Financial Services Council NZ

Grow the financial confidence and wellbeing of New Zealanders

Friday 14 February 2025

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

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Adjustments to the climate-related disclosures regime

This submission on adjustments to the climate-related disclosures regime (the Discussion Document) is from the Financial Services Council of New Zealand Incorporated (FSC).

As the voice of the sector, the FSC is a non-profit member organisation with a vision to grow the financial confidence and wellbeing of New Zealanders. FSC members commit to delivering strong consumer outcomes from a professional and sustainable financial services sector. Our 112 members manage funds of more than $100 billion and pay out claims of $2.8 billion per year (life and health insurance). Members include the major insurers in life, health, disability and income insurance, fund managers, KiwiSaver, and workplace savings schemes (including restricted schemes), professional service providers, and technology providers to the financial services sector.

Our submission has been developed through consultation with FSC members and represents the views of our members and our industry. We acknowledge the time and input of our members in contributing to this submission.

Our climate related entities (CREs) support adjustments to the climate-related disclosures (CRD) regime as there have been significant issues and costs incurred since the regime's inception. These currently relate to internal expenditure on senior staff as the regime requires significant resource focus. The metrics and targets for scope 3 emissions data are both third party subscriptions and require external audits which also come at a cost. In addition, there are also costs related to strategy, for example scenario analysis includes both sector scenario and entity level costs, noting this is a significant time and resource undertaking based on the current requirements and transition planning will also require budget to undertake.

Our members support taking action on climate and are keen to work with officials to reduce the above issues and costs. We encourage further consideration on making the requirements less onerous for a broader set of the market by simplifying and streamlining the Aotearoa New Zealand Climate Standards (NZ CS) as part of the External Reporting Board's (XRB) upcoming review.

More broadly, we consider that there is a strong need for reform to differentiate the reporting requirements themselves for managed investment scheme (MIS) managers as a class of CRE (as compared to banks, insurers and listed issuers). Some of the NZ CS 1 requirements are not relevant to MIS Managers and impose high costs of compliance for little value delivered to primary users. We understand that the question of differential reporting requirements will be considered in the upcoming review, as noted above, which is welcomed. From a sequencing perspective, there would be benefit in that review being completed prior to any legislative changes to the underlying reporting thresholds. Without knowing the extent of the relief provided by such differential reporting, it is difficult to determine which of the reporting threshold options would be preferable.

There are regulatory risks for CREs given the data gaps and for fund managers and mandated emission reduction plans have uncertainty due to the lack of control over investee emissions. There are also difficulties in quantifying current impacts on investments given lack of recognised best practice for fund managers.

We note that the industry and beyond is committed to taking steps and many who are not CREs are complying with the regime and beyond legislative requirements, such as activities undertaken for responsible investment, robust risk management and measuring operational carbon emissions.

We welcome continued discussions and engagement. S9(2)(a) [redacted].

Yours sincerely

Kirk Hope
Chief Executive Officer

Financial Services Council of New Zealand Incorporated

Financial Services Council NZ

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Adjustments to the climate-related disclosures regime

Name	S9(2)(a)
Date	Friday 14 February 2025
Organisation (if applicable)	Financial Services Council of New Zealand Incorporated
Contact details	S9(2)(a)

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Chapter 2: Reporting Thresholds	
1	**Do you have any information about the cost of reporting for listed issuers?**
	Please refer to individual FSC members' submissions for information about the costs of reporting for listed issuers. We note for non-listed issuers, significant costs are incurred in complying with CRD regime. These include external consultancy and advice fees, staff resourcing, assurance costs, data costs and compliance project management costs as well as associated management, executive and board time
2	**Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?**
	It is possible that the listed issuer thresholds are a barrier to listing in New Zealand. The thresholds and director liability settings create additional compliance and reputational risks, and reporting is costly. This may potentially deter clients from listing, particularly smaller issuers that could face disproportionate compliance burdens. The ongoing costs and compliance requirements associated with being listed, over and above what it costs to run the business, are among the first things advisors warn of when an entity is considering capital raising options. If listing on a public market is a clear goal, and there are jurisdictional options as to where to list, then the extent of the regulatory compliance requirements, and the entities' ability to deal with them, will inevitably form part of the decision making. This is reasonable given the directors' duty to act in what each director considers to be in the best interests of the company. The CRD regime, being new in every way, is significant and was always going to be time consuming and costly. This is not a reason not to require climate reporting, but it should prompt pause to consider which sort of entities are likely to have the ability to absorb the time and cost involved in dealing with the CRD requirements. In these early years (as skill levels rise across all parts of the CRD 'ecosystem'), the entities required to meet the CRD requirements are "trail blazers", adding to the uncertainty, and inevitably involving further time and cost as relevant matters are dealt with to a point where directors are sufficiently confident to release the information to the public.
3	**When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?**

	Our preference is for Option 3, a generally consistent staged approach with Australia. We consider this ensures the competitiveness of New Zealand's capital markets. It would also maintain climate reporting expectations for entities that have greater resources and whose decisions can likely have a greater positive environmental impact. It also enables the biggest of our listed entities continue to disclose, and in doing so between them help build capability within New Zealand's CRD ecosystem and ultimately, the minimum threshold of reporting is raised significantly. The 'stop-start' involved in this approach that will apply to those with market capitalisations between $250m and $550m may not be ideal and may create anomalies as they will still have to produce mandatory reporting for 2025 and perhaps 2026. However, those entities will no doubt use the time to develop their own climate-related infrastructure, systems and capability, and many may wish to continue to disclose voluntarily in the meantime. If this option is recommended, an area FMA may consider is potentially a class exemption for 2025, otherwise, they will need to be fully compliant (except for anticipated financial impacts and assurance) in 2025 which is a significant compliance and investment cost for those entities. Building time into the CRD regime has the benefit of allowing the FMA to establish and embed its enforcement approach. This will also allow the reporting community time to benefit from the FMA's stated educative approach during the initial years of the CRD regime.
4	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
	Overall, this would not impact our preferred option of Option 3. There is clear benefit in clarification of legislative intent, and Option 3 shows that the CRD regime should apply to larger entities, and in a staged manner. This helps all CREs now and should also assist regulators and creators of secondary legislation to proceed with a degree of confidence. However, we would not want to see what is intended to be an interim solution unwittingly resulting in limiting the XRB's ability to respond further, and possibly quickly, to market changes by creating appropriate differential reporting as the need arises. We would like to ensure the legislative regime is modified in a way that balances these goals. Access to data and specialised resources, for example inhouse climate scientists, are also more restricted for smaller size firms which make compliance more challenging. Differential reporting will allow smaller size firms to focus on what is deemed more critical from an XRB and FMA perspective. However, care should still be taken on defining the scope of differential reporting for primary users of the report.
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?
	No, we do not think a different reporting threshold for listed issuers should be considered.
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?

	Some issuers would continue to report voluntarily for several reasons. For example, competitive advantage and to earn a social license, as this information is demanded by international investors and reporting is seen as necessary to raise capital. It is also often considered as a benefit of understanding climate risks and opportunities. It may also be necessary to meet issuers' voluntary commitments to external standards or industry groups. For some entities, climate reporting has been and will continue to be important beyond the need to comply with the Financial Markets Conduct Act 2013 (FMCA). Reasons include meeting expectations or requirements of investors, secondary regulators (such as the stock exchanges), lenders, export markets, customers and also to meet the increasing New Zealand societal requirements for entities to play their part in GHG emissions reduction. Many entities will also wish to understand and manage their climate risks and opportunities, from a purely business perspective, irrespective of the disclosure element. We note there is still a legal duty of directors to manage climate-related risk to investments, regardless of whether an entity is a CRE and therefore we expect to still undertake many of the same processes disclosed in our climate reports, particularly those relating to governance and risk management.
7	What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime?
	This is somewhat business dependent. The advantages of being a listed issuer in a regulated climate reporting regime include transparency and comparability for users that are interested (building trust), it promotes good risk management and resilience building, aligns with reporting standards in other jurisdictions, enables access to capital from institutional investors (particularly those overseas), and has reputational benefits. The disadvantages include compliance costs (both initial and ongoing), liability risks, operational challenges, collecting data and staying up to date with evolving standards and that their competitors are not subject to the regime.
8	Do you have information about the cost of reporting for investment scheme managers?

	Please refer to individual FSC members' submissions for information on the cost of reporting for investment scheme managers. We note the significant work involved across our members' businesses to produce reporting and there is a risk that these costs will be passed on to investors or customers, if they are not done so already. Costs broadly outlined in response to Question 1 also apply to investment scheme managers. The cost of procuring external data regarding emissions of investments is particularly costly for investment scheme managers. Given the wide ranging number of investments made by managed funds across jurisdictions and entity types, data can be prohibitively expensive to procure and audit (as well as being inaccurate). This cost is prohibitive for minimal ability to impact on the actions of the companies that are actually directly responsible for emissions. We also note that for many investment scheme managers who already receive this data, the greater cost burden comes from audit, external consultants and internal resources. An inability to reduce fees as businesses scale is also possible, meaning that the end result is that fees are higher than they otherwise would have been. For smaller scheme managers that are captured by the regime, these costs represent a significant portion of overall operational budgets. Scheme managers with between $1b and $5b funds under management (FUM) are not large companies and therefore do not have the significant resource that needs to be available for climate reporting. The costs for smaller entities currently captured are not proportionate to the benefits of climate reporting. The value of climate reporting is less for fund managers than for other entities captured by the regime as fund managers are not directly responsible for activities within funds that have a climate impact and are therefore less able to take action in regard those activities. In addition, given most entities in funds will in due course be captured by climate reporting in home jurisdictions and the climate reporting by those companies will be a better primary source of information than fund manager reporting.
9	Do you have information about consumers being charged increased fees due to the cost of climate reporting?
	Please refer to individual FSC members submissions for further information. We note however the pressure on management fees to offset compliance costs, which may take the form of fee increases or inability to decrease fees as scale is reached.
10	When considering the reporting threshold for investment scheme managers, which of the three options do you prefer, and why?

	Whilst a number of our members support Option 3, there are also members that support retaining the status quo, Option 1. If there is to be a change to the reporting thresholds, Option 2 appears to be the middle ground as it carries through many of the benefits of Option 3 without significantly reducing the FUM covered by the regime, namely a total FUM based threshold of $NZD5billion. This would ensure most of the New Zealand retail managed fund sector remained within the scope of the regime, while reducing compliance costs on smaller boutique managers. Consideration also needs to be given to ensuring that any change in thresholds does not give rise to the risk of avoidance, for example structuring funds under management in each scheme below the reporting threshold which would have a detrimental impact on the overall purpose of the regime. We consider Option 2 may better mitigate this risk. It is important with the option that is progressed to ensure that compliance obligations align with the capacity and scale of scheme managers, reducing the disproportionate compliance impact on smaller entities with limited resources. Smaller scheme managers often face significant challenges in meeting reporting obligations due to their lack of inhouse expertise, reliance on external consultants, and the extensive time and financial investment required to comply with climate reporting standards. It is also important to ensure investor participation, as where management fees are increased too much, it creates the risk of being passed on to investors, particularly in retail funds. This could deter individuals from saving and investing through managed schemes. The impact on managers at both ends of the scale must be considered as larger managers in New Zealand have multiple schemes, such as a larger KiwiSaver scheme with one or more smaller schemes. Option 3 would mean that a large manger may have differing reporting treatment across the schemes they manage, which introduces further complexity and may mean differing treatment of investors of the same provider, or differing regulatory treatment if managers continued to publish climate-related disclosures voluntarily for their smaller schemes. Without clarification to director liability settings, it may also mean where a larger manager has the same directors for more than one scheme that those directors have liabilities for some but not all of those schemes. Any change to the reporting thresholds should not be viewed as the only method to address issues and concerns with the regime. We encourage consideration in the upcoming XRB review on the reporting requirements and how these can be tailored and streamlined.
11	If the XRB introduced differential reporting, would this impact on your choice of preferred option?

	We consider there is a need for differential reporting to apply to MIS managers as a class of CREs. For differential reporting to be effective, the standards must differentiate between MIS managers and other CREs as a whole (such as banks and listed issuers), rather than based on other factors such as size. This means that the model should include a separate standard for all MIS managers (differentiated from the existing or future version NZ CS 1, which could remain for other CREs) that is simplified and tailored to provide the right disclosures for retail MIS investors, rather than differentiating between different types of MIS Managers (for example, small versus large managers). Some of the NZ CS 1 requirements are not relevant to MIS Managers and impose high costs of compliance for little value delivered to primary users. For a MIS Manager to omit these prescribed disclosures from a fund or scheme's climate statement under the current regime, MIS Managers are required to form a view that they are not material to a primary user and maintain records of its decisions. With such a new regime and assessments being complex, they are still developing, and MIS Managers are likely taking a conservative approach against omitting prescribed disclosures based on materiality. Reduced prescribed reporting requirements would allow simplified disclosures focusing on the information most relevant to a primary user across the industry, also enabling a primary user to make investment decisions with information that is largely comparable across different MIS Managers. Without knowing the extent of the relief provided by such differential reporting, it is difficult to say whether it might influence which of the reporting threshold options is preferred. From a sequencing perspective, there would be benefit in first understanding what changes, if any, the XRB intends to make to the reporting requirements before considering the appropriate reporting threshold under the FMCA. From there, further consideration can be given to the provision of clear guidelines on the obligations and the expectations for simplified disclosures.
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?
	Making the requirements less onerous for a broader set of the market by simplifying the NZ CS is considered to be a better outcome from a policy, regulatory and investor decision making perspective, rather than significantly reducing the number of entities participating in the regime.
13	When considering the location of the thresholds, which Option do you prefer and why?
	Our preference is for Option 2, moving to secondary legislation. This approach allows greater flexibility and adaptability, enabling thresholds to evolve to market feedback and conditions as the regime continues to bed in. Although we do note changes should not be made frequently and sufficient notice of such changes needs to be provided to ensure industry certainty.
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?
	Consultation should be required, as well as thorough analysis of the proportionality of compliance costs and the overall impact on market participants and report users.

Chapter 3: Climate reporting entity and director liability settings	
15	When considering the director liability settings, which of the four options do you prefer, and why?

The changes outlined are problematic as no option appears to be an exact fit as we have differing members supporting each option. We note however that liability for director involvement in the contravention of part 7A of the FMCA (which includes aiding and abetting or being knowingly concerned in the contravention of a Part 7A climate-related disclosure provision) should be retained as noted for Options 2 and 3.

The problems with the existing CRD regime are well summarised on page 11 of the Discussion Document, particularly that several factors are contributing to the problem, and one of those factors is perhaps miseducation around the director liability regime. The results will take time to manifest, as skill and experience levels grow across the wider CRD ecosystem, including businesses, regulators, advisers, investors, lenders and directors. The desired result of more comprehensive climate statements will likely take time to appear, but clarifying director liability will be an important step in achieving that result.

Section 534 – deemed liability
Options 2 and 3 of the Discussion Document both involve amending the FMCA so that section 534 no longer applies to climate-related disclosures.

Given directors presently have deemed liability under section 534 of the FMCA for breaches of Part 7A climate-related disclosure provisions (subject to defences) as well as potential liability for involvement in a contravention of various provisions of the FMCA, it is reasonable for directors to be cautious about what is disclosed. In practice, this possible cautious approach can end up with reduced scope of disclosure, and spending money on external advisers to confirm appropriateness of statements. The latter is particularly problematic at present given that the adviser community is still building its own knowledge. This cautious approach may also lead to 'chilling' developing and publishing ambitious transition plans out of fear of personal director liability.

The director liability settings in the in the FMCA in relation to climate reporting are consistent with the liability settings for disclosures in financial statements. We recognise concerns that financial reporting is based on events that have already occurred whereas climate reporting is more uncertain and may be based on anticipated future outcomes. Many aspects of transition planning are inherently forward looking and uncertain and may not be able to be substantiated fully. This sits uncomfortably with many of the mandatory reporting obligations in the NZ CS.

Status quo option
If the status quo is retained (Option 1), there is scope for greater education about the implication of the deemed liability provision in section 534 for directors. In particular, there are defences available to directors who are automatically treated as contravening part 7A, including an "all reasonable steps" defence. We consider there is scope to enhance the understanding of the steps that directors can take to maximise the prospects of these defences being available.

Unsubstantiated representations
In relation to unsubstantiated representations, Option 3 involves amending the FMCA so that directors can no longer be liable for aiding and abetting an unsubstantiated representation.

	As noted above, we consider that it is appropriate to retain potential liability for involvement by directors in a contravention of a Part 7A climate-related disclosure provision. Similarly, we do not consider that any changes are required to the liability settings for misleading or deceptive conduct in sections 19 to 22 of the FMC Act (for which directors may also be liable for involvement in a contravention). In relation to unsubstantiated statements, we agree that certain requirements of the NZ CS may give rise to challenges because forward looking statements in uncertain areas such as scenario analysis and transition planning may be more difficult to substantiate than statements involving historic information. This is reflected in the Australian law referred to in paragraph 108 of the Discussion Document, which provides a safe harbour for certain "protected statements", however this only applies over a transitional period. We consider that there is scope for further support to be provided to the CRE and director community to help manage the risks associated with these statements in an inherently uncertain area (whether that be via guidance or changes to the FMCA. For completeness, we disagree with the contention at paragraph 104 of the Discussion Document that directors can simply 'choose to have climate statements fully assured'. In practice, it has been challenging for CREs to prepare to obtain assurance over GHG emissions given New Zealand was the first country in the world to adopt mandatory CRD (noting that the quantitative data required to be reported under NZ CS is much broader than GHG emissions disclosures, which form one part of a typical climate statement). It may be some time before New Zealand assurance providers have the experience and capability to provide assurance over other aspects of climate statements and at a cost that is proportionate. We do not consider seeking to obtain a full assurance of climate statements is as helpful as it might seem. The costs of obtaining that assurance will be very significant, and the benefit likely limited given how much of the information is either subjective or forward looking, or both, both of which are likely to result in an assurance provider being able to provide limited assurance, at best.
16	Do you have another proposal to amend the director liability settings? If so, please provide details.
	We are also supportive of a combination of options (provided liability for involvement in a contravention of Part 7A climate-related disclosure provisions is retained). An example of a possible combination approach could include both temporary safe harbour (as noted for Option 4) and permanent change (as provided in Options 2 or 3). This would provide higher temporary protection while CREs mature in climate reporting and take into account the inherently forward looking nature of climate reporting which has significant data uncertainties and limitations.
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements?

	No, as it is unlikely that retail investors are generally aware of director liability settings at all, and trust will not be diminished as such amendments will not absolve the reporting entity from its obligation to prepare statements in line with the FMCA. In addition, liability for the CRE itself will remain unchanged. This will provide the investor with the necessary assurance to ensure that the climate statements are an accurate representation of the reporting entity's position. We consider the qualitative nature of the statements and retaining some director liability (for example, for involvement in a contravention of Part 7A climate-related disclosure provisions) should negate any perception of an "all care no responsibility" approach.
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?
	The FMA have applied the fair dealing provisions of the FMCA very broadly in support of an active enforcement programme in areas outside of CRDs. Despite assurances of a pragmatic approach to monitoring in the early years of the regime, we are concerned that this broad approach will continue to be applied to climate reporting, leading to excessive enforcement action or litigation. When applied to climate reporting (which involves inherent uncertainties as outlined above), there is the potential for excessive enforcement and litigation. We would also highlight the need for clear guidance on appropriate records to substantiate claims in this context.
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?
	Not applicable.
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)
	If Option 4 is ultimately adopted, we support the framework covering the FMA as well and consider the modified liability framework should be a minimum of three years for CREs and ideally enduring.
Chapter 4: Encouraging reporting by subsidiaries of multinational companies	
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?

	There could be value for potential investors although if produced voluntarily or under a different standard there may be confusion for the primary user and where they do not align with the New Zealand regime comparison with New Zealand domiciled companies may be difficult. There may also be timing issues to consider at the time the NZ CRE files their statements as there may only be available a prior parent company statement.
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?
	Yes, we consider this could provide value for users while avoiding negative impacts on business. However, it is noted that parent company statements will be issued under different regimes so will not be directly comparable and this should be conveyed clearly on the website Another option may be to consider making a “where applicable” disclosure to include a link in the NZ CRE’s statements.

Other comments

We emphasise the importance of proportionate compliance obligations to ensure the regime’s effectiveness without imposing undue burdens on smaller entities, particularly investment managers.

It is very important that any changes are made as soon as possible with certainty provided regarding timelines to complete legislative amendments. Climate reporting has a considerable impact on companies captured by the regime, both in terms of resource and cost. Companies need certainty as to whether they should be taking on these impacts well in advance of any changes being made. If changes to reporting thresholds are made, there is a risk that companies continue to be captured by current thresholds over the course of the next year that, in the governments view, should not continue to be reporting entities, this would be a significant cost to those entities, and possibly their clients, for little perceived benefit.