of the MUA is also the President of the ITF, and in that capacity, is a Vice Chair of CWC. He Chairs the CWC Asset Manager Accountability Initiative, which engages with the globe's largest asset managers to leverage the power of collective action by asset owners to drive changes down the investment chain by holding the largest global asset managers accountable to their clients on human and labour rights.

The MUA National Secretary is also an independent director on the board of the ACTU Centre for Workers Capital, and a trustee director on the board of Cbus superannuation fund.

Our interest in sustainability reporting – we are a user

Trade unions and related party organisations such as NGOs we work with are avid users of sustainability reports.

Trade unions in Australia represent over 1.6 million workers and millions more who gain the benefits of trade union activities such as negotiation of enterprise bargaining agreements from which workers covered by an enterprise agreement gain benefits, regardless of whether they are a trade union member.

Additionally, under Australia's highly successful industrially based equal representation model of superannuation fund governance, many unions have an obligation under superannuation fund trust deeds to nominate potential candidates for trustee director positions on superannuation fund governance boards. Union nominated trustee directors on superannuation boards represent some 11 million superannuation fund contributors and beneficiaries.

But trade unionists are not just investors through their superannuation fund, they are also retail investors, holding equities and other investment instruments.

Trade union members and superannuation members are also borrowers and consumers.

Trade union members and superannuation fund members therefore interface with corporations as investors, borrowers and consumers – and more broadly through their role as citizens.

For all those reasons, trade unions as representatives of workers in their investment, borrower and consumer roles are vitally interested in the sustainability performance of companies, and in the investment performance of the shareholder owners of those companies, irrespective of whether their shareholding is secured through public or private markets.

Trade unions use sustainability reports to help assess the responsible investment performance of companies in which we have an interest, across all facets of environmental, social and governance (ESG) performance.

We have a particular interest in the transition planning and scenario analysis aspects of climate related sustainability disclosure, where there is inevitably a large workforce impact that requires a just, equitable and inclusive outcome for impacted workers and communities. We also have a strong interest in social and equity factor performance of companies, largely based on the enjoyment of human and labour rights and of course in high quality governance founded on engagement, social dialogue and workforce/trade union participation in company decision making. We emphasise that human rights are universal and inalienable, and are therefore universally material.

The workers that trade unions represent are also vitally interested in housing, education, health, transportation/mobility, energy and social/environmental amenity and access to recreation. So issues such as food security, water security, energy security which are all dependent on soils, water, biodiversity and ecosystems are central to standards of living and worker well-being, and are all aspects of nature.

We mention the full spectrum of responsible investment (Climate, Nature and Social/Equality) because as the IFRS International Sustainability Standards Board (ISSB), in building on its Climate-related standards, develops its approach to the translation of Nature-related Financial Disclosure into an ISSB standard following the Taskforce on Nature-related Financial Disclosure (TNFD) report of September 2023, and considers the work of the Taskforce on Inequality and Social-related Financial Disclosures (TISFD) which has committed to develop a TISFD global disclosure framework by Q4 2026, we anticipate that the Corporations Act, including section 296D (Climate statement disclosures), will need to be expanded.

We anticipate that expansion will require disclosure on not only nature-related disclosures but social and equality-related disclosures. We note and agree with the climate-related risks and opportunities derived from the definition in Appendix A of AASB S2 laid out in Attachment 1 to CP 380/*Draft Regulatory Guide 000: Sustainability reporting*, though we would have preferred if climate-related transition risks, described as including “*policy, legal, technological, market and reputational risks*” had also included ‘workforce’ risks and opportunities.¹

In our view section 296D in the Corporations Act is presently deficient in that there is a clear ‘grey’ area between climate disclosure and social disclosure (workforce risks), because commitments and actions on climate related mitigation activities a company is allocating resources to, which the Corporations Act now requires companies to disclose, includes human resources. At present the Corporations Act does not provide a specific obligation to disclose approaches to the allocation or performance of human resources, and importantly, to ensure that the rights of ‘people’ (workers, communities, citizens) are not only ‘respected’ but ‘enjoyed’ as required under international human rights law.²

Sustainability reports provide the primary evidence on an entity’s commitments and plans to address their ESG commitments and actions – their social licence to operate. The ISSB standards, as

¹ ASIC, *Attachment 1 to CP 380 / Draft Regulatory Guide 000: Sustainability reporting*, see Table 1 on P8, <https://download.asic.gov.au/media/ihcotflf/attachment1-to-cp380-published-7-november-2024-20241112.pdf>

² Office of the High Commissioner for Human Rights (OHCHR), *What are human rights?* - <https://www.ohchr.org/en/what-are-human-rights>

released for application in Australia by the Australian Accounting Standards Board (AASB), combined with taxonomy and technical definitions will help ensure trade unions understand how and to what extent the companies that have an employment relationship with their members or are providing other goods and services on which they depend, are meeting their social licence to operate. This will assist in the quality of social dialogue given effect through enterprise bargaining and other participatory mechanisms like health and safety committees, that impact on productivity and profitability and ultimately on living standards and social equity.

Similarly, trade unions and their members are deeply interested in the way their superannuation funds, their banks, their insurers, their IT&C service providers, the companies they interact with as consumers like supermarkets and other retailers are addressing the decarbonisation imperative, the environment more broadly, the treatment of their workforce and the way they adopt and use new technologies. Ultimately, their quality of life.

The quality, consistency and comparability of disclosures of reporting entities is therefore a central concern of trade unions. They are not the exclusive preserve of investors and corporations.

We therefore urge ASIC, and in fact all regulators, to elevate and apply the social, equity and human rights lens when interpreting legislation (and advising Government on legislative reform), developing guidance and taking regulatory action.

Our response to the Consultation questions

Part B. Preparing a sustainability report

Entities that must prepare a sustainability report

Consultation question B1Q1: Do you agree with our proposed guidance?

- Broadly speaking, yes. We want to see high-quality, consistent and comparable climate-related financial disclosures that can be relied upon to enable users of that information to make informed decisions.
- We nevertheless propose a number of improvements to the Guidance in this submission.

Consultation question B1Q2: What further guidance could we provide to help entities determine whether they are required to prepare a sustainability report?

- We propose that where appropriate in the Guidance, it refer to related regulatory guidance and voluntary codes that will help reporting entities.
- For example, the ACCC *Making environmental claims: A guide for business* of December 2023³, the Australian Association of National Advertisers (AANA) *Environmental Claims Code* commencing March 2025.⁴

Sustainability records, directors' duties and modified liability

Consultation question B2Q3: Does our proposed guidance help you understand our expectations for directors in complying with their sustainability reporting requirements?

- We note that the Guidance refers to:
 - Sustainability reports being audited in accordance with Division 3 of Part 2M.3 of the Corporations Act;
 - That directors may rely on the special knowledge or expertise of others in relation to sustainability reporting. This might include **experts, advisers, and other suitably qualified persons**. [our emphasis]; and

³ ACCC, *Making environmental claims: A guide for business*, December 2023
<https://www.accc.gov.au/system/files/greenwashing-guidelines.pdf>

⁴ Australian Association of National Advertisers (AANA), *Environmental Claims Code*, March 2025,
<https://info.aana.com.au/hubfs/AANA-Codes-Environmental-Claims-March-2025.pdf>

- Additionally, in that section of the Guidance addressing Proportionality mechanisms and exceptions under AASB S2 (RG 000.92), one proportionality factor to be considered is *“the ability for a reporting entity to take an approach to disclosing the anticipated financial effects of a climate-related risk or opportunity that is ‘commensurate with the skills, capabilities, and resources that are available to the entity.’”* [our emphasis]
- These references assume there are:
 - Auditors (which reporting entities may contract with);
 - Experts, advisers, and other suitably qualified persons to advise governance directors; and
 - ‘Skilled’ executives on the staff of reporting entities (or contacted in) to prepare sustainability reports and to audit sustainability reports:
 - ❖ All with the appropriate qualifications, skills, expertise and competence to perform the roles envisaged.
- However, what is not clear and not included in the Guidance is what qualifications or professional standards are expected or required to be held by these professionals that form an integral part of the sustainable finance architecture that is rapidly emerging.
- We note that the Consultation Paper issued by the Auditing and Assurance Standards Board in March 2024 sought advice from interested parties *“on the expected ability of audit firms to resource assurance engagements using partners and staff **with appropriate competence, skills expertise**, as well as their own internal or external experts”⁵*, but we don’t know if that has resulted in any consensus on what constitutes ‘appropriate competence and skills’. [our emphasis]
- We propose that the next iteration of the Guidance include advice on the expected qualifications and or competencies and skills that professionals, who form part of the architecture of the new sustainability reporting requirements, must hold to perform the roles identified in the Guidance.

Part C. Content of the sustainability report (specific issues)

Statements about no climate risks or opportunities

Consultation question C1Q1: Are there other issues relevant to reporting entities’ assessment of whether there are no material financial risks or opportunities?

- We reiterate a key point we raise earlier in this submission under the heading *Our interest in sustainability reporting – we are a user* where we say *“We have a particular interest in the transition planning and scenario analysis aspects of climate related sustainability disclosure, where there is inevitably a large workforce impact that requires a just, equitable and inclusive outcome for impacted workers and communities. We also have a strong interest in the social and equity factor performance of companies, largely based on the enjoyment of human and labour rights and of course in high quality governance founded on engagement, social dialogue and workforce/trade union participation in company decision making. We emphasise that human rights are universal and inalienable, and are therefore universally material.”*
- We submit that this means that it would be wise for ASIC, in finalising its Guidance, to explicitly acknowledge that there is an evolution of concepts in the ESG space, one being a widening of the materiality concept so that double materiality⁶ is now in many jurisdictions,

⁵ Auditing and Assurance Standards Board, *Consultation Paper: Assurance over Climate and Other Sustainability Information*, March 2024, <https://auasb.gov.au/media/yzsb1zlf/consultation-paper-assurance-over-climate-and-other-sustainability-information-final.pdf>

⁶ We refer to two internationally respected sources to explain double materiality:

European Sustainability Reporting Standards (ESRS)

- *“A sustainability matter is material from an impact perspective when it pertains to the undertaking’s material actual or potential, positive or negative impacts on people or the environment over the short-*

in large sections of the investment community and among standards setters, an accepted concept.⁷

- This is reflected for example in the US Department of Labor interpretation of the US *Employee Retirement Income Security Act 1974* (ERISA) set out in its 2022 ruling entitled *‘Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights’*⁸. This ruling recognises that, under the appropriate circumstances, ERISA does not preclude fiduciaries from making investment decisions that reflect environmental, social, or governance (ESG) considerations, and choosing economically targeted investments (ETIs) selected in part for benefits in addition to the impact those considerations could have on investment return, i.e. it recognises that double materiality approaches are entirely legitimate in making investment decisions provided the entity conforms with the underlying fiduciary duty to act in the best financial interests of the beneficiary. There is no

, medium- or long term. A material sustainability matter from an impact perspective includes impacts caused or contributed to by the undertaking and impacts which are directly linked to the undertaking’s own operations, its products, and services through its business relationships. Business relationships include the undertaking’s upstream and downstream value chain and are not limited to direct contractual relationships.” (ESRS 1 General principles, P11)

- *“A sustainability matter is material from a financial perspective if it triggers or may trigger material financial effects on the undertaking’s development, including cash flows, financial position and financial performance, in the short-, medium- or long-term. This is the case, in particular, when it generates or may generate risks or opportunities that significantly influence or are likely to significantly influence its future cash flows. Future cash flows, together with other critical factors such as business model, strategy, access to finance and cost of capital, are likely to influence the financial position and financial performance of the undertaking in the short-, medium- or long-term.”* (ESRS 1 General principles, P12)
- *“Notably, while many frameworks started with the “outside-in” (or financial materiality) approach and have more recently incorporated the “inside-out” (or impact materiality) perspective, the ESRS specify that impact materiality must be the starting point for double-materiality assessments, and that impact matters must be reported upon regardless of whether they are (or will become) financially material for the company. It also acknowledges that “impact materiality and financial materiality assessments are interrelated and the interdependencies between the two dimensions shall be considered”* (ESRS 1 General principles, P11) – see UN Environment Program (Finance Initiative), *EFRS*, <https://www.unepfi.org/impact/interoperability/european-sustainability-reporting-standards-esrs/>

Global Reporting Initiative (GRI)

- *“Double materiality, in essence, reflects the new practical nature of sustainability reporting and the recognition that impact, and financial reporting are interconnected and that reporting ideally should be one holistic process.”* – see GRI, Guides for Policy Makers Series, *Double materiality: The guiding principle for sustainability reporting*, <https://www.globalreporting.org/media/rz1jf4bz/qri-double-materiality-final.pdf>

⁷ Anna Hancock, Pollination, *It’s time for boards to see double when it comes to materiality* September 2024. The article contains the following statements:

- *“Double Materiality adds a more complete view of adverse impacts and value at risk”;*
- *“The assessment of outward impacts for Double Materiality typically span climate, or greenhouse gas emissions, impacts on nature and biodiversity, and practices affecting people, whether First Nations, staff, customers, or people associated with the value chain or regions of operation. Impacts can each be positive or negative.*
- *“Adverse outward impacts, if left out of step with expectations, regulations, legal developments and shifts in the competitive landscape, not only cause harm, but increase transitional risks that can in turn destroy company value.”*

⁸ US Department of Labor, *Final Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 22 November 2022, <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-on-prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights>

incompatibility between acting in the best financial interests of fund members or beneficiaries and taking into account ESG factors which pose a material risk to an investment and may also provide investment opportunity.

- It is also accepted in the European Commission Sustainable Finance Disclosure Regulation (SFDR) of 2020.
- Current sustainability reporting frameworks, such as the Global Reporting Initiative (GRI) reporting framework has long accepted the double materiality principle, and this is reflected in its metrics, which are widely adopted in current sustainability reporting. This can be observed in the GRI Climate and Energy disclosure draft standards currently under revision.
- As we note in the following sections the IFRS/ISSB S2 climate disclosure standard does not include a Just Transition component (and subsequently, neither does the AASB climate disclosure standard). Nor do the draft ASFI Australian taxonomy. This in our view is a weakness because including a justice element in transition planning and in scenario analysis is critical in enabling an assessment of the impact on workers and communities (an investment risk [and opportunity]), and is indicative of the significance of adoption of the double materiality principle.
- We do not wish to see disclosure reporting entities who have been voluntarily using the GRI reporting framework who may be required to move to mandatory reporting, to fall back to a narrow concept of materiality. That would be a retrograde and perverse outcome.
- We note that the Senate report on its Inquiry into the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024, in the section on *Committee view* said this:

Climate reporting

*“2.87 The committee looks forward to the release of AASB and AUASB reporting standards and the certainty this will provide. The committee is also encouraged by the level of engagement in the consultation process and expects that this will continue as these standards are reviewed, brought in line with international benchmarks over time, and further developed in other areas such as **human rights and human capital**.⁹ [our emphasis]*

- In other words it has foreshadowed the development of human rights and human capital disclosure emerging in line with international practice, which again signals the importance of acceptance of the double materiality principle.
- ASIC already acknowledges the shift in impact investing exemplified by the statement in RG 65 that *“More and more product issuers are taking into account labour standards or environmental, social or ethical considerations as part of investment management. Different motivations include: (a) the desire to choose investments that will perform well financially; (b) the belief that an understanding of how far labour standards or environmental, social or ethical considerations are complied with or practised by a company will enable a better assessment of the opportunities and risks posed by a particular investment; and (c) the desire to provide investment products that match investors’ views about the type of world in which they wish to live.”¹⁰*
- We elaborate further in the sections below the position we stated earlier that *“there is a clear ‘grey’ area between climate disclosure and social disclosure (workforce risks)”*.
- We note that in the Strategy section of AASB S2, specifically Paragraph 9(c), there is a clear requirement that an entity shall disclose information to enable users of general purpose

⁹ Senate Standing Committee on Economics, *Report on its Inquiry into the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024*, May 2024, P43 (https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABFinancialMarketInf/Report)

¹⁰ ASIC, *Regulatory Guide 65: Section 1013DA disclosure guidelines*, November 2011, <https://download.asic.gov.au/media/1239069/rg65-published-30-november-2011.pdf>

financial reports to understand “*the effects of those climate-related risks and opportunities on the entity’s strategy and decision making, **including information about its climate-related transition plan** (see paragraph 14)” [our emphasis].*

- Paragraph 14, headed ‘Strategy and decision-making’ provides more specificity as follows:

“Specifically, the entity shall disclose:

(a) information about how the entity has responded to, and plans to respond to, climate-related risks and opportunities in its strategy and decision-making, including how the entity plans to achieve any climate-related targets it has set and any targets it is required to meet by law or regulation. Specifically, the entity shall disclose information about:

*(i) current and anticipated changes to the entity’s business model, **including its resource allocation**, to address climate-related risks and opportunities (for example, **these changes could include plans to manage or decommission carbon-, energy- or water-intensive operations**; resource allocations resulting from demand or supply-chain changes; resource allocations arising from business development through capital expenditure or additional expenditure on research and development; **and acquisitions or divestments**);*

*(ii) current and anticipated direct mitigation and adaptation efforts (for example, through **changes in production processes or equipment, relocation of facilities, workforce adjustments**, and changes in product specifications);*

(iii) current and anticipated indirect mitigation and adaptation efforts (for example, through working with customers and supply chains);

(iv) any climate-related transition plan the entity has, including information about key assumptions used in developing its transition plan, and dependencies on which the entity’s transition plan relies; and

(v) how the entity plans to achieve any climate-related targets, including any greenhouse gas emissions targets, described in accordance with paragraphs 33–36.

(b) information about how the entity is resourcing, and plans to resource, the activities disclosed in accordance with paragraph 14(a).

(c) quantitative and qualitative information about the progress of plans disclosed in previous reporting periods in accordance with paragraph 14(a).” [our emphasis]

- Our highlighted text emphasises that entities are required, in transition planning, to report on ‘human resources’ or ‘workforce’ impacts in relation to, as a minimum (i) decommissioning operations; (ii) acquisitions and divestments; (iii) changes in production processes or equipment; and (iv) relocation of facilities. The paragraph makes specific reference to ‘workforce adjustment’. We note that human resources, which are a crucial element of an entity’s ‘resources’ are often described in company sustainability statements as an entity’s most important asset.
- The critical point we make is that entities that are mandated to disclose against AASB S2 will be required to report on the impacts on ‘human resources’ in transition planning (and also in scenario analysis).
- If there is acceptance of our reference to human rights being universal and inalienable, and are therefore universally material (and are therefore financially material, because the impact on ‘human resources’ in decommissioning operations; acquisitions and divestments; changes in production processes or equipment; and relocation of facilities carry a workforce material risk, among those being the adverse consequences of not respecting and positively ensuring that human and labour rights of workers are enjoyed.
- The conclusion must therefore be that if a reporting entity employs workers and is involved in a transition activity, it could not with integrity claim it faces no material financial risk.
- We therefore urge ASIC to address this issue in the next iteration of its guidance. It will be

important that ASIC again emphasise that that disclosure should also focus on 'opportunity'. In relation to workforce and human/labour rights there are really significant productivity and collaboration opportunities for companies who are prepared to embrace new worker-centred business models as being promoted, inter alia, by the ILO.¹¹

- This should not be a novel idea for ASIC and entities required to prepare sustainability reports as the Corporations Act and Corporations Regulations have for some time provided guidance for corporations, in relation to product disclosure statements (PDSs) on labour standards and on environmental, social or ethical considerations that are taken into account in the selection, retention or realisation of an investment.¹²

Consultation question 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?

- The only issue we raise relates to the use of disclaimers – the typical 'all care and no responsibility' statements that accompany just about every public company financial statement.
- Given that the whole purpose of sustainability standards and accompanying disclosure is to make redundant such disclaimers and ensure that the information provided is reliable for users to make informed decisions, we strongly suggest that ASIC include Guidance on this issue.
- On the question of Australian specific guidance, we submit that paragraphs D1–D33 of Appendix D to AASB S2 provides sufficient guidance and it would be unwise, in the interests of ensuring international consistency, to seek to enhance AASB guidance by inclusion of additional or Australian specific guidance.

Cross-referencing in a sustainability report

Consultation question C4Q1: Do you agree with our proposal?

- We agree with ASICs proposal to issue Guidance about information included by cross reference in a sustainability report and that entities should lodge the cross-referenced document with ASIC at the same time as the sustainability report.
- We consider one really important document that we would like to see cross referenced is the only current mandatory 'sustainability' reporting requirement in Australia, and that is Modern Slavery Statements made in accordance with the *Modern Slavery Act 2018* (C'th).

D Sustainability-related financial disclosures outside the sustainability report

Sustainability-related financial information in PDSs

Consultation question D4Q1: Do you agree with our guidance?

- We agree with the ASIC proposal to:
 - Ensure entities preparing PDSs consider, and be informed by, AASB S2 in preparing any climate-related financial disclosures required under s1013D and 1013E; and
 - Consider updating Regulatory Guide 65 Section 1013DA disclosure guidelines (RG 65) and Regulatory Guide 168 Disclosure: Product Disclosure Statements (and other disclosure obligations) (RG 168).

¹¹ King's Law Journal, Volume 32, 2021 - Issue 2: *The ILO At 100 - Celebration and Challenges* – see article by Lisa Rodgers, *Future Challenges: The ILO, Social Contracts and the Human-Centred Approach to Work*, Pages 207-227 (Published online: 27 July 2021), <https://www.tandfonline.com/doi/full/10.1080/09615768.2021.1951497#d1e92>

¹² Corporations Regulations Volume 3, *Division 4A - General Regulation 7.9* P173, which sets out the more detailed information to be included in a Product Disclosure Statement (PDS) for compliance with section 1013D(4)(c) of the Corporations Act, regarding labour standards and environmental, social and ethical considerations.

- This is important as it will complement and enhance the current Corporations Act and Corporations Regulations that already provide guidance for corporations in relation to product disclosure statements (PDSs) on labour standards and environmental, social or ethical considerations.

F Other issues regarding disclosure of sustainability-related information

Determining revenue, employees and assets for the purposes of applying the sustainability reporting thresholds

Consultation question F1Q1: Do you require guidance on how to determine revenue, employees and assets, for the purposes of applying the sustainability thresholds?

- We note that ‘employee’ is a relatively narrow concept to capture a company workforce given the increasing number of methods of engagement of a workforce as technology platforms emerge and workforce-company relationships become more flexible.
- We note that the definition of employee in the Corporations Act (Dictionary) and in Part 5.8A (Employee entitlements, section 596AA (Objects and coverage of this Part) sections (4) and (5) is:
 - *“employee”, in relation to a company, means a person:*
 - (a) who has been or is an employee of the company, whether remunerated by salary, wages, commission or otherwise.*
- We note that the Closing Loopholes legislative package passed by the Parliament in 2023 and 2024 amends the definition of employee and employer in the *Fair Work Act 2009* with effect from 24 August 2024, but Department of Employment and Workplace Relations Advice says that the new FW Act definition will generally not affect the meaning of the terms ‘employee’ and ‘employer’ as used in other Commonwealth legislation.¹³
- Nevertheless, it is important to also note that the principles in the AASB Standards that adopt a whole of supply chain approach to reporting on emissions i.e. Scope 1, 2 and 3 emissions (a supply chain approach), and given that in relation to human and labour rights, the UN Guiding Principles on Business and Human Rights, especially Paragraph 13, requires businesses to “*seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts*”¹⁴, a (supply chain) principle that is referenced in most good quality voluntary sustainability reports and leading edge Modern Slavery Statements.
- We therefore propose that ASIC clarify and strengthen how it will interpret ‘employee’ related provisions in the Corporations Act as applied in sustainability disclosure.

Other areas where we can support the transition to sustainability reporting

Consultation question F2Q1: Are there any other areas of concern or uncertainty about complying with the sustainability reporting requirements that you consider ASIC could address through regulatory guidance?

- We identify two issues that we propose ASIC address in the next iteration of its Guidance:
 - Firstly, to clarify the role it envisages, if any, for the Australian Taxonomy being prepared by the Australian Sustainable Finance Institute (ASFI) for consideration by the Government:

¹³ DEWR, Closing Loopholes, *Meaning of ‘employee’ and ‘employer’ in the Fair Work Act 2009*, <https://www.dewr.gov.au/download/15645/meaning-employee-and-employer-fair-work-act-2009/36529/meaning-employee-and-employer-fair-work-act-2009/pdf>

¹⁴ UN *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* (UNPGs), Paragraph 13, June 2011 https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

- ❖ While ASFI is still finalising its Taxonomy report for the Government following its second round of consultation that concluded on 1 December 2024, which we understand it will be lodging with the Government by 30 December 2024, there is sufficient information in its Consultation Paper issued in October 2024 for ASIC to assess if and how the Taxonomy could potentially support its Guidance on sustainability reporting.
- ❖ We note that ASFI's consultation paper says:
 - ✓ A sustainable finance taxonomy is a framework to classify economic activities—generally constituted as assets, projects, facilities or measures—that positively contribute to key environmental sustainability objectives.
 - ✓ The Australian taxonomy will provide a common standard for green and transition finance in Australia, helping to accelerate the allocation of capital towards sustainable activities to achieve Australia's net zero ambitions.
 - ✓ The taxonomy will:
 - Make it easier for financial institutions to identify investment and lending opportunities;
 - Provide financial and non-financial corporate entities with greater confidence in and assurance over sustainability claims;
 - Support the provision of consistent and comparable information to users;
 - Enable comparability between investment products and portfolios; and
 - Reduce transaction costs associated with due diligence by providing market clarity on whether a transaction is contributing to Australia's climate mitigation goals, thereby increasing the attractiveness of transactions for sustainable activities.
- ❖ The jury is still out on the extent to which the product ASFI has prepared meets its stated objectives. For example, the MUAs submission to ASFI indicated we have grave concerns about the human and labour rights aspects of Minimum Social Safeguards (MSS) in ASFI's proposed Taxonomy. We note that ASFI made no reference to the AASB Climate Disclosure Standards in its Consultation Paper. The absence of a reference to that important context for its proposed Taxonomy is perplexing.
- Second, we propose that ASIC address the way that it anticipates sustainability reports will dovetail with the encouragement by the Government for co-investment from institutional capital in joint capitalisation of national industrial policy and decarbonisation objectives consistent with Australia's Paris Agreement commitments set out in the Government's Nationally Determined Contributions (NDCs). This is important in circumstances where the Government wishes to provide investment support to companies through various specialist investment vehicles (SIVs) where government regulates the investment mandate for those SIVs:
 - ❖ In our view, it will be important for those SIVs to be held to the same levels of accountability as the AASB standards and the Corporations Act imposes on the investors that may enter co-investment arrangements with those SIVs and which are also imposed on the company beneficiaries of co-investment support.