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

Your name and organisation

Name	Mercury NZ Limited – Nicola Mulvay, Esther Tomkinson
Date	14 February 2024
Organisation (if applicable)	Mercury NZ Limited
Contact details	nicola.mulvay@mercury.co.nz esther.tomkinson@mercury.co.nz

Privacy and publication of responses

☐ 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***. 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.

N/A

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.

N/A

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?
	Mercury's external costs related to climate related disclosures (CRDs) for FY2024 were in the range of $130-150k. This does not recognise initial costs incurred in FY2023 when Mercury published a voluntary Climate Statement aligned with the Climate Standards. We expect our CRD related costs to increase in the short term as we increase spend on internal systems that support the preparation of CRDs, but ultimately decrease as our processes becomes more systemised.
2	Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?
	Mercury acknowledges that the CRD regime, including listed issuer thresholds and director liability settings, is a factor that companies will likely take into account when considering whether to list in New Zealand. However, we also note that climate reporting requirements and expectations are increasing internationally, and this may not be a long term consideration or barrier.
3	When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?
	Mercury broadly supports alignment with the Australian regime and other overseas standards to promote consistency and comparability of climate information. However, we do not consider that the proposed options on reporting thresholds align with the Australian thresholds in an effective way. We acknowledge the difficulties of attempting to align with a regime that has a delayed start to the New Zealand regime where reporting entities have already begun reporting. Mercury prefers maintaining the current reporting thresholds under Option 1. This maintains the number of reporting entities to encourage transparency of climate reporting. As noted in our response to question 4, we consider that concerns about compliance costs and other reporting burdens could potentially be addressed through differential reporting requirements. In our opinion, Option 2 represents a step backwards from New Zealand's leading position on mandatory climate reporting. Additionally, Option 2 would ultimately result in New Zealand's regime becoming out of step with the Australian regime when the Australian group 2 and 3 entities begin reporting. Mercury supports the overall purpose of the CRD regime, and we consider that this is more likely to be achieved with more entities being required to report. The staged reporting approach in Option 3 most closely aligns to the Australian regime. However, we agree that there may be some confusion for those entities that have a gap in reporting under Option 3. There is a possibility that this option may not provide effective relief if those entities choose to continue to voluntarily report in the

	interim to respond to stakeholder demand and maintain momentum and continue to improve processes. Similarly, those entities that would no longer be required to report under Option 3 may also continue to do so for other reasons (see our response to question 6). If Option 3 was progressed, we think it could be further aligned to the Australian regime by adding a third step with a $50 million threshold.
4	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
	Mercury prefers Option 1 and encourages the XRB to consider differential reporting.
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?
	Yes, Mercury anticipates that if thresholds are changed, some issuers may choose to voluntarily report due do demand from investors, consumers or other stakeholders. This may be particularly true where issuers have overseas stakeholders that begin to expect climate disclosures regardless of local requirements.
7	What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime?
	Mercury supports the purposes of the CRD regime. More issuers in a regulated regime should result in the production of comparable information for stakeholders, leading to enhanced information transparency. Additionally, being in a regulated reporting regime may be the catalyst for some entities to elevate the priority of climate matters within their organisations, which is a positive outcome that Mercury supports. As has already come to MBIE's attention, potential disadvantages could include increased compliance costs and challenges around the source and quality of data inputs where the regime has specific requirements.
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?
	Mercury supports Option 1, maintaining the status quo and keeping the reporting thresholds in the Financial Markets Conduct Act. We support certainty in the CRD regime and recognise the need to build stakeholder confidence in CRDs. We do not anticipate the thresholds would require frequent amendment after this initial period.
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?
	Under Option 2, the Minister should be required to consult with stakeholders for a reasonable period before making a change.
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?

	Mercury prefers Option 2. In our view deemed liability under section 534 is a key concern for directors and others. We think it is appropriate that directors may still be liable if they aided or abetted, or were knowingly party to, a contravention by a climate reporting entity, but do not automatically have deemed liability. Removing deemed liability is likely to further promote the purpose of the CRD regime, by reducing focus of directors on liability and allowing a less risk-averse and conservative approach to reporting. As noted in the discussion document, removing deemed liability aligns to the liability approach under the Australian regime. Alternatively, we would support Option 3 on the basis that potential liability for aiding and abetting unsubstantiated representations was removed only for specific forward-looking statements. We note that accessory liability plays an important role in ensuring that directors are engaging responsibly in the disclosure process. However, we acknowledge that this may be less appropriate for specific climate-related disclosures which involve forward-looking statements that can be more difficult to evidence reasonable grounds for. The additional amendment proposed in Option 3 may be appropriate in these cases but not necessary in relation to all statements. We encourage MBIE to consider whether Option 3 would best achieve the purpose of mandatory climate-related disclosures, namely to ensure that the effects of climate change are routinely considered in decision making, to demonstrate responsibility and foresight in considering climate issues, and to support the more efficient allocation of capital and smooth the transition to a low emissions economy. We also note that the regime is still in its infancy, with entities working at pace to develop the organisational capability needed to routinely consider climate change in decision making and engage in foresight (which is inherently uncertain) when considering climate issues. We suggest that MBIE needs to consider how to best balance, on the one hand ensuring Boards are engaging responsibly in the disclosure process, and on the other ensuring that the disclosure assurance process doesn't limit or shift focus away from achieving the broader purpose of the regime. Unintended consequences of criminal liability settings for directors in connection with climate-related disclosures should also be considered in this context. The potential for criminal liability may have the effect of turning unnecessary focus on assurance and distracting from the purpose of disclosures. Introducing a temporary safe harbour as suggested in Option 4 may provide temporary relief, however this measure alone risks delaying concerns about director liability rather than directly addressing them. In our response to question 16 below we suggest that Option 4 could be combined with another option.
16	Do you have another proposal to amend the director liability settings? If so, please provide details. We suggest that either Option 2 or Option 3 could be combined with Option 4 to reduce liability settings and also provide a temporary safe harbour from liability in respect of certain statements for a number of years until reporting has matured. This would more closely align to the Australian liability regime and allow reporting entities and directors to upskill and develop their reporting over the initial period.
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements?

	No, Mercury is confident that investor trust in climate statements will be maintained as the climate reporting entity itself is still liable for contraventions regardless of the director liability settings. It may be more concerning to investors if New Zealand climate reporting was seen to be more conservative (and less useful) than reporting internationally, due to director liability settings driving undesirable reporting outcomes.
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?
	No, Mercury does not think section 23 should be completely disapplied for climate reporting entities and directors. As mentioned in our response to question 15 above, retaining the rules around unsubstantiated representations is important to incentivise good reporting practices and retain stakeholder trust in disclosures. However, there may be some specific cases where it may be appropriate to disapply section 23 where disclosures relate to inherently uncertain forward-looking statements. For example, statements made around scenario construction and analysis.
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?
	Mercury agrees that any modified liability should be aligned to Australia and apply to statements about Scope 3 emissions, scenario analysis and transition planning. Additionally, we would support modified liability applying to current and anticipated financial impacts. Many reporting entities relied on adoption provisions in respect of these disclosures in the first reporting period, showing how challenging they are. In our view modified liability would allow entities to begin reporting on financial impacts while building internal capability and director confidence.
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)
	Mercury supports alignment with Australia, with a modified liability framework applying to private litigants only and a similar 3 year timeframe. However, we note that it may be appropriate to reduce this to recognise that entities in New Zealand have been reporting for longer than Australian entities. The timeframe for modified liability should also be tied to the timeframes for any threshold step changes, if these are implemented.
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?

	Mercury generally supports more transparency for climate disclosures by encouraging New Zealand subsidiaries of multinational companies to file their parent company climate statements in New Zealand. We agree with the comments in paragraph 129 of the discussion document. Although we note that these disclosures can already be easily found and accessed by interested parties and we are not certain the amount of additional value a central repository would add. Any confusion about the status of overseas climate statements could be easily avoided by clearly signalling on the register where a filed statement is for an overseas parent and not regulated in NZ.
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?
	A dedicated webpage by MBIE could be a good alternative option. We note that this should be clearly cross referenced in the current CRD register and vice versa to avoid confusion from having two different pages.
Final comments	
23	Please use this question to provide any further information you would like that has not been covered in the other questions.
	Mercury welcomes MBIE's engagement with the CRD regime and appreciates the commitment to improving the regime. In addition to reporting threshold and director liability settings, Mercury recognises the importance of aligning disclosure requirements in the Climate Standards with overseas frameworks, including the International Sustainability Standards Board framework and Australian regime to support consistency and comparability of climate-related disclosures globally. We encourage further efforts in this direction and look forward to upcoming XRB consultations on this matter. We look forward to continued collaboration and dialogue as the reporting regime and standards evolve.