Submission template

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

Your name and organisation

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Date	14 February 2025
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Responses to discussion document questions

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

Chapter 2: Reporting Thresholds	
1	Do you have any information about the cost of reporting for listed issuers?
	Our first Climate-Related Disclosures (**CRD)** under the mandatory climate reporting regime cost approximately NZD $225,000 in external consultancy fees, spread across FY23, FY24, and FY25 (year-to-date). However, we expect the cost to decrease in subsequent years, with an estimated NZD $100,000 required for the second-year disclosure, excluding assurance costs. In addition, we incurred assurance costs across our emissions inventory in FY24 of approximately NZD $50k. We expect an increase in external assurance costs from FY25 onwards, as we transition to a new assurance provider to meet the NZCS standards. The cost of reporting extends beyond external consultancy fees, as the time and effort required to complete this work has put a significant strain on internal resources. We estimate that internal resource exceeded 300 hours to produce our first CRD. This requirement is particularly demanding for smaller issuers that are required to meet the same requirements as larger issuers who have more internal resource to deploy.
2	Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?
	The listed issuer thresholds and director liability settings in New Zealand could potentially act as barriers to listing to foreign-based entities. It's crucial for New Zealand to ensure that its regulations remain aligned with global standards to avoid becoming uncompetitive. The Australian Sustainability Reporting Standards (**ASRS**) has a reporting threshold for Group 1 entities of $550m (aligned with the consultation's option 2) but this is not limited to listed issuers, rather it captures all large entities. There is potential for the NZ regime's focus on listed issuers only to be a disincentive to list, irrespective of threshold. Furthermore, the global regulatory landscape is becoming increasingly uncertain. Political changes in both Australia and the United States could impact similar climate-related disclosure regimes abroad. New Zealand must stay broadly aligned with these international developments to maintain its attractiveness as a listing destination.

3	When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?
	When considering the listed issuer reporting threshold, we do not support any of the three proposed options for the following reasons: • **Option 1 is too low:** The $60 million threshold is too low, because it captures issuers with minimal financial or climate impact while imposing on them a disproportionately heavy compliance burden. This is subject to our comments under section 4 below; if there was a differential reporting approach, this would support a lower reporting threshold. • **Option 2 is too high:** The $550 million threshold is too high, as it exceeds the current threshold adopted under the ASRS (and will far exceed the phased thresholds for 2026 and 2027). • **Stepped/phased approach in Option 3:** We do not support the stepped/phased approach in Option 3. Since the regime is already in effect, and will continue to apply until any changes are implemented (likely after Climate Reporting Entities (**CREs**) have completed two reporting periods), it is more practical to maintain the momentum of establishing structures and workstreams to support ongoing climate disclosures. Current CREs that would fall below the proposed first phase threshold of $550 million could lose the benefits of the groundwork already invested. Dropping out of the regime for a couple of reporting periods, only to re-enter once the threshold drops to $250 million, risks undermining the progress made. While a phased approach might have been sensible before the regime took effect, we should not lose the significant achievements of the first year's efforts now that the regime is operational.
4	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
	Yes potentially, although this would depend on how reporting requirements would differ between CREs. Differential reporting could provide benefits for smaller issuers, or different classes of entities. For example, if smaller entities were only required to report on Scope 1 and 2 emissions, or if there were reduced obligations around financial quantification and analysis for these smaller entities, it could make the reporting process more manageable and practical for them but allow the benefits of strategic refinement to address the future risks and opportunities of climate change through transition planning. Such differentiation could enhance the overall effectiveness and inclusivity of the climate-related disclosures regime. This could enable more market participants to contribute to climate disclosures without the high compliance burden and cost.

	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?
5	Yes, we submit that the option of shifting directly to a defined market capitalisation threshold should be considered, allowing for entities below this threshold to opt to stop reporting on a permanent basis if they wish to do so. This approach would be more efficient and would provide clarity and certainty to market participants. Specifically, we consider that moving directly to a $250 million market capitalisation threshold could be appropriate. This threshold strikes a balance between capturing significant entities with material climate impact and contribution to financial markets while avoiding an overweighted compliance burden on smaller issuers. Alternatively, we suggest considering whether the regime should apply based on business size rather public listing, similar to the ASRS in Australia, with a focus on the contribution of an entity's emissions profile to international emissions targets. Ultimately, who is captured by the CRD regime should be driven by the underlying purpose of the legislation; which is to support more efficient allocation of capital within financial markets. This threshold and the reporting structure which best achieves these aims should be stakeholder guided; considering what investors and financiers actually need, and which climate reporting entities they need to receive that information from, for their decision-making processes. The information required for investors' modelling and assessments around funding decisions should inform the appropriate threshold.
	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?
6	Yes, we do think some issuers would choose to report voluntarily, primarily because of stakeholder expectations. Disclosure obligations should be driven by stakeholder needs; for instance, if the information is valuable to banks or insurers, there is a strong incentive to produce it, even in the absence of regulation. Companies that demonstrate appropriate risk assessment and transition planning through these disclosures may gain access to more competitive sustainable finance options and reduced insurance premiums. In the instance of KMD Brands, we have set Science Based Targets, which are integral to our broader ESG strategy and B Corp commitments. Furthermore, we are assessed by external market analysts and ratings agencies on our environmental, social and governance performance; involving evaluation on information across a number of business areas including emissions reporting and progress. To ensure transparency and accuracy, we want to make sure that our data is publicly available for these assessments to provide the best score possible. A defined regulatory reporting regime that is widely understood and accepted provides a good mechanism for doing this.

7	What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime?
	Advantages: A regulated climate reporting regime ensures a level playing field, as all listed issuers are required to undertake climate reporting. This promotes fairness and consistency across the board. Additionally, the shared responsibility of climate reporting fosters collaboration among issuers, leading to collective problem-solving and innovation. As all entities work towards meeting the same requirements, it supports industry-wide upskilling and development at a uniform pace. Furthermore, stakeholders benefit from the comparability of climate-related information across all entities, although it may take some time for them to effectively utilise this data for meaningful investment decision-making. One of the key opportunities for CREs under NZCS is the requirement to integrate transition planning into overall business strategy. This requirement benefits companies by ensuring they focus on adapting to or mitigating the impacts of climate change in their forward planning. This crucial opportunity and advantage might not be prioritised by many entities without such a mandate, despite its importance. **Disadvantages**: There are a number of disadvantages to consider. Not all issuers have equal resources, capabilities, and capacity. Smaller businesses may struggle more with the obligations due to limited budgets and resources. The uniform obligations imposed by the regime apply regardless of business size, posing challenges for smaller issuers with fewer resources. Moreover, the stringent requirements of the regime limit a business' ability to focus on other important, competing priorities, reducing its overall agility and flexibility in challenging and turbulent times.
8	Do you have information about the cost of reporting for investment scheme managers?
	N/A
9	Do you have information about consumers being charged increased fees due to the cost of climate reporting?
	N/A
10	When considering the reporting threshold for investment scheme managers, which of the three options do you prefer, and why?
	N/A
11	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
	N/A
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?
	N/A
13	When considering the location of the thresholds, which Option do you prefer and why?
	N/A

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?
	N/A
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?
	We prefer a combination of Options 2 and 4 for the following reasons: • **Nature of information should determine liability settings**: The nature of the information disclosed in financial statements is retrospective, focusing on information that has already occurred and is able to be definitively stated with certainty. In contrast, many of the reporting requirements connected with CRD are forward-looking and require statements on topics that are inherently uncertain. This fundamental difference necessitates a distinct approach to liability which the FMCA does not provide. • **Support for Option 2**: We support the removal of deemed liability provisions as proposed in Option 2 for failure to meet the CRD Climate Standards. Entities are required to comply with the Standards notwithstanding the deemed liability provisions, and this is enough to ensure the production of high-quality disclosures. Removing the deemed liability provisions would alleviate the unnecessary cost and compliance-driven processes that the current regime imposes. • **Distinction between misleading statements and deemed liability**: The issues arising from liability settings in relation to misleading statements need to be considered distinctly to the issue of deemed liability. We find Option 3 unhelpful in the way it combines the two issues. We comment on the approach to unsubstantiated representation further, in section 18 below. • **Support for Option 4**: Carving out liability for certain forward-looking matters, as suggested in Option 4, would encourage more open disclosure. This approach would allow CREs and supporting service providers to develop the necessary skillsets and processes to deliver robust and reliable information. Introducing a safe harbour for a couple of years would be beneficial. However, even after a safe harbour period, the issues generated by holding CRE entities to the same level of liability for forward-looking content as applies to backwards-looking content, will persist. Ongoing protection (not just a safe-harbour) should be considered in relation to liability for forward-looking statements, along with guidance on what constitutes a reasonable basis for making a forward-looking statement. • **Encouraging target setting**: A safe harbour would better support engagement in target setting. The current settings could disincentivise target setting due to the uncertainty and substantial challenge in meeting targets. Targets are meant to be ambitious; progress over completion should be the aim and liability settings that encourage all businesses to participate in collective responsibility is vital. In the instance of KMD Brands, we have already set a scope 3 GHG emissions Target. Our view is that the liability regime should recognise the work that is required to set and achieve ambitious targets, by ensuring CREs are given the space and time to do so without the risk of added liability. Transparent reporting on progress towards targets ensures accountability and discourages setting targets without a plan to achieve them.

16	Do you have another proposal to amend the director liability settings? If so, please provide details. We propose the that a permanent solution for forward-looking statements should be considered. Instead of a temporary safe-harbour, a permanent carve-out from liability is needed. Given the inherent uncertainties and the forward-looking nature of many disclosures required by the CRD standards, it is unreasonable to hold directors to the same level of liability as for past-looking financial statements. This carve-out would encourage more open and ambitious target setting, fostering a proactive approach to climate-related goals.
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements? We believe that amending the director liability settings will not negatively impact investor trust in the climate statements and may actually improve it. With less stringent liability settings, companies can be more open and transparent in their disclosures. This increased transparency can enhance investor trust, as it demonstrates a genuine commitment to providing accurate and comprehensive information. Encouraging companies to share detailed and honest climate-related data, including challenges and failures, without fear of severe repercussions helps investors better understand the company's environmental impact and risk management strategies. This openness can lead to better-informed investment decisions and a stronger relationship between companies and their investors and financiers.
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? While we do not primarily support Option 3, if it were to be considered, we believe that the application of section 23 should be treated differently based on the nature of the statements: • **Substantiation of Information**: We disagree that section 23 should be amended regarding past-looking statements. These statements should have a reasonable basis and be substantiated with factual evidence. Ensuring the accuracy and reliability of past-looking information is crucial for maintaining trust and accountability. • **Carve-Out for Forward-Looking Statements**: Section 23 should not apply to forward-looking statements for either Climate Reporting Entities (**CREs**) or directors. Forward-looking statements inherently involve uncertainties and projections that cannot be substantiated in the same way as past-looking statements. These matters should be carved out and treated differently, with more flexibility, to encourage open, ambitious and pro-active climate-related disclosures.

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?
	We support Option 4, and the approach of introducing a modified liability framework similar to Australia's. It is our submission that under this framework, the following representations should be covered: • **Scope 3 Emissions**: Given the complexity and uncertainty associated with measuring Scope 3 emissions, this should be included under the modified liability framework. • **Scenario Analysis**: Scenario analysis involves forward-looking assessments that are inherently uncertain. Including scenario analysis under the modified liability framework would support more comprehensive and informative disclosures. • **Transition Plans**: Transition plans are forward-looking and involve numerous assumptions and projections. Covering transition plans under the modified liability framework would encourage development and disclosure of more ambitious transition strategies. • **Climate targets and goals**: Climate-related targets and goals should also be included under the modified liability framework. This inclusion would provide entities with the necessary flexibility to set and disclose ambitious targets, driving progress and not being afraid to fail. Reporting on progress towards achievement of the target however should not be carved out from the liability framework.
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)
	We support the introduction of a modified liability framework with the following considerations: • **Duration of Modified Liability**: The modified liability framework should be in place for an initial period of at least two or three years. This period would provide entities with the necessary time to develop robust processes and skillsets for producing high-quality climate-related disclosures. • **Coverage of the Framework**: The modified liability framework should prevent actions by both private litigants and the Financial Markets Authority (FMA). This comprehensive coverage would ensure that entities and directors are protected from undue liability while they adapt to the new disclosure requirements.
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?
	N/A
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?
	N/A
Final comments	
23	Please use this question to provide any further information you would like that has not been covered in the other questions.