

The Colonial Motor Company Limited

14 February 2025

Dear Sir or Madam

Re: Submission on MBIE's proposed adjustments to the Climate-related Disclosures Regime.

The Colonial Motor Company Ltd (CMC) is a Climate Reporting Entity. Our Annual Report for the year ended 30 June 2024 contains our first climate statement.

CRE Thresholds and Differential Reporting

S9(2)(b)(ii)

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

Listed company directors face exposure to significant civil and criminal liability, which is both an unsupportable element of the regime and a clear barrier to listing in New Zealand. In addition, CRD adds to the substantially increased reporting cost and scrutiny faced by publicly listed companies compared to their privately held peers.

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

Option 2 – increasing the threshold to \$550m market capitalisation. There is no benefit to a staged approach when companies in the \$60-550m groups must already report in the interim. Legislating and regulating flexibility into the reporting regime is more important than alignment with Australia.

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

Potentially yes but with clear caveats. Option 1 might be the preferred option but this is heavily dependent on the requirements of differential reporting being considered (and to which we are not yet privy). The aspects of CRD that incur the greatest time and cost are: scenario analysis, quantification of current and future risks, publication of a transition plan and the inclusion of assured scope 3 emissions. Removing these aspects, or providing a lighter approach to these topics, could make a meaningful difference for companies between \$60-550 million.

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?

We have no comment to make here.

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?

Yes, some companies would choose to voluntarily report, or they may report on certain elements of the standard in the same way companies can choose which elements of TCFD to report on. Some companies see marketing or reputational advantage in voluntary reporting.

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

A regulated scheme voids the internal arguments of whether to report (or not), and if so, to which extent. In other words, 'we have to do this so just get on with it'. It provides a clear and level field for all regulated entities, and reduces the ability of the reporting to simply be used as marketing fodder. For some entities it could identify risks that were not already identified (i.e. via its internal risk assessment processes) ahead of carrying out the regime work. One disadvantage is the same reason that 'we have to do this so just get on with it', which is compliance for compliance-sake. Reporting entities become focused on ticking the box.

Location of the thresholds

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

Option 2 – as having thresholds (and all elements of the regime) moved to regulation will provide the necessary flexibility the regime clearly requires. The clear need for this consultation after the regime's short life and the inability to pro-actively and in a timely manner amend important elements for the proposed changes to thresholds supports flexibility via regulation.

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?

As the regime will continue to face challenges from both CREs internally and from the already changing external world environment, the Minister needs to be able to act quickly on both Officials' advice and, as importantly, on CRE feedback. A consultation process, such as this one, should be a regular feature that could be assessed annually as being required or not.

Director Liability Settings

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

Option 3 is preferred and Option 4 could be considered. However, Option 4 has the limitations as described at paragraph 121 of the Discussion Document that effectively limit it as being useful/of value. Option 3 is preferred as the one on offer that most limits the serious negative impacts on director liability, while not going far enough by eliminating the personal exposures.

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

Our recommendation regarding director liability (as provided to NZX in their October 2024 consultation round in this area) is for the Government to remove the ability of the FMA to take any action (criminal or civil).

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

Investors can already encourage the use of additional safeguards such as external assurance of the entire climate statement. If assertions around climate-related matters are being used for marketing purposes then other legislation covering misleading statements would presumably still apply.

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?

Yes, as this is consistent with the responses to questions 15 and 16.

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?

The response to question 15 prefers support of Option 3.

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)

The response to question 15 prefers support of Option 3.

Reporting by subsidiaries of multinationals

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?

We have no comment to make on this question.

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

We have no comment to make on this question.

Final comments

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

As noted at question 16, we submitted to NZX in their October 2024 consultation round and to the XRB. The points we made to NZX were around the costs of compliance and director liability, so the Discussion Document has been very helpful and timely. Our submission on the provisions of Part 7A noted it is an area of real concern to every director of a CRE. The personal criminal exposures of directors (and those civil exposures for a CRE itself) put in place under Part 7A are unnecessarily onerous and detract from the regime. A blunt assessment would hold that if the CRD regime has wide merit then it would not need mandated requirements that had to bring with them onerous criminal and civil penalties to ensure compliance. Specifically, a term of imprisonment that could reach 5 years and/or a fine of up to \$500,000 for an individual and up to \$2.5 million for a CRE are out of all proportion to a CRD regime. This is not a health and safety-type regime where there can be real and immediate consequences for non-compliance. It is one where a very small number of entities (insignificant in New Zealand-wide terms let alone in world terms) are required to comply. The regime can therefore have little value, other than to be seen as a 'world leader' in its introduction – not a sound reason for such onerous sanctions. The regime itself must be continuously reconsidered as related regimes develop (or not) internationally in this area.

Any questions regarding this submission can be directed to:

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