

# Submission on discussion document: Adjustments to the climate-related disclosures regime

## Your name and organisation

Name	S9(2)(a)
Date	13 February 2025
Organisation (if applicable)	B Lab Australia & Aotearoa New Zealand
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## Responses to discussion document questions

Please enter your responses in the space provided below each question.

### Chapter 3: Climate reporting entity and director liability settings

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

#### Option 2

B Lab Australia & Aotearoa New Zealand (B Lab AANZ) is supportive of Option 2: Amend the FMC Act so that section 534 no longer applies to climate-related disclosures. To come to this position, we have drawn on our experience with [Certified B Corporations](#) ('B Corps') and their boards in using [directors' duties](#) as a pathway to effect organisational change. Our reasoning is outlined below.

#### B Lab AANZ's position

We know that accountability is important to Kiwis. According to [B Lab AANZ's Brand Health findings](#), 81% of New Zealanders believe businesses should consider people and planet in their decision-making. Meanwhile, 88% believe directors/CEOs should be held accountable for their social/environmental performance.

However, accountability is not the same as liability. Businesses can be held accountable in numerous ways - by consumers, investors, and employees - without making directors personally or criminally liable.

An excessive focus on compliance can detract from genuine disclosure and transparency, ultimately limiting stakeholders' access to the information needed to hold businesses to account. If compliance discourages open and honest reporting, true accountability is compromised. That said, where there is misleading or deceptive conduct, we fully support that liability should still apply.

Additionally, B Lab AANZ supports the introduction of publicly available tools for greater transparency and benchmarking, and believes increased Government incentives for businesses to exceed basic disclosure requirements can be a powerful tool for driving high-quality reporting and accountability.

#### Unintended consequences: Strict liability risks shifting focus to compliance and risk

Our business community reports that while director exposure has encouraged greater levels of board education and engagement, much of this focus has centred on compliance, risk management, and minimising board members' liability. We recognise that the legislation aims to increase awareness, preparedness, responsibility, and transparency for climate risk and transition planning, however we are concerned that the current framework instead drives conversations towards exposure minimisation, conservative decision-making, and rising legal costs for compliance.

In interviews, several of our Certified B Corporations noted that their board concern is misdirected: *"We are getting the wrong type of board engagement. The attention is on protection and exposure, not progress and preparedness."*

Concerns with risk under the current regime have led to reduced transparency and genuine disclosure, as boards focus on minimising exposure from ambitious internal targets or measurements that cannot be guaranteed.

B Corps are often leaders in climate action; for example, compared to ordinary businesses, [B Corps in the region](#) are 2.8 times more likely to assess the environmental impact of their business activities, 2 times more likely to have end-of-life waste programs, and 2 times more likely to be carbon neutral.

As businesses, B Corps are well-versed in climate measurement and voluntary reporting as part of their certification process every three years, and are often industry leaders in reducing their footprints. However, several B Corp-certified CREs reported that liability concerns have resulted in their businesses making less aspirational public targets. While the goal of the legislation is to drive transparency, we believe the current liability settings may instead risk contributing to the phenomenon of '[greenhushing](#).' *"We used to be innovators in this space, but over the last five years, there has been so much focus on compliance and risk that we have had to act much more conservatively,"* one B Corp noted. Another B Corp consultancy that works across a wide range of businesses shared similar concerns: *"We are seeing greenhushing happening first hand, and even worse, neglect of real opportunities for businesses in the climate transition due to increased focus on risk."*

Director liability is one way to get board and leadership attention on climate reporting, but for companies already leading in climate action, such as B Corps, this can create pressure that counters the goal to be more transparent and ambitious with their targets.

### **Protection needed for uncertain territory**

Climate reporting is a rapidly evolving space with varied methods and standards. The Australian Institute of Company Directors (AICD)'s [A Director's Guide to Mandatory Climate Reporting](#) (2024) recognises the complexity of this space, highlighting that businesses must "understand, and get comfortable with assumptions, contingencies, uncertainties and judgements" when assessing metrics and targets. As a result, inaccuracies in reporting are a risk.

The risks of inaccurate statements are particularly high for forward-looking statements, and are further compounded by a shortage of trained, credible experts within companies. Meanwhile, specialised consultancies can come at a significant cost and do little to build capacity for long-term climate management.

While we believe that climate action must be an urgent priority for all companies, we also know this must be balanced with the reality that many businesses are not yet fully equipped to meet disclosure requirements. Introducing temporary safe harbour or modified liability provisions (Option 4) would allow time for capacity building — both on boards and within organisations — in the training, recruitment, and preparedness needed for disclosures. However, it does not guarantee that the measurement of Scope 3 emissions, scenario analysis, and transition planning will have any more certainty when those temporary provisions expire.

**In sum, we support amending the liability settings to not apply section 534 of the FMC Act to climate-related disclosures, provided the Government considers complementary solutions that drive greater transparency and accountability for businesses' disclosures and climate action.**

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

Liability settings are only one piece of the puzzle for driving necessary and urgent climate action. We strongly encourage the Government to pursue alternative methods that complement the liability settings to drive positive outcomes and incentivise genuine, accurate, and transparent disclosures. Our recommendations are as follows:

### **1. Publicly available, comprehensive data sets with comparison tools**

Introducing user-friendly tools to help put climate-related disclosures and progress on measures in the context of national and industry averages, would support public accountability. The use of public data sets can accelerate progress against climate targets while promoting greater scrutiny of the data provided.

For example, in 2012, Australia introduced legislation for national gender pay gap reporting. The Workplace Gender Equality Agency (WGEA) collects data through an annual census and publishes it online. Users can explore the data at the individual employer, industry, or national level.

Introducing these tools has led to higher rates of target setting and policies to address the gender pay gap. In the last decade, the reported gender pay gap in total remuneration has decreased from 28.6% to 21.8%.

A similar trend is seen amongst B Corps to measure impact as defined by our B Impact Assessment. Users have access to reporting tools that show benchmarks based on location, size, and industry, as well as a publicly available score that is published every three years. Even with improvement adjustments to the standards, and the aim to 'raise the bar' with every version of the assessment, most B Corps improve their score at recertification. Many of these companies report that boards and leadership place high value on this score as a benchmark to competitors and a sign of investment in social and environmental issues.

### **2. Incentivise companies to go beyond disclosure into measurement, management, and improvement**

Since 2021, B Lab Australia & Aotearoa New Zealand (B Lab AANZ) has collaborated with New Zealand Trade & Enterprise to deliver the Business for Good programme: an intensive six-week hybrid course to help export businesses measure and improve their environmental and social impact. To date, 172 Kiwi-based export companies have completed this programme to help them measure their impact and compete in global markets.

Government support for programmes like Business for Good can provide education and upskilling for business leaders in how to effectively measure their environmental impact, learning from industry leaders and international best practice while they adjust to the new reporting requirements.

Companies can pursue B Corp Certification as part of this programme, which also offers third-party assurance to their impact measurement and additional transparency and disclosure requirements.

Encouraging businesses to pursue voluntary measurement and reporting beyond what is required by the CRD regime can help to build internal confidence and capacity, improve industry standards, and offer a point of difference for investors. Evidence shows that companies willing to not only make transparent disclosures, but also invest in measuring, substantiating, and improving on their impact claims have been rewarded by investors.

This is a strong indication that investors want to see more than just disclosures to have trust in their investments. Government support to go beyond disclosure requirements can be an effective lever in driving high-quality reporting and disclosures.

#### Final comments

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

#### **About B Lab Australia & Aotearoa New Zealand**

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A leader in economic systems change, B Lab certifies companies — known as B Corps — for proactively meeting its high standards of environmental and social performance, transparency, and accountability. Established in 2006 in the US and 2012 in Australia and Aotearoa New Zealand, the global B Corp community includes more than 9,500 businesses. Representing more than 920,000 workers in 105 countries and across 161 industries, businesses across the movement are committed to creating an inclusive, equitable, and regenerative economy that benefits all.

To date, over 170 Aotearoa New Zealand-based businesses are Certified B Corporations, including significant and influential brands such as Kiwibank, Kathmandu (KMD Brands), ecostore, and Sharesies. Kiwi-headquartered B Corps contribute \$7 billion to Aotearoa's economy.