

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

Your name and organisation

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n/a

Responses to discussion document questions

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

| Chapter 2: Reporting Thresholds | |
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| 1 | <p>Do you have any information about the cost of reporting for listed issuers?</p> <p>We support the NZX position on this.</p> <p>The LCA is aware through its members of the significant cost of climate reporting, and the figures quoted in the Consultation paper from AIRA, NZX and Turners Automotive are consistent the range experienced by our members.</p> <p>While the external consultants' costs tend to get the headlines, we would like to emphasise the amount of management and board time that is involved. While we do not have any quantitative analysis of that time/cost we know from the experience of our members that it is significant.</p> <p>The time and resource commitment is amplified by the fact that not only do directors face personal liability (which drives comprehensive due diligence and verification processes) but also the reality that the science around climate science continues to develop.</p> |
| 2 | <p>Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?</p> <p>While the LCA is concerned with the interests of currently-listed entities, it does have a broader interest in wanting a vibrant and deep public capital market. In this regard, we are aware from interactions with other market participants that the existing climate reporting settings is a barrier to listing, with some smaller LCA members questioning whether it is the straw that breaks the camel's back in terms of remaining listed.</p> |
| 3 | <p>When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?</p> <p>We support the NZX position on this.</p> |
| 4 | <p>If the XRB introduced differential reporting, would this impact on your choice of preferred option?</p> <p>We support the NZX position on this.</p> |
| 5 | <p>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?</p> <p>The LCA understands that the exemption of unlisted companies from the regime does provide a disincentive to list. However, if the underlying purpose of the climate reporting regime is to inform investors of the exposure to climate change from a risk perspective, then it is harder to see why private unlisted companies that do not seek capital from public markets should be affected. The market itself should resolve this, in that if an unlisted company seeks capital from investors who are sufficiently concerned about these matters, then such disclosure can be part of the negotiation between the investor and the company seeking the capital rather than being mandated by legislation.</p> |

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| | 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 | We think it likely that some will continue to report, having already incurred the sunk cost of the baseline work required. In other cases, their investor base might well pressure them into reporting further, especially those for whom the climate risk is one of the more significant or existential risks faced by the business. |
| | What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime? |
| 7 | We support the NZX position on this. |
| | Do you have information about the cost of reporting for investment scheme managers? |
| 8 | n/a |
| | Do you have information about consumers being charged increased fees due to the cost of climate reporting? |
| 9 | n/a |
| | When considering the reporting threshold for investment scheme managers, which of the three options do you prefer, and why? |
| 10 | n/a |
| | If the XRB introduced differential reporting, would this impact on your choice of preferred option? |
| 11 | n/a |
| | 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? |
| 12 | n/a |
| | When considering the location of the thresholds, which Option do you prefer and why? |
| 13 | n/a |
| | 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? |
| 14 | 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? |

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| | <p>We support Option 3:</p> <ul style="list-style-type: none"> - amend the FMC Act so that section 534 (deemed liability for directors) no longer applies to climate related disclosures; and - amend the FMC Act so that directors can no longer be liable for aiding and abetting an unsubstantiated representation. <p>The problems with the current liability settings as set out in the consultation paper are succinctly articulated and the Option 3 change would address these.</p> <p>Given the nature of climate statements and the uncertainty that naturally exists in relation to the required forward-looking information, the LCA considers this is a more appropriate setting. Importantly, liability will remain under section 461ZG where a director knowingly allows a climate statement to fail to meet the climate standards.</p> |
| 16 | <p>Do you have another proposal to amend the director liability settings? If so, please provide details.</p> <p>No</p> |
| 17 | <p>If the director liability settings are amended do you think that will impact on investor trust in the climate statements?</p> <p>We do not consider the change should erode investor confidence. Knowing failure to comply will still attract liability for directors, and so there would still be an appropriate level of tension for boards such that they will ensure robust due diligence and reporting, in the same way as they do when reporting on other matters.</p> <p>Listed companies face risks other those related to climate change, and in many cases those risks will be more significant than climate-related risks in terms of both likelihood and consequence. Yet there is no section 534 type liability in relation to statements made in relation to those non climate-related risks.</p> <p>In this regard section 6.1 of the NZX Corporate Governance Code recommends that listed companies report their material risks and how these are being managed. Knowing failure to report correctly on such risks attracts the same liability as other misstatements. It therefore means a level playing field in that directors have equal tension in the accuracy and completeness of advice to investors over their material risks in general, whether they are connected to climate change or, quite possibly, something more likely and with more severe consequences.</p> |
| 18 | <p>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> <p>We support the NZX position on this.</p> |
| 19 | <p>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> <p>We support the NZX position on this.</p> |

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| 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 NZX position on this. |
| 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? |
| | The LCA does not have a particular view on this. |
| 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? |
| | See 21 above |
| Final comments | |
| 23 | <p>Please use this question to provide any further information you would like that has not been covered in the other questions.</p> <p>In summary, we consider that there has been regulatory overreach in the current thresholds and liability settings that elevate the importance of climate-related risks beyond what is universally appropriate for listed companies.</p> <p>Directors of listed companies in our experience take their responsibilities seriously and are acutely conscious of their own liability risk. Because of the current liability regime in relation to climate statements, directors and executives are inevitably forced to place what can be an undue focus on climate risk and disclosure, as opposed potentially to more pressing business opportunities and risks.</p> <p>Accordingly, the LCA welcomes the discussion that MBIE has initiated, and we look forward to hearing the outcome of the consultation process.</p> |