

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?
2	Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand? No. There are many other, more fundamental reasons why some entities choose not to list in New Zealand. CRD settings should not be singled out as a scapegoat.
3	When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?

None of the options presented address the issues that have been raised.

Now that Australia has followed NZ's lead and introduced its own set of Disclosure requirements, it would make much more sense to tweak our requirements to more closely mirror theirs.

The coverage of Australia's regime is far broader than all three options considered in the Discussion Document. Australia's CRD Regime covers large private companies, National Greenhouse and Energy Reporting (NGER) reporting entities, superannuation and MIS schemes with AUD\$5B or more in assets under management, and listed companies that trigger size thresholds.

The criteria for inclusion within the different groups is also more nuanced. Where Options 1, 2, and 3 in the Discussion Document solely use market capitalisation as the threshold, Australia instead uses the metrics of consolidated revenue, consolidated gross assets and/or number of employees. For the sake of completeness, it is also worth noting that market cap and consolidated revenue are not equivalent – one cannot be simply substituted for the other when comparing the different standards.

Option 3 is the only option that proposed introducing staged reporting, but there are lots of problems with this option.

Unlike when Australia's regime was introduced, New Zealand's regime is already up and running. Introducing a staged approach now could mean that almost half of the CREs would pause reporting temporarily, creating inefficiencies. The first few years of producing Climate Statements are the most difficult and resource-intensive for CREs, including because they require upskilling. However, CREs under the current regime have already invested their resources in this process, and will have produced two climate statements before any changes to the regime are implemented. The "stop-start" approach in Option 3 will be highly disruptive.

Internationally major companies have been reporting their emissions for decades. In 2002, the Carbon Disclosure Project began asking companies to disclose their carbon risks, and by 2022 nearly 18,700 organisations (including many in Australasia), representing companies worth half of global market capitalization disclosed their carbon information through CDP. I was therefore dismayed, when the provisions were first made mandatory in NZ, that the Financial Markets Authority stated very clearly that they would be very generous in year one "taking an educative approach". In other words, companies have already been cut a lot of slack in getting their act together to gather information which it is in the best interests of themselves and their investors to be on top of. Responsible boards of directors should already be asking their teams about their climate emissions and risks to factor into their strategy, and risk management.

Unlike in Australia, the proposed Option 3 only captures listed issuers with over \$250m market cap. Australia's Group 3 threshold extends to a third group, covering both listed and unlisted entities with >\$50m revenue, >\$50m, and/or >100 employees. This is far more inclusive than what Option 3 would cover, with the 'lowest' threshold being >\$250m market cap.

Table 2 of the Discussion Document claims that approximately 110 NZ entities would be captured by Australia's Group 3 if adopted in New Zealand. That means that Option 3 would result in roughly 29 fewer climate-reporting entities than if New Zealand adopted Australia's group thresholds - and significantly fewer than our current standards. However, this is likely a significant underestimate, as Table 2 only considers listed entities - whereas Australia's Group 3 also includes unlisted entities.

My preferred approach is to maintain the status quo, with these two changes:

1. I strongly support the XRB introducing different standards for different classes of entities. This would allow New Zealand to leave the threshold under the FMCA unamended but still provide greater flexibility regarding reporting requirements. I also support the

	introduction of differential reporting requirements in regulation rather than legislation, to provide greater flexibility in the future. 2. Second, I strongly encourage the government to use this opportunity to amend the Financial Markets Conduct Act 2013 (FMCA) to broaden the definition of “climate reporting entity” to better align with Australia’s regime. At the very least, it should be extended to large unlisted entities. At present, the definition fails to capture several types of entities that the CRD Regime should capture to achieve its purposes. The current definition draws several arbitrary lines between similar entities that make little sense. Among other things, broadening the definition will ensure that listed competitors and investors in capital and private markets are able to understand the potential financial impacts of climate change across sectors and that a lack of transparency on the part of others does not disadvantage listed entities. It is also in the interests of unlisted entities who are likely to face increased financial risk from climate change due to exposure to transition and physical risks but are currently excluded from the regime.
4	If the XRB introduced differential reporting, would this impact on your choice of preferred option? In theory, yes (as per above). However, whether I support differential reporting depends on the proposed differential reporting criteria and requirements - this has to be considered on its merits.
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? See response to Q3 above
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, some listed issuers would choose to voluntarily report, as it would be in their commercial interests to do so. However, relying on voluntary reporting may make it more difficult to achieve the aim of “allocating capital towards activities that are consistent with a transition to a low-emissions and climate-resilient future”, as for this purpose to be most effectively realised, it requires broad and comprehensive coverage and buy-in from as many entities as possible. In addition, consistent with our answer to question 15, if amendments to directors’ and CREs’ liability settings only affect entities subject to mandatory reporting requirements, this will create a strong disincentive on entities to engage in voluntary reporting as they will be subject to higher potential liability than entities that are required to report. This would be distortionary and presumably an unintended effect of the proposed changes to liability settings.
7	What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime?

	There are several advantages of having listed issuers in the CRD Regime, including: ● It helps ensure that the effects of climate change are routinely considered in business and investment decisions in New Zealand, allowing for more environmentally friendly business practices and investment decisions. ● Scaling up climate-aligned finance and investment is critical to accelerating global emissions reductions and building climate resilience. To this end, the World Economic Forum, for instance, has estimated that \$4-\$5T per year of investment is needed to meet global decarbonisation goals. And this past week, a group of 26 financial institutions and pension funds globally have asked their asset managers to more actively engage with the companies they are invested in to address climate risk, given the long-term financial risks that climate change presents. The CRD Regime makes it far easier for investors and other stakeholders to make informed decisions about how their investments support the transition towards a climate-resilient future and reflect climate-related risks. ● Maintaining broad coverage in our CRD Regime, and ensuring the regime remains robust, is critical for protecting New Zealand's global competitive advantage. Climate and sustainability disclosures are growing internationally, and New Zealand companies will be best placed to seize opportunities and protect market access if they are engaged in climate related reporting. The Chapman Tripp/Aotearoa Circle Report, "Protecting New Zealand's Competitive Advantage", also makes the point that ESG performance and climate reporting requirements are increasingly playing a role in capital raising, international trade agreements, and global supply chains.
8	Do you have information about the cost of reporting for investment scheme managers? This Government shows an alarming tendency to be swayed by anecdotal evidence – just one organisation needs to tell a Minister they feel hard done by, and next day effective systems that had been working for everyone by the complainant are overturned. RNZ recently reported claims by Turners Automotive Group about how much they spent to comply with the reporting rules (https://www.rnz.co.nz/news/environment/541499/world-leading-climate-disclosure-rules-likely-to-be-weakened) – presumably because up to now they have until now shown no interest in examining the significant impact they have on NZ's transport emissions through the types of vehicles they chose to buy and sell, and so unlike most organisations had to start from scratch. But their case was an outlier of an ill-prepared company – it should not be used to shape government policy. Likewise before any conclusions can be drawn on the cost of reporting for investment scheme managers, one would need information about the costs that ALL such scheme managers have experienced – anecdotal evidence that this type of question seems likely to generate should not be considered relevant to decisionmakers.
9	Do you have information about consumers being charged increased fees due to the cost of climate reporting? No, and I do not expect it. Research on various disclosure reporting regimes internationally (eg US Toxic Release Inventory, Danish mass balance legislation) has show that the vast majority benefit from their expenditure in better tracking and understanding their own businesses – the monitoring allows them to identify inefficiencies and opportunities for improvement and innovation, and better position themselves for a progressively more demanding market..
10	When considering the reporting threshold for investment scheme managers, which of the three options do you prefer, and why?

	I prefer Option 1. As for listed issuers, we would prefer that the XRB address concerns through differential reporting rather than changing the threshold for investment scheme managers. This would be a better way of responding to some valid concerns that the current standards are not always appropriate for investment scheme managers. Amendments to the CRD Regime should not come before the XRB's consultation on differential reporting standards (per paragraph 68 of the Discussion Document). The thresholds set by Options 2 and 3 are unduly high. As the Discussion Document notes, they will significantly reduce the value of funds under management covered by the reporting regime, reducing the information available for decision-making. This, in turn, will affect the ability of the CRD Regime to achieve its purpose of supporting the transition to a low-emissions economy. It is also at odds with demand from retail investors, 86 per cent of whom strongly support investment funds providing information on the impact of their investments on climate change (see paragraph 73 of the Discussion Document). Part of the reason why the thresholds set in Options 2 and 3 are too high is because they are based on a shallow comparison to Australian thresholds. The Australian and New Zealand fund management markets are distinct in terms of size, market position, and impact. For instance, in terms of scale alone, the Australian fund management industry is roughly 10x the size of the New Zealand industry - which explains the significantly higher thresholds that apply in Australia. In addition, the options considered in the Discussion Document generally suffer by solely comparing New Zealand's settings with Australia's, when other jurisdictions should also be considered. For instance, the European Union's Corporate Sustainability Reporting Directive does not set a distinct threshold for investment managers, but rather folds them into the general corporate entity thresholds, requiring >€20 million assets, > 250 employees, or >€40 million turnover. This is more inclusive than even New Zealand's existing investment managers threshold.
11	If the XRB introduced differential reporting, would this impact on your choice of preferred option? Yes. I understand that the XRB intends to consult on the development of a differential reporting strategy for climate-related disclosures later this year (paragraph 68 of the Discussion Document). Decisions on thresholds should not be taken in advance of that process.
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? See Q 10 above
13	When considering the location of the thresholds, which Option do you prefer and why? In theory, we would support the reporting thresholds being set out in regulation to make it easier to adjust the standards without the need for legislative amendment. This, of course, would be dependent on the statutory criteria to ensure that there was adequate transparency and scrutiny. We would also suggest that the Government allow the definition of "climate reporting entity" to be amended through regulation.
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?

It is critical that the criteria supporting Ministerial regulatory decision-making is robust. It must include a requirement for formal and robust consultation, as well as a duty on the Minister to:

- a. consider and respond to the outcomes of such consultation; and
- b. publish a summary of the rationale for, and implications of, any proposed change.

If the Minister were to be given the power to amend reporting thresholds by regulation, before making any change, the Minister should be satisfied that the change is in the public interest, and supports and is consistent with the overarching purpose of the CRD Regime. That is, to support the allocation of capital towards activities that are consistent with a transition to a low-emissions future.

The Minister should also be required to have regard to:

- a. whether the proposed threshold is appropriate given the size, scale, and exposure to climate-related risks and opportunities of affected entities;
- b. whether the proposed threshold imposes a compliance burden on affected entities that is proportionate to the benefits of the CRD Regime;
- c. whether the proposed threshold aligns with comparable, best-practice international CRD Regimes.

If the Minister were given the power to broaden the definition of climate reporting entity by regulation, the Minister should be satisfied that:

- a. The change supports and is consistent with the overarching purpose of the CRD Regime; and
- b. The amended definition is necessary to capture entities whose activities, size, or risk profile materially affect New Zealand's emissions and/or are materially affected by climate change, both in terms of transition and physical risks.

The Minister should also be required to have regard to:

- a. the extent to which the amended definition is consistent with comparable, best-practice international climate-related disclosures regimes;
- b. whether the proposed change imposes a compliance burden on affected entities that is proportionate to the benefits of the CRD Regime.

Chapter 3: Climate reporting entity and director liability settings

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When considering the director liability settings, which of the four options do you prefer, and why?

I support Option 1, but on the basis that additional guidance is issued to assist CREs and their directors in complying with the CRD Regime, and also additional guidance on the scope and ambit of directors' duties to alleviate confusion about when a breach of directors' duties may be found.

However, as a middle ground, I would suggest that the Government reduce the penalty for breach of directors' duties (see response to question 16 below).

Removing, or providing a safe harbour, directors' liability would significantly impede the effective functioning of the CRD Regime

The purpose of having director liability for climate statements is to ensure that directors have the right incentives to provide sound governance of CREs' climate reporting obligations. As climate risk only increases, this is only becoming more important.

Removing directors' liability - and, remarkably, even going so far as to propose amending the Fair Trading Act - removes this incentive, and risks giving directors a licence for greenwashing. It also sends a strong signal to directors about the reduced level of importance that the Government places on the CRD Regime, and the degree of care and importance that directors ought to place on it, in turn.

Removing directors' liability from the FMCA (Options 2, 3, 4) does not remove directors' liability for climate change

Directors' existing legal obligations require them to consider, identify and manage climate-related risks if those risks are matters that a reasonable director exercising appropriate care, diligence and skill would consider, identify or manage. In this way, for diligent company directors, the CRD Regime and its corresponding directors' liability does not increase directors' exposure.

There is also a developing international discussion about whether the fiduciary duties owed by directors encompass obligations not only to investors but also to other stakeholders such as suppliers, customers, employees and the general public. If so, the obligation of directors to consider, identify and manage climate-related risks, or to disclose climate-related information, might extend beyond simply addressing those risks that are potentially financially material.

Given the current state of knowledge about climate change and the foreseeable risk of harm to many aspects of our environment and economy, my view is that all directors have, at a minimum, a present obligation to consider whether climate-related risks are potentially material to their company, and to take appropriate steps to manage any such risks which are identified as a result.

Removing directors' liability under the FMCA will not remove directors' liability with respect to climate-related risks and disclosures. However, it could provide directors with a false sense of security, and also convey a concerning and perverse perception that directors need not take climate-related disclosures and risks seriously.

One of the biggest achievements of the CRD Regime to date has been to ensure that directors and senior managers understand and regularly consider climate-related risks and opportunities. Having a mandatory reporting regime ensures that maturity and education on these issues lifts across the economy. Winding back the CRD Regime in the ways proposed in the Discussion Document would be incredibly harmful messaging from the Government.

Concerns are an overreaction as breaches of directors' duties already require a high threshold

There has been a gross overreaction to the risks of directors being found in breach of their duties under Part 7A of the FMCA.

The FMCA creates a high threshold for finding a breach of directors' duty; the circumstances in which directors could face litigation in respect of climate-related disclosures are limited and will only arise where there has been a clearly identifiable breach. And globally, it is clear that there have been numerous barriers to litigation against directors on climate grounds.

Directors also have the benefit of a range of potential defences, including if they prove they took "all reasonable steps" to ensure that the CRE for which they are a director complied with the FMCA requirements.

Significant parallels can be drawn between the way the defence applies in the CRD context and the financial reporting context - where breach of directors' duties require a high threshold.

It would create a perverse imbalance between voluntary and required climate disclosures

The proposals canvassed in the Discussion Document would only apply to mandatory climate-related disclosures. However, for any entities that make voluntary disclosures, they would be perversely be subject to higher duties of care and potential penalties. Not only is this unfair, but it would be a strong disincentive for entities choosing to make climate statements.

It would be out of step with other jurisdictions

According to the Lawyers for Climate Action review of proposed and existing climate-related disclosure frameworks in other jurisdictions, Australia is the only jurisdiction to offer immunity from private litigation. We would be aligning ourselves with a climate-related reporting regime that has already been widely criticised for introducing a safe harbour provision of this nature - and it would be a significant backward step. (see ["Climate Plans of Australian Companies would be exempt from Private Litigation under Proposal"](#) The Guardian 15 July 2024)

Introducing a safe harbour for civil enforcement against *both* directors and CREs is particularly harmful

Option 4 is the most radical, and most concerning, proposal. Providing an immunity for civil liability for both directors and CREs would significantly weaken the CRD Regime - restricting access to justice, undermining New Zealand's emissions reduction goals, and significantly restricting the ability for investors to allocate capital towards climate-resilient and future-proof companies. This reform would be a self-serving attempt to stymie the kind of legitimate legal action that has occurred elsewhere in the world that ultimately protects investors and market integrity, and supports the transition to a low-emissions future.

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Do you have another proposal to amend the director liability settings? If so, please provide details.

	I appreciate that the current directors' liability settings is leading to some unintended and counter-productive consequences, including a degree of conservatism and timidity on the part of entities within the regime in terms of assessing the potential impacts of climate change on their business and responding to them. It is important that the regime encourages directors and executives to understand the value of climate-related risk reporting and facilitate open and honest conversations without an overwhelming fear of non-compliance. As an easy first step, I suggest that the FMA publish additional guidance to help support directors and CREs in complying with the CRD Regime, and also publish materials clarifying the nature and scope of directors' duties. For instance, guidance on the degree of substantiation of representations in climate statements and meeting the fair presentation principles set out in New Zealand Climate Standard 3 (NZ CS3) would be helpful. In addition, the Government could consider reducing the penalties for director liability under the regime, <i>for an initial period</i>, while New Zealand CREs and their directors develop greater confidence in complying with the regime. This would be a better response to directors' concerns than winding back or pausing liability altogether – but does pose the risk that Directors will be shielded from understanding the nature of their organisations impact and risks, and taking effective action to reduce them.
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements? Yes - it will almost certainly decrease investor trust in climate statements.
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? For the same reasons outlined in Question 16, I strongly disagree with extending any immunities to both CREs and directors. This would be an extreme step to take.
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? I do not support Option 4 - there should be no modified liability framework like that introduced in Australia.
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) I do not support Option 4 - there should be no modified liability framework like that introduced in Australia
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? I see value in encouraging subsidiaries of multinational companies to file their parent company climate statements in New Zealand. This would cover several significant entities in New Zealand - such as Woolworths New Zealand Ltd, the NZ subsidiary of Woolworths Group Ltd (not currently a listed issuer in NZ). However, if the statements were prepared under the CRD Regime of the parent company's jurisdiction, they could vary significantly from the NZ requirements - creating confusion.
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?

It may be this option is more helpful - providing a central repository so that the information is easy to find. However, a lot of this information is already fairly easy to find online, so I see this option as more of a 'nice to have' than something that would significantly improve the CRD Regime.

Final comments

Please use this question to provide any further information you would like that has not been covered in the other questions.

As noted above, many international companies have been reporting their carbon emissions and action plans for decades, recognising that having a good handle on their own systems and processes makes them a more effective and efficient company, benefiting not only the customers, communities and the planet, but also their own bottom line. Many also place high importance in leading in this space – eg yesterday at 2am Siemens posted their recent success on Facebook “Big news! We’ve made the CDP (formerly Carbon Disclosure Project) Climate

Change A List for the second year in a row! 🎉🌍

Out of 24,800+ companies, we’re among the few to earn the highest rating—especially meaningful as CDP raised the bar for climate leadership in 2024.

Our commitment to [#decarbonization](#) is showing real impact: 60% CO₂e reduction in our operations since 2019, surpassing our 2025 target ahead of schedule!

Please do not weaken the incentives for NZ companies to start competing in this arena.

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I taught an MBA course “Leading Sustainable Enterprises” at the University of Canterbury for close to 20 years, and spent a similar period as a business consultant helping NZ companies understand sustainability, researching the impacts on and of companies, and on the board of an international sustainability agency. I am therefore extremely familiar with the many benefits that accrue to organisations who make the effort to understand the changes happening in the REAL world (not just the subset of the market) and how the converging crises of climate change, biodiversity loss, inequality and exceeding planetary boundaries is increasing impacting companies through extreme weather events, resource depletion, tightening government regulations and investor and consumer expectations. As just one example, in the 1990s the major global company Electrolux used the Framework for Strategic Sustainability (also known as the Natural Step – TNS - Framework) to understand these bigger picture real world trends. As Leif Johansson, CEO Volvo and former CEO Electrolux, said at a TNS meeting in 2010 *"It was not until at least ten years later that we understood how much money Electrolux had saved & earned from applying the TNS Framework to foresee changes on markets and legislation"*.

Please help strengthen – not weaken - the regulatory framework which will help NZ companies to start realising these benefits.