Law Council
OF AUSTRALIA

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Director
Labelling and Disclosure Unit
Climate and Energy Division
Langton Crescent
Parkes ACT 2600

By email: ClimateReportingConsultation@treasury.gov.au

Dear Director

Sustainable investment product labels

1. This submission concerning sustainable investment product labels is made jointly by the Financial Services Committee of the Business Law Section of the Law Council of Australia (the **FS Committee**) and the Superannuation Committee of the Legal Practice Section of the Law Council of Australia (the **Super Committee**) (jointly the **Committees**) in response to the consultation paper released by Treasury on 18 July 2025 (**Consultation Paper**).

2. The Committees thank Treasury for the opportunity to respond to the questions posed in the Consultation Paper.

Background

3. The Consultation Paper seeks views on possible policy options to underpin a Sustainable Financial Product Labelling Framework to inform ongoing policy development and regulatory engagement on sustainable financial product labels. It forms part of the Federal Government's broader Sustainable Finance Roadmap. The target date for implementing sustainable investment product labels is 2027.

Submissions

4. The Committees consider that it is appropriate for Treasury to be considering these matters at this time, and that it is appropriate for Australia to seek to keep up with developments in this space in comparable overseas jurisdictions.

5. Currently there is considerable uncertainty around the meaning of terms such as "sustainable" and "ethical" and inconsistency in their use, which create risks that consumers could be misled through misunderstanding these terms, and also risks for product issuers wishing to appropriately describe their products and investment approaches. In the Committees' view consumers and product issuers would benefit from some clarification in use of terms such as "sustainable" and "ethical" (whether in headline product labelling or in Product Disclosure Statement (**PDS**)

disclosure) and when describing approaches to sustainable investing, which ideally should be sourced from international (eg United Nations) standards.

6. In view of the impending application of mandated Climate Related Financial Disclosure (**CRFD**) for regulated superannuation funds and registered managed investment schemes for the year commencing 1 July 2026, references to sustainability in terms of environmental considerations/risks and impact ought to reference the CRFD terminology that will apply to that disclosure.

7. The Super Committee notes that industry-sponsored/agreed and simple to understand "Standard Risk Measures" are used to assist in categorising the expected volatility of investment product and options within a product. A similar approach could be adopted, to assist product providers to succinctly define (and monitor and report) their product offering in terms of "sustainability" generally or across separate elements of that term, which could assist ease of understanding and comparison by consumers. Certain prescribed text, examples (showing limits of any screens/exclusions etc), and warnings could accompany such disclosure in a similar manner to current requirements for prescribed fee disclosure tables in PDS documents.

8. The Committees note that the Consultation Paper is relatively short and believes that, in order to meaningfully respond to some of the questions posed, it would have been preferable to have access to more detailed information.

9. The questions posed by Treasury in the Consultation Paper, and the Committees' responses, are set out below.

1) In the context of existing regulatory settings and disclosure requirements, what is the role for sustainable financial product labels?

10. The purpose of this question is not clear.

11. The Committees notes that sustainable financial product labels are not mandated under the current legislative framework and that there can be inconsistency in the use of terms such as "sustainable", "green", "responsible", "ethical" and "socially aware" and their intended meaning.

12. The Committees note that, under the *Corporations Act 2001* (Cth) and Regulations:
    a. the issuer of a financial product with an investment component must include information about "the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment" in the PDS (s 1013D(1)(l)); and
    b. the Australian Securities and Investments Commission (**ASIC**) may develop guidelines that must be complied with where a Product Disclosure Statement makes any claim that labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment (s 1013DA). These guidelines are currently set out in Regulatory Guide 65 *Section 1013DA disclosure guidelines*.

13. The Committees note that the above provisions were introduced more than 20 years ago and may no longer be fit for purpose.

14. The Committees suggest that these provisions are removed and replaced by "Sustainability" disclosure requirements that apply where sustainability related terms are used. These could cover for example:
    a. climate related considerations in investment decision-making—risks and opportunities;
    b. stewardship activities in relation to investments held;
    c. screens/exclusions/limits on investment holdings—asset or sector level; and
    d. supply chain labour standards risks (under modern slavery reporting obligations).

2) Should any new requirements apply to all financial products that make a claim or state a sustainability or similar objective other than, or in addition to, maximising financial returns?

15. The Committees consider that it would be appropriate for any new requirements to apply uniformly to financial products that meet specified criteria.

16. The Committees believe that the introduction of a more standardised product labelling framework could assist investors to:
    a. better understand what claims and statements about sustainability do (and don't) mean; and
    b. compare the "sustainability" credentials of different financial products in the course of making investment decisions.

17. However, such requirements could serve as a deterrent to product issuers' willingness to offer or market financial products with sustainability credentials due to the risk of non-compliance (which could be inadvertent) if there are significant potential penalties associated with non-compliance.

3) What aspects of international regimes should the Government consider for Australian application?

18. While the Consultation Paper touches on some features of existing international regimes, there does not appear to be any assessment as to their effectiveness.

19. The FS Committee submits that the Government needs to understand how effective other regimes have been in achieving their objective in order to make a properly informed decision about which approach Australia should adopt. This applies equally to the broader Sustainable Finance regulatory reform agenda of which the proposals in the Consultation Paper form part.

20. It should be noted that the European Parliament voted earlier this year to ease sustainability reporting requirements under the Corporate Sustainability Reporting Directive and Corporate Sustainability Due Diligence Directive due to concerns about their adverse impact on the ability of companies covered by regulations to complete in a changing global business environment.[1]

21. The FS Committee recommends that a careful and measured approach is adopted in Australia, with a view to avoiding going too hard, too early, and thereby causing unnecessary uncertainty and disruption to Australian businesses that are seeking to navigate what is an already complex regulatory environment.

3) a. Is there merit in incorporating additional rules about sustainability characteristics, similar to the UK's consumer-facing disclosures requirement?

22. The Super Committee supports the introduction of standardised labels that can be used for products that meet specified thresholds and other criteria.

4) Is international interoperability important for Australian investment product labelling?

23. Generally speaking, the Committees consider that there should not be unnecessary inconsistencies between Australian and foreign laws. The Committees note that having international interoperability is likely to encourage greater competition among investment products with sustainability objectives in both Australian and similarly regulated foreign markets.

24. Given the relatively small size of the Australian investment market relative to those of other developed economies, the Committees consider that it is unlikely that international product issuers would be willing to make significant changes to their product offerings to accommodate bespoke Australian requirements if such requirements deviate significantly from those in their home jurisdiction, in which case the potential range of investment products with sustainability objectives offered in the Australian market could be diminished.

25. The Committees note however that there can be some nuance in the way that certain terms are used in particular languages and cultures. For this reason, achieving consistency across jurisdictions with respect to the use of words may be more challenging and complex than formulating financial reporting standards (which are more primarily number-based).

[1] https://www.europarl.europa.eu/news/en/press-room/20250331IPR27557/sustainability-and-due-diligence-meps-agree-to-delay-application-of-new-rules

5) Do the Responsible Investment Approaches (identified in Table A), UNSDG and PRI cover the field for sustainable investment approaches? Are there others that should be considered?

b. Are any of these approaches inappropriate? If so, why?

c. What are the merits and deficiencies of each approach?

d. Should the approaches be ranked on their ability to deliver sustainable outcomes?

26. The Committees do not comment on the merits of sustainable investment approaches, as this is a non-legal matter.

6) Should allowable investment approaches be prescribed in legislation or left for industry to define?

27. The FS Committee does not consider that investment approaches should be prescribed in legislation, as this would be too inflexible.

28. The FS Committee considers that the Australian Securities and Investments Commission could develop disclosure principles and benchmarks with a view to requiring product issuers to explain certain key matters demonstrating how the relevant investment approach drives their investment decision-making processes and outcomes.

7) Which approach can best improve the confidence of Australian investors? Which options best help investors to identify, compare and make informed decisions about sustainable investment products?

29. The Committees do not comment on the merits of the different sustainable investment approaches.

30. The FS Committee submits that, if product issuers that use each respective approach are required to meet standard disclosure principles and benchmarks, this could assist investors in sourcing, comparing and selecting sustainable investment products.

8) What should determine when product labels apply to a financial product? What are the benefits and costs of:

a. applying labels to all financial products regardless of sustainability claims?

b. applying them only to products that market themselves as sustainable or similar?

31. The Committees submit that a product labelling regime should only be applied to products that are marketed as sustainable or similar. The Committees consider that any further regulation would be beyond what is necessary to achieve the stated policy objective, and would be likely to impose unnecessary costs on products that are not marketed as sustainable or similar.

9) Which approach would best address issues of greenwashing and/or greenhushing?

32. The Committees consider that the approach canvassed in 8)b. would be sufficient to address greenwashing.

33. While the approach canvassed in 8)a. could arguably be more effective in addressing greenhushing, the Committees submit that this would be unnecessary additional regulation.

34. Compliance with product labelling obligations would necessarily involve incurring extra costs and the Committees submit that only those product issuers that are seeking to market their products as "sustainable" or similar should be required to pay these costs, because that is where the risk of greenwashing lies.

35. The Committees consider that greenwashing is a more important risk to address than greenhushing, and product issuers should not be required to assess their sustainability credentials beyond prescribed reporting requirements (such as CRFD and modern slavery disclosure).

10) What features of a financial product should trigger a labelling requirement?
- ***a. Should particular words or terms be specified?***
- ***b. Should it be based on a threshold such as per cent of product invested under a sustainable investment approach or objective?***

36. As noted in their response to Question 8, the Committees support a labelling regime that only applies to products that are marketed as sustainable or similar. The Committees would support a regime that specifies particular words or terms that are permitted to be used as product labels where the product meets specified criteria, which may include thresholds such as percentage of product invested under a sustainable investment approach.

37. The Committees do not seek to nominate what the thresholds or other criteria should be for particular labels to apply, as this is more a policy than a legal matter, and it is expected that appropriate thresholds and other criteria can be worked out with industry.

38. The Committees note it is important to recognise that the proportion of a portfolio that is invested in a particular asset or type of asset can sometimes change for reasons outside the portfolio manager's control for reasons which may include:
    a. material changes in asset prices and values due to market forces;
    b. mergers and acquisitions activity;
    c. inflows and outflows of investor capital;
    d. liquidity constraints;

e. debt facility terms imposed by external financiers; and
f. temporary allocations to cash in the period between the disposal of an asset and the acquisition of a replacement asset.

39. The Committees also note that responsible entities and trustees of managed funds and superannuation funds have a fiduciary duty to act in the best interests of investors, and other matters (including, for example, taxation outcomes) unrelated to sustainability may need to be given priority in some circumstances to ensure that this duty can be fulfilled.

40. The Committees therefore suggest that prescribed disclosure should include clarifying statements to be used in circumstances where an investment portfolio's adherence to the prescribed sustainability threshold or criteria cannot be absolutely assured, including a description of the circumstances where full adherence may not be possible.

11) Should evidentiary requirements underpinning labelling be prescriptive, principled or a mixture of both?

41. The Committees acknowledge the issues raised in the Consultation Paper regarding the respective merits of a prescriptive or principles-based approach to evidentiary requirements for use of sustainability labels. On balance we support a principles-based approach. See the comments about Question 13 regarding the role of third-party certification.

12) Should evidentiary requirements for investment product labels be linked to other policy initiatives being progressed as part of the taxonomy?

42. The Committees submit that it would be appropriate to adopt a holistic approach to the Sustainable Finance Roadmap, aim for consistency in the relevant laws, and seek to avoid unnecessary overlap, duplication and inconsistency. On that basis it would be sensible to link evidentiary requirements to other policy initiatives such as CRFD.

13) What should be the role of independent third-party certification?
a. If third-party certification is required, what criteria should be [sic] the product be certified against and who should set the criteria?
b. If third-party certification is not required, how can credibility and robustness of labels be ensured?

43. The Committees consider it important for ASIC as the regulator to be well equipped to assess whether products that are promoted as sustainable investments are "true to label" and notes that third-party certification could play a role in ASIC's assessment.

44. The Committees do not have detailed knowledge of third-party certification processes, but would expect them to come at an economic cost.

45. The FS Committee recommends that a cost-benefit analysis of third-party certification be conducted to weigh the potential economic impact on those required to obtain such certification against any potential regulatory benefit.

46. The Super Committee acknowledges there would be merit in a requirement that any use of the new prescribed terms, and associated claims as to how a product will apply those terms, be subject to annual audit assurance—as for prescribed CRFD. However, the Super Committee agrees that a cost-benefit analysis is warranted before such a requirement is imposed.

Conclusion and further contact

47. The Committees would be pleased to discuss any aspect of this submission with Treasury and look forward to being further involved in this important policy development process.

48. Please contact Pip Bell, Co-Chair of the FS Committee [redacted] and/or Nathan Hodge, Chair, Submissions of the Super Committee [redacted], as appropriate, if you would like to do so.

Yours faithfully



James Popple
Chief Executive Officer
Law Council of Australia