

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

Your name and organisation

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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?
	N/A
2	Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?
	N/A
3	When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?
	N/A
4	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
	N/A
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?
	N/A
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?
	N/A
7	What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime?
	N/A
8	Do you have information about the cost of reporting for investment scheme managers?
	Whilst the specific cost of reporting has not been quantified, there are soft and hard costs incurred in relation to CRD reporting. The various hard costs involved for reporting include FMA and Companies office filing fees, legal costs, design costs, climate scenario analysis costs, data provider fees, and going forward audit assurance costs. The soft costs of colleagues working on the CRD are not inconsequential. In this context, Mercer is supportive of the MBIE's intent to streamline the regulatory requirements to promote a more competitive and efficient business environment.
	Do you have information about consumers being charged increased fees due to the cost of climate reporting?
9	We do not have information about consumers being charged increased management fees due to the cost of climate reporting, but providers may have recovered some costs from the relevant funds which ultimately is incurred by investors as an expense.

	When considering the reporting threshold for investment scheme managers, which of the three options do you prefer, and why?
10	Mercer would be most supportive of Option 2. Option 2 mitigates the risk of investment scheme managers structuring funds under management below \$5billion to avoid application of CRD reporting, which would affect the applicability and purpose of having the regime. Furthermore, this approach would ensure the larger managers in the New Zealand market are captured under the CRD regime to help further the cause of sustainability and climate change whilst relieving pressure and reducing compliance costs on smaller managers. We note however that the thresholds should also consider incorporating a lower end threshold to expressly exclude smaller schemes incorporated into funds under management of a manager. For instance, there may be a manager with \$5billion in total assets, but this may include smaller schemes with lower values (e.g. \$100m). Requiring separate CRDs for the small scheme may lead to high in-fund costs. It would therefore be beneficial for investors and managers if a lower end threshold is incorporated so that smaller schemes are carved out and lessen the burden for compliance. A further option to consider is making explicit within the Climate Standards that it is permissible for schemes with a lower value to consolidate reporting with other schemes from the same manager to reduce the cost of compliance for those schemes. This would mean individual funds would be reported upon; however, where there is commonality across governance, risk management, and strategy disclosures, the Climate Statements would be contained within the one document. Another option is to consider whether the threshold for smaller schemes should be per fund rather than per scheme.
11	If the XRB introduced differential reporting, would this impact on your choice of preferred option? Yes – differential reporting for CREs of different industries (i.e. banks vs investment scheme managers) would be helpful to create clearer guidelines as to what is required for CRDs with an aim of significantly lowering the costs and resources required to produce CRDs. Whilst smaller CREs with limited resourcing may still struggle to comply, the threshold issue would significantly benefit from CREs having clearer and differentiated reporting guidelines suited to the need and objectives of the CRE and lower the barrier to entry for CRDs to be produced.
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? Noting our preferred option in question 10 above, our view is the focus should be to simplify the reporting standards in the CRD regime as well as reducing the number of entities which are captured by the CRD regime. The regime is designed to address current risks to our climate, and consequently the market should all take part to the extent possible, which will be best achieved by having clearer reporting standards and therefore significantly reducing costs to implement such reporting.
13	When considering the location of the thresholds, which Option do you prefer and why?

	Our preference is for the thresholds to be located in secondary legislation. This will allow for any amendment to thresholds to be implemented in an efficient manner to reflect both shifting climate demands and any amendments required to CRD requirements going forward (given the young nature of the regime currently). Whilst market certainty may be compromised with this approach, we believe this is necessary in the early stages of the regime to reach an agreed position which the market can adopt.
	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	We agree a statutory obligation to consult prior to any amendments to secondary legislation would be helpful to implement amendments which the market recognises as being necessary and to not have too many amendments which would disrupt market understanding. Furthermore, it would be helpful to place a time limit on the delegated authority to allow parliament to review at a longstop date on whether the market position is well established enough to not require secondary legislation going forward.

Chapter 3: Climate reporting entity and director liability settings

	When considering the director liability settings, which of the four options do you prefer, and why?
	Our view is option 4 would be an appropriate amendment to director liability settings. Whilst directors should ultimately have some form of liability for climate statements in order to be held accountable for a CRE's CRDs, given the regime is at its early stages, directors should have modified liability whilst the market navigates the standards to which CRDs need to be provided. However, also refer to our comments to question 18. We suggest the modified settings should be broader than that contemplated within paragraph 120, which if not extended would mean option 2 or 3 should also be incorporated alongside of option 4.
	A further element to add to option 4 may be to incorporate a timeline to the modified director liability settings with a view to developing the CRD regime in that timeframe and the accompanying director liabilities to be reassessed. It may be appropriate for this to be for about 5 years to review international trends in the CRD space and to test the current regime in New Zealand.
15	We note however that the status quo of director liability should not be the position to revert to – parts of CRDs are based on inherently qualitative and currently incomplete data (e.g. Scope 3 emissions and carbon emission reduction targets) and to apply deemed liability to such reporting places undue burden on directors and diminishes the value of CRDs, as it encourages the market to take a conservative approach to reporting when such liability is at risk. This is coupled with the fact that auditing CRDs is limited to assurance over scope 3 emissions, meaning that obtaining wider independent assurance could be prohibitively expensive for many companies to gain the assurance directors would want. It is market practice for directors to make decisions on specialist areas of a business based on due internal processes being followed with appropriate sign offs from specialist experts and on the basis of external auditing reports. This is difficult for participants to achieve with CRDs (especially in the infancy of the CRD regime) and therefore having a timeline to modified liability for directors gives space to review the best approach whilst alleviating the pressures noted above (a hybrid approach to options 3 and 4 may be the best approach).

16	Do you have another proposal to amend the director liability settings? If so, please provide details.
	As above in question 15, suggesting a hybrid approach to options 3 and 4.
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements?
	No – the amendment is being made in the spirit of trying to clarify and best implement the CRD regime and we also do not believe investors generally would factor in amendments to director liability when making investments. Furthermore, investors who may be aware of such amendments and factor in director liabilities specifically can take comfort in that the proposed amendment is not a complete diversion of director liability and the relevant CRE is still at risk of being caught under sections 19 and 23 of the FMCA which presents risks beyond just legal enforcement such as reputational damage.
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?
	N/A
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?
	Statements with respect to scope 3 emissions should not be covered under the modified liability of directors, and any data / reporting which is forward looking, inherently speculative and qualitative should be excluded from director liability in the early stages of the CRD regime. The pressure of providing such information whilst being potentially liable leads to useful information being withheld from the market to assist investors in making an informed decision. Director liability should therefore be adjusted until there is more certainty with respect to reporting standards.
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 framework should cover the FMA as well as the purpose of introducing a modified liability framework is to alleviate the pressures of presenting and reporting on data that could inherently be qualitative and speculative to assist the market in making informed decisions. Note, we do not think director liability should not be reintroduced – this is simply a temporary mechanism whilst clearer guidelines are being ironed out (refer Q15). We do believe it is appropriate for director liability to be maintained to ensure the board of CREs are aware of the CRD requirements and have a base level of understanding to make informed disclosures.
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?

	Although there may be value to parent company climate statements being filed in New Zealand, this should be adopted only after there is more clarity and solidarity with the CRD regime in New Zealand. Given the current CRD regime in New Zealand is in the early stages, end users having exposure to parent company statements in a New Zealand registry may cause confusion as to any differences in standards among different jurisdictions for climate standards and consequently, confusion in the market to make informed decisions. Furthermore, the climate statement of parent companies may introduce data and/or be inconsistent with the climate statements of the New Zealand company for various reasons and impact end user investment decisions unnecessarily. It may therefore be beneficial to be clear that this is not a requirement but rather, something which would be helpful if it would assist end users.
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, but the points raised in the previous question equally apply.
Final comments	
23	Please use this question to provide any further information you would like that has not been covered in the other questions. Thank you for the opportunity to provide comment on this.