Adjustments to the climate-related disclosures regime

Discussion Document

December 2024

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

Ministry of Business, Innovation and Employment (MBIE)

Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders. MBIE combines the former Ministries of Economic Development, Science and Innovation, and the Departments of Labour, and Building and Housing.

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Foreword from the Minister

Hon Andrew Bayly
Minister of Commerce and Consumer Affairs

New Zealand's climate-related disclosures regime was introduced in legislation passed in 2021. The disclosure regime is a useful tool to promote consideration of climate change in business decisions. However, the first year of reporting has highlighted some significant problems with the regime.

Stakeholders are telling me that the reporting thresholds are too low, the cost of producing climate statements is excessive and the director liability settings are not suitable for the nature of climate reporting. The regime settings are also creating a disincentive to list on the NZX and are hampering the efficient operation of New Zealand businesses.

In addition, our regime is not well-aligned with Australia. New Zealand was among the first countries in the world to introduce climate reporting but now that Australia has its own regime, I think we should be better aligned.

This Government is committed to streamlining regulation and reducing compliance costs to enable businesses to get on with the job of doing what they do best. I want to ensure that our climate reporting regime is proportionate and not an undue burden on New Zealand businesses.

I have asked officials to prepare this discussion document to consult on sensible improvements that could be made to New Zealand's regime. The discussion document seeks your feedback on options to raise the reporting thresholds for listed issuers and investment scheme managers, make changes to the director liability settings, and explore whether there is value in encouraging multinational corporations to file climate statements in New Zealand.

I welcome your feedback on the options in this paper to adjust our climate-related disclosures regime. Please provide feedback on the proposals to climaterelateddisclosures@mbie.govt.nz by 5pm, 14 February 2025.

Hon Andrew Bayly
Minister of Commerce and Consumer Affairs

How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (**MBIE**) seeks written submissions on the issues raised in this document by **5pm, 14 February 2025**.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: https://www.mbie.govt.nz/dmsdocument/29943-submission-template-adjustments-to-the-climate-related-disclosures-regime. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission:

- By sending your submission as a Microsoft Word document to ***climaterelateddisclosures@mbie.govt.nz***
- By mailing your submission to:

  Corporate Governance and Intellectual Property Policy
  Building, Resources and Markets
  Ministry of Business, Innovation & Employment
  PO Box 1473
  Wellington 6140
  New Zealand

Please direct any questions that you have in relation to the submissions process to ***climaterelateddisclosures@mbie.govt.nz***.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process and will inform advice to Ministers on potential reforms to the climate-related disclosures regime. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

MBIE will publish the submissions on our website at www.mbie.govt.nz.

Submissions may be subject to release under the New Zealand Official Information Act 1982 and requests under the Privacy Act 2020.

Official information

Submissions may be requested under the Official Information Act 1982. If you have any objection to the release of any information in your submission, please set it out clearly in your submission, indicating which parts you consider should be withheld, together with the reasons for withholding the information and the grounds under the Official Information Act 1982 you believe apply. We will

take such objections into account and will endeavour to consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 2020 governs how we manage personal information (e.g., collection, use, holding, disclosure, etc). Any personal information you supply to us in the process of making a submission for this consultation will only be used for the purpose of assisting in the development of policy advice in relation to this review, to attribute submissions or for contacting you about your submission. We may also use personal information you supply in the course of making a submission for other reasons permitted under the Privacy Act 2020 (e.g. with your consent, for a directly related purpose, or where the law permits or requires it).

Please clearly indicate in the submission template or email accompanying your submission if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures. You have rights of access to and correction of your personal information as explained on the MBIE website at www.mbie.govt.nz. If you include the personal information of another individual in your submission, they also have the right to access and/or correct their own information.

Other information

If there is other information that you would like to submit to MBIE for consideration in this consultation but do not want it publicly disclosed, please clearly set that out in your submission for MBIE to consider.

Glossary

Climate related disclosure provision	Means a provision requiring climate reporting entities to keep proper records under section 461V of the FMC Act, prepare climate statements under sections 461Z to 461ZC of the FMC Act, obtain an assurance engagement under section 461ZH of the FMC Act, lodge climate statements under 461ZI of the FMC Act and keep climate records for seven years under section 461X of the FMC Act.[i]
CRD regime	Climate-related disclosures regime
ESG	Environmental, social and governance
FMA	Financial Markets Authority
FMC Act	Financial Markets Conduct Act 2013
MBIE	Ministry of Business, Innovation and Employment
XRB	External Reporting Board

[i] Refer section 461ZK of the FMC Act

Introduction

Purpose of this discussion document

1. This discussion document seeks feedback on potential adjustments to the climate-related disclosures regime (**CRD regime**). The document discusses:

    a. whether the listed issuer and investment scheme manager reporting thresholds should be changed, particularly to bring them into closer alignment with our closest trading partner, Australia;

    b. whether the director liability settings for the CRD regime should be adjusted; and

    c. if there would be value in encouraging subsidiaries of multinational corporations to file their parent company climate statements in New Zealand.

2. This discussion document has five Chapters:

    a. Chapter 1 outlines the key elements of the CRD regime, issues experienced in the first year of reporting, possible options for change and the objectives for making any change.

    b. Chapter 2 describes options to adjust the New Zealand reporting thresholds for listed issuers and investment scheme managers.

    c. Chapter 3 describes the current liability settings for climate reporting entities and directors and explores options for change in relation to director liability.

    d. Chapter 4 considers whether there would be value in encouraging New Zealand subsidiaries of multinational companies to file their parent company climate statements in New Zealand.

    e. Chapter 5 sets out the limitations and constraints on analysis.

Process and timeline

3. Submissions on this paper close at 5pm, 14 February 2025. Following this, we will review the feedback and make recommendations to the Minister of Commerce and Consumer Affairs with a view to introducing amendment legislation in 2025. Changes could have effect in 2026.

Chapter 1: Background

Context for reform

4. New Zealand's CRD regime was introduced by the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021, which amended the Financial Markets Conduct Act 2013 (**FMC Act**), Financial Reporting Act 2013 and the Public Audit Act 2001. The CRD regime requires climate reporting entities to prepare annual climate statements disclosing their climate-related risks and opportunities.

5. The purpose of the CRD regime, as set out in the General Policy Statement of the Bill introducing the regime, is:

   a. to ensure that the effects of climate change are routinely considered in business, investment, lending, and insurance underwriting decisions

   b. to help reporting entities better demonstrate responsibility and foresight in their consideration of climate issues

   c. to lead to smarter, more efficient allocation of capital, and help smooth the transition to a more sustainable, low-emissions economy.

6. Climate reporting entities must prepare climate statements in accordance with standards issued by the External Reporting Board (**XRB**).[ii] The Financial Markets Authority (**FMA**) is responsible for independent monitoring and enforcement of the CRD regime.

7. The Financial Reporting Act, as amended, states that the purpose of climate standards is to provide for climate-related disclosures, in order to:

   a. encourage entities to routinely consider the short-, medium-, and long-term risks and opportunities that climate change presents for the activities of the entity or the entity's group

   b. enable entities to show how they are considering those risks and opportunities

   c. enable investors and other stakeholders to assess the merits of how entities are considering those risks and opportunities.

8. The climate standards state that their ultimate aim is to support the allocation of capital towards activities that are consistent with a transition to a low-emissions climate-resilient future. [iii]

[ii] Aotearoa New Zealand Climate Standards » XRB
[iii] Refer NZ CS 1 paragraph 2, NZ CS 2 paragraph 2, NZ CS 3 paragraph 2.

9. The climate reporting entities are:

   a. registered banks, credit unions, and building societies with total assets (including subsidiaries) of more than $1 billion as at their two preceding year-end balance dates[iv]

   b. managers of registered investment schemes (other than restricted schemes) with more than $1 billion in total assets under management as at their two preceding year-end balance dates[v]

   c. licensed insurers with total assets (including of subsidiaries) of more than $1 billion as at their two preceding year-end balance dates or annual gross premium revenue (including subsidiaries) of more than $250 million in each of their two preceding accounting periods[vi]

   d. listed issuers of quoted equity securities or quoted debt securities that are large. An issuer of quoted equity securities is large if the market price of all its equity securities (quoted or unquoted) exceeds $60 million as at its two preceding year-end balance dates. An issuer of quoted debt securities is large if the face value of its quoted debt exceeds $60 million at any time in the two preceding accounting periods.[vii]

10. Climate reporting entities are required to lodge their climate statements with the Registrar of Financial Service Providers within four months of the entity's balance date or, if the entity is a manager of a managed investment scheme, within four months of the scheme balance date. The first climate statements were lodged in March 2024 and have continued to be filed throughout the year. Approximately 173 entities in total are required to report.

11. Other jurisdictions have developed or are developing their own climate-related disclosure regimes, although New Zealand was the first country to require reporting in accordance with mandatory standards. Australia's regime was introduced recently by the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024[viii], and the first reports will be produced under the Australian legislation for financial years beginning on or after 1 January 2025. The Australian regime is different in a number of respects to New Zealand's as set out in paragraphs 33 to 36 below.

12. The expansion of climate reporting around the world responds to growing investor demand for more consistent, comparable and useful disclosures by large businesses and financial institutions about their climate-related risks and opportunities.

13. Many climate reporting entities and industry groups have emphasised the importance of climate reporting. For example, ASB has recently confirmed its support for the CRD regime and notes that "we believe that demand for CRD information will continue to grow with more than 80% of New Zealand exports by value already going to countries with mandatory climate-

[iv] Refer section 461Q of the FMC Act
[v] Refer section 461S of the FMC Act
[vi] Refer section 461Q of the FMC Act
[vii] Refer section 461P of the FMC Act
[viii] See schedule 4 of the Act

related disclosure regimes proposed or in force”[ix]. The Responsible Investment Association Australasia has stated that climate reporting should lead to “faster, meaningful decarbonisation efforts as well as ensure New Zealand remains an attractive destination for global capital”.[x]

The problem

14. However, the Government has also heard that the first year of reporting has highlighted some significant issues with the CRD regime which are negatively impacting New Zealand businesses.

15. In particular, some climate reporting entities consider that the cost of reporting is excessive and disproportionate, and that the regime is encouraging a focus on compliance, rather than positive actions to prepare businesses for the impacts of climate change. The Australasian Investor Relations Association surveyed NZX 50 companies and reported a median cost of $250,000 - $300,000 for published climate statements (excluding internal time).[xi] Turners Automotive Group, who are a listed issuer, has advised that the cost to the company of the production of their first climate statements was in excess of $1 million.[xii] Other stakeholders consider that the regime is a barrier to listing on the NZX and New Zealand issuers are substantially disadvantaged by the regime (when compared to the Australian requirements).

16. Some stakeholders consider the reporting threshold for listed issuers is too low and that misalignment with the Australian reporting settings leads to a competitive disadvantage for listed issuers in New Zealand. There is also a risk of regulatory arbitrage with Australia, i.e., given the differences between the New Zealand and Australian disclosure regimes, an issuer may choose to list in Australia rather than New Zealand.

17. There is a similar concern that the investment scheme manager reporting threshold is also too low, and not aligned with Australia. Senior directors and brokers have advised that the costs of reporting by investment scheme managers are disproportionately high and are being passed to consumers via fees.

18. We have also heard that the director liability settings are causing climate reporting entities to take a very risk averse approach to reporting and are contributing to high legal and consultancy costs. We have also heard that directors are reluctant to include potentially useful information in the climate statements due to concerns about personal liability. Given climate statements contain some forward-looking statements, stakeholders have queried whether the director liability settings should be similar to those for financial statements (which have a greater focus on the past).

Options considered in the discussion document

19. In this discussion document we consider some options for adjusting the CRD regime to ensure that potential liabilities and reporting thresholds are appropriate and proportionate for the

[ix] Consultation Feedback » XRB (refer ASB submission)
[x] Consultation Feedback » XRB (refer Responsible Investment Association Australasia submission)
[xi] Consultation Feedback » XRB (refer Australasian Investor Relations Association submission)
[xii] Climate reporting will cost Turners $1m, CFO says

New Zealand context. Chapter two considers the thresholds for listed issuer and investment scheme manager reporting. Chapter three explores options to amend the director liability settings for the CRD regime.

20. In addition, we seek feedback on whether it would be useful to encourage subsidiaries of multinational corporations to file their parent company climate statements in New Zealand. A short discussion is included in Chapter four.

Objectives

21. Primarily the CRD regime settings sit in the FMC Act. Therefore, in considering whether to make changes to the regime, the Government is mindful of the main and additional purposes of the Act[xiii]. The main purposes are to:

    a. promote the confident and informed participation of businesses, investors, and consumers in the financial markets

    b. promote and facilitate the development of fair, efficient, and transparent financial markets.

22. Both the main and additional purposes in the FMC Act indicate that a "weighing up" will sometimes be required between different interests. For example, investors will want to ensure their informed participation in the financial markets[xiv] and will have an interest in the production of useful information in the climate statements to support investor decision making[xv]. Climate reporting entities will also have an interest in ensuring their informed participation in the financial markets including via the production of climate statements. However, climate reporting entities will also want to avoid unnecessary compliance costs[xvi].

23. Within this framework, the Government's more specific objectives when considering the options in this paper are to ensure that:

    a. the right entities are reporting so that the CRD regime encourages our transition to a low-emissions economy but does not become a barrier to doing business in New Zealand

    b. the CRD regime does not impact the competitiveness of New Zealand's capital markets, particularly when compared to Australia

    c. directors have the right incentives to encourage robust and useful reporting in New Zealand.

[xiii] Refer sections 3 and 4 of the FMC Act
[xiv] Refer section 3(a) of the FMC Act
[xv] Refer section 4(a) of the FMC Act
[xvi] Refer section 4(c) of the FMC Act

Recent changes to the regime

24. In addition to the problem outlined above, climate reporting entities have also expressed concern about some elements of the reporting requirements for the CRD regime including reporting on and getting assurance for Scope 3 greenhouse gas emissions.[xvii] The XRB has listened to these concerns and, following consultation, has recently announced that it will be making amendments to NZ CS 2 to extend the adoption provisions for Scope 3 greenhouse gas emissions disclosures and anticipated financial impacts disclosures by one year. The XRB also announced a new one-year adoption provision for the assurance of Scope 3 greenhouse gas emissions.[xviii]

25. These changes will have immediate application for reporting periods commencing 1 January 2024. However, these amendments to the climate standards will not address the problem as described above.

[xvii] NZ CS 1 requires Scope 3 emissions to be reported (subject to the operation of the adoption provisions in NZ CS 2). The FMC Act (section 461ZH) requires a climate reporting entity's greenhouse gas emissions disclosures to be assured.
[xviii] Latest News » XRB

Chapter 2: Reporting Thresholds

26. As noted in Chapter 1, there is concern that the reporting thresholds for listed issuers and investment scheme managers are too low particularly when compared to Australian settings.

Listed issuer thresholds

27. Listed equity issuers must prepare climate statements if the market price of all its equity securities (quoted and unquoted) exceeds $60 million and listed debt issuers must report if the face value of its quoted debt exceeds $60 million[xix].

28. The $60 million threshold was chosen because this was the maximum market capitalisation permitted for an issuer to join Catalist Markets Limited, a stock exchange designed for growth businesses too small to list on the NZX. The thinking at the time that once an issuer was too large to list on Catalist, the climate reporting obligations should apply.

The problem – further information

29. Some climate reporting entities and other stakeholders are concerned that the $60 million market capitalisation threshold is too low and the cost of reporting, particularly for the smaller listed issuers is disproportionately high. The Australasian Investor Relations Association surveyed NZX 50 companies and reported a median cost of $250,000 - $300,000 for published climate statements (excluding internal time)[xx]. Turners Automotive Group, a listed issuer with a market capitalisation of approximately $400 million, has advised that the cost to the company of the production of their first climate statements was in excess of $1 million.[xxi]

30. We expect that the cost of climate reporting will reduce over time as reporting entities become more familiar with the process to produce climate reports. However, the costs noted above don't reflect the full cost of reporting because, from October 2024, assurance over part of the reports (the greenhouse gas emissions) is also required. The cost of assurance could add another significant cost for climate-reporting entities.

31. Senior directors and brokers have also told the Minister of Commerce and Consumer Affairs that climate reporting (including the liability settings discussed in Chapter 3 and the threshold for listed issuers to report) is a barrier to listing on the NZX and there is a potential risk of regulatory arbitrage with Australia, i.e., given the differences between the regime settings, a company may choose to list in Australia rather than New Zealand.

32. Businesses will have reduced options to access capital if there are barriers to listing on the NZX. Fewer listings in New Zealand also means fewer options for New Zealand investors.

[xix] Refer section 461P of the FMC Act
[xx] Consultation Feedback » XRB (refer Australasian Investor Relations Association submission)
[xxi] Climate reporting will cost Turners $1m, CFO says

The Australian Regime

33. In Australia, reporting is being phased in over time in three groups with the biggest entities reporting first. Group 1 commences reporting for financial years beginning on or after 1 January 2025, Group 2 commences for financial years beginning on or after 1 July 2026 and Group 3 for financial years beginning on or after 1 July 2027. Whether an entity meets the requirements for a group depends on its size. This is a two-out-of-three test based on annual revenue, total assets and FTE employee numbers.

34. Further details are set out in the table below (all dollar amounts are in Australian dollars).

Table 1: Overview of the Australian reporting requirements

First annual reporting periods starting on or after	Large entities and their controlled entities meeting at least two of three criteria:			National Greenhouse and Energy Reporting (NGER) Reporters	Asset Owners[xxii]
	Consolidated revenue	EOFY consolidated gross assets	EOFY employees		
1 January 2025 Group 1	$500 million or more	$1 billion or more	500 or more	Above NGER publication threshold	N/A
1 July 2026 Group 2	$200 million or more	$500 million or more	250 or more	All other NGER reporters	$5 billion or more assets under management
1 July 2027 Group 3	$50 million or more	$25 million or more	100 or more	N/A	N/A

35. A smaller listed issuer that would have to report in New Zealand in line with the $60 million market capitalisation threshold, might not need to report until Group 2 or 3 reporting begins in Australia. In addition, in Australia Group 3 entities that assess that they have no material climate-related risks or opportunities do not produce full climate statements. Instead, they are required to disclose a statement that they have no material risks or opportunities as well as an explanation about how this conclusion was reached.

36. These statements will be subject to an assurance engagement by the entity's financial statement auditor. CA ANZ and CPA Australia has estimated that these engagements would involve costs ranging from $20,000 - $50,000 per entity[xxiii]. While these are significant sums

[xxii] An entity is an asset owner if it is a registered scheme, registrable superannuation entity or retail Corporate Collective Investment Vehicle. See discussion at paragraph 60.
[xxiii] Submission by CA ANZ and CPA Australia to the Senate Economics Legislation Committee Submissions – Parliament of Australia).

this is less than the cost of producing climate statements in New Zealand, as noted at paragraph 29 above.

1. **Do you have information about the cost of reporting for listed issuers?**

2. **Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?**

Options for reform

37. Given our objective of ensuring that New Zealand's CRD regime does not impact the competitiveness of New Zealand's capital markets, we have undertaken an exercise, supported by the NZX, to calculate what the New Zealand threshold for listed issuers would be if it were roughly equivalent to Group 1, 2 and 3 in Australia. The Australian tests do not map exactly to the New Zealand framework, which is based on market capitalisation, but a rough approximation is possible. Rough equivalence with Group 1 would mean raising the New Zealand threshold to $550 million in market capitalisation, rough equivalence with Group 2 and 3 would be $250 million and $50 million respectively[xxiv].

38. The table below sets out the Australian Group thresholds, the New Zealand approximate market capitalisation that equates to the Australian thresholds, and the number of listed issuers captured in each category.

Table 2: Listed issuers required to report based on Australian thresholds.

Australian group thresholds	New Zealand approximate market capitalisation equivalent	Listed issuers required to report in New Zealand (approximately)
Group 1 (2 out of 3 of >$500m revenue, >$1 billion assets and >500 employees)	$550 million	54
Group 2 (2 out of 3 of >$200m revenue, >$500m assets and >250 employees)	$250 million	81

[xxiv] The approximate New Zealand equivalent to Group 1 in Australia was calculated by considering how many NZX listed companies met the Group 1 requirements (approximately 38) and then considering the level of market capitalisation that would capture the largest 38 companies on the NZX. This results in a market capitalisation of NZ$550 million for rough equivalence with Group 1. A similar approach was taken to calculate the thresholds for Group 2 and Group 3. Twenty-four companies sit in Group 2 and 31 in Group 3 which equates to $230 million and $33 million respectively (both figures were rounded to the nearest $50 million).

Australian group thresholds	New Zealand approximate market capitalisation equivalent	Listed issuers required to report in New Zealand (approximately)
Group 3 (2 out of 3 of >$50m revenue, >$25m assets and >100 employees)	$50 million	110

39. Any adjustments to the thresholds will require legislative change which takes time. If a Bill adjusting the thresholds was introduced into the House next year it may come into force in early 2026. This time delay has been considered when proposing options to amend the threshold.

40. We have considered our objectives to ensure that the right entities are reporting, and the comparative alignment with Australia that will provide competitiveness of New Zealand's capital markets, when proposing the following options for reform:

Table 3: Options to amend the listed issuer reporting thresholds

Options	Reporting threshold
Option 1	Status quo (no change from $60 million market capitalisation threshold).
Option 2	From early 2026 (approx.), threshold increases from $60 to $550 million market capitalisation.
Option 3	Staged reporting: • From early 2026 (approx.), threshold increases from $60 to $550 million market capitalisation • From early 2028 (approx.) threshold reduces from $550 million to $250 million market capitalisation.

41. Under both Option 2 and 3 the current listed issuers (i.e., those with more than $60 million in market capitalisation) will continue reporting until the legislation is changed (potentially early 2026). Under Option 2, those with less than $550 million in market capitalisation will then stop reporting.

42. Under Option 3, listed issuers with between $250 and $550 million in market capitalisation will continue reporting until early 2026 (approximately) and then will be exempt from reporting for approximately two years before re-joining the mandatory reporting regime in 2028.

43. In preparing the Options we considered introducing a minimum emissions threshold as part of the reporting criteria. We ultimately decided against this approach because the thresholds for climate reporting in other jurisdictions are generally based on the size of the entity, not emissions produced. In addition, recording an entity's emissions is usually focussed on the impact an entity has on the environment. However, the CRD regime is also concerned with the impact of climate change on an entity, e.g., a climate reporting entity may have low emissions but face significant risks from climate change that investors would expect to be disclosed.

Discussion

44. When considering the Options, it is relevant to consider that the XRB is able to introduce differential reporting standards. This means that the XRB has the power to issue different standards for different classes of entities, e.g., the XRB could issue new standards for investment scheme managers, and for different sizes of entities, e.g., the XRB could issue new standards for smaller listed issuers. If, for example, Option 1 (status quo) was preferred, the XRB may be able to alleviate some of the reporting pressures for listed issuers by taking this approach. The XRB intends to consult on the establishment of a differential reporting strategy for climate-related disclosures in 2025.

45. One of our objectives is to ensure that the right entities are reporting so that the CRD regime encourages the transition to a low emissions economy but does not become a barrier to doing business in New Zealand.

46. As noted above, the purpose of the CRD regime is to support the allocation of capital towards activities that are consistent with a transition to a low-emissions, climate resilient future. A downside of reducing the number of entities reporting under the regime is that the likelihood that the regime will achieve its aims is reduced because there will be less information available to inform investor decision making.

47. The impact of the Options on the number of issuers who would report is set out in the table below.

Table 4: Impact of reporting threshold on number of listed issuers required to report

Reporting threshold (market capitalisation)	Number of listed issuers required to report (numbers based on information from the current reporting cycle)
Option 1: $60 million (status quo)	107
Option 2: $550 million	54
Option 3: $250 million	81

48. It is not easy to determine what the “right” level of reporting is so that progress is made towards a low-emissions future without causing undue burden to businesses. We are interested in your views about this.

49. Another objective when considering the options is to ensure that the CRD regime does not impact the competitiveness of New Zealand’s capital markets. More closely aligning with our second largest trading partner, Australia, is a particular consideration. The issue of regulatory arbitrage is relevant to this objective.

50. Raising the reporting threshold will reduce costs for some businesses who currently have to report which may improve competitiveness. Under Option 2, some listed issuers will no longer have to report and, if Option 3 is progressed, the smaller listed issuers will have a gap in mandatory reporting, i.e., they will leave and then re-join the mandatory regime. A staged approach would allow professionals who support the regime to upskill before the smaller listed issuers are required to resume reporting, which should help to reduce the costs of producing the climate statements.

51. However, the “stop start” approach in Option 3 may have downsides for climate reporting entities and users of the reports. For example, it may be costly for climate reporting entities to pause and then re-start reporting, and it may be confusing for users of the reports if there is a gap in reporting.

52. Raising the thresholds may help ensure that New Zealand’s capital markets are competitive when compared to Australia in the sense that New Zealand issuers will have reduced regulatory costs. However, competitiveness is not solely an issue of cost. The Chapman Tripp report Protecting New Zealand’s Competitive Advantage: A snapshot of Global Sustainability Reporting and Trade Trends notes:

    As CRD regimes continue to bed-in and expand globally, we foresee that the ability to demonstrate an understanding of, and support, climate-related reporting will become a key competitive advantage for New Zealand businesses. New Zealand companies that have invested in upskilling will be well placed to seize opportunities and protect market access.

53. We know that some large international investors are demanding information in the climate reports from entities and funds. Without disclosure from New Zealand entities, New Zealand companies may miss out on global capital flows. Financial institutions (banks, insurers etc.) are also increasingly demanding this information.

54. New Zealand entities may also find it more difficult to raise capital and export if New Zealand’s climate reporting regime is seen as being set at a lower level than in other comparable jurisdictions. Over 80% of New Zealand’s exports by value are going to markets that have mandatory ESG reporting in force or proposed[xxv]. Also, if entities are not required to report

[xxv] See page 5 of the Chapman Tripp report Protecting New Zealand’s Competitive Advantage: A snapshot of Global Sustainability Reporting and Trade Trends

they may miss out on the benefits gained from getting a better understanding of their climate risks and opportunities through the reporting process.

55. We have been told that even if the thresholds are raised some issuers will continue to voluntarily report. We are interested to hear about why this is the case and if these issuers see any disadvantages to them in not being in a regulated regime. For example, if there are any concerns that their climate statements will not have the same value to investors if they are made voluntarily and not regulated by the FMA.

56. Under Option 2, New Zealand's reporting thresholds would not be closely aligned with Australia from the time that Group 2 joins the Australian regime (Group 2 reports in relation to financial years beginning on or after 1 July 2026). However, of the options, this will likely best reduce the risk of regulatory arbitrage. Option 3 would be better aligned with Australia's reporting requirements.

57. When considering the issue of regulatory arbitrage, it is not just reporting thresholds that are relevant. It is also relevant to consider the total cost of reporting in Australia. For example, in Australia, full assurance of the climate statements is required by 2030 and in New Zealand only assurance of the greenhouse gas emissions disclosures is mandated. In addition, we note that although a concern about regulatory arbitrage has been expressed, as the Australian regime expands to Groups 2 and 3 over the next few years this will be less of an issue.

3. **When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?**

4. **If the XRB introduced differential reporting, would this impact on your choice of preferred option?**

5. **Do you think that a different reporting threshold for listed issuers should be considered (i.e., not one of the options above) and, if so, why?**

6. **If Option 2 or 3 was preferred do you think that some listed issuers would still choose to voluntarily report (even if not required to do so by law)? And, if so, why?**

7. **What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime?**

Investment scheme managers thresholds

58. Managers of registered investment schemes with greater than $1 billion in total assets under management (by the manager and other managers authorised under their market services licence) as at their two preceding year-end balance dates are climate reporting entities under the New Zealand regime. This means that if one manager is a manager of multiple schemes, then the assets of all the schemes are added together to determine if the manager is a reporting entity.[xxvi]

59. An investment scheme manager prepares climate statements for every fund in each scheme that it manages. Climate statements for a scheme may be combined in a single document (see section 461ZE of the FMC Act).

60. In Australia an “asset owner” must report if the value of its assets are $5 billion or more. An asset owner is a registered scheme, registrable superannuation entity or retail Corporate Collective Investment Vehicle.[xxvii] Unlike in New Zealand, the threshold in Australia is determined at the scheme level, i.e., an individual scheme must have more than $5 billion in assets under management before reporting is required. This means a fund manager with more than $5 billion in assets may not be required to report if none of their individual schemes meet the $5 billion threshold. A registered scheme may also be required to report if it meets the general reporting thresholds for large entities.

The problem – further information

61. There is a significant lack of alignment between the reporting required in New Zealand and that required in Australia for investment scheme managers. As noted, in Australia the threshold is $5 billion in assets per scheme and in New Zealand the threshold is total assets under management of $1 billion, calculated across all schemes under management.

62. This difference is imposing higher costs on New Zealand investment scheme managers. Potentially these higher costs are not proportionate to the benefits received from climate reporting, particularly given the concerns investment scheme managers have expressed around data quality.

63. Investment scheme managers are not reporting on their own emissions but on the emissions of the entities that the funds invest in. Investment scheme managers have told us that there needs to be an improvement in data from investee entities in order to improve the reliability of the information in the scheme reports. We have also been told that the cost of the investment scheme manager reporting is being passed onto consumers via fees.

64. We have also heard that fund managers do not use climate reports or find the reporting especially useful.

[xxvi] Refer section 461S of the FMC Act
[xxvii] Refer section 292A of the Australian Corporations Act 2001

8. **Do you have information about the cost of reporting for investment scheme managers?**

9. **Do you have information about consumers being charged increased fees due to the cost of climate reporting?**

Options for reform

65. When proposing the following options for reform, we have considered our objective to ensure that the right entities are reporting so that the CRD regime encourages our transition to a low emissions economy, but does not become a barrier to doing business in New Zealand:

Table 5: Options to amend the investment scheme manager reporting thresholds

Options	Threshold
Option 1	Status quo ($1 billion total assets under management)
Option 2	$5 billion total assets under management (i.e., per manager calculation)
Option 3	$5 billion per scheme

66. Under both Option 2 and 3, the current reporting threshold would apply until the legislation could be changed (possibly in early 2026).

67. Both Option 2 and 3 would ensure better alignment with Australia for the investment scheme manager reporting threshold. Option 2 would lift the threshold within the current framework, i.e., this would require calculation of the total assets under management of a particular manager. Option 3 would change the current framework so that the $5 billion threshold applied to an individual scheme rather than all schemes under management. In either case, investment scheme managers would continue to report on a fund-by fund-basis, as currently required.

Discussion

68. As noted above, when considering the Options it is relevant to consider that the XRB intends to consult on the establishment of a differential reporting strategy for climate-related disclosures in 2025. As discussed, it would be possible for the XRB to consult on and issue standards specifically for investment scheme managers. Such standards could address issues investment scheme managers have experienced with reporting and ensure that the information most useful for decision making by investors and investment scheme managers is disclosed.

69. Raising the threshold will reduce costs but it will also reduce the information available to the market. The impact of these potential changes on the number of investment scheme managers required to report in New Zealand, number of schemes captured by the CRD Regime and value of funds under management is set out in the table below[xxviii].

Table 6: Impact of options on numbers of investment scheme managers required to report

Threshold	$1 billion total assets under management (status quo)	$5 billion per manager (total assets under management)	$5 billion per scheme
Number of managers	23	12	9
Number of schemes	119	56	10
Number of funds (approx.)	956	690	136
Value of funds under management (approx. as at 30 September 2023)	$185 billion	$150 billion	$90 billion

70. As can be seen in the table, raising the threshold under either Option 2 or 3 would significantly reduce the value of funds under management covered by the reporting regime and therefore reduce information available for investor decision making. This may impact on the likelihood of the CRD regime achieving its purpose of supporting the transition to a low emissions economy.

71. Option 3 might also create opportunities for avoidance, i.e., investment scheme managers could structure funds under management in each scheme to below $5 billion.

72. In addition, if less investment scheme managers are required to report they may also miss out on the benefits gained from getting a better understanding of their funds' climate-related risks and opportunities.

73. A recent GlobeScan survey of 5,000 retail investors in 10 countries also reports that 86 percent of retail investors somewhat or strongly support investment funds providing information on the impact of investments on climate change[xxix]. This suggests that there continues to be demand for disclosures.

10. **When considering the reporting threshold for investment scheme managers, which of the three options do you prefer, and why?**

[xxviii] These numbers are based on historical information for the first reporting cycle and the impact for future reporting periods could be different.
[xxix] Private Investors Want Funds, Pension Plans to Actively Address Climate Change | Sustainable Brands

11. **If the XRB introduced differential reporting, would this impact on your choice of preferred option?**

12. **Do you think that a different reporting threshold for investment scheme managers should be considered (i.e., not one of the options above) and, if so, why?**

Location of the thresholds

74. As we are looking at amending the reporting thresholds, we are also considering where the thresholds should be set out. Currently, the climate reporting thresholds are included in the primary legislation in the FMC Act. We are considering if it would be appropriate to put the thresholds into secondary legislation instead, e.g., in regulations, and for Parliament to delegate authority to the Minister to adjust the thresholds in accordance with certain statutory criteria. This would enable flexibility so that reporting thresholds can be amended over time to, for example, reflect international trends.

75. The following are options for reform:

Table 7: Options for location of reporting thresholds

Option	Location
Option 1	Status quo: reporting thresholds remain in the FMC Act
Option 2	Thresholds moved to secondary legislation

Discussion

76. If the thresholds remain in the primary legislation as per Option 1, it will be more difficult to change the thresholds in the future. It might be desirable to change the thresholds to keep pace with inflation and ensure the CRD regime does not unintentionally apply to a wider group of entities over time. It might also be desirable to change the thresholds to ensure further alignment with Australia or to make other changes in line with international developments.

77. Option 2 would mean that the thresholds could be changed more efficiently without a full legislative process (for example, consideration by a Select Committee). However, the downside is the potential loss of certainty for the market if it is perceived that the thresholds might be changed more frequently.

13. **When considering the location of the thresholds, which Option do you prefer and why?**

14. **For Option 2 (move thresholds to secondary legislation) what statutory criteria do you think should be met before a change may be made, e.g., a statutory obligation to consult. What should the Minister consider or do before making a change?**

Chapter 3: Climate reporting entity and director liability settings

78. There are a number of liability provisions relevant to climate reporting entities and their directors in the FMC Act.

Climate reporting entity liability

79. When preparing and submitting climate statements, a climate reporting entity must comply with sections 19 and 23 of the FMC Act. Section 19 of the FMC Act prohibits misleading or deceptive conduct in relation to dealings in financial products or the supply of financial services. Section 23 prohibits unsubstantiated representations in respect of financial products and services. If an entity's climate statements are misleading or deceptive, or contain unsubstantiated representations, the climate reporting entity may be civilly liable under these sections.[xxx]

80. In addition, a climate reporting entity may be subject to civil liability for a contravention of the obligation to keep proper CRD records, prepare climate statements in accordance with the climate standards, lodge climate statements and obtain assurance.[xxxi]

81. A climate reporting entity commits a criminal offence if it knowingly fails to comply with the climate standards[xxxii]. Criminal liability may also follow if a climate reporting entity knowingly makes a false or misleading statement in the climate statements.[xxxiii]

82. Various infringement offences also apply to climate reporting entities.[xxxiv]

Director liability

83. The most important director liability settings are discussed below.

(a) Sections 19 and 23 of the FMC Act (the Fair Dealing provisions)

84. If a climate reporting entity breaches section 19 or 23 of the FMC Act (misleading and deceptive conduct and unsubstantiated representations) then the directors of the climate reporting entity may be liable for their involvement in the contravention under section 533 of the FMC Act, i.e., if for example, they aided or abetted, or were knowingly concerned in, the contravention.

[xxx] Refer section 485 of the FMC Act
[xxxi] Refer section 461ZK of the FMC Act
[xxxii] Refer section 461ZG of the FMC Act
[xxxiii] Refer section 512 of the FMC Act
[xxxiv] Refer section 461W (manner in which CRD records to be kept), 461Y (inspection of CRD records), 461ZI (lodgement of climate statements), 461ZJ (information about climate statements of climate reporting entities to be made available in annual report).

(b) Deemed contravention – section 534 of the FMC Act

85. If a Court is satisfied that a climate reporting entity has contravened certain climate-related disclosure obligations, then all directors of the entity are treated as also having personally contravened these requirements. The climate-related disclosure obligations require a climate reporting entity to prepare climate statements in accordance with the standards, obtain an assurance engagement and lodge the climate statements. This means that if an entity's climate statements fail to comply with the climate standards, all directors of the entity are treated as having failed to comply. A number of defences are available as discussed below.

(*c) Other civil liability*

86. A director may also be liable if they aided and abetted a breach by the climate reporting entity of a climate related disclosure provision.[xxxv] These provisions include the obligation to prepare and lodge climate statements and obtain assurance (deemed liability also applies to these obligations), and the obligation to keep proper records for a period of seven years.

(d) Criminal liability - section 461ZG, 461ZHD, 461ZHE and 512 of the FMC Act

87. A director may commit a criminal offence if the climate statements fail to comply with the climate standards and the director knows that the climate statements fail to comply[xxxvi]. A director may also be subject to criminal liability if they knowingly make, or knowingly authorise the making of, statements that are false or misleading in a material way. This obligation would apply to statements in the climate statements.[xxxvii]

88. A director may also commit a criminal offence if a climate reporting entity does not give an assurance practitioner access to information or if the director does not provide information and explanations to the assurance practitioner.[xxxviii]

Penalties for climate reporting entities

89. If a climate reporting entity contravenes sections 19 or 23 or a climate-related disclosure provision (other than the obligation to keep records for seven years) the entity may be liable to pay a pecuniary penalty of up to $5 million. A climate reporting entity may be liable to pay a fine not exceeding $2.5 million for knowingly failing to comply with climate standards.[xxxix] Knowingly making a false or misleading statement in the climate statements could result in a fine not exceeding $200,000.[xl]

Penalties for directors

90. If a director is involved in a contravention of section 19 or 23 (fair dealing provisions) or a climate-related disclosure provision (other than the obligation to keep records for seven years)

[xxxv] Refer sections 461ZK, 484, 485 and 533 of the FMC Act.
[xxxvi] Refer section 461ZG of the FMC Act
[xxxvii] Refer section 512 of the FMC Act
[xxxviii] Refer section 461ZHD and 461ZHE of the FMC Act.
[xxxix] Refer section 461ZG of the FMC Act
[xl] Refer section 512 of the FMC Act

or is deemed to be in contravention under section 534, then that director may be liable to pay a pecuniary penalty of up to $1 million[xli].

91. A director who commits an offence under section 461ZG (criminal offence to knowingly fail to comply with climate standards) is potentially liable on conviction to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000 or both. Knowingly making or authorising a false or misleading statement could result in a term of imprisonment not exceeding 5 years, a fine not exceeding $200,000 or both.[xlii]

92. The penalty for directors if a climate reporting entity does not give an assurance practitioner access to information or if the director does not give information and explanations to an assurance practitioner is a fine of up to $50,000.[xliii]

Defences for climate reporting entities

93. If a climate reporting entity is alleged to have contravened sections 19 or 23 (fair dealing provisions) or a climate-related disclosure provision, then the entity may be able to rely on the defence in section 499 of the FMC Act. Under this section it is a defence if the breach was due to reasonable reliance on information supplied by another person (not including a director, employee or agent of the entity). It is also a defence if the breach was beyond the entity's control and the entity took reasonable precautions and exercised due diligence to avoid the breach.

94. There is no statutory defence under the FMC Act for breach of section 461ZG (knowing failure to comply with the climate standards) or section 512 (knowingly making a false or misleading statement).

Defences for directors

95. If a director is alleged to have been involved in a contravention by a climate reporting entity of section 19 or 23 of the FMC Act (fair dealing provisions) or a climate-related disclosure provision,[xliv] then the director may be able to rely on the defence in section 503. Under section 503 it is a defence if their involvement in the contravention was due to reasonable reliance on information supplied by another person or they took all reasonable steps to ensure that the climate reporting entity complied with the relevant provision.

96. Two defences apply in relation to deemed contravention under section 534. Section 501 provides that it is a defence if the director took all reasonable steps to ensure that the climate reporting entity complied with the climate reporting obligation. Section 499 provides that it is a defence if a director reasonably relied on information supplied by another person (not including an employee or agent of the director), or the contravention was beyond the

[xli] Section 461ZK and 490 of the FMC Act
[xlii] Refer section 512 of the FMC Act
[xliii] Refer sections 461ZHD and 461ZHE of the FMC Act
[xliv] Refer section 461ZK of the FMC Act

director’s control and the director took reasonable precautions and exercised due diligence to avoid the contravention.

97. Defences will also apply for failure to give an assurance practitioner access to information or for failure to supply information and explanations to an assurance practitioner.[xlv]

98. There is no statutory defence under the FMC Act for breach of section 461ZG (knowing failure to comply with the climate standards) or section 512 (knowingly making a false or misleading statement).

The problem – further information

99. The potential problem with the director liability settings has been set out in brief above (see background, page 11).

100. Some stakeholders consider that the director liability provisions in the FMC Act are not suitable for the nature of climate reporting, which is inherently qualitative and uncertain. They consider that the settings are working against the purpose of the CRD regime.

101. Directors of climate reporting entities have similar potential liability for disclosures in their climate statements as they do for disclosures in their financial statements. Stakeholders have queried whether this is appropriate given that, to some extent at least, climate reports contain forward looking statements and financial reporting largely contains information about what has already occurred.

102. We have heard that directors are concerned about being personally liable for incorrect statements in the climate statements, which is:

    a. generating high legal and consultancy costs for producing climate statements

    b. resulting in directors and entities being reticent about including detail and useful information in the climate statements

    c. limiting opportunities for directors to take an exploratory or innovative approach to climate reporting

    d. in the case of listed issuers, contributing to a disincentive to list on the NZX.

103. We have also been told that, although defences are available to directors, the nature of the defences means that to be able to rely on them a high level of involvement by all directors in the preparation of the climate statements and surrounding due diligence process is required. Therefore, they do not detract from the liability concerns, and the costs, associated with preparing the climate statements.

[xlv] Refer sections 461ZHD and 461ZHE of the FMC Act

104. Some stakeholders have also suggested that part of the problem for directors is that New Zealand does not require full assurance over all parts of the climate statements so directors can't rely on an external practitioner's assurance engagement and report to get comfort over information disclosed (as they can for financial statements). However, directors can choose to have their climate statements fully assured if they wish.

105. Directors' concerns have not been alleviated by the FMA's commitment to taking a pragmatic and educative approach in the early years of the CRD regime, with a high threshold for enforcement[xlvi].

Specific concerns - deemed liability in section 534 and unsubstantiated representations in section 23

106. Directors have mostly pointed to deemed director liability in section 534 of the FMC Act as a concern. Directors face liability under section 534 regardless of their actual involvement with the climate statements.

107. In addition, some stakeholders have expressed concern about potential liability for unsubstantiated representations under section 23. This is because the climate statements contain inherently uncertain disclosures about the future and therefore it may be difficult to comply with section 23. As noted above, a climate reporting entity may have liability for making an unsubstantiated representation in the climate statements and a director may be liable if they are involved in making that representation.

The Australian approach to director and entity liability

108. The Australian Corporations Act 2001 protects climate reporting entities from civil actions by private litigants in relation to certain defined "protected statements" in the first three years of the regime.[xlvii] A protected statement is a statement about scope 3 emissions, scenario analysis or a transition plan. In this period only claims by the Australian Securities and Investments Commission (ASIC) for non-compliance or misleading or deceptive conduct may be made. The modified liability regime does not prevent criminal proceedings being brought.

109. The Australian modified liability regime is extended to cover all forward-looking statements made for the purpose of complying with the climate standards for the first financial year for Group 1 entities. Group 1 entities are the first reporters under the Australian regime, see paragraphs 33 to 36 for more information.

Options for reform

110. Bearing in mind the objective to ensure that directors have the right incentives to encourage robust and useful reporting in New Zealand we consider the following options for adjusting the liability settings:

[xlvi] Refer https://www.fma.govt.nz/Guidance/CRD-monitoring-plan-2023-2026.pdf

[xlvii] Refer section 1707D of the Australian Corporations Act 2001

Table 8: Options to change the director liability settings

Options	Director liability settings
Option 1	Status quo (no change to liability settings)
Option 2	Amend the FMC Act so that section 534 no longer applies to climate-related disclosures
Option 3	Amend the FMC Act so that section 534 no longer applies to climate-related disclosures; and Amend the FMC Act so that directors can no longer be liable for aiding and abetting an unsubstantiated representation
Option 4	Introduce a temporary safe harbour provision, or modified liability provision, to protect climate reporting entities and their directors from civil actions for a certain period of time.

Discussion

111. As per Option 2 and 3, section 534 of the FMC Act could be amended by repealing section 534(1)(cb). This would mean that there was no deemed liability for directors for a contravention by a climate reporting entity of a climate-related disclosure obligation. So, if a climate reporting entity prepared climate statements that did not meet the climate standards the directors would not automatically be liable.

112. Removing deemed liability for directors would not affect the climate reporting entity's potential liability for failure to prepare climate statements in accordance with the standards. It would also not affect the civil liability of a director who was actively involved in the climate reporting entity's contravention i.e., a director could still be liable if a climate reporting entity didn't prepare climate statements in accordance with the standards and the director aided or abetted, or was knowingly party to, the contravention[xlviii].

113. As per Option 3, it would be possible to amend the FMC Act to make it clear that directors cannot be liable for aiding and abetting a section 23 (unsubstantiated representations) breach. It would also be possible to "disapply" section 23 in relation to both directors and climate reporting entities. However, the feedback received to date has related primarily to concerns about director liability and so at this stage we haven't proposed this as an option. We are interested in your feedback on this point.

114. If an amendment was made that impacted section 23, the Fair Trading Act may also need to be amended. This is because section 12A of the Fair Trading Act prohibits unsubstantiated representations in relation to all goods and services and this would include unsubstantiated representations in climate statements.

[xlviii] Refer section 533 of the FMC Act.

115. When considering whether to make changes to section 534 and section 23 it may be useful to consider the legislation in Australia. There is no deemed liability for directors in Australia. However, the Australian Securities and Investments Commission Act 2001 (ASIC Act) includes a provision that is similar to section 23 of the FMC Act. Section 12BB of the ASIC Act provides that representations made with respect to a future matter without reasonable grounds may be misleading and prohibited under Australian law. While certain statements in the Australian climate reports will be covered by the modified liability period described in paragraphs 108 and 109, once the modified liability period ends liability may attach, i.e., there is no permanent relief from the requirement in section 12BB in Australia.

116. If Option 3 were adopted, directors would still have potential liability for misleading and deceptive conduct (civil and criminal breaches[xlix]), involvement in a breach of a climate-related disclosures provision (obligation to prepare climate statements in accordance with standards, lodge climate statements, keep proper records and obtain assurance) and the criminal offences referred to in paragraphs 87 and 88 above.

117. In addition, climate reporting entities would still have potential lability for misleading and deceptive conduct (civil and criminal breaches), unsubstantiated representations, failure to comply with a climate-related disclosure provision (refer section 461ZK of the FMC Act) and knowing failure to comply with the climate standards (section 461ZG of the FMC Act). As noted above, the potential penalties for the climate reporting entities are significant.

118. Without the possibility of deemed liability, Options 2 and 3 may help encourage directors to make fulsome climate disclosures, in line with our objective above.

119. As per Option 4, an alternative to amending section 534 and section 23 would be to introduce a temporary modified liability framework, like the approach in Australia.

120. It would be possible to protect climate reporting entities and directors from civil liability for certain forward-looking statements in the climate statements for a period of time. This would give preparers more time to adjust to the regime and directors increased confidence about the statements in their climate reports. We suggest that, as is the case in Australia, the protection should relate to statements about Scope 3 emissions, scenario analysis or a transition plan, as these are the matters that are most challenging to disclose. In Australia the modified liability also applies to all forward-looking statements for the first financial year for Group 1 entities. Given the New Zealand regime has commenced we don't think that this extension is required.

121. However, at the end of any modified liability period, although reporting will have matured, the same issues could well remain, i.e., the directors would still have deemed liability for certain actions. We are therefore not convinced that this approach would create a significant change for directors and may not meet the objective discussed above.

[xlix] Refer sections 19 and 512 of the FMC Act

122. In addition, part of the reason for the Australian modified liability regime relates to concerns about Australia's class action regime. The policy settings between Australia and New Zealand are different and as a result there is not the same prevalence of class actions in New Zealand.

123. Although a number of stakeholders have raised concerns about the director liability settings and there is a clear desire for reform, making changes to the settings (whether under Options 2, 3 or 4) may affect investor trust in the climate statements. We are interested in your views on this point.

15. **When considering the director liability settings, which of the four options do you prefer, and why?**

16. **Do you have another proposal to amend the director liability settings? If so, please provide details.**

17. **If the director liability settings are amended do you think that will impact on investor trust in the climate statements?**

18. **If you support Option 3, should this be extended so that section 23 is disapplied for both climate reporting entities and directors? If so, why?**

19. **If you support Option 4 (introduce a modified liability framework, similar to Australia) what representations should be covered by the modified liability, i.e., should it cover statements about scope 3 emissions, scenario analysis or a transition plan, and/or other things?**

20. **If you support the introduction of a modified liability framework, how long should the modified liability last for? And who should be covered, ie., should it prevent actions by just private litigants, or should the framework cover the FMA as well? (Criminal actions would be excluded)**

Chapter 4: Encouraging reporting by subsidiaries of multinational companies

124. New Zealand subsidiaries of multinational companies do not file climate statements in New Zealand unless those subsidiaries fall within one of the current categories of climate reporting entity, e.g., the subsidiary is a bank.

125. Potentially the New Zealand subsidiary of a multinational company could be encouraged to file their parent company climate statements in New Zealand on a register. There is no repository of this information in New Zealand and people may not be aware that it is available.

126. This would be in addition to the filing that might be required by the parent company in their home jurisdiction. For example, Veolia has operations in New Zealand and could file parent company climate statements, or their equivalent, in New Zealand.

127. Filing would be voluntary, and all climate statements would be produced in accordance with the standards and other requirements of the home jurisdiction, i.e., no new climate statements would need to be produced.

128. Another option would be for MBIE to have a webpage where subsidiaries of multinational companies could provide links to their parent company climate statements filed overseas.

Discussion

129. It may be that it would be useful to have a repository for this information in New Zealand so that it can be easily accessed. A New Zealand business that has dealings with the subsidiary may have an interest in reading the climate reports of the parent to understand how the group is responding to climate change. It may also send a signal that New Zealand is supportive and see value in climate-related disclosures.

130. However, filing in New Zealand of the climate statements of a parent company in another jurisdiction could cause confusion about the status of the climate statements and give the impression that the climate statements are regulated in New Zealand (which they would not be).

131. Further, we think it would be difficult to cost recover any associated register costs for voluntary filing.

21. **Do you think that there would be value in encouraging New Zealand subsidiaries of multinational companies to file their parent company climate statements in New Zealand?**

22. **Do you think that, alternatively, there would be value in MBIE creating a webpage where subsidiaries of multinational companies could provide links to their parent company climate statements?**

Chapter 5: Limitations and constraints on analysis

132. Although the CRD regime is still fairly new, the Minister of Commerce and Consumer Affairs is concerned about the impact of the CRD regime on New Zealand businesses right now and wants to alleviate the problems described as soon as possible. We have therefore not undertaken a review of all aspects of the regime.

133. For example, we haven't considered wider questions including if we should move away from the current tests that define who is a climate reporting entity to the Australian criteria for who must report (this is a two-out-of-three test based on annual revenue, total assets, and FTE employee numbers). We also have not considered whether the regime should be extended to private companies that are not otherwise climate reporting entities. This is the approach taken in several overseas jurisdictions including Australia.

134. Some preliminary consultation has occurred with stakeholders. However, to get a wider view on these matters the Government proposes a short public consultation. Submissions on this discussion document will be used to inform policy decisions.