COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Minister of Commerce and Consumer Affairs
Title of Cabinet paper	Improving New Zealand's Capital Markets: Initial decisions and approval to consult	**Date to be published**	13 December 2024

List of documents that have been proactively released		
Date	**Title**	**Author**
December 2024	Improving New Zealand's Capital Markets: Initial decisions and approval to consult	Office of the Minister of Commerce and Consumer Affairs
4 December 2024	Improving New Zealand's Capital Markets: Initial Decisions and Consultation ECO-24-MIN-0296 Minute	Cabinet Office
27 November 2024	Regulatory Impact Statement – Prospective Financial Information for Initial Public Offerings	MBIE

Information redacted **NO**

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Policy Committee

Improving New Zealand's Capital Markets: Initial decisions and approval to consult

Proposal

1 This paper:

1.1 seeks policy approval to amend the requirements for companies raising equity capital through Initial Public Offerings

1.2 seeks approval to release documents for public consultation on:

1.2.1 adjustments to the Climate-Related Disclosures Regime, and

1.2.2 changes to enable KiwiSaver providers to invest more in private assets; and

1.3 outlines further work that will be progressed in 2025 to improve capital markets and remove barriers to listing on the New Zealand Stock Exchange.

Relation to government priorities

2 This paper supports the Government's priority to rebuild the economy and improve conditions for investment and economic growth.

Executive Summary

3 Efficient capital markets provide the capital necessary for great New Zealand businesses to invest and grow. Strengthening capital markets will enhance New Zealand's economic growth and help address long-term productivity challenges.

4 To do this, I propose to:

4.1 remove regulatory barriers that add excessive costs for companies raising equity capital through Initial Public Offerings;

4.2 consult on improvements to the climate related disclosures regime including in relation to the director liability settings and the reporting thresholds;

4.3 consult on changes to enable KiwiSaver providers to invest into unlisted assets, like infrastructure projects and great New Zealand businesses, and;

4.4 undertake further work in 2025 to ensure our capital markets are supporting investment and economic growth.

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Background

5 Access to capital is a key concern for New Zealand businesses who often struggle to access finance. This is reflected in our infrastructure deficit, diminishing productivity levels and the frequent sale of great New Zealand businesses to foreign investors.

6 Our capital markets offer huge potential to help address these issues and support competition, innovation and growth by providing sources of equity and debt capital for businesses to invest, grow, and provide returns for investors over time.

7 However, adjustments are needed to better align our capital market settings with our international peers, particularly Australia – our closest trading partner. Over time our settings have drifted, and we have placed ourselves at a competitive disadvantage.

8 My highest priority is improving the attractiveness and competitiveness of our markets by removing unnecessary costs and barriers faced by companies that are listed, or are considering listing, on the New Zealand Stock Exchange. Areas of particular concern are the costs associated with providing forward-looking financial information as part of an Initial Public Offerings and the burden of complying with our Climate-Related Disclosures settings.

9 Adjustments are also needed to grow and diversify our markets so we can increase investment in businesses and growth assets. I propose to do this by removing barriers to invest in unlisted assets.

10 New Zealand has over $110 billion invested in KiwiSaver funds. These funds could be better leveraged to benefit our economy through investment in domestic private assets, such as infrastructure projects and great New Zealand businesses. Adjusting the regulatory settings to enable more KiwiSaver funds to be invested in private and unlisted assets (where it is in the long-term interests of KiwiSaver members) would deepen our capital markets and help support growth.

11 Certainty is key to support decisions ahead of the early 2025 Initial Public Offering ‘season’. The Government must present clear direction to industry to provide them with the confidence to plan, invest and make the most of opportunities as our economic conditions improve. That is why I am prioritising some decisions now, with a view of looking at other matters in 2025.

12 My officials and I have hosted a series of discussions with key stakeholders (including industry leaders, market participants and the NZX) who have indicated support for these proposals from the business and investor community. Many of the proposals have been well signalled.

Developing New Zealand’s capital markets

Prospective financial information disclosures for initial public offerings optional

13 A company making an Initial Public Offering to retail investors must disclose information about its business and strategy, past performance, and future risks to investors. This information is in the ‘Product Disclosure Statement’ and is intended to help a retail investor to understand the risks and benefits of investing.

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14 The Financial Markets Conduct Regulations 2014 requires a Product Disclosure Statement to include forward-looking financial disclosures, called 'prospective financial information'. This must be provided for the following two financial years using a New Zealand specific accounting standard in addition to following generally accepted accounting practice. The threshold to do an Initial Public Offering without prospective financial information is very high.

15 I have received feedback that the regulatory requirements for prospective financial information adds significant costs to an Initial Public Offering, and are uncompetitive with other jurisdictions. The cost of preparing prospective financial information can be between 5-15 per cent of the total listing cost (likely to be in the $0.5 - $1m range but can be several million dollars). I have also received feedback that prospective financial information is too complex and technical for retail investors. Institutional investors tend to use other information available in the Product Disclosure Statement.

16 To improve our market competitiveness and better align with Australia, I propose to amend the regulations to make prospective financial information optional for an Initial Public Offering. The regulations would allow businesses doing an Initial Public Offering to either:

16.1 not prepare prospective financial information, in which case the company should outline the reasons why (such as that information was not available), or

16.2 prepare prospective financial information in a form of its choosing [1] for the next financial year, including assumptions it has made and the basis for its calculations.

17 Stakeholders that both prepare and use prospective financial information, including institutional and retail investors, have indicated support for removing the regulatory requirements that exceed Australia.

18 I aim to have the regulatory changes in place by May 2025 to give confidence to businesses looking to make an Initial Public Offering in the near future.

Public consultation on reforming the climate-related disclosures regime

19 New Zealand's Climate-Related Disclosure Regime requires large financial market participants to report on their climate-related risks and opportunities annually. These reports must be prepared in accordance with standards issued by the External Reporting Board (**XRB**). The legislation introducing the Climate-Related Disclosures Regime was passed in 2021 and the XRB issued the reporting standards in 2022. The first climate statements were lodged this year.

20 New Zealand was the first country in the world to require climate reporting according to mandatory standards. However, other jurisdictions are now developing their own regimes. Australia has now passed legislation introducing mandatory reporting for certain entities, however there are currently several differences between our regimes.

[1] PFI could take the form of earnings guidance, non-GAAP metrics, GAAP metrics, or the New Zealand accounting standard (called "FRS-42").

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21 To retain our competitiveness, it is important that New Zealand's regime is well aligned internationally, particularly with Australia. The first year of reporting has also highlighted significant problems with our regime.

22 I therefore propose to release "Adjustments to the Climate-related Disclosures Regime" (**Appendix One**) for public consultation to seek feedback on possible changes to New Zealand's regime to better align with Australia.

Listed issuers

23 In New Zealand, listed issuers must report if they have more than $60 million in market capitalisation. Feedback from stakeholders is that this threshold is too low and is creating excessive costs, particularly for smaller listed issuers. A survey of NZX 50 companies has reported a median cost of $250,000 - $300,000 (excluding internal time). Turners Automotive Group (market capitalisation of approximately $400 million) has advised that the cost of preparing their first climate statements was more than $1 million.

24 In Australia, reporting for large entities (including listed issuers) is being phased in over time in three distinct groups with the biggest entities reporting first. 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.

25 In Australia Group 1 will report for financial years beginning on or after 1 January 2025. Groups 2 and 3 report for financial years beginning on or after 1 July 2026 and 1 July 2027 respectively.

26 The NZX advises me that a rough New Zealand equivalent to Group 1 in Australia would be companies with a market capitalisation of $550 million. A rough equivalent to Group 2 would be $250 million in market capitalisation. The thresholds for Group 1 and 2 are therefore much higher than in New Zealand and means our companies are competitively disadvantaged. These differences create a risk of regulatory arbitrage, (i.e., companies choosing to list in Australia rather than New Zealand).

27 The discussion document proposes three options: status quo; raising the threshold to $550 million market capitalisation; raising the threshold to $550 million market capitalisation and then reducing the threshold to $250 million in two years' time.

28 If the threshold was raised from $60 million to $550 million this would reduce the number of listed issuers required to report from 107 to 54 (approximately). If the threshold was $250 million approximately 81 listed issuers would be required to report.

29 I am also interested in creating flexibility to adjust thresholds by regulation. This would allow for amendments over time in line with international trends. In the first instance, this would allow us to more easily align with Australia as their thresholds change.

Investment scheme managers

30 In New Zealand, managers of registered investment schemes (who may have multiple schemes) with more than $1 billion in *total* funds under management must report.

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This threshold is considerably lower than in Australia where investment managers report if an *individual* scheme has more than $5 billion funds under management. Stakeholders have advised that the costs of reporting are also disproportionately high and are passed to consumers via fees.

31 There is clear misalignment, which I want to address. The discussion document proposes three options: status quo; raise the threshold to $5 billion in total funds under management; or raise the threshold to $5 billion per individual scheme.

32 Currently 23 investment scheme managers prepare climate statements. If the threshold was raised to $5 billion in total funds under management this number would reduce to 12 and, if the threshold was $5 billion per scheme, 9 managers would report.

Director liability

33 I have received feedback that the director liability settings for the Climate-Related Disclosures regime are:

33.1 contributing to excessive legal and consultancy costs;

33.2 resulting in directors being reticent about including useful information in climate statements

33.3 are not suitable for the nature of climate reporting, which is inherently qualitative and uncertain, and

33.4 in the case of listed issuers, creating a disincentive to list on the NZX.

34 Concerns about deemed director liability have been raised. Under the Financial Markets Conduct Act if climate statements do not meet the requirements of the climate standards, directors are deemed to be liable for failures regardless of their actual involvement in the preparation of the reports.

35 The discussion document therefore proposes that changes could be made to the liability settings. Deemed director liability could be removed altogether or, alternatively, we could take a similar approach to Australia which is phasing liability settings in over time.

Multinational corporations reporting

36 I also want to encourage New Zealand subsidiaries of multinational corporations to voluntarily file their parent company climate statements in New Zealand. For example, Veolia, which is a French company, has a New Zealand subsidiary and the subsidiary could file the parent company climate statements or equivalent in New Zealand adhering to the overseas standards they already use.

External Reporting Board consultation

37 Following concerns from industry, the External Reporting Board separately and independently consulted on delaying certain climate reporting requirements. The XRB has now announced that it will extend the deadline for companies to report on ‘Scope

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3 greenhouse gas emissions' and 'anticipated financial impacts' by one year.[2] The XRB will also extend by one year the deadline for the assurance of Scope 3 emissions.

38 These changes were necessary because many climate reporting entities faced data challenges relating to scope 3 greenhouse gas emissions disclosure and assurance, and disclosing anticipated financial impacts in the absence of comprehensive guidance. The changes will have immediate application for reporting periods commencing 1 January 2024.

Public consultation on proposals to lift KiwiSaver providers' investment in private assets

39 Following discussions with KiwiSaver providers, I also propose to remove barriers preventing KiwiSaver funds from flowing into productive private assets, such as unlisted infrastructure, private equity and debt.

40 KiwiSaver is a successful and growing retirement savings vehicle. It is also a significant source of capital with over $110 billion now under management. To date, however, New Zealand KiwiSaver funds have invested little in private assets compared to pension funds overseas. To date, only 2–3 per cent of KiwiSaver funds is invested in private assets, compared to around 16 per cent of Australian superannuation funds (totalling approximately AUD $3.6 trillion).

41 More investment in private assets would deliver substantial benefits to New Zealand. For businesses and the wider economy, it would mean a significant supply of private capital. For investors, exposure to different asset classes means risk diversification and potentially higher returns. Investing in long-term, less liquid and private assets also aligns well with the long-term retirement purpose of KiwiSaver.

42 A range of market and non-regulatory factors have been identified as limiting or disincentivising investment activity in these types of assets. I have also received feedback by the Kiwisaver industry that some regulatory settings do not enable investment in private assets.

43 To address these issues, I propose to release a consultation document, "Enabling KiwiSaver investment in private assets" (**Appendix Two**) for public consultation. The consultation paper will seek feedback on the following issues:

43.1 KiwiSaver managers' ability to use tools to manage the liquidity risk of investing in private assets;

43.2 visibility of private asset investments by KiwiSaver Schemes through clearer asset classifications in disclosure requirements;

43.3 amendment of governing documents (i.e. Trust Deeds) to better address valuation requirements that support investment in private assets, and

[2] Scope 3 emissions refer to indirect greenhouse gas emissions that occur because of an entity's business activities. Anticipated financial impacts relate to potential financial effects of climate-related factors, such as changes in regulations or shifts in the market.

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43.4 Fund manager fee calculations where private asset management is outsourced (in the total expense ratio (TER)).

44 Together, I expect changes on these issues will create an enabling regulatory environment that will give KiwiSaver providers confidence to invest in private assets.

45 However, I also believe that further work will be needed from the industry to address the non-regulatory factors that are limiting their investment (e.g. operational capability, identification of appropriate investment opportunities). I will continue my discussions with the industry to identify further opportunities to support this issue.

46 I propose to undertake public consultation on these issues and return to Cabinet with substantive proposals in early 2025. I note that some of the changes may require amendments to aspects of the KiwiSaver Act that the Minister of Revenue is responsible for. I will work closely with the Minister of Revenue as these proposals progress.

Next steps to further improve capital markets in 2025

47 I have received feedback from market participants that they need the Government to give clear direction, so they have the confidence to list and invest. This is necessary ahead of the 2025 Initial Public Offering season beginning in early 2025.

48 As a result, I intend to review the following settings in 2025 which impact the effectiveness of, and confidence in, our capital markets:

48.1 the law relating to takeovers: based on non-contentious recommendations from the Takeovers Panel. I will look to consolidate legislative vehicles for capital markets matters to ensure effective use of House time;

48.2 product disclosure requirements: for issuers of equity securities, and existing listed equity issuers who wish to offer debt securities with a view of reducing costs on issuers and improving usability for investors; and

48.3 liability settings for auditors and continuous disclosure liability settings for listed companies: this work will consider how current settings may be discouraging companies from listing in New Zealand. It will also consider issues disadvantaging our audit profession, including the introduction of capped liability.

Cost-of-living Implications

49 There are no cost-of-living implications.

Financial Implications

50 This paper has no financial implications.

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Legislative Implications

51 Making prospective financial information disclosures for initial public offerings optional will be implemented by amendments to the Financial Markets Conduct Regulations 2014.

52 The rest of the papers' proposals do not have legislative implications at this stage, but the following consultations will likely result in legislative changes:

52.1 "Adjustments to the Climate-related Disclosures Regime" consultation paper: Proposals will be implemented by a Bill.

52.2 "Enabling KiwiSaver investment in private assets" consultation paper: Proposals will be implemented by a Bill and consequential regulations as needed.

53 Priority for these proposals will be sought in the 2025 Legislation Programme.

54 The work that will begin in 2025 may also result in legislative changes.

Impact Analysis

Regulatory Impact Statements

55 The Ministry of Business, Innovation and Employment (MBIE) Regulatory Impact Analysis Review Panel has reviewed all three documents (the Regulatory Impact Statement on PFI disclosure and the two discussions documents attached).

56 The Panel has determined that the PFI Regulatory Impact Statement meets the Quality Assurance criteria. The discussion documents function as an interim Regulatory Impact Assessment. The MBIE Quality Assurance panel have reviewed both discussion documents and confirm that they meet the quality assurance criteria and are likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions.

Climate Implications of Policy Assessment

57 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to the PFI Regulatory Impact Statement as the threshold for significance is not met. The CIPA requirements do not apply to the KiwiSaver and Climate-Related Disclosures policy proposals at this time, as they are at the discussion document stage.

58 The CIPA team will be consulted again when the proposals reach a later stage, at which point a CIPA assessment will be prepared.

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Population Implications

59 The proposals in this paper are not expected to have significant implications for population groups.

Human Rights

60 This paper has no human rights implications.

Use of external Resources

61 No external resources were used in the policy development process.

Consultation

62 The following agencies and crown entities were consulted on the proposals in this paper: Treasury, Inland Revenue, Ministry for the Environment, Ministry for Regulation, Financial Markets Authority, External Reporting Board, and Te Ara Ahunga Ora Retirement Commission. The Department of the Prime Minister and Cabinet was informed.

Communications

63 I intend to issue a media statement once Cabinet decisions have been made. This paper, the attached discussion documents, and the RIS, will be made publicly available on MBIE's website.

Proactive Release

64 This paper will be proactively released, subject to relevant redactions, within 30 business days of Cabinet.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

Policy decision to streamline prospective financial information disclosures for initial public offerings

1 **note** that businesses making an initial public offering (IPO) to retail investors are required to prepare forward-looking information (known as prospective financial information (PFI)) which is prescriptive and expensive for businesses doing an IPO, especially compared to other jurisdictions;

2 **agree** to amend the Financial Market Conduct Regulations 2014 to replace the current requirement to prepare PFI with a flexible regime that allows a business doing an IPO to prepare PFI if they want to;

3 **agree** that the flexible regime will allow businesses doing an IPO to either:

3.1 not prepare PFI, in which case it should outline the reasons why no PFI is provided in its product disclosure statement;

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3.2 prepare PFI in a form of its choosing for the next financial year;

4 **agree** that any PFI a business prepares should be accompanied with disclosure of the assumptions it has made and explanation of the basis of any calculations;

5 **invite** the Minister to issue further drafting instructions to the Parliamentary Council Office to give effect to the above decisions through amendments to the Financial Market Conduct Regulations 2014;

6 **authorise** the Minister to approve any matters that arise during drafting and that may be required to align with the above decisions;

Public consultation on reforming the climate-related disclosures regime

7 **note** that stakeholders have raised concerns about aspects of the climate-related disclosure regime;

8 **agree** to the release of a discussion document, “Adjustments to the Climate-related Disclosures regime”, attached as **Appendix One**, for public consultation about proposed adjustments to the climate-related disclosures regime;

9 **authorise** the Minister of Commerce and Consumer Affairs to make minor and technical editorial changes to the consultation paper before its release in December 2024;

10 **invite** the Minister of Commerce and Consumer Affairs to report back to Cabinet with the results of the public consultation and any proposed policy decisions;

Public consultation on changes to support KiwiSaver providers to invest more in private assets

11 **note** stakeholders have raised some regulatory barriers that are preventing or disincentivising investment in private assets by KiwiSaver providers;

12 **agree** to the release of a discussion document, “Enabling KiwiSaver investment in private assets”, attached as **Appendix Two**, for public consultation about proposed changes to enable KiwiSaver providers to invest more in private assets;

13 **authorise** the Minister of Commerce and Consumer Affairs to make minor and technical editorial changes to the consultation paper before its release in December 2024;

14 **invite** the Minister of Commerce and Consumer Affairs to report back to Cabinet with the results of the public consultation and any proposed policy decisions;

Direction of the 2025 capital markets work programme

15 **note** that in 2025 the Minister of Commerce and Consumer Affairs will undertake further work on the following aspects of the capital markets regulatory system:

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15.1 Considering changes to takeovers law based on non-contentious recommendations by the Takeovers Panel, to be pursued as a priority;

15.2 Reviewing certain financial product disclosure requirements related to equity and debt offers to ensure that the requirements balance benefits for retail investors against the costs on issuers;

15.3 Considering liability settings for auditors, and directors of listed companies in relation to their continuous disclosure obligations; and

16 **invite** the Minister to report back to Cabinet in 2025 on progress against the work outlined in recommendation 15 and to seek agreement to consult on the issues as appropriate.

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs

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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

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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.

More information

Information, examples and answers to your questions about the topics covered here can be found on our website: www.mbie.govt.nz or by calling us free on: 0800 20 90 20.

Disclaimer

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Month Year

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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 xxxx 2025.

Hon Andrew Bayly
Minister of Commerce and Consumer Affairs

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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 on xxxx 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: *http://www.mbie.govt.nz/[pageURL]*. 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.

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Please clearly indicate 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 cover letter 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 do clearly set that out in your submission for MBIE to consider.

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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

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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

    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 on xxxx 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.

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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.

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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-

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[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

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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

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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

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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.

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.

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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[xviii].

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)[xix]. 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.[xx]

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.

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

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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[xxi]
	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[xxii]. While these are significant sums this

[xxi] 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.
[xxii] Submission by CA ANZ and CPA Australia to the Senate Economics Legislation Committee Submissions – Parliament of Australia).

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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[xxiii].

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

[xxiii] 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).

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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 (approximately), 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.

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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

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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[xxiv]. Also, if entities are not required to report

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

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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

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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.[xxv]

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

60. In Australia "asset owners" 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.[xxvi] 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.

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

[xxv] Refer section 461S of the FMC Act

[xxvi] Refer section 292A of the Australian Corporations Act 2001

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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.

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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[xxvii].

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 climate-related disclosures 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[xxviii]. 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?**

[xxvii] These numbers are based on historical information for the first reporting cycle and the impact for future reporting periods could be different.

[xxviii] Private Investors Want Funds, Pension Plans to Actively Address Climate Change | Sustainable Brands

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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?**

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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?**

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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.[xxix]

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.[xxx]

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

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

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.

[xxix] Refer section 485 of the FMC Act
[xxx] Refer section 461ZK of the FMC Act
[xxxi] Refer section 461ZG of the FMC Act
[xxxii] Refer section 512 of the FMC Act
[xxxiii] 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).

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(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.[xxxiv] 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[xxxv]. 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.[xxxvi]

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.[xxxvii]

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.[xxxviii] Knowingly making a false or misleading statement in the climate statements could result in a fine not exceeding $200,000.[xxxix]

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)

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

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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[xl].

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, or 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.[xli]

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.[xlii]

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,[xliii] 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

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

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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.[xliv]

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.

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

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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[xlv].

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 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.[xlvi] 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:

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

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

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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[xlvii].

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.

[xlvii] Refer section 533 of the FMC Act.

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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[xlviii]), 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 but only 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.

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

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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)**

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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 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?**

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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 climate statements?**

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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.

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Enabling KiwiSaver investment in private assets

Discussion document

December 2024

MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

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Foreword from the Minister

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs

KiwiSaver has proven to be a big success for encouraging New Zealanders to save money for retirement. There is currently over $110 billion sitting in KiwiSaver accounts, some of which is invested in financial assets to increase the savings of scheme members.

My officials and I have been talking to our KiwiSaver scheme providers to understand how we can improve the scheme to make better use of the funds in these accounts, and potentially increase returns to scheme members.

One prominent issue with the KiwiSaver scheme at present is the low level of investment of KiwiSaver funds into private assets. Private assets are those that are not listed on stock exchanges. They may include things like unlisted infrastructure (e.g. road and rail projects, or renewable energy projects) and great, private New Zealand businesses.

I propose to remove some of the barriers I have heard about from KiwiSaver providers that currently prevent or discourage them from investing the KiwiSaver funds they manage into productive private assets.

We think more investment in private assets would bring substantial benefits to New Zealand. For businesses and the wider economy, it would mean a significant supply of private capital. For KiwiSaver members, exposure to different asset classes means better diversification of risk and potentially higher returns. The KiwiSaver scheme is a long-term investment tool, and it makes sense to invest more KiwiSaver funds in private assets whose growth expectations are also medium- to long-term.

The changes suggested here are mostly to the way KiwiSaver providers carry out the management of assets. We do not expect this to have major impacts on KiwiSaver members and it may provide them with more options for how their money is invested. We are keen to hear feedback from everyone.

I look forward to hearing your response to the changes we are considering.

Andrew Bayly

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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 on **14 February 2025**.

We are keen to hear from both industry (KiwiSaver providers or other financial markets participants) and from the general public, including KiwiSaver members. The document includes some technical questions that are for KiwiSaver providers only, but there are also questions specifically for the KiwiSaver members or the public. Each proposal in the documents also has a "Potential impact on KiwiSaver members" section explaining what the changes under discussion would mean for KiwiSaver account holders to assist the public in providing feedback.

Please respond using the submission template provided at: *http://www.mbie.govt.nz/[pageURL]*. 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.

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

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 financialmarkets@mbie.govt.nz
- By mailing your submission to:

  Financial Markets
  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 financialmarkets@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 financial markets conduct requirements. 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.

Please clearly indicate 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

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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 cover letter 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 of 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.

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Glossary

Term	Meaning
Financial asset	Financial assets include cash, shares, and bonds. Money that a KiwiSaver member puts into their KiwiSaver account is invested in financial assets by the KiwiSaver provider to grow that money over time.
Public asset	An investment interest listed on a financial product market or public stock exchange.
Private asset	An investment interest that is not listed on the public stock exchange (sometimes called "unlisted assets").
KiwiSaver member	Anyone who has a KiwiSaver account.
KiwiSaver providers	The financial institutions that offer KiwiSaver schemes. There are currently 29 KiwiSaver providers listed on the Internal Revenue website: KiwiSaver providers
KiwiSaver scheme	The overall design of the KiwiSaver scheme set out in the KiwiSaver Act 2006, especially Schedule One: *KiwiSaver Scheme Rules.* May also refer to a specific scheme offered by a specific provider (schemes can vary across providers as long as they follow the rules in the KiwiSaver Act 2006).
Liquidate	To liquidate an asset is to change it from whatever form it is in (stocks, bonds) into cash that can be transferred, withdrawn, and spent.
Liquidity	Liquidity refers to the ease with which an asset can be converted into ready cash without affecting its market price. • 'Liquid assets' (such as shares listed on the New Zealand Stock Exchange) are easy to turn into cash by selling. • 'Illiquid assets' are more difficult to convert to cash or take longer to do so, for example infrastructure or private assets that are not sold on the public stock market.
LMT	Liquidity (risk) Management Tools are tools and practices used by fund managers to address issues related to the liquidity of managed investments.
TER	Total Expense Ratio—the ratio of totals costs of managing and operating an investment fund divided by the value of the fund's total assets. KiwiSaver providers are required to report the TER in their quarterly reports to members.
FMA	Financial Markets Authority
FMC Act	Financial Markets Conduct Act 2013
MBIE	Ministry of Business, Innovation and Employment
NZX	New Zealand Stock Exchange
XRB	External Reporting Board

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Introduction

Background

1. KiwiSaver is a retirement savings scheme launched in 2007. Its purpose, set out in the KiwiSaver Act 2006, is to help people save money for retirement. It is designed to:

    encourage a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in pre-retirement. The Act aims to increase individuals' well-being and financial independence, particularly in retirement, and to provide retirement benefits.[1]

2. The amount of money in KiwiSaver accounts has grown steadily, with total funds under management now over $110 billion[2]. The money in KiwiSaver accounts is not simply held by the KiwiSaver provider in a deposit account. Some of it is invested in financial markets to get higher returns over time for KiwiSaver members.

3. Currently most of the funds held in KiwiSaver accounts are invested in 'public' assets—that is, things listed on stock exchanges. The level of KiwiSaver investment in 'private' assets is low (around 2-3 per cent). Private assets are not listed on stock exchanges, and can include:

    a. private debt and equity (e.g. investment in unlisted New Zealand or foreign businesses)

    b. unlisted infrastructure (e.g. road or rail projects, or renewable energy developments).

4. New Zealand's investment of retirement funds into private assets is particularly low compared to pension funds in other jurisdictions.[3] As at 31 March 2024, 72.4 per cent of KiwiSaver money was invested in stock in overseas businesses and fixed interest compared to around 2-3 per cent allocated to private assets.[4] By comparison as at 30 June 2024, Australia had $3.6 trillion (AUD)[5] in superannuation assets, with almost 16 per cent invested in private assets.[6]

5. There could be substantial benefits for KiwiSaver members from investment in private assets. Potential benefits include exposure to a broader range of investments, which diversifies risk. Greater diversity of investments may also bring higher returns for KiwiSaver members in the long run.

6. Investing the money currently held in KiwiSaver accounts in New Zealand private assets could also have broad economic benefits for New Zealand businesses and the wider economy. It could provide access to capital for great private New Zealand businesses who need money to develop and grow. New Zealand has also a limited supply of funding available for infrastructure development, and the funds within KiwiSaver could help bridge this gap.

7. Although some KiwiSaver providers do invest in private assets, we understand that current rules for the scheme, as set out in the KiwiSaver Act 2006 and the Financial Markets Conduct Act 2013 (FMC Act) are not clear, and some of the rules make it hard to do so. For example, the rules say that a KiwiSaver member can request that their funds be transferred to a different KiwiSaver provider, and the current provider must transfer those funds to the new

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[1] KiwiSaver Act 2006, Part 1 https://legislation.govt.nz/act/public/2006/0040/latest/whole.html#DLM378378

[2] Financial Markets Authority KiwiSaver Annual Report 2024 https://www.fma.govt.nz/assets/Reports/KiwiSaver-Annual-Report-2024.pdf

[3] This document will focus on KiwiSaver and not address other Managed Investment Schemes (MISs). MIS investment in private assets is a separate issue with similar benefits, but not clearly the same set of barriers.

[4] Financial Markets Authority KiwiSaver Annual Report 2024 https://www.fma.govt.nz/assets/Reports/KiwiSaver-Annual-Report-2024.pdf

[5] The Australian Prudential Regulation Authority superannuation statistics for June 2024 https://www.apra.gov.au/news-and-publications/apra-releases-superannuation-statistics-for-june-2024

[6] As above.

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provider within ten working days. The rules also allow KiwiSaver members to withdraw KiwiSaver funds in a number of circumstances including hardship and to buy a house. These rules mean that KiwiSaver fund managers must keep a high level of 'liquidity' (ability to turn into cash or 'cash-up') in relation to their investments. These rules have resulted in many providers leaning toward lower-risk, shorter term investments.

8. We are not proposing changes to the ability of KiwiSaver members to transfer or withdraw funds—these are key features of the KiwiSaver scheme. We are looking at ways to adjust some of the rules that will make it easier for KiwiSaver providers to invest in private assets while meeting these rules, or adjusting the rules only where a KiwiSaver member agrees.

Awareness of this issue is not new, and government is considering its response

9. The 2019 industry report *Growing New Zealand's Capital Markets 2029*[7], funded by the Financial Markets Authority (FMA) and the New Zealand Stock Exchange (NZX), noted that KiwiSaver schemes do not have high investment in private assets, and suggested changes to the KiwiSaver scheme settings to encourage investment in less-liquid assets such as private equity and infrastructure.

10. In 2023, the Centre for Sustainable Finance Toitū Tahua (CSF) published *Investing in Private Assets*[8], which includes recommendations for changes made by the Investing in Private Assets Working Group to address the barriers and challenges KiwiSaver fund managers face when investing in private assets. The conclusions of that work have been factored into this paper.

11. More recently, the Minister of Commerce and Consumer Affairs and officials from the Ministry of Business, Innovation and Employment (MBIE) have conducted extensive consultation with KiwiSaver providers, supervisors and other industry participants to understand the extent to which the scheme rules may be limiting or discouraging their investment in private assets. We also discussed potential changes the Government could make to enable KiwiSaver managers to increase their investment in private assets.

12. We have heard through these conversations about a range of rules that are likely to be limiting or discouraging this type of investment, to the potential detriment of KiwiSaver members, businesses and the wider economy.

13. In this paper, we discuss how the Government would like to address these issues with the KiwiSaver rules to support greater investment in private assets without undermining the core purpose of KiwiSaver as a retirement savings scheme for New Zealanders.

Objectives

14. The primary objectives of this work are to enable greater KiwiSaver investment in private assets to:

    a. support the long-term financial wellbeing of KiwiSaver members

    b. support the long-term productivity and growth of New Zealand businesses

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[7] *Growing New Zealand's Capital Markets 2029* https://www.fma.govt.nz/assets/Reports/Growing-New-Zealands-Capital-Markets-2029.pdf.

[8] Centre for Sustainable Finance, *Investing in Private Assets: Joint paper on key recommendations to reduce barriers and challenges for KiwiSaver funds to invest in private assets*, 2023. https://static1.squarespace.com/static/637d83c964e50e3125f983aa/t/6530e629a2891e484b1f1ec9/1697703468948/Investing+in+Private+Assets+WG_Recommendations+Paper_v1.1+FINAL.pdf .

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c. support the funding and development of private assets such as infrastructure

15. This work may also contribute to broader Government goals by providing funding to support climate measures such as emissions reductions and adaptation initiatives.

What is the problem?

16. Our view is that the current regulatory settings for KiwiSaver do not support investment in private assets by KiwiSaver providers. As discussed above, this means KiwiSaver members may be missing out on a better diversification of risk and better returns, and New Zealand businesses and the economy may be missing out on a significant source of funding.

17. KiwiSaver providers have told us that there are a number of potential factors contributing to this situation. Sometimes these are very specific scheme rules, and sometimes providers find that it is not clear what the exact rules or expectations are.

18. In addition to the pressure to focus on liquid assets (those easy to 'cash up') so that KiwiSaver providers can meet the expected transfer and withdrawal requests of KiwiSaver members, the issues we have heard include the following:

The focus of this paper and current Government work

a. **KiwiSaver settings** impacting operational aspects of private asset investment including:

- **how KiwiSaver providers can use what are called 'liquidity risk management tools'** that enable them to better manage any risks of holding long-term private assets, but still meeting short-term member interests (e.g. withdrawals and transfers).
- **lack of clarity in the categories used for reporting by KiwiSaver providers** currently making it difficult or impossible to see whether funds are invested in public or private assets.
- **issues around valuation of private assets**, given that KiwiSaver providers must value KiwiSaver funds on a daily basis to meet withdrawal and transfer requirements. Most private assets are normally assigned a value on a longer basis, such as quarterly. For some providers, addressing this issue may require changes to trust deeds that govern their schemes, which can be difficult.
- **the way KiwiSaver providers are required to report fees related to private asset investment** can be an issue for providers because private assets often cost more to invest in, particularly if KiwiSaver providers 'outsource' the expertise required for private asset investment (that is, when they use a specialist fund manager outside their own company to manage the private asset investments).

Other issues that arose in discussions that the government is not addressing in this discussion document (some of which may be more appropriate for the industry to respond to)

b. **KiwiSaver managers' operational capacity and capability –** providers may not have the specialised skillset required to invest in private assets, and outsourcing increases fees and reduces returns.

c. **Other regulatory issues**, including lack of clear guidance on operational aspects of private asset investment, e.g. valuation, pricing, liquidity risk management and asset classification.

d. **KiwiSaver members' expectations and financial literacy** may tend to limit their focus to short-term returns, whereas private asset investments are typically long-term. They also may also not be willing to pay higher fees.

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e. **Limited availability of suitable private investments, particularly in New Zealand**, for KiwiSaver providers to invest their member's funds in.

f. **'related party' transaction settings** in the FMC Act, sections 12, 173, 174, 175 that set rules around the relationship between KiwiSaver providers and the people who own or govern the private assets they may wish to invest in.

19. While 18b-f are not being considered in detail in this discussion document, we are open to receiving any feedback you may have on these issues (please use questions 33 and 34 for this feedback).

Scope of this paper

20. This paper is focused solely on the issues set out in paragraph 18a. The paper proposes ways to address the issues, in the given order of priority:

a. **Enabling KiwiSaver providers to use liquidity risk management tools** for investing in private assets.

b. **Improving visibility of private asset investment** by amending asset reporting categories.

c. **Ensuring valuation requirements support private asset investment** by considering ways to make it easier to amend valuation methodologies in trust deeds.

d. **Considering the total expense ratio (TER**) and how it may currently discourage investment in private assets.

21. Addressing these issues as a package is expected to create a regulatory environment that is more enabling of KiwiSaver investment in private assets.

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Proposal 1: Enabling KiwiSaver providers to use liquidity risk management tools

Liquidity risk management – general background

22. Investment fund liquidity refers to the ease with which an asset can be converted into ready cash without substantially affecting its market value. Liquidity risk is the risk of the assets not being able to be 'liquidated' or converted into cash at a reasonable price or within a reasonable period as and when fund investors request it. Liquidity risk management is an essential part of delivering good outcomes for investors (such as KiwiSaver members), particularly so that any investors withdrawing funds or exiting a scheme can get their money out. Liquidity is a particular challenge for KiwiSaver fund managers due to the scheme's transferability across providers and withdrawal provisions (discussed further below).

23. In contrast to publicly listed assets, which are more highly liquid (as they can be sold much more readily), there is a wide range of liquidity risk in private assets. Private equities are less liquid and may require longer-term investment to gain in value and deliver returns. So-called 'illiquid assets,' like real estate and infrastructure, pose the greatest liquidity challenges as they are intended to be held for longer, are less predictable, and may be harder to value, price, and divest.

24. The FMA expects all fund managers to have appropriate liquidity risk management (LRM) policies, processes and tools for the schemes that they manage. This is set out in their guidance *Liquidity risk management guide* (April 2024). The guidance explains that having effective and appropriate LRM is an important part of how fund managers demonstrate they are meeting their statutory duties (such as exercising care, diligence, and skill, treating scheme participants equitably, and acting in the best interests of scheme participants).[9] It provides principle-based measures that managers should review and consider implementing in their schemes if it is appropriate. The guidance applies to all management investment schemes, not just KiwiSaver.

25. Liquidity management tools (LMTs) are essential for fund managers investing in private assets. These tools can assist and enable fund managers to fulfil those statutory duties set out above.

26. The FMA categorises LMTs in how they can be used (for example, pre-emptively to avoid liquidity issues or reactively to manage liquidity issues that emerge) and by type[10]:

    a. Quantity-based: such as redemption gates or withdrawal limits, temporarily suspending redemptions by suspending net asset value (NAV) calculations, or suspending redemptions (in extreme situations)

    b. Price-based: such as anti-dilution levies, subscription/redemption fees, valuation at bid or ask prices, dual pricing and swing pricing

    c. Others: such as side pockets, and redemptions in kind.

KiwiSaver managers' ability to use side liquidity risk management tools

27. We have conducted extensive consultation with KiwiSaver providers (fund managers), supervisors and other industry participants throughout 2024 through direct engagements, ministerial roundtables, and industry-wide forums. We have heard that there are currently

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[9] Sections 143, 153, Financial Markets Conduct Act 2013

[10] FMA Liquidity risk management guide, p15 https://www.fma.govt.nz/assets/Guidance/liquidity-risk-management-guide.pdf

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provisions in the KiwiSaver Act 2006 that limit the ability of KiwiSaver providers (as opposed to providers of other managed investment schemes) to use certain LMTs that may be necessary or appropriate for managing liquidity risk associated with private assets for the best interests of investors (KiwiSaver members).

28. These provisions include:

a. **Transfer requirements:** Section 56(4) of the KiwiSaver Act 2006 requires requested transfers of funds in KiwiSaver accounts to a different KiwiSaver provider to be made within 10 working days unless both providers agree otherwise. This ability of providers to agree to a slower transfer could allow 'side pocketing' (see para 32 below for further explanation), but we have heard that in practice it may be inefficient and current guidance is unclear. The overriding pressure to meet the timeframe for transfer may discourage providers from increasing their allocation of investment funds into private assets.

b. **Withdrawal requirements:** Schedule 1 of the KiwiSaver Act 2006 allows members to withdraw money from their accounts in various circumstances (e.g. for purchase of a first home, significant financial hardship, serious illness, etc.). The withdrawal provisions do not impose time frame requirements on providers, but in practice are met reasonably quickly (many trust deeds indicate they will be met within 21 days). The pressure to be able to meet withdrawal requests could also discourage allocation of investment towards private assets.

29. The rule that KiwiSaver members can only be a member of one scheme (under section 53 of the KiwiSaver Act 2006) was also perceived as a possible barrier to using side pockets to manage transfer and withdrawal requests. This is because when a side pocket is used, a (small) portion of the funds remain behind with the 'old' provider, while the bulk of the fund is transferred to the 'new' provider, thus appearing to leave them in two schemes (old and new).

30. We do not think this situation would constitute being a member in two schemes, as the member would have only a residual financial interest in the side-pocketed assets and would no longer be contributing to any KiwiSaver scheme at the old provider for the purposes of the KiwiSaver Act 2006.

Liquidity risk management tools that KiwiSaver providers would like to use

31. We have heard in discussions with the sector that there is particular interest in two LMTs that could lift fund managers' ability to investment in private assets: side pockets and redemption gates.

Side pockets

32. A side pocket is a type of account that fund managers can use to isolate a specific asset (one that may be 'in distress' or difficult to value and therefore less liquid than the remainder of the fund). This isolation in a separate account prevents the asset being sold and gives it time to recover some or all of its value. This allows the fund manager to provide investors with the majority of their money quickly and get the best value for the asset that may be temporarily devalued or unable to be sold (rather than, for example, selling it at a significant loss).

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Side pocket example

When a KiwiSaver member requests to transfer from one provider to another, in the vast majority of cases, members would have all their money transferred. However, very occasionally, certain assets in KiwiSaver funds (e.g. private or illiquid assets) might temporarily lose a lot or all of their value or not be possible to sell. This could happen in times of extreme market volatility like the Global Financial Crisis.

If this happens, the fund manager might consider that it is in the best interests of the KiwiSaver member to transfer the majority of the members' funds to the new provider, but 'side pocket' the asset which is distressed and hold onto it until it recovers its value, or they can sell it again. This could take some months but may be better in the long term for the value of the asset and therefore the member.

33. Trust deeds would need to provide for side pocketing for it to occur. There could be controls around how side pocketing is practiced, including for example, allowing supervisors to stipulate when it can be used, with which funds, and for how long. Clarity would also be needed on whether providers would be allowed to charge fees on side-pocketed funds.

34. We have heard some consensus that side pocketing, if used, should be a tool of last resort—and ideally a tool that is seldom used.

Need for clarity on rules on side pocketing

35. There are some differing views on whether side pocketing is in fact technically available to KiwiSaver managers. FMA guidance, for example, notes section 56(4) of the KiwiSaver Act 2006 which allows KiwiSaver managers (both 'old and new') to agree to complete transfers in a longer period than the default 10 working days in the context of suspending redemptions in situations such as extreme market conditions or scheme-specific liquidity issues.[11] In theory this could provide flexibility for a scheme provider to use side pocketing, with the agreement of the 'new' provider. However, there is no incentive for the new provider to agree.

36. We have heard from providers that use of this provision is not practical. Even if the legislation does technically allow the use of side pocketing as providers are able to use LRM tools, the current framework appears to be unclear and not providing sufficient comfort to providers or supervisors that they can use side pocketing. We believe this lack of clarity is contributing to low investment in private assets.

37. At best, therefore, we consider that the legislation and guidance could be more explicit in signaling and supporting the availability of side pocketing as it may currently be interpreted and acted on differently by different KiwiSaver providers.

38. At the same time, we have heard concern from the sector about complicating the KiwiSaver scheme and confusing KiwiSaver members in a manner that undermines its brand reliability. It will be an ongoing challenge to communicate clearly to KiwiSaver members what the conditions of their investment are, particularly if more complex schemes are introduced.

Redemption gates

39. An investment fund redemption gate is a provision that enables a fund manager to carefully control withdrawals from a fund over a period of time—including by slowing or halting withdrawals. As discussed further below, if a redemption gate were used in a KiwiSaver scheme, it would require KiwiSaver members to 'opt-in' by waiving their right to transfer

[11] FMA Liquidity risk management guide (2024), page 16.

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between KiwiSaver schemes within ten working days or to withdraw funds in certain circumstances.

40. We have heard from industry that this 'opt-in' model could enable the KiwiSaver industry to develop new products, such as those that have a relatively high exposure to private assets (such as unlisted infrastructure or renewable energy projects), that members can choose to invest in if this suits their circumstances.

41. By restricting an investor's right to withdraw funds, a gate prevents a forced liquidation of an asset in an adverse market situation, and helps to prevent 'runs on the fund' (where a number of investors might try to withdraw their funds from a particular fund or scheme in a short period) which can have a negative impact on remaining investors. The gate provision is built into the fund offering, particularly where there are private, illiquid or complex assets.

42. If used in KiwiSaver schemes, fund managers could choose to implement a redemption gate in a number of ways—for example, slowing down requested withdrawals with a minimum waiting period, or limiting withdrawals to a maximum proportion of the fund within a set timeframe. These practices should be spelled out for investors in the trust deed.

Current practice around investing in private assets

43. We are seeking information on current practices around KiwiSaver managers' investment in private assets and the management of liquidity risk associated with such investment.

Questions for feedback on current practice

	QUESTIONS for KiwiSaver providers (or other industry participants)
1.	For KiwiSaver managers: Please describe your current practice around investing in private assets, including levels of exposure you have to these types of assets, how you invest in these assets, and any liquidity risk management tools you use. Do you have safeguards or limits around your use of these tools?
2.	Do you think that the current legislative framework for KiwiSaver effectively allows for the use of side pocketing and redemption gating (or other tools) that may impact transfer or withdrawal times?
3.	For KiwiSaver managers: If you cannot use side pocketing or redemption gating (or other tools), can you please explain the reasons for this and the impacts in terms of: a. your ability to increase investment in private assets b. risks associated with your current allocation of private assets.
4.	Please provide any other comments on the availability of liquidity management tools.

Enabling more use of side pocketing by KiwiSaver managers

Common view on the benefits of LMTs

44. From discussions with industry, we think there is broad agreement that KiwiSaver providers should have clearer access to LMTs including both side pocketing and gating, and in both cases including the ability to delay or suspend withdrawals or transfers of any assets that have been side pocketed or gated when it is in the best interests of scheme participants.

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45. The ability to use these tools will give KiwiSaver providers the ability to development new schemes with increased focus on private assets, giving KiwiSaver members greater choice in how their retirement savings are being invested. Any use of side pocketing or gating that may impact withdrawal or transfers would be clearly disclosed, explained to scheme participants and used proportionally.

Proposed approach

46. Drawing on the sector proposal above, we propose the following approach to support KiwiSaver managers to use liquidity management tools that we would like feedback on:

Proposed approach	
Clarify availability of LMTs	This approach would leave most of the current KiwiSaver settings in place (e.g. the 10-working day transfer timeframe and withdrawal settings), but explicitly enable all KiwiSaver managers to override the scheme transfer and withdrawal requirements when it is a necessary step for them to manage liquidity risk of investments. In practice, we expect this would likely require clear disclosures in trust deeds, Statements of Investment Policy and Objectives, and Product Disclosure Statements as appropriate that LMTs may be used and communication of how and when they might work. As updates to these documents are made, members would have a choice to opt in/out of the scheme if they chose.

47. Further development of this approach will need to consider more detailed design consideration, policy questions and technical matters, including:

a. How general (e.g. all LMTs) or specific (limited to side pocketing and gating) should any legislative changes be?

b. When should LMTs be able to be used?

c. Should there be any regulatory conditions placed on the use of LMTs? For example, only for certain types of assets, or in certain market conditions?

d. What disclosure arrangements should apply for side pocketed or gated funds?

e. Should any changes extend to all managed investment schemes as well as KiwiSaver schemes?

f. How should these proposed changes be effectively communicated to members?

Potential impact on KiwiSaver members

48. If some of a KiwiSaver member's funds were invested in assets that were side pocketed, this would impact how quickly that money could be either shifted to a different KiwiSaver provider or withdrawn. For example, if a member wanted to change providers, it could be that 98 per cent of their money would move quickly, but 2 per cent would stay with the current provider for a set period until the side pocket was resolved (had either regained its value or a decision made that it wasn't going to), and then it would also transfer to the new provider.

49. As noted above, we anticipate that LMTs like side pockets and gating are tools of last resort and would only be used if in the best interests of KiwiSaver members.

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Questions for feedback on proposed approach

	QUESTIONS for KiwiSaver providers (or other industry participants)
5.	Do you support the proposed approach? Why / why not?
6.	If redemption gates were allowed, would you consider developing new products more focussed on private assets?
7.	Will you face implementation costs if this change is made (management, administration, etc)? If yes how much will they be and will they be one-off or ongoing?
8.	Do you have any comments on the detailed design considerations noted above?
9.	Please provide any further comments on this issue of liquidity management tools.

	QUESTIONS for the public (including KiwiSaver members)
10.	Do you support more investment by KiwiSaver funds into private assets? Why / why not?
11.	Do you support the use of liquidity management tools like 'side pockets', if they may have an impact on the availability of your KiwiSaver funds? Please explain.
12.	Please provide any further comments on the proposed approach.

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Proposal 2: Improving private asset visibility in disclosure requirements

Asset categories in disclosure documents

50. Under the Financial Markets Conduct Regulations 2014 (Schedule 4, clause 1(4)), fund managers are required to disclose in quarterly fund updates which types of assets the fund invests in. The asset categories in Schedule 4 are:

    a. cash and cash equivalents

    b. New Zealand fixed interest (which are fixed-interest assets the country of which is New Zealand)

    c. international fixed interest (which are fixed-interest assets the country of which is not New Zealand)

    d. Australasian equities (which are those equities the country of which is Australia or New Zealand)

    e. international equities (which are equities the country of which is not Australia or New Zealand)

    f. listed property

    g. unlisted property

    h. commodities

    i. other.

51. The list above does not fit well with private assets, as they remain 'invisible,' included in categories such as 'Australasian equities', 'New Zealand fixed interest' or the general 'other' category. This means that the level of exposure of each scheme and the KiwiSaver system as a whole to private assets may not be clear to investors or to the market generally.

Problems caused by lack of 'private assets' categories

52. The absence of appropriate private asset categories in the disclosure provisions of the FMC Regulations have flow-on impacts for KiwiSaver managers and for scheme participants. This is because disclosures shape the conduct of fund managers in the market and the availability of information to scheme participants and investors in the market.

    Impacts for KiwiSaver managers and managed investment schemes

53. The absence of appropriate private asset categories has been raised as a regulatory issue in industry engagement on ways to lift investment in private and illiquid assets. This issue has not previously been raised through either the Capital Markets 2029 report or the work of the Centre for Sustainable Finance.

54. The absence of asset categories for private assets may be a problem from the perspective of KiwiSaver managers in relation to the 'reasonableness' of fees. Investing in private assets has proportionally higher costs than other asset classes due to the administrative costs of private asset management and the specialist skillsets required to effectively manage these assets, whether by an independent private equity investment firm or internally. It is reasonable that some of these costs are passed on via fees.

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55. Recognising private assets as an asset category should help to establish grounds – in disclosure documents – for the proportionally higher fees relating to the allocation of the fund assets that are in those private assets.

Impacts for scheme members and investors

56. These is little publicly visible information on whether KiwiSaver schemes are investing in private assets, and if so, which ones.

57. Any information that is available tends to come from voluntary disclosures or communications material. This information is not readily comparable between different funds in order for scheme members or investors to make investment decisions reflecting their preferences.

58. The absence of comparable information means that tools helping investors or KiwiSaver members to choose between schemes do not include much information on the types of assets that any particular scheme holds. This will not change unless reporting of type of asset is prescribed in regulations, as these websites tend to pull information from the Disclosure Register that is limited to prescribed disclosures.

Questions for feedback on asset categories as an issue

	QUESTIONS for KiwiSaver providers (or other industry participants)
13.	Do you consider that the current asset classes in the Financial Markets Conduct Regulations 2014 are problematic as they relate to private assets? If yes, please explain.
14.	How do you think the categories should be described?
15.	Please provide any other comments on the lack of private asset categories.

Improving disclosure of private assets categories by KiwiSaver schemes

Outline of options

59. We have identified four options for changing the regulations to make private assets more visible in the asset categories:

Option		Description
1	Create new category for 'private assets'	Add new categories for private assets, include international and New Zealand private equities and debt. This would show the private assets held, but will not differentiate by jurisdiction. This would also leave the 'other' category as a more general mop-up (e.g. including hedge funds).
2	Modify existing categories to better include private assets and jurisdictions	Modify some categories to deliver a new list that is (roughly): • cash / cash equivalents • fixed interest (New Zealand, international, unlisted) • equities (New Zealand, international, unlisted) • property (listed, unlisted) • infrastructure (listed, New Zealand unlisted, international unlisted) • commodities • other. This roughly mirrors the asset categories used in Australia.

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3	Modify existing categories and focus categories on the underlying assets	Use the same modified categories from Option 2 but add in a requirement that the category reflect the underlying assets held. This is particularly relevant as more schemes are investing in index tracking funds or other wholesale funds (e.g. Blackrock).
4	Adding sub-categories to current categories	Add unlisted debt under 'NZ Fixed Interest'; NZ unlisted equity under 'Australasian equities' and NZ unlisted property under 'Unlisted property' and reporting infrastructure under 'other' or a separate 'Infrastructure' category for better visibility of all NZ private assets.

60. The information in these new categories would need to be included in product disclosure statements (PDS), on the Disclose Register, and the quarterly fund update in the future. Transitional provisions may be required to give industry time to adjust to the changes and transitional provisions could be made to enable changes to be made when the PDS is next updated.

61. Some providers currently show their exposure to private assets for each category in the quarterly fund update (via a footnote under actual asset allocation). This approach can also be explored.

Potential impact on KiwiSaver members

62. The options around change discussed in this section relate only to the information that is available to KiwiSaver members about their KiwiSaver investments in reports that KiwiSaver providers publish four times per year. This proposal would improve the information available to KiwiSaver members, enabling them to more clearly see which types of assets their KiwiSaver funds are invested in and whether that includes private assets.

Questions for feedback on the proposed options

QUESTIONS for KiwiSaver providers (or other industry participants)	
16.	Which option do you think is best and why?
17.	Will you face implementation costs if this change is made, if yes how much will they be and will they be one-off or ongoing?
18.	Please provide any further comments on this issue of including private assets in asset categories.

QUESTIONS for the public (including KiwiSaver members)	
19.	Do you think it would be useful to have better visibility over how much KiwiSaver funds are investing into private assets?

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Proposal 3: Ensuring valuation requirements support private asset investment

Daily pricing requirements and valuation methodologies in governing documents

63. The Financial Markets Conduct Act 2013 (FMC Act) requires that a scheme's governing documents must set out valuation methodologies, and pricing must occur in accordance with those methodologies (section 135(1)(d)).

64. In practice, KiwiSaver funds are required to price assets in their funds daily so that they can process transfers and eligible withdrawals at any time. The value of the asset on the day determines the withdrawal amount. Most, if not all, KiwiSaver schemes have governing documents that "require managers to calculate the net asset value of a KiwiSaver scheme (or fund(s) within that scheme) within a set period (e.g. at least once every 5 business days)."[12]

65. Pricing, or valuing, private assets that are largely illiquid is different from pricing liquid assets such as listed equities or bonds, which has a clear price available every day. The valuation of illiquid private assets must be calculated – or estimated – using different methodologies because market pricing is not available. Many private assets, such as a privately held companies or an infrastructure asset, are valued quarterly or longer.

66. There is therefore a clear mismatch between any KiwiSaver scheme governing documents that stipulate a valuation of assets within the scheme within a set time period of around 5 business days or less, and quarterly valuations of private assets.

67. We have heard from some KiwiSaver providers that they have overcome the challenge of providing valuation methodologies appropriate for illiquid assets in their trust deeds. However, we understand that some trust deeds (and older ones in particular) still have valuation methodologies that do not provide for valuation methodologies for illiquid assets. Some of those providers have reported facing difficulty in amending those trust deeds, which requires the agreement of members or KiwiSaver supervisors.

Difficulty altering governing documents to include suitable valuation methodologies

68. The FMC Act imposes requirements on amending managed investment scheme governing documents (section 139). The process has two pathways for such change:

a. Pathway one: with the approval of [all] scheme participants, or by special resolution of the scheme participants that is or may be adversely affected by the amendment or replacement.

b. Pathway two: if the scheme supervisor or FMA is satisfied that the change to the governing document has:

    i. no material adverse effect on scheme participants for MIS or

    ii. no material adverse effect on scheme participants for KiwiSaver schemes.

[12] MinsterEllisonRuddWatts/Chapman Trip Joint Legal Opinion on KiwiSaver investing fund in private assets, para 4.3: https://static1.squarespace.com/static/637d83c964e50e3125f983aa/t/657a8308125a4947ade35286/1702527753874/CSF+Opinion+-+KiwiSaver+investment+in+private+assets.pdf

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69. We understand from discussions with industry that updating older KiwiSaver trust deeds to incorporate valuation methodologies for private assets may be difficult given these requirements.

70. Pathway one requires approval from all scheme participants which is complex and impractical given the broad membership of many KiwiSaver schemes.

71. Pathway two also has challenges. We understand from certain industry participants that there is no clear benchmark for a "material adverse effect on scheme participants" that will give KiwiSaver managers confidence to seek approval from their supervisors for a change to the valuation methodologies in their governing documents. Without legal or commercial clarity about this test, we have heard from some industry participants that supervisors can be conservative in its application. In particular, updates to trust deeds around general valuation practices are unlikely to be problematic. However, updates around pricing frequency may raise questions about adverse effects on the interests of scheme participants.

Questions for feedback on status quo valuation methodology issues

	QUESTIONS for KiwiSaver providers (or other industry participants)
20.	For KiwiSaver managers: Do your governing document(s) include a valuation methodology which is challenging to apply to valuing private assets? If you do, can you please explain the impact in terms of: a. the extent to which your governing documents require amendments to allow for the inclusion and pricings of private assets within your funds. b. whether you have tried to amend the valuation provisions in the past or not, and why. Include examples of where the supervisor has or has not approved a valuation methodology.
21.	Please provide any other comments on the valuation methodologies in governing documents.

Enabling changes to governing documents to include suitable valuation methodology

72. The joint legal opinion on KiwiSaver investment in private assets cited in footnote 12 signaled two changes that could be made in relation to the valuation issue:

   a. a non-legislative change by private asset promoters (including Government) to establish what would effectively be a market for private assets

   b. an amendment to the FMC Act provisions on governing documents to allow supervisors to agree to trust deed changes to permit long-term valuation methodologies

73. While we have heard from engagement with stakeholders that New Zealand does not have a secondary market for trading private assets, this was not considered a high priority for the Government to address, nor is it an obvious role for government. We are not currently considering action in this area.

Proposed approach

74. We are interested in whether it is necessary to clarify the FMC Act so that KiwiSaver providers can modify their trust deeds to allow for valuation practices that support investment in private assets. If it is necessary, we are open to feedback on how best to achieve this. The primary suggestion we have heard from the sector is to deem a change in valuation methodology not

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to be adverse, or materially adverse, to allow the changes to governing documents to be made. This could require a change to provisions in section 139 of the FMC Act.

75. We note in relation to side-pocketing that if the KiwiSaver Act were amended to expressly allow side-pocketing, amending of trust deeds to enable side-pocketing should not pose an issue in relation to the interests of investors. If schemes wish to amend their trust deeds to also permit side-pocketing this would need to follow the current requirements under section 139.

76. Consideration and further development of any proposal will need to consider:

    a. the standard or conditions for any legislative amendment

    b. disclosure or communication requirements, if any, beyond existing requirements to lodge governing documents on the Disclose Register[13]

    c. the duration of the change.

Potential impact on KiwiSaver members

74. The interests of KiwiSaver members are protected by the KiwiSaver provider's obligation to act in their best interest, and also to be specific in their governing documents, specifically the trust deed, on the valuation methodologies they use.

75. Any change in valuation methodology to be used for private assets would only affect a small portion of a member's KiwiSaver savings. Anyone who is a KiwiSaver scheme member will still be able to check the value of their KiwiSaver money on any given day. This would continue to support the withdrawal and transfer that are open to members.

Questions for feedback

	QUESTIONS for KiwiSaver providers (or other industry participants)
22.	Do you agree that this is an issue that needs addressing?
23.	Do you have views on how it should be addressed?
24.	Will you face implementation costs if this change is made, if yes how much will they be and will they be one-off or ongoing?
25.	Please provide any further comments on this issue of valuation requirements.

[13] The Disclose Register is a register for offers of financial products and managed investment schemes (including KiwiSaver) under the Financial Markets Conduct Act 2013.

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Proposal 4: Consideration of the total expense ratio formula

77. Disclosure of fees is necessary to know if investors are getting good value for money and to support a competitive market where investors can make fully informed decisions about which KiwiSaver provider to use, including which providers align with their personal savings interests. Disclosing information about fees and charges is important for managed funds under the FMC Act and the Financial Markets Conduct Regulations 2014. The FMA provides advice to managers on fee disclosure requirements in their guidance Fee disclosure by managed funds.[14]

78. One fee measure used is the total expense ratio (TER)—the ratio of the total costs of managing and operating an investment fund divided by the value of the fund's total assets. The relevant costs consist primarily of management fees and additional expenses, such as trading fees, legal fees, auditor fees, and other operational expenses.

79. Schedule 4 of the Financial Markets Conduct Regulations 2014 provides that funds must disclose their synthetic total expense ratio in quarterly fund updates to investors, and on the Disclose Register (a register of financial product and managed investment scheme offers maintained by the New Zealand Companies Office). The regulation defines the TER as 'the ratio of the total charges charged for the operations of the fund and its underlying funds to the fund's average net asset value,' and sets out the formula for calculating the TER.

Regulation of KiwiSaver fees and returns and related principles

80. Transparency for KiwiSaver members and prospective members is essential for them to know what is happening with their funds, and to make informed decisions about which scheme they choose to join. This includes transparency around fees, returns pre-fees and pre-tax, and final returns.

81. Specifically in relation to fees, the KiwiSaver Scheme Rules (clause 1 of Schedule 1 of the KiwiSaver Act 2006), stipulate that "fees must not be unreasonable". Transparency assists members to assess whether they think a particular provider's fees are reasonable. We have heard that fee transparency remains important to the sector as well, and that the current TER calculation is an industry standard.

82. Thus, for KiwiSaver, as for other managed investment schemes, all costs to manage funds (whether in-house or third party) are recorded in the same way.

83. This provides for competition in the market so that KiwiSaver providers are offering investors value for their fees. This is particularly important where fees are proportional and will deliver more revenue to KiwiSaver providers as the funds under management increase.

Industry concerns with the current approach

84. We have heard from industry that the formula for calculating the TER and the requirement to make it public can disincentivise KiwiSaver managers from investing in private assets or using third-party fund managers, as those practices will make the TER less favorable. Some providers have also suggested that the fees for third-party managers are already reflected in the unit price or overall returns of the underlying private asset, and so do not need to be included in the TER calculation as well.

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[14] FMA guidance note, *Fee disclosure by managed funds* (May 2016)
https://www.fma.govt.nz/assets/Guidance/160526-Guidance-Note-Fee-Disclosure-For-Managed-Funds.pdf

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85. While visibility of fees may make sense from a perspective of ensuring a 'value for money' point of view (that is, ensuring that any fees are "reasonable" because they may deliver higher returns), some KiwiSaver investors are focused on low fees and could be discouraged from enrolling in a scheme by a less favorable TER. From the provider point of view, the TER may not be sufficiently transparent as it does not always include an explanation of those fees or their relationship to value for money.

86. Managers may thus be motivated to keep the TER low by avoiding private asset investment, or by limiting the use of third-party management and advice. This can in turn prevent investment in private assets in providers who lack the in-house expertise to do so. It may also hinder the growth and development of private investment fund managers and block their access to investment capital in KiwiSaver funds if providers are incentivised to not use them.

87. Some KiwiSaver members may focus more on the 'returns after fees' their investment are delivering, and less on the specific fees. However, the returns will always be uncertain. KiwiSaver schemes disclose their past performance which is often a good way to compare how different funds have performed in the past and whether a fund manager has provided good returns (after fees and tax) to their members.

88. There have been calls from the sector to exempt these third-party private investment costs from the calculation of the TER in order to incentivise greater investment in private assets, including through the use of third-party managers, and more effective deployment of capital in KiwiSaver funds. Some have suggested that an exemption apply only to New Zealand-based funds. Some providers feel that the success or failure of the private asset strategy should be measured by the after-fee returns and not by fees.

Counter views

89. We have heard from other KiwiSaver providers who do not support changes to the TER because it would reduce transparency and potentially value for money for investors. Changes to remove some costs from TER mean an investor would not see the costs they are actually paying for their funds to be managed - they would only see the net returns.

90. The removal of third-party management costs from the TER formula reduces transparency and for that reason is not supported by the FMA. In addition to misleading investors, it could have roll-on undesirable outcomes such as:

    a. privileging one type of investment (third-party managed private assets) over others within the KiwiSaver scheme; and

    b. enabling KiwiSaver managers to outsource more of their schemes while maintaining (or even reducing) their fees as reported under TER. This could allow them to adopt higher-cost and potentially higher-risk investment strategies with inadequate disclosure to an investor.

Maintaining transparency of KiwiSaver fees

91. To some extent, this appears to be a communication and education issue. That is, investors may not quite understand the difference between fee level and value for money, or that a higher TER may still make sense if it provides a longer-term opportunity for greater returns. It is up to the sector to continue to assist their current and potential investors to understand what the fees in the TER represent.

92. We are interested to hear further from the sector, particularly given the varying perspectives we have heard to date, on whether this presents an issue, and whether any changes are required.

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93. We are also seeking views from others (beyond KiwiSaver providers—for example, members or other private equity or venture capital providers) on the fees reported under the TER and whether any changes are required.

94. We are not providing options on this issue at this stage. Possible options will be considered following feedback.

Potential impact on KiwiSaver members

95. Changes to the TER may impact how well KiwiSaver members are able to see and understand exactly what expenses they are being charged for through fees. This includes being able to see why their fees might be higher than fees of other providers (for example if their provider is paying another investment company to manage some of its private investments). This enables KiwiSaver members to decide if paying more in fees is worth the specific investment options that KiwiSaver offers.

96. If the change requested by the sector occurs, this does not necessarily mean that a KiwiSaver member's fees will be lower. The fee amount seen may be lower, but the charges removed from the fee calculation could (for example) be subtracted from the returns the member receives.

Questions for feedback on current Total Expense Ratio calculation methods

	QUESTIONS for KiwiSaver providers (or other industry participants)
26.	Do you currently outsource fund management for private assets?
27.	Do you see any issues with the current TER calculation and if so, what are they?
28.	Does the current TER calculation impact your decision to invest in private assets, or to utilise third-party fund management?
29.	Are there any other issues you would like to draw attention to on the TER?

	QUESTIONS for the public (including KiwiSaver members)
30.	Do you look at KiwiSaver scheme fees when deciding which KiwiSaver scheme to put your money with?
31.	Do you think it is fair to include outsourced management fees charged to KiwiSaver managers in the overall 'KiwiSaver scheme fee' that is eventually charged to members?
32.	Please share any other thoughts you have around the TER (total expense ratio) and its function to inform the public of the expenses involved in KiwiSaver management.

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Final comments and next steps

Final comments

97. Please respond to the questions below if you have any further comments you would like to share:

QUESTIONS for KiwiSaver providers (or other industry participants)	
33.	Please provide any further comment on barriers to KiwiSaver investment in private assets that you see (including any comments in relation to issues identified in paragraph 18b-f).

QUESTION for all respondents	
34.	Please use this question to provide any further information you would like that has not been covered in the other questions.

Next Steps

98. This consultation closes on **14 February 2025**. Please see the instructions at the front of this document on how to submit your feedback.

99. MBIE will consider the feedback we receive through this consultation and use that feedback to further develop the options on possible responses to the issues raised in this paper around KiwiSaver investment in private assets.

100. MBIE will provide advice to the Minister of Commerce and Consumer Affairs on both the feedback received and options for next steps in early 2025. Proposals for change will then need to be submitted to Cabinet for approval.

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Questions asked

Note: teal = for industry; purple = for the public; blue = for all respondents.

Liquidity management tools – problem definition questions	
1	For KiwiSaver managers: Please describe your current practice around investing in private assets, including levels of exposure you have to these types of assets, how you invest in these assets, and your management of liquidity risk.
2	Do you think that the current legislative framework for KiwiSaver effectively allows for the use of liquidity risk management tools that may impact transfer or withdrawal times (e.g. suspending redemptions or side-pocketing)?
3	For KiwiSaver managers: If you cannot use these tools, can you please explain the reasons for this and the impacts in terms of: a. your ability to increase investment in private assets b. risks associated with your current allocation of private assets.
4	Please provide any other comments on the availability of liquidity management tools.
Liquidity (risk) management tools – options for change	
5	Do you support the proposed approach? Why/why not?
6	If redemption gates were allowed, would you consider developing new products more focussed on private assets?
7	Will you face implementation costs if this change is made? If yes how much will they be and will they be one-off or ongoing?
8	Do you have any comments on the detailed design considerations noted above?
9	Please provide any further comments on this issue of liquidity management tools.
10	Do you support more investment by KiwiSaver funds into private assets? Why / why not?
11	Do you support the use of liquidity management tools like 'side pockets', if they may have an impact on the availability of your KiwiSaver funds? Please explain.
12	Please provide any further comments on the proposed approach.
Valuation requirements – problem definition questions	
13	For KiwiSaver managers: Do your governing document(s) include a valuation methodology which is challenging to apply to valuing private asset? If you do, can you please explain the impact in terms of: a. the extent to which your governing documents require amendments to allow for the inclusion and pricings of private assets within your funds. b. whether you have tried to amend the valuation provisions in the past or not, and why. Include examples of where the supervisor has or has not approved a valuation methodology.

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14	Please provide any other comments on the valuation methodologies in governing documents.
Valuation requirements – options for change	
15	Do you agree that this is an issue that needs addressing?
16	Do you have views on how it should be addressed?
17	Will you face implementation costs if this change is made, if yes how much will they be and will they be one-off or ongoing?
18	Please provide any further comments on this issue of valuation requirements.
Private asset categories – problem definition questions	
19	Do you consider that the current asset classes in the Financial Markets Conduct Regulations 2014 are problematic as they relate to private assets? If yes, please explain.
20	How do think the categories should be described?
21	Please provide any other comments on the lack of private asset categories.
Private asset categories – options for change	
22	Which option do you think is best and why?
23	Will you face implementation costs if this change is made, if yes how much will they be and will they be one-off or ongoing?
24	Please provide any further comments on this issue of including private assets in asset categories.
25	Do you think it would be useful to have better visibility over how much KiwiSaver funds are investing into private assets?
Total Expense Ratio questions	
26	Do you currently outsource fund management for private assets?
27	Do you see any issues with the current TER calculation and if so, what are they?
28	Does the current TER calculation impact your decision to invest in private assets, or to utilise third-party fund management?
29	Are there any other issues you would like to draw attention to on the TER?
30	Do you look at KiwiSaver scheme fees when deciding which KiwiSaver scheme to put your money with?
31	What do you think should be included in any figure that is called “KiwiSaver scheme fees”?
32	Please share any thoughts you have around the TER (total expense ratio) and its function to inform the public of the expenses involved in KiwiSaver management.

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Final comments	
33.	Please provide any further comment on barriers to KiwiSaver investment in private assets that you see (including any comments in relation to issues identified in paragraph 18b-f).
QUESTION for all respondents	
34.	Please use this question to provide any further information you would like that has not been covered in the other questions.

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