

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

**By email:**  
**[climaterelateddisclosures@mbie.govt.nz](mailto:climaterelateddisclosures@mbie.govt.nz)**

14 February 2025

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

- 1 This is a submission by Dentons Kensington Swan on the Ministry of Business, Innovation & Employment's ('**MBIE**') *Adjustments to the climate-related disclosures regime* discussion document dated 13 December 2024 ('**Discussion Document**').

#### **About Dentons**

- 2 Dentons Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Auckland, Wellington, and Christchurch. We are part of Dentons, the world's largest law firm, with more than 12,000 lawyers in over 200 locations.
- 3 We have extensive experience advising a range of banks, insurers, fund managers and listed companies, many of which currently fall within the scope of the climate-related disclosures ('**CRD**') regime established under the Financial Markets Conduct Act 2013, or who anticipate falling within the current thresholds in the next few years. All have an interest in and will be affected by the outcome of the consultation process covered by the Discussion Document.

#### **General comments**

- 4 We welcome the review of the regulatory settings for the CRD regime. However, in our view the focus of the Discussion Document on the threshold levels that must be met before an entity becomes a climate reporting entity ('**CRE**') misses the key problem with the regime, which is briefly articulated at paragraph 15 of the Discussion Document. And what is the key problem? The cost of reporting under the current settings is excessive.
- 5 Raising the thresholds does nothing to reduce the cost of reporting. Given the desire currently being expressed by the Government to reduce inefficiency and the regulatory burden imposed on businesses, it is unfortunate that the opportunity has not been taken in the Discussion Document to revisit those aspects of the CRD regime that are leading to excessive costs (and which add no real value to reports produced).
- 6 In our view, a more substantive objective review of the value provided by the current detailed reporting settings is required. While the Financial Markets Authority's well-compiled monitoring report '*Climate-related Disclosures: Insights from our reviews*' released in December 2024 provides a helpful summary of areas where climate statements could be improved and is generally positive

about what has been observed with respect to CREs attempts to engage with the requirements, minimal qualitative analysis appears to have been undertaken to assess the practical value of the detail of the reporting requirements, in light of the significant costs and devotion of internal resources required of CREs to produce that detail.

- 7 We believe the current reporting requirements could be simplified to shift the primary focus to a more high-level public reporting obligation. The focus of such a report would be on addressing the purposes of the CRD regime (as set out at paragraph 5 of the Discussion Document), being to:
- a ensure that the effects of climate change are routinely considered in business, investment, lending and insurance underwriting decisions
  - b help CREs better demonstrate responsibility and foresight in their consideration of climate issues
  - c encourage smarter, more efficient allocation of capital, and help smooth the transition to a more sustainable, low-emission economy.
- 8 We do not believe that pursuing the above purposes requires the full public reporting of detailed climate statements in their current form, with the existing settings imposing an excessive and disproportionate burden on CREs. Streamlined reporting would allow CREs to remain accountable for the approach they are taking to managing their climate risks without being burdened by the need to publicly report on the full complex and technical details required by current climate statement settings. We believe such an approach would encourage the development of more user-friendly reporting. Importantly, we are not suggesting that a separate public facing report be produced by CREs in addition to climate statements. Rather, public climate statements should be reduced in scope via streamlining of the existing requirements (with a focus on core or 'must have' matters).
- 9 In light of the above, we have limited our response on the Discussion Document to questions relating to the liability settings, as per the submission document **attached**.
- 10 Thank you for the opportunity to submit. We would welcome the opportunity to discuss any of the points we have raised.

Yours faithfully

David Ireland  
*Partner*  
Dentons

Catriona Grover  
*Partner*  
Dentons

Tom McLaughlin  
*Partner*  
Dentons

Mark Schroder  
*Senior Associate*  
Dentons

# Submission template

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## Adjustments to the climate-related disclosures regime

This is the submission template for the discussion document, *Adjustments to the climate-related disclosures regime*. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **5pm on 14 February 2025**.

Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table. Your submission may respond to any or all of the questions in the discussion document, as appropriate.
3. When sending your submission:
  - a. Delete this page of instructions.
  - b. Please clearly indicate in template if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures.
  - c. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
  - d. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
    - i. Please state this in the template, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
    - ii. Indicate this on the front of your submission (e.g. the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
4. Please send your submission (or any further questions):
  - as a Microsoft Word document to [climaterelateddisclosures@mbie.govt.nz](mailto:climaterelateddisclosures@mbie.govt.nz) (preferred), or
  - by mailing your submission to:

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New Zealand*

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

## Your name and organisation

Name	Dentons
Date	14 February 2025
Organisation (if applicable)	Dentons
Contact details	David.Ireland@dentons.com

## Privacy and publication of responses

[To tick a box below, double click on check boxes, then select 'checked'.]

☐ The Privacy Act 2020 applies to submissions. Please check this box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☐ MBIE intends to upload submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do not want your submission to be placed on our website, please check the box and provide an explanation in the box below.

## Please check if your submission contains confidential information

☐ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

## 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	
1	When considering the director liability settings, which of the four options do you prefer, and why?
	<p>When considering the director liability settings, we strongly advocate for Option 3 – the removal of deemed liability for directors and the provision of relief from section 23 liability for aiding and abetting an unsubstantiated representation. Additionally, we recommend that this relief be extended to disapply section 23 in relation to any Climate Reporting Entity ('CRE') itself.</p> <p>Our reasoning for taking this position is largely as acknowledged in the discussion document. The status quo liability position is a factor in CREs taking a conservative approach to reporting, serving as a statutory deterrent to including potentially useful (but not strictly legally required) information in their climate statements due to concerns over exposure to liability. In addition, climate statement requirements are inherently qualitative, uncertain, and highly technical to comply with. As such, substantiation in this space as required by section 23 is challenging. The extent of the potential liability for getting it wrong discourages CREs from offering additional information that may be helpful unless the substantiation supporting representations made is beyond challenge.</p> <p>Even with the removal of section 23 liability, CREs will still face liability for false or misleading representations under section 22, meaning CREs are still appropriately incentivised to avoid making claims that cannot be backed up. In our view, section 22 serves as an adequate backstop to discourage overly optimistic claims being made in the course of reporting under the climate-related disclosures ('CRD') regime. Additionally, we recommend Option 4 be considered as a proportionate interim measure to provide protection for CREs in the early years of the CRD regime in relation to the most challenging aspects of compliance.</p> <p>The Financial Markets Authority ('FMA') will have data from its monitoring as to the problem areas within the CRD regime that have presented the greatest challenges to CREs to get right. Granting safe harbour relief for those areas not only aligns with the Australian regime, but gives substance to the FMA's assurances as to taking an educative approach in the early years of the CRD regime. It would provide tangible regulatory acknowledgement of the new ground the CRD regime is breaking in New Zealand as we look to continue to lead the world in this space.</p>
2	Do you have another proposal to amend the director liability settings? If so, please provide details.
	Our alternative proposals are incorporated in the response above.
3	If the director liability settings are amended do you think that will impact on investor trust in the climate statements?
	We do not think that amending the liability settings as proposed will undermine public confidence in the CRD regime. If anything, by removing a statutory impediment to CREs and their directors from volunteering additional information that might be helpful, users are likely to find climate statements more informative and helpful to them, potentially raising confidence. Negative publicity in this space will continue to serve as a major deterrent from CREs failing to take due care, irrespective of specific liability settings.

4	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?
	<p>Yes, as discussed in question 1. Climate statement requirements are inherently qualitative, uncertain and highly technical to comply with. As such, substantiation in this space as required by section 23 is challenging. The extent of the potential liability for getting it wrong discourages CREs from offering additional information that may be helpful unless the substantiation supporting representations made is beyond challenge.</p> <p>As mentioned, even with the removal of section 23 liability, CREs will still face liability for false or misleading representations under section 22. This serves as an adequate backstop to discourage overly optimistic claims being made in the course of climate reporting.</p>
5	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?
	<p>We support Option 4 as an extension to the permanent amendments to the liability position we support under Option 3. Aspects of the climate statement requirements are highly speculative and prone to be second-guessed, with CREs requiring time for market practice to evolve and to ensure their processes are sufficiently robust to be confident as to what 'good' looks like. As with Australia, safe harbour protection should be limited to those aspects, such as Scope 3 emissions, scenario analysis and transition plans. Accessing that safe harbour relief should require CREs to take reasonable steps to comply, but without setting that standard so high that the safe harbour relief becomes meaningless.</p>
6	If you support the introduction of a modified liability framework, how long should the modified liability last for? And who should be covered, i.e., should it prevent actions by just private litigants, or should the framework cover the FMA as well? (Criminal actions would be excluded)
	<p>The timeframe for the provision of 'safe harbour' relief ought to align with the equivalent relief under the Australian Act, for consistency between the two jurisdictions. It should prevent actions by private litigants as well as civil actions by the FMA, in order to make that safe harbour meaningful.</p>
<b>Final comments</b>	
23	Please use this question to provide any further information you would like that has not been covered in the other questions.
	<p>Recently, the Minister and the FMA CEO have suggested that firms might be taking overly conservative approaches to compliance. Reducing director and entity exposure to liability regarding certain aspects of the CRD regime would give effect to this message (that firms need not be so constrained by regulatory compliance concerns).</p> <p>Providing safe harbour relief for the more challenging aspects of the regime would be a tangible transitory response to give reporting entities some certainty in these early days of the CRD regime.</p>