Submission template

Adjustments to the climate-related disclosures regime

This is the submission template for the discussion document, *Adjustments to the climate-related disclosures regime*. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **5pm on 14 February 2025**.

Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table: "Your name and organisation".
2. Fill out your responses to the consultation document questions in the table. Your submission may respond to any or all of the questions in the discussion document, as appropriate.
3. When sending your submission:
    a. Delete this page of instructions.
    b. Please clearly indicate in template if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures.
    c. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
    d. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE's website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
        i. Please state this in the template, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
        ii. Indicate this on the front of your submission (e.g. the first page header may state "In Confidence"). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
4. Please send your submission (or any further questions):
    - as a Microsoft Word document to ***climaterelateddisclosures@mbie.govt.nz*** (preferred), or
    - by mailing your submission to:

        Corporate Governance and Intellectual Property Policy
        Business, Resources and Markets
        Ministry of Business, Innovation & Employment
        PO Box 1473
        Wellington 6140
        New Zealand

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

Your name and organisation

Name	Kristin Brandon Head of Policy
Date	14 February 2025
Organisation (if applicable)	NZX Limited (note this also reflects the views of the NZX Corporate Governance Institute and NZ Corporate Governance Forum)
Contact details	Email: kristin.brandon@nzx.com Mobile: 027 5 776 994

Privacy and publication of responses

[To tick a box below, double click on check boxes, then select 'checked'.]

☐ 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.

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.

Responses to discussion document questions

About NZX Limited

NZX is a licensed market operator and New Zealand's exchange. NZX, along with many other listed issuers on NZX's markets, is a climate reporting entity (**CRE**) required under Part 7A of the Financial Markets Conduct Act 2013 (**FMC Act**) to prepare climate statements in accordance with the Aotearoa New Zealand Climate Standards (**NZ CS**).

NZX is a member of the Sustainable Stock Exchange Initiative (a United Nations partnership programme organised by UNCTAD, the UN Global Compact, UNEP FI and the PRI), and a member of the Sustainable Business Council.

NZX's markets have a total market capitalisation of approximately $235bn, with approximately $6.9bn comprised of 'green bonds' on the NZX Debt Market.

NZX's role in CRD reform

NZX strongly supports the climate-related disclosures (**CRD**) regime. We are committed to supporting the development of capital markets in a manner that contributes to a climate-resilient future for New Zealand.

Although NZX is supportive of the CRD regime, we believe the disclosure requirements should be proportionate, including in relation to thresholds at which an entity becomes a CRE, and in relation to director liability.

NZX considers these adjustments need to be made to the CRD regime to ensure it is practical, workable, and right-sized for New Zealand. Current reporting pressures need to be relieved to allow CREs to focus their time, effort, and resources on climate change mitigation and adaption – rather than on lawyers, consultants and assurance.

NZX has engaged closely with the Government, MBIE, the FMA and XRB, throughout the design and implementation of the CRD regime, including appearing at Select Committee when the Bill giving effect to the CRD regime was introduced. In 2024, NZX continued that engagement in relation to the proposals that are contained in the Consultation Paper. We appreciate the effort involved in undertaking the regulatory reform process and would like to thank the Government and relevant agencies for engaging with us on these matters, and listening to our concerns.

NZX CGI and NZCGF Endorsement

The NZX Corporate Governance Institute (NZX CGI) is an industry body that supports NZX in the development of NZX's regulatory policy relating to corporate governance matters. The NZ Corporate Governance Forum (NZCGF) is an industry association of institutional investors with significant investments in New Zealand listed companies, and a member of the NZX CGI. The NZX CGI and NZ CGF support the climate-related disclosures (CRD) regime and believe that changes should be made regarding reporting thresholds and director liability settings to better align the CRD regime to NZX Issuers' ability to bear reporting and disclosure costs. The NZX CGI and NZCGF endorse the spirit of the NZX submission in general without advocating for any of the particular options provided by MBIE.

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?
	Anecdotally, and as a CRE ourselves, we are aware that the costs of reporting for issuers are significant, as reflected in the consultation paper. This feedback is consistent with the results of the AIRA survey referred to in the paper which concluded that the median cost of reporting for survey respondents was between $200-$300k (without the costs of internal time, or assurance). NZX incurred approximately $250k of external cost in preparing its own climate statements for the 2023 reporting period (in which NZX relied on 6 adoption provisions) with similar costs anticipated for the 2024 reporting period. There were also significant internal costs incurred in the preparation of the climate statements over the reporting period, including significant senior management and director time.
2	Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?
	Yes. As New Zealand's market operator, NZX is aware of a number of listing candidates who have elected not to pursue a listing as a direct consequence of the CRD framework. As noted in the consultation paper, this issue is exacerbated by the lack of alignment between New Zealand's and Australia's climate reporting frameworks, making ASX an even more viable listing venue alternative for New Zealand companies. We consider the current CRD reporting thresholds and liability settings are acting as a barrier to doing business in New Zealand, inhibiting the efficient allocation of capital for the New Zealand economy, and are reducing investors' access to investible product and participation in New Zealand's capital markets. NZX's views on this issue are well articulated in the consultation paper.
3	When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?
	We support option 2 (the threshold at which listed issuers must report being increased to $550m market capitalisation in early 2026), and also option 3 (option 2 until early 2028 at which point the threshold reduces to $250 market capitalisation) so long as the XRB introduces appropriate differential reporting standards for listed issuers with a market capitalisation between $250m and $550m (i.e. group 3). We consider these thresholds will better calibrate the framework to ensure smaller issuers are not disproportionately adversely affected by the reporting regime, noting the costs of climate reporting are not strongly correlated with issuer size. We consider removing smaller issuers from the framework will provide those issuers with a greater ability to utilise their human and financial resources for climate adaption and planning, rather than those resources being absorbed by reporting and assurance activities.
4	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
	As noted above, NZX only supports option 3 on the basis the XRB introduces appropriate differential reporting standards for issuers with a market capitalisation between $250m and $550m (i.e. group 3).

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?
	NZX is comfortable with the reform proposals articulated in the consultation paper. NZX would also support the CRD framework being applied to private or unlisted entities. We do not consider there is any reason to differentiate between listed and unlisted entities given the purpose of the CRD framework to ensure the effects of climate change are routinely considered in business, help entities better demonstrate consideration of climate issues, and to smooth New Zealand's transition to a more sustainable low-emissions economy. New Zealand's legislation does not cover large, privately owned businesses and it therefore creates an unlevel playing field between public and private companies regarding emissions reporting and transparency. Private and unlisted entities are included in the Australian CRD regime meaning the New Zealand regime does not align with the Australian approach.
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?
	While we do not have specific evidence, we consider it is probable many listed issuers would continue to voluntarily report their climate risks and opportunities. We note that regardless of the CRD framework, NZX Corporate Governance Code recommendation 4.3 recommends that an issuer should provide non-financial disclosure at least annually, including in respect of environmental factors and practices. In addition, Code recommendation 6.1 recommends an issuer should report the material risks facing the business and how these are being managed (with the Code commentary noting that these may include ESG factors). Issuers of equity securities are required to report the extent to which they have complied with Code recommendations in their annual corporate governance reporting under NZX Listing Rule 3.8.1(a). In addition to Code reporting, we consider that larger issuers, or issuers with more material exposures to climate-risk and opportunities will be likely to voluntarily report. Where an issuer has investors who have adopted the NZ Stewardship Code, there is likely to be greater demand for climate reporting given the obligations these investors have to incorporate material ESG matters in their investment decision-making, and to report the effectiveness of their stewardship practices. In addition, the Institute of Directors' 'The Four Pillars of Governance Best Practice' recognises the importance of corporate reporting and transparency in relation to ESG matters including climate change.
7	What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime?

	NZX considers the most significant disadvantages of a listed issuer being required to a report under the climate reporting regime are the liability that attaches to the issuer and its directors, and the resources required to comply with NZ CS given the nature of the information that must be reported. NZX does not consider the nature of climate-related disclosures warrant personal criminal liability for directors, given the inherent difficulties in measuring the matters that are required to be disclosed. The effect of this is a significant cost on publicly listed companies related to additional legal fees and assurance. It may also lead to difficulties for publicly listed companies to recruit directors, with follow-on implications for the availability of directors. Cost and liability settings are barriers to accessing New Zealand's public market for companies considering whether to list, as privately owned New Zealand companies do not face the same mandatory requirements. In addition, for issuers operating in multiple jurisdictions there is a disadvantage because the reporting and assurance required by NZ CS differs from the settings in foreign jurisdictions (including Australia). The advantages of inclusion in the CRD framework are that stakeholders may have more confidence in the reporting provided through a regulated regime, and benefit from the comparability of reported information.
8	Do you have information about the cost of reporting for investment scheme managers?
	We do not have information about the generic costs of reporting for investment scheme managers. Smartshares Limited (Smart), an investment scheme manager that is a wholly owned subsidiary of NZX, incurred significant internal costs in the preparation of separate climate statements for each of its ten registered managed investment schemes over the reporting period, including significant amounts of senior management (legal, product and investment team) and director time. Smart also incurred externa costs as part of its due diligence process.
9	Do you have information about consumers being charged increased fees due to the cost of climate reporting?
	We do not have information about increased fees being charged to consumers due to the cost of climate reporting.
10	When considering the reporting threshold for investment scheme managers, which of the three options do you prefer, and why?
	We support option 3 ($5 billion per scheme) which would align with the approach taken in Australia. We consider that the current CRD reporting thresholds for investment scheme managers are significantly different to the thresholds that will apply in Australia, and could act as a disincentive for investment scheme managers operating in New Zealand. We do not consider that it is likely that an investment scheme manager would use scheme creation as an anti-avoidance measure, given the high barriers to entry that are involved in scheme creation (e.g. appointment of a supervisor, product disclosure statement, bespoke financial statements etc).
11	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
	While it would be useful for the XRB to introduce differential reporting standards for investment scheme managers, to reflect that these reporting entities are reporting the emissions of entities in which their funds invest, we do not consider that this would impact our preference for option 3.

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?
	We are comfortable with the reform proposals articulated in the consultation paper.
13	When considering the location of the thresholds, which Option do you prefer and why?
	We consider it is appropriate for the thresholds to be included in primary legislation, given the significance of the reporting burden and liability settings for climate reporting entities (even if the proposals to alter the liability settings contained in the consultation paper are effected). The time and cost involved in preparing climate statements is significant, and it is important for entities to have certainty as to whether and when they will fall within the regime.
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?
	If the reporting thresholds were moved to secondary legislation, we consider there should be a statutory obligation to consult on the changes, and a criterion the thresholds are not set at a level that is lower than necessary to achieve the purposes of the legislation.
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 support option 3 (disapply section 534 which creates deemed director liability for climate statements that do not comply with the climate standards, and section 23 which creates potential liability for unsubstantiated representations irrespective of whether the statement is false or misleading). We consider option 3 would address the concerns articulated in paragraph 102 of the consultation paper which clearly sets out our concerns in relation to the current director liability settings. We consider option 3 to be appropriate given the intricate nature of the climate statements' requirements and inherent uncertainty in relation to forward looking information that is required to be reported, noting that director liability would remain under section 461ZG (which creates liability for a director who knowingly allows climate statements fail to comply with the climates standards at the time of lodgement).
16	Do you have another proposal to amend the director liability settings? If so, please provide details.
	We do not have an alternative proposal relating to the director liability settings.
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements?

	We do not consider the proposed amendments will negatively affect investor trust when relying on climate statements. The proposed amendments to the director liability settings will not remove the broader liability framework which retains director liability where a director knowingly allows climate statements to be lodged which do not comply with the climate standards, and broader liability for climate reporting entities. We consider investors will continue to take confidence that the FMA is monitoring climate statements for compliance with the climate standards. We consider the modified liability settings will continue to be sufficient to incentivise reporting entities to ensure their climate statements comply with the climate standards. In addition, we consider regulatory settings are only one avenue that investors and other stakeholders rely upon to ensure they receive robust information from issuers. NZX Corporate Governance Code recommendation 8.2 (against which listed issuers of equity securities must report against in their governance report on a 'comply or explain' basis) recommends an issuer should provide investors with the ability to easily communicate with the issuer. The commentary to this recommendation notes that shareholders should be specifically given an opportunity to express their views to the issuer on important issues, and that an issuer should have an investor relations programme outlining how the issuer plans to engage with investors and encourage their input.
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?
	We support section 23 being disapplied for climate reporting entities as well as directors in relation to climate statements. We consider this would be appropriate given the future looking and uncertain nature of the information that is required to be included in climate statements.
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 do not support option 4. We consider Option 3 is preferable to a modified liability period as applies in Australia, noting that the class action culture in Australia differs from New Zealand, and the broader CRD liability framework differs from the framework in Australia including that under Option 3 liability will remain for climate reporting entities and directors where there is an element of knowledge.
20	If you support the introduction of a modified liability framework, how long should the modified liability last for? And who should be covered, i.e., should it prevent actions by just private litigants, or should the framework cover the FMA as well? (Criminal actions would be excluded)
	We do not support Option 4. However, if it were to be adopted, we would support it being framed broadly in relation to regulatory action from the FMA, given the complexity of the climate-related disclosure framework, and the forward-looking nature of the information required to be reported.
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?
	NZX does not have strong views on this issue. However, we consider it would be preferable for foreign parent company climate statements to be made available via a webpage, rather than through a register maintained by MBIE. We consider a register could confuse investors and other stakeholders that the foreign climate statements are required to comply with the climate standards and are overseen by a New Zealand regulator.

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?
	Please refer to our response to question 21.

Final comments	
	Please use this question to provide any further information you would like that has not been covered in the other questions.
23	As New Zealand's market operator and as a climate-reporting entity, NZX sees the benefits in transparency of companies' climate-related risks. It will help promote more informed decision making – including for investment decisions – that will facilitate the transition to a more sustainable, low-carbon economy. It allows organisations to appropriately price climate-related risks and opportunities, value assets and allocate capital efficiently. However, it is important these potential benefits are weighed against the way the New Zealand regime is currently designed which imposes significant costs for listed New Zealand companies, which disproportionately effect small and mid-sized listed issuers. We strongly support the initiatives set out in the consultation paper that would increase the climate-reporting entity thresholds and reduce the director liability settings. We consider our views are well articulated in the consultation paper, and reflect our engagement with the Government, MBIE, the FMA and XRB in 2024. It is important these changes are made to ensure the legislative settings enable the CRD framework to deliver on its purpose of supporting more efficient allocation of capital to smooth the transition to a more sustainable, low-emissions economy. We support right-sized liability and reporting thresholds to ensure New Zealand businesses appropriately allocate their human and financial resources to climate risk management and adaption. While we endorse the objectives of the CRD framework and consider that such reporting encourages entities to consider climate risks and opportunities as part of their business practices, the current settings result in over-emphasis being placed on compliance reporting and assurance activities. We consider it would also be appropriate for large private businesses to also be included within the CRD framework. There is no basis on which to differentiate listed issuers from other businesses when considering the objectives of the legislation. Present settings have created an unlevel playing field between public and private companies regarding emissions reporting and transparency. **NZX CGI and NZCGF Endorsement** The NZX Corporate Governance Institute (NZX CGI) is an industry body that supports NZX in the development of NZX's regulatory policy relating to corporate governance matters. The NZ Corporate Governance Forum (NZCGF) is an industry association of institutional investors with significant investments in New Zealand listed companies, and a member of the NZX CGI. The NZX CGI and NZ CGF support the climate-related disclosures (CRD) regime and believe that changes should be made regarding reporting thresholds and director liability settings to better align the CRD regime to NZX Issuers' ability to bear reporting and disclosure costs. The NZX CGI and NZCGF endorse the spirit of the NZX submission in general without advocating for any of the particular options provided by MBIE.