



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

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

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Consultation paper 380: Sustainability reporting

Dear Ms. La Bouchardiere,

We appreciate the opportunity to provide our feedback on Consultation Paper 380 issued by the Australian Securities and Investments Commission (ASIC) in November 2024. We are committed to supporting the development of robust and effective sustainability reporting in Australia, and consider this guidance will help entities, directors and auditors to do this.

Our responses to the consultation questions are included in the attached appendix. However, we would like to draw your attention to two key areas of our response:

1) Alignment between sustainability reporting and financial reporting regimes

We consider it important for there to be as much alignment as possible between the sustainability reporting and financial reporting regimes. This alignment will help reduce the compliance burden on entities and promote consistency in reporting. We therefore support the extension of reliefs for sustainability reporting that are currently available for financial reporting.

2) Guidance on scoping criteria

We would value guidance from ASIC as to how it will consider the scoping criteria of revenue, employees, and assets when enforcing the sustainability reporting regime. There are several areas where determining what constitutes revenue and employees requires judgment and may lead to inconsistency in the application of the legislation. Clear guidance from ASIC on relevant considerations in making these judgements for the purpose of applying the size tests will assist entities in determining whether and when they fall within the scope of the sustainability reporting requirements and ensure consistent application across similar entities.

PricewaterhouseCoopers, ABN 52 780 433 757
One International Towers Sydney, Watermans Quay, Barangaroo NSW 2000
T: +61 2 8266 0000, F: +61 2 8266 9999, www.pwc.com.au



We appreciate ASIC's efforts in supporting the sustainability reporting regime in Australia, and look forward to continued engagement on this important initiative. Should you require any further information or clarification on our responses, we would be happy to discuss.

Yours sincerely

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Sue Horlin
Managing Partner, Assurance
PricewaterhouseCoopers
M: [Redacted]
E: [Redacted]

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Caroline Mara
Sustainability Reporting and Assurance Leader
PwC Australia
M: [Redacted]
E: [Redacted]

Appendix

Proposal:

We propose to issue regulatory guidance about:

- (a) the phasing in of sustainability reporting requirements for each cohort of reporting entity;
- (b) how RSEs, registered schemes and retail CCIVs can determine whether they meet the sustainability reporting thresholds;
- (c) the accounting standards that apply for reporting entities in determining whether an entity controls another for the purposes of s292A(3) and s292A(6);
- (d) the intersection between the sustainability reporting requirements and entities that are part of a consolidated entity or group members of stapled groups; and
- (e) entities that do not need to prepare a sustainability report.

Questions:

B1Q1 Do you agree with our proposed guidance?

Response:

We are supportive of ASIC providing guidance which helps entities to determine whether they are required to prepare a sustainability report. The following areas require further refinement:

- There is reference throughout the draft regulatory guide to the term ‘assets under management’ when referring to the \$5bn size test for registrable superannuation entities, registered schemes and retail CCIVs. Whilst the Explanatory Memorandum for the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 makes reference to ‘assets under management’, the amended Corporations Act does not use or reference such a term. s292A(6)(b) refers to the ‘value of assets’ when setting out the \$5bn test, and s292A(7)(b) states that ‘value of assets’ should be determined applying the accounting standards. As such, given ‘assets under management’ is not a defined term or concept within Australian Accounting Standards, we do not consider the \$5bn test should be determined with reference to ‘assets under management’. Rather, the ‘value of assets’ should be determined by applying the accounting standards as required by s292A(7)(b).
- The reference to the publication threshold in Table 2 Row 1 should refer to section 13(1)(a) of the NGER Act (as referenced by s1707B(4)(b) of the Corporations Act).

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

B1Q3 What additional guidance should we provide to clarify how the s292A thresholds apply to RSEs, registered schemes and retail CCIVs?

Response:

Entities would benefit from additional guidance in respect of the following areas:

- How the ‘value of assets’ should be determined for the purposes of the test under s292A(6)(b) of the Corporations Act. It is not clear whether this is referring to consolidated assets or aggregated assets, or whether the reference is to gross or net assets. We note that the asset test set out in s292A(3)(b) specifies ‘consolidated gross assets’, however s292A(6)(b) is silent in this

- respect.
- How NGERs reporting transfer certificates impact the requirement to prepare a sustainability report under the emissions thresholds set out in sections 292A(5) and 1707B(4) of the Corporations Act. The NGERs legislation permits the reporting obligation (ie the reporting made to the Clean Energy Regulator) to be transferred to other entities within the same group. It is not currently clear whether this also transfers the requirement to prepare a sustainability report under the aforementioned sections of the Corporations Act.

Proposal:

We propose to provide guidance on:

- (a) the sustainability records that the reporting entity must keep;
- (b) how material climate risks broadly intersect with directors' duties, including for directors of entities required to prepare a sustainability report; and
- (c) the modified liability settings that apply until 31 December 2028, in relation to sustainability reporting.

Questions:

B2Q1 Does our proposed guidance help you understand the sustainability records that must be kept?

B2Q2 What further guidance should we provide on keeping sustainability records?

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

B2Q4 Are there any aspects of the sustainability reporting requirements where further ASIC guidance would be helpful for directors?

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?

B2Q6 What further guidance should we provide about the modified liability settings?

Response:

We have no specific comments to make on these questions.

Proposal:

We propose to provide guidance that reporting entities to whom s296B(1) may apply must assess, in accordance with AASB S2, whether for a financial year there are no material financial risks or opportunities relating to climate.

Questions:

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

Response:

We have no additional issues that would warrant further guidance in this area.

However, we do not consider that RG 000.68(c) is required. This is because s296B(5) only excludes RSEs, registered schemes and retail CCIVs from being able to make a statement that there are no material financial risks or opportunities where the value of assets is greater than \$5bn, which by definition would exclude them from Group 3 and mean they are already covered by RG000.68(b).

Proposal:

We propose to provide guidance that reporting entities that consider they have no material financial risks or opportunities under s296B(1) must:

- (a) maintain adequate sustainability records; and
- (b) establish robust processes to ensure that they meet the sustainability reporting requirements under s296A(1) for any subsequent financial year that there are material financial risks or opportunities.

Questions:

C2Q1 Do you agree with our proposed guidance? If not, why not?

Response:

We agree with the proposed guidance.

Proposal:

We propose to issue guidance about statements with forward-looking climate information in the sustainability report. Notably:

- (a) reporting entities must comply with paragraphs D1–D33 of Appendix D of AASB S2 (the qualitative characteristics of useful climate-related financial information) in preparing statements with forward-looking climate information;
- (b) in doing so, reporting entities must disclose the basis for those forward-looking statements, including the underlying methods and assumptions used to produce that information; and
- (c) reporting entities must also maintain adequate sustainability records that explain the methods, assumptions and evidence for all forward-looking information in the climate statement.

Questions:

C3Q1 Do you agree with our proposed guidance?

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.

Response:

We agree with the proposed guidance.

If additional guidance is to be developed, we would not support any guidance that could result in divergence in reporting between Australian entities and their international peers. The feedback the AASB received to Exposure Draft SR1 demonstrated that stakeholders place particular importance on international alignment in reporting standards.

Proposal:

We propose to issue guidance about information included by cross reference in a sustainability report (under paragraph 63 of Appendix D of AASB S2). Our proposed guidance is that entities should lodge the

cross-referenced document with ASIC at the same time as the sustainability report (unless that document has already been lodged with ASIC).

Questions:

C4Q1 Do you agree with our proposal? If not, why not?

Response:

We agree that this is an area where entities will value guidance.

In our view there should be greater clarity as to whether lodging cross-referenced documents alongside the sustainability report is required or strongly encouraged. RG000 para 80 states that ‘the reporting entity is **strongly encouraged** to lodge the other document with their sustainability report’. RG000 para 81(c) states that ‘users of the sustainability report [...] **should have access via ASIC’s register** to both the sustainability report and any cross-referenced document’. Paragraph 81(c) therefore suggests that it is a requirement for the cross-referenced document to be lodged with ASIC, whereas para 80 suggests it is optional.

In our view there is benefit to users to have all documents available via ASIC’s register, and entities would benefit from clarity from ASIC.

Proposal:

We propose to issue guidance recommending how entities should label reports and statements containing sustainability-related financial information. Our proposed guidance includes that:

- (a) the term ‘sustainability report’ should be used when referring to the statutory sustainability report defined in s9 and s292A(1);
- (b) the term ‘climate statements’ should be used when referring to the statutory statements defined in s296A(2) and/or s296B (as applicable);
- (c) the term ‘voluntary sustainability statements’ should be used for sustainability-related information other than climate-related financial disclosures, prepared voluntarily by applying all or parts of AASB S1; and
- (d) the term ‘voluntary climate statements’ should be used for climate related financial disclosures prepared voluntarily by applying all or parts of AASB S2.

Questions:

C5Q1 Do you agree with our proposal to encourage specific labelling for sustainability-related financial disclosures?

C5Q2 If not, what guidance (if any) should we provide to:

- (a) ensure that users of sustainability-related financial information are not misled by unhelpful or inappropriate labels; and
- (b) support investor comprehension and the consistency of information provided across the market?

C5Q3 If you currently prepare voluntary reports covering sustainability, are there other ways to achieve the outcomes our guidance seeks to achieve?

Response:

We agree that any voluntary sustainability-related disclosures made by entities should be clearly distinguished from mandatory climate-related disclosures made under the Corporations Act.

We note that similar circumstances arise in financial reporting, in instances where non-IFRS®

financial information is presented in the annual report, or where non-statutory remuneration tables are included in a remuneration report.

In line with our overarching support for alignment in the reporting regimes across financial reporting and sustainability reporting to the extent possible, we consider that the principles that would apply to non-IFRS financial information should similarly apply to voluntary sustainability reporting. Therefore, we are of the view that similar principles to those in Regulatory Guide 230 should apply.

Proposal:

We propose to issue guidance that we do not consider that notes to the climate statements currently need to be included in a sustainability report.

Questions:

C6Q1 Do you agree with our proposed guidance? If not, why not?

Response:

We agree that this is an area of potential confusion. Whilst we agree with the proposed guidance, we feel further simplification in the wording of the guidance and/or examples could aid in ensuring that preparers understand the purpose of the requirement in the legislation to provide notes. Providing examples of when notes might be needed in the future (e.g. the Minister making a legislative instrument that requires additional disclosure) might help preparers understand why notes are not currently required.

Proposal:

We propose to issue guidance that reporting entities should take particular care to ensure adequate sustainability records are kept that substantiate the reporting entity's application of the proportionality mechanisms under AASB S2.

Questions:

C7Q1 Do you agree with our proposed guidance? If not, why not?

Response:

We have no specific comments to make on this question.

Proposal:

We propose to issue guidance that all entities should consider, and be informed by, the sustainability standards when preparing sustainability related financial disclosures outside the sustainability report.

Questions:

D1Q1 Do you agree with our proposed guidance? If not, why not?

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?

Response:

We agree with the proposed guidance.

Proposal:

We propose to provide guidance for listed entities that must comply with OFR requirements that:

- (a) all listed entities should disclose sustainability-related financial information (including climate-related financial information) if it would be reasonably required by members to make an informed assessment of the entity's operations, financial position, business strategies and prospects for future financial years (see s299A); and
- (b) reporting entities that are listed (listed reporting entities) should include an overarching narrative and analysis in the OFR that supplements both the financial report and the sustainability report. This will help shareholders understand the operations, financial position, business strategies, and risks and opportunities affecting the prospects of the reporting entity overall.

Questions:

D2Q1 Do you agree with our interpretation of s299A(1)? If not, why not?

D2Q2 Do you agree with our proposed regulatory guidance? If not, why not?

Response:

We agree with the interpretation of s299A(1).

Whilst we agree in principle with the proposed guidance, consideration should be given as to whether s299A(1) can be complied with whilst avoiding unnecessary duplication between the OFR, the financial report, and the sustainability report.

Proposal:

We propose to issue guidance that if s710 requires the disclosure of sustainability-related financial information:

- (a) the issuer of a disclosure document under s710 should consider, and be informed by, AASB S2 in preparing any climate-related financial information required under s710;
- (b) the issuer should consider disclosing sustainability-related financial information required under s710 in the body of the prospectus itself (rather than merely as an annexure) to facilitate clear, concise and effective disclosure under s715A;
- (c) the issuer should provide an overarching analysis and narrative in the investment overview section of the prospectus. This narrative should explain the significance of the sustainability-related financial information within the broader context of the issuer's corporate strategy, business model and prospects;
- (d) the issuer should consider disclosing the sustainability-related financial information in further detail in the business model and investment risk sections of the s710 prospectus (as appropriate);
- (e) where an issuer has lodged a sustainability report with ASIC for the most recent financial year, a statement of this fact should be included in the s710 prospectus; and
- (f) an issuer that has lodged a sustainability report with ASIC for the most recent financial year should summarise climate-related financial information from that report.

Questions:

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

D3Q2 Are there any practical problems associated with our proposal? If so, please provide details.

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?

Response:

We do not have any comments to make with respect to the guidance on the content of prospectus documents.

We note the guidance in RG 000.124(b) which highlights the requirement for the most recently prepared sustainability report to be included in an offer information statement and be audited. It would be helpful to provide guidance that steps out the assurance requirements for sustainability reporting information that is included in other types of offer documents beyond an offer information statement.

Proposal:

We propose to issue guidance that:

- (a) if s1013D or 1013E requires the disclosure of sustainability-related financial information:
 - (i) the issuer should consider, and be informed by, AASB S2 in preparing any climate-related financial disclosures required under s1013D or 1013E;
 - (ii) the issuer should consider whether it is necessary to disclose any sustainability-related financial information required under s1013D or 1013E in the PDS itself (including the investment strategy or investment risk sections); and
 - (iii) where the issuer has lodged, on behalf of the reporting entity, a sustainability report with ASIC for the most recent financial year, the PDS should include a statement of this fact; and
- (b) if an issuer of an investment product takes into account environmental considerations that are climate-related in the selection, retention or realisation of the investment, it should summarise both the methodology applied, and the weighting given, in taking these climate-related considerations into account.

Questions:

D4Q1 Do you agree with our guidance? If not, why not?

D4Q2 Are there any practical problems associated with our proposal? If so, please provide details.

D4Q3 What reasonable expectation are retail investors likely have about the disclosure of climate-related financial information if required by s1013D and s1013E?

Response:

We have no specific comments to make on these questions.

Proposal:

We propose to provide guidance about our approach to granting relief from the sustainability reporting and audit requirements, including that we will consider:

- (a) the underlying policy objectives of the sustainability reporting regime;
- (b) the users of the sustainability report, their information needs, and how those users are likely to be impacted if relief is granted;
- (c) established policy and precedents from financial reporting relief, as these are relevant to our exercise of relief powers under s340 and 341;
- (d) whether to provide individual relief on a short-term basis or a no action letter during the early years of the regime; and

(e) in reviewing applications for relief, in which an applicant is claiming that preparing a sustainability report would impose an unreasonable burden, the proportionality mechanisms and exceptions that are available to the reporting entity under

Questions:

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?

E1Q2 Do you have any feedback about any aspect of our proposed guidance on relief?

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?

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.

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?

Response:

We agree that the proposed guidance helps in understanding how applications for relief will be considered by ASIC.

We consider that many of the applications for relief will be driven by common group structures in Australia. For example,

- A foreign controlled group that has multiple entry points in Australia may seek relief to prepare one 'aggregated' sustainability report where much of the information may be the same across the different entities in the group (e.g. Governance and Risk Management processes).
- A group that consists of a parent that is a trust (which is not a registered scheme), and a number of subsidiaries which are each companies and sister entities of each other. The trust does not prepare reporting in accordance with the Corporations Act, and there is no other subconsolidation of the subsidiaries. Despite not being in the scope of the Corporations Act, the trust may seek relief to prepare a consolidated sustainability report for the whole group (applying s292A(2)) rather than preparing a sustainability report separately for each of the subsidiaries in the group.

Whilst we do not necessarily agree that it would be appropriate to provide relief in all such cases, it may help to consider some of these more common scenarios in the Regulatory Guide.

Proposal:

We propose to:

- (a) extend the relief in ASIC Instrument 2023/673 to enable stapled entities relying on the relief in that instrument to prepare a sustainability report on behalf of the stapled group;
- (b) adopt the position that if a stapled entity chooses to rely on the relief in ASIC Instrument 2023/673, it must prepare a sustainability report as if all the members in the stapled group (including entities controlled by other stapled issuers) are a single entity. The report must cover all the group members of the stapled group even if one or more members of the stapled group is not required to prepare a sustainability report under s292A; and Note: See draft updated ASIC Instrument 2023/673 at Attachment 2 to this consultation paper.
- (c) provide guidance that the stapled entity preparing the sustainability report must keep sustainability records in relation to the sustainability report (see s286A).

Questions:

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?

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?

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.

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.

Response:

We note that for most reporters, the reporting entity for sustainability reporting will be the same as the related financial statements (AASB S2 Appendix D para Aus 20.1). Given AASB 3.43(c) confirms that a stapling arrangement is a business combination, one of the entities in a stapling arrangement will be identified as the parent and will prepare consolidated financial statements for the stapled group, being the reporting entity. The relief in ASIC Instrument 2023/673 would therefore appear consistent with the respective requirements of Australian Accounting Standards and Australian Sustainability Reporting Standards.

Proposal:

We are seeking feedback from preparers and users of sustainability reports about the intersection between ASIC Instrument 2016/785 and the sustainability reporting requirements.

Questions:

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?

Response:

We would encourage ASIC to consider whether ASIC Instrument 2016/785 needs to be updated to ensure that it does not create unintended consequences.

Specifically, we note the following two potential issues:

- ASIC Instrument 2016/785 permits a registered foreign company to be the holding entity of the group. Where this is the case, and all Australian subsidiaries are subject to a deed of cross guarantee, the Australian subsidiaries would not prepare financial reports in accordance with Chapter 2M of the Corporations Act. Instead, the financial statements of the registered foreign company are lodged with ASIC. Where a law in the registered foreign company's place of origin applies to the preparation of the financial statements, they are not considered to be prepared in accordance with Chapter 2M (see ASIC Instrument 2016/785 para 6(t)(ii)). s292A of the Corporations Act only requires a sustainability report to be prepared where an entity prepares a financial report in accordance with Chapter 2M. As neither the Australian companies nor the

registered foreign company prepare a financial report in accordance with Chapter 2M, this would result in no sustainability reporting being prepared. We would therefore suggest that a condition of applying the relief in 2016/785 where the head entity is a registered foreign company is that it also prepares and lodges a consolidated sustainability report in accordance with Australian Sustainability Reporting Standards or IFRS Sustainability Disclosure Standards.

- We understand from [AASB Agenda Paper 3.1](#) from the 20 September 2024 meeting that ASIC considers s292A(2)(b) to provide parent entities with the choice as to whether to prepare a consolidated or separate sustainability report. If this is the case, and an entity that is the head entity for the purposes of ASIC Instrument 2016/785 were to elect to prepare a separate sustainability report, this would result in no consolidated sustainability reporting being prepared in respect of the subsidiaries that are relieved from reporting. We would therefore suggest that a condition of applying the relief in 2016/785 is that the head entity also prepares a consolidated sustainability report.

Proposal:

We have proposed to extend some relief available for financial reporting under ASIC Instrument 2023/673 to sustainability reporting: see proposal E2. We are seeking feedback on whether any other ASIC legislative instruments that grant financial reporting or audit relief should also be extended to apply to sustainability reporting and the audit of sustainability reports. For example:

- (a) ASIC Corporations (Related Scheme Reports) Instrument 2015/839;
- (b) ASIC Corporations (Investor Directed Portfolio Services Provided Through a Registered Managed Investment Scheme) Instrument 2023/668;
- (c) ASIC Corporations (Audit Relief) Instrument 2016/784;
- (d) ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191; and
- (e) ASIC Corporations (Stapled Group Reports) Instrument 2015/838.

Questions:

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:

- (a) why the relief is necessary;
- (b) how one of the statutory preconditions for providing relief in s342 would be satisfied in relation to the relevant sustainability reporting requirements;
- (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?

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:

- (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

Response:

As noted in our comments above, in our view there should be as much alignment as possible between the financial reporting and sustainability reporting regimes. This will help reduce the compliance burden to entities that would otherwise increase should they need to consider different rules/reliefs for the different types of reporting. Therefore, where a relief applies for the purposes of financial reporting, it should similarly apply in the context of sustainability.

However, we would highlight that in most cases relief will not need to be specifically extended to sustainability reporting given the way in which s292A(1) operates. An entity can only be required to prepare a sustainability report if they are required to prepare a financial report under Chapter 2M (see s292A(1)(a)). Therefore, wherever relief applies for financial reporting, relief will also apply for sustainability reporting as the entity will not be preparing a financial report. This therefore achieves the objective of alignment across the two reporting regimes without additional intervention being required by ASIC.

Proposal:

We propose to issue guidance on how we may exercise ASIC's directions power. The proposed guidance explains the scope of ASIC's directions power and our processes for issuing directions under s296E.

Questions:

E5Q1 Does our proposed guidance clarify how we may exercise ASIC's directions power under s296E? If not, why not?

Response:

We agree that the proposed guidance clarifies how ASIC may exercise its powers under s296E.

Proposal:

We are considering whether our guidance should address how to determine revenue, employees or assets for the purposes of applying the sustainability reporting thresholds.

Questions:

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

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?

Response:

Guidance in this area will be helpful. Specifically, there are a number of areas where determining 'revenue' and 'employees' requires judgement which may lead to inconsistency in the way the legislation is applied across similar entities. Some examples include:

- Whether employees include contracted labour hire, or how employees should be determined for entities that operate in the gig economy.
- Whether gains accounted for outside the scope of AASB 15 might meet the definition of revenue for the purposes of the size test, such as:
 - Share of profit of equity accounted investments where an entity's principal purpose is to hold the equity accounted investment
 - Fair value gains on investment property held by a Real Estate Investment Trust
 - Fair value gains on subsidiaries measured at fair value through profit and loss by an investment entity
 - Gains recognised in other comprehensive income (eg fair value gains on financial instruments recognised at fair value through OCI)
- If gains accounted for outside the scope of AASB 15 meet the definition of revenue, whether these gains should be considered net of losses, or whether only gross gains should be

considered. For example, should fair value gains on investment property be considered net of fair value losses on other investment properties?

We acknowledge that the issuance of interpretations of accounting standards is a role more appropriately dealt with by the Accounting Standard setters. However, we are also aware that there are diverse views on how the above matters should be considered for the purpose of determining whether and when entities are in the scope of the legislation. Given ASIC's role in enforcing these scoping requirements, we consider that it would be helpful for ASIC to provide scoping guidance on the matters it will consider as part of enforcement activities.

Proposal:

We are seeking feedback on how we could otherwise support entities in complying with their legal obligations within the scope of our regulatory mandate.

Questions:

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? If so, please provide details.

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.

F2Q3 Are there any other areas where we could help reporting entities develop their capabilities to meet the sustainability reporting requirements?

Response:

ASIC should consider providing clarity on the requirement in s296D(2B) of the Corporations Act as part of the Regulatory Guide. This requirement introduces two specific scenarios which must be considered as part of an entity's scenario analysis in order for their reporting to be considered compliant. However, there is limited guidance as to what types of scenarios would meet the requirements of s296D(2B):

- For s296D(2B)(a), the scenario must consider an increase in the global average temperature that well exceeds 2 degrees. The Explanatory Memorandum for the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 explains that a scenario of 2.5 degrees would well exceed 2 degrees. However it is not clear whether other scenarios that are lower than 2.5 degrees might also be considered to well exceed 2 degrees (for example, 2.4 degrees).
- For s296D(2B)(b), the scenario must consider an increase in the global average temperature that is limited to 1.5 degrees. There is no guidance in the the Explanatory Memorandum for the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 as to what 'limited to' means, and therefore this gives rise to a number of questions:
 - Does this mean that the temperature is held at all times below 1.5 degrees? Given the science in this area is indicating this is becoming increasingly unlikely, what other scenarios might satisfy this requirement?
 - Would a scenario that sees a short-term overshoot of 1.5 degrees before returning below 1.5 degrees over the medium to long term satisfy this requirement?
 - What time horizon is used to calculate the global average temperature increase (eg annual, 10 years, 30 years, 100 years)?

Without guidance in this area it is likely that these requirements will be interpreted differently by different preparers, leading to inconsistency in reporting across Australia.