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Mr Mark Fitt
Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Fitt

Inquiry into Carbon Risk Disclosure – Public Hearing Wednesday 8 March 2017 Question on Notice and additional comments

During the course of CPA Australia's appearance before the Committee's Public Hearing the question was raised as to the extent to which the continuous disclosure regime (ASX Listing Rule 3.1 and Corporations Act 2001Chapter 6CA) was used as an avenue for disclosing carbon and climate-related impacts, say in relation to asset write-downs and reappraisals of reserves.

We have informally approached the ASX on this matter and they suggest that presently it would be unlikely to find announcements specifically related to carbon and climate-related matters, suggesting also that the most likely avenue for such disclosure would be an entity's periodic financial statements.

This no doubt fair assessment of the current 'state-of-play' does not, we believe, undermine the potential for the interaction between continuous disclosure obligations and annual and half-yearly statutory financial reporting to provide key elements in achieving, in time, a suitable degree of market transparency and capacity to price carbon risk. To find some anecdotal evidence of this potential, we have undertaken a quick examination of some likely areas of climate-related announcements and can point to disclosures as recently as March this year of ASX list coal mining companies announcing to the market a shift of some operations to care and maintenance "in response to ongoing market challenges".

Doubtless, a more thorough study of these types of announcement would be beneficial. CPA Australia currently has work of this nature underway through a university research grant, though results are not expected until later this year.

Turning briefly to the related element of financial reporting and the potential for modifying guidance to directors beyond the current narrow emphasis on financial performance. CPA Australia and a number of other respondents to the Inquiry have raised for consideration the operation of Corporations Act 2001 s 299A (Additional general requirements for listed entities) and ASIC's guide RG 247 (Effective disclosure in an operating and financial review). The UK equivalent is to be found in the Companies Act 2006 (Strategic Report and directors' reporting) Regulation 2013. The UK Financial Reporting Council (FRC) has provided guidance on the strategic report (June 2014), the objective being to "provide shareholders with a holistic and meaningful picture of an entity's **business model**, strategy, development, performance, position and future prospects" (emphasis added). Paragraph 7.29 provides the following:

To the extent necessary for an understanding of the development, performance or position of the entity's business, the strategic report should include information about:

(a) Environmental matters (including the impact of the business of the entity on the environment);
(b) the entity's employees; and
(c) social, community and human rights issues.

The information should include a description of any relevant policies in respect of those matters and the effectiveness of those policies.

Where information on any of the matters described above is not included in the strategic report because it is not considered necessary for an understanding of the development, performance or position of the company's business, the strategic report should state the matters that are not covered in the strategic report.

The final sentence of the above is typical of the 'report or explain' approach to disclosure found in frameworks such as the ASX Corporate Governance Council's Principles & Recommendations and is the type of principle-based approach to carbon risk and climate-related regulation urged my CPA Australia where there are significant issues of industry-sector and firm size characteristics in determining materiality and user decision-utility.

A related UK regulatory attributed is in their Corporate Governance Code, again promulgated in April 2016 by the FRC and is relevant as a model or reference point for measured broadening and subtle re-emphasising of disclosure within which carbon risk confronting Australian companies could be communicated to the market, shareholders and other interested parties. Paragraph C.2.1 under Risk Management and Internal Control states:

> The directors should confirm in the annual report that they have carried out a robust assessment of the principal risks facing the company, including those that would threaten its **business model**, future performance, solvency and liquidity. The directors should describe those risks and explain how they are being managed or mitigated. (emphasis added)

The above is presented as indicative of the type of reforms that could be readily implemented in Australia, and we believe could harmonise with relevant related initiatives of ASIC including its guidance for forward-looking statements in the mining and resources sector and its statements recently as 8 December 2016 (16-428MR) emphasising its surveillance focus on impairment tests and asset valuation. Similarly, the building of both depth of annual and half-yearly reporting of climate, environmental and other nonfinancial information, along with related market expectations about availability of this information, should, we suggest, provide the impetus for parallel flows of information through the medium of continuous disclosure.

As an addition point made in relation to the UK approaches described above, CPA Australia wishes to highlight that although the UK has adopted a comparatively more 'pluralist' approach to whom directors' owe their duties under an 'enlightened shareholder value' principle adopted in s 172 of their Companies Act 2006, this does not preclude, as we see it, adaptation of the governance and disclosure approaches discussed. In this context we would like to address our opening statement and the subsequent question from the Committee member concerning the lapse of time since serious policy analysis of stakeholder interests in the context of directors' duties. We respond here without reaching a concluded position, that the narrative disclosure in the above mentioned s 299A dealing with business strategies might be reoriented to include some reference to both the discharge of the duty of care and diligence (s 180) and, in particular, the duty to act 'bona fide in the best interest of the company as a whole'. The latter, given its broad expression in s 181, evolves through judicial development. Any reform should of course not derogate from directors communicating their performance and oversight on matters of financial management and stewardship.

Finally, mention was made in response to a question from the Committee of the Commonwealth Climate Law Initiative and that this was identified in CPA Australia's submission to the Inquiry. This was incorrect. The following link is therefore provided noting that CPA Australia participated with the University of Melbourne Law School and MinterEllison in the Australian symposium and we expect further developments across 2017.

http://www.smithschool.ox.ac.uk/research-programmes/ccli/

If you require further information on our views expressed in this submission please contact Dr John Purcell on or at .

Yours sincerely

Stuart Dignam
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