

31 January 2025

Law Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: miscamendments@treasury.gov.au

Dear Treasury,

Miscellaneous amendments to Treasury Portfolio Laws Autumn 2025

Thank you for the opportunity to provide a submission on the *Treasury Laws Amendment Bill 2025: Miscellaneous and technical amendments (Autumn 2025) (Bill)*.

The Australian Institute of Company Directors (**AICD**)'s mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of more than 53,000 includes directors and governance leaders of not-for-profits, large and small businesses and the public sector.

The AICD's submission provides comments on the proposed amendments contained in the Bill focused on clarifying aspects of the sustainability reporting provisions of the *Corporations Act 2001 (Cth) (Corporations Act)*.

1. Extending modified liability to voluntary Sustainability Reports

The AICD strongly supports amendments in the Bill to clarify that the limited immunity provisions are intended to apply to all Sustainability Reports, whether or not they are legally required to be prepared. In other words, voluntary Sustainability Reports and any reports prepared as a condition of, or to obtain the benefit of, an exemption granted by ASIC under sections 340 and 341 of the Corporations Act.

We see this as a critically important clarification. As highlighted in the AICD's recent [submission](#) to ASIC on its draft Regulatory Guide 000 *Sustainability reporting (Draft Guide)*, reporting entities in Group 2 or 3 may wish to begin reporting voluntarily in line with AASB S2 and issue a Sustainability Report in advance of their statutory obligation commencing. Policy settings should remove potential legal barriers to entities which choose to be early adopters, noting the complexity of the new reporting regime.

To align with the proposed changes to effect this clarification, ASIC's Draft Guide should also be updated to confirm that AASB S2-aligned climate statements made on a voluntary basis are protected under the modified liability settings.

2. Application of modified liability to statements outside a sustainability report

The AICD also wished to highlight related comments provided in our recent submission to ASIC on the application of the modified liability settings.

Section 1707D(1) of the Corporations Act makes clear that the modified liability settings will apply to a statement made outside a Sustainability Report which is required to be made by a Commonwealth

law, provided it is the same as the protected statement, or differs from a protected statement only in so far as it contains updates or corrections to the protected statement.

However, neither the Explanatory Memorandum to the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 (Sustainability Reporting Legislation)* or ASIC's Draft Guide, explicitly confirms that the modified liability settings apply to statements reproduced or summarised in corporate reports required by law, such as the Financial Report, Operating and Financial Review (OFR) report in the Directors' Report, a Corporate Governance Statement, or Notice of Meeting.

In fact, ASIC's Draft Guide cautions against "selective use or reproduction of information contained in a Sustainability Report" warning that it can be misleading. In our view, this is unhelpful and would limit information flows, particularly given the Sustainability Report is likely to be long and complex. A more pragmatic approach should be taken that recognises it would be unrealistic to expect that climate-related information will solely be provided to the market once a year in the Sustainability Report.

In the absence of confirmation that a summary or partial reproduction of information contained in the Sustainability Report will be treated as a protected statement, we anticipate reporting entities will likely cross-reference these corporate reports to information included in the Sustainability Report to minimise private litigation risk. Such an approach may be unhelpful for users as it will require them to navigate what is likely to be a long and complex Sustainability Report, rather than accessing only the most relevant information in context – for example, a user interested in understanding the material climate-related risks facing a listed entity would need to look at the lengthy Sustainability Report rather than gaining a holistic picture, alongside other material risks, of those risks in the OFR.

In addition, the AICD considers that answers required by law to be provided in response to questions from investors at an AGM that relate to information provided in the Sustainability Report (for example, all forward-looking climate-related information for the first year of reporting, and scope 3 disclosure, scenario analysis and transition planning for the first three years of reporting) should be covered by the modified liability settings. Indeed, the Explanatory Memorandum to the Sustainability Reporting Legislation notes that the intent of the regime is to ensure that Sustainability Reports are considered as part of the AGM.¹

In the absence of further legislative clarification on statements reproduced outside of the Sustainability Report where they are required by law, we strongly encourage ASIC to use its exemption powers under section 340 and 341 of the Corporations Act to enable these statements to benefit from the modified liability provisions.

3. Next steps

We hope our submission will be of assistance to you. If you would like to discuss these matters further, please contact Laura Bacon, Senior Policy Adviser at lbacon@aicd.com.au, or Christie Rourke, Senior Policy Adviser at crourke@aicd.com.au

Yours sincerely,



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¹ Treasury Laws Amendment (Financial Market infrastructure and Other Measures) Act 2024 (Cth), Explanatory Memorandum, paragraph [4.30].