

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	S9(2)(a)
Date	29 Jan 2024
Organisation (if applicable)	Scales Corporation
Contact details	S9(2)(a)

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.

S9(2)(b)(ii)

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.

S9(2)(b)(ii)

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? S9(2)(b)(ii)
2	Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand? Scales agrees that the liability settings for directors need reviewing to ensure the desired outcomes from climate reporting are achieved. Scales incurred significant legal fees in producing our FY23 (and FY24) CRD. We feel that if we could have directed more of the costs spent on producing the report toward initiatives to achieve sustainability goals within our businesses, it would have been a more beneficial investment to accelerate the transition to a low emissions economy. The inherently qualitative and uncertain nature of CRD creates significant risk under the current director liability settings and provides concern for Scales' directors. The information disclosed through financial statements, for example, is largely focused on quantitative data relating to past events of which the entire board are aware and many have experience with. CRD and climate-related risks are new and emerging fields, and it will take time to build the necessary skills and capability to report on them with confidence. With this in mind, the penalties for financial statements should not be the same as those for CRD. As things stand, director liability settings present significant additional costs for listed companies.
3	When considering the listed issuer reporting threshold, which of the three options do you prefer, and why? Scales understands that the reporting regime is difficult and (possibly relatively) costly for smaller entities so perhaps some consideration needs to be given to this. However, the more entities there are reporting and disclosing CRD, the more robust the entire regime becomes. It enables a better understanding of sustainability and the environment, and encourages development of better data solutions. One would hope this would lead to more seamless exchanges of climate-related information, similar to that achieved over decades of financial reporting. The standards require reporting entities to work with suppliers and other businesses to improve reporting and information flows. The more entities that are connected to the process, the better the understanding and systems can become. With this in mind, Scales does not agree that lifting the threshold now is the right approach. Perhaps there could be consideration of companies new to listing and the implementation of grace periods to account for the challenges entities in that position face. We note that while Australia has a higher market cap threshold than New Zealand, the Australian regime includes privately held companies within the CRD regime. The relative size and value of Australian companies likely means a large number of companies are captured even though the thresholds are higher.
4	If the XRB introduced differential reporting, would this impact on your choice of preferred option?

	Scales is supportive of differential reporting. As noted above, Scales is supportive of the broad application of the CRD regime to encourage improvements in climate-related data availability and services. Differential reporting could help to maintain sufficient numbers of entities captured by the regime to facilitate this while accounting for the differences in capability and resources for some smaller entities. Additionally, differential reporting has similarities to Australia's phased approach based on revenue and/or size of the entity. We like the idea of being aligned more to Australia for simplicity. Such similarities in Australian and New Zealand requirements are not dissimilar to IFRS for financial reporting where the foundational principles are the same but some of the parameters on size and value might be larger in Australia and some of the exemptions allowed within New Zealand may not apply in Australia.
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?
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. As outlined above, customers are seeking this information, so it is a market led approach (carrot) rather than regulatory/compliance enforcement (stick). Scales, as a mature developed entity, does not want to go backward in our reporting. Even following the extension of the adoption provisions, we have not changed our approach. For example, we will continue to report on Scope 3 even though it is subject to adoption relief. We are supportive of some lighter touch regulatory parameters to achieve a level of engagement and manage poor performers that may put others at risk.
7	What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime? -
8	Do you have information about the cost of reporting for investment scheme managers? No
9	Do you have information about consumers being charged increased fees due to the cost of climate reporting? No
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? No
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?

	N/A
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? Scales is in favour of keeping the thresholds in the Act as opposed to moving them to secondary legislation. We favour the relative stability and certainty this creates for the business community and would prefer that the thresholds were not subject to frequent 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? Scales is not supportive of option 1 (maintaining the status quo). As discussed above at [2], we feel that Scales' costs incurred in trying to reduce risk for directors would have been better served if deployed towards decarbonisation initiatives. Additionally, as noted, financial statements and CRD are inherently different, justifying a different approach to liability and penalties. Our position is that lesser liability settings, ie reducing personal risk to directors, allow for better and more fulsome disclosures. Scales strongly supports option 4, whilst the standards and understanding is still evolving, however, for the reasons above, Scales longer term position supports a modified version of Option 3. Section 534 of the FMCA should no longer apply to CRD (i.e., no deemed liability). We suggest that section 23 (unsubstantiated representations) of the FMCA should not apply to key forward-looking statements with inherent uncertainty, including scenario analysis and transition planning. Accordingly, Scales supports the amending of section 23 so that directors cannot be liable for aiding and abetting a breach of section 23, but only in relation to key forward-looking statements.
16	Do you have another proposal to amend the director liability settings? If so, please provide details. See [15] above.
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements? No, we think that given all of the uncertainty and confusion around reporting standards to date and the fact that companies are currently taking a very conservative approach to reporting because of the potential risks and penalties, as mentioned above this would mean it is more likely you would get fuller more meaningful reporting.
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? -
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? -

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) -
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? -
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? -
Final comments	
23	Please use this question to provide any further information you would like that has not been covered in the other questions. -