14 February 2025

Hon Andrew Bayly, Minister of Commerce and Consumer Affairs
C/o Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

BY EMAIL: climaterelateddisclosure@mbie.govt.nz

Dear Minister,

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

SHIFT Advisory is a law firm providing lawyers on a flexible, secondment basis to fill the internal legal needs of clients across the financial services and corporate market. SHIFT Compliance provides non-legal services including Climate and ESG, Corporate Governance and Risk and Compliance services, in a similar manner. Over the past year and a half, a number of SHIFT Compliance consultants have gained knowledge of and experience in relation to the Aotearoa Climate Standards, supporting clients in various ways as part of internal client teams.

We are aware of some of the challenges of the initial year of climate reporting and would be supportive of adjustments to reduce the cost burden of reporting, especially on smaller reporting entities. However, we note the positive progress that we have seen – in particular, a vastly increased awareness of climate change related issues and progress towards embedding regular consideration of these issues into internal practices – and would not want to lose progress after two years of reporting.

As noted, we are supportive of adjustments to the climate-related disclosures (CRD) reporting regime. However, understandably, given the time pressure MBIE was under, we consider that there are other points to be explored beyond those raised in the Discussion Document. We consider that for the most part, the options outlined in the Discussion Document are too broad brush, and further refinement is warranted in order to avoid unintended negative consequences. The Discussion Document makes it clear that the CRD regime will continue unchanged for another year, which will not only give climate reporting entities more experience producing another climate statement, but will also time to allow consideration of alternatives such as differential reporting, and for the External Reporting Board to continue its Post-Implementation Review.

We also note that the Discussion Document focuses on limited aspects only of the Australian climate-reporting regime, and does not cover other relevant factors in the Australian regime – such as its application to unlisted entities and its more extensive reporting requirements. Nor does the Discussion Document include other reference to the reporting regimes of other major trading partners such as California and Europe and the implications for New Zealand entities as part of the value chains of entities reporting in Australia or elsewhere that require value chain disclosure.

Our submission is largely that the options offered are not preferred and differential reporting could address concerns about resource intensity and improve the usefulness of information for primary users while still meeting the purposes of the CRD regime.

S9(2)(a)

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

Your name and organisation

Name	S9(2)(a)
Date	14 February 2025
Organisation (if applicable)	SHIFT Compliance
Contact details	S9(2)(a)

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☐ 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.

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Responses to discussion document questions

Chapter 2: Reporting Thresholds	
1	**Do you have any information about the cost of reporting for listed issuers?**
	We are not a climate reporting entity, but based on our work in this area we simply make the following observations: 1. adjustments to the CRD regime and further guidance on areas that issuers have found most resources intensive such as scenario analysis and appropriate data sources could reduce costs to listed issuers and reduce reliance on third party consultants. 2. as the CRD regime is embedded and listed issuers' capabilities and understanding mature, it is reasonable to expect that costs reduce. We note that for many entities, areas of disclosure such as Governance and Risk Management seem likely to reach a 'steady state' by the end of the second year of reporting which will reduce the burden to monitoring and refreshing where necessary. 3. at industry events, the cost of compliance with the Australian climate reporting regime (which has greater and more granular disclosure requirements) was discussed as being far higher than compliance with our CRD regime, as is also noted in paragraph 57 of the Discussion Document.
2	**Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?**
	We have not heard anything on this point. In relation to the risk of New Zealand companies moving to Australia to avoid climate reporting, this seems likely to be a short-lived risk. As noted in the Discussion Document, many companies will be caught within the Australian reporting requirements as Group 2 or Group 3 companies within a relatively short time period, reducing risk of regulatory arbitrage. Companies considering a move to Australia would need to take note that the Australian climate reporting regime will also apply to unlisted companies. If anything, the New Zealand CRD regime creates an uneven playing field for listed entities in New Zealand by not including equivalently-sized private companies within its scope.
3	**When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?**

We do not prefer any of these three options for the following reasons:

Option 1: We support some adjustments to the CRD regime for smaller reporting entities to be explored through differential reporting, which rules out Option 1. Reporting frameworks that are used by smaller companies in the private equity or venture capital space may be a helpful point of reference.

Option 2: In our view, a significant threshold increase applied hastily after the first year of reporting and not implemented until after 2 full years of reporting seems a blunt approach to the problem, which rules out Option 2. Whilst we understand the desire to reduce the burden of the CRD regime for smaller listed entities, close alignment with the absolute size of Australian reporting entities omits consideration of the different markets and the relative position of reporting entities within their respective industries and markets. In addition, as mentioned, there are differences between the CRD regime and the Australian regime that also play a part – the Australian regime may have higher thresholds because it requires more disclosure content, greater assurance in the long run and also applies to unlisted companies.

Option 3: Whilst it states in the Discussion Document that Option 3 would be better aligned with Australia's reporting requirements, in our view, this statement doesn't take into account a number of other factors that may be relevant, including:

- Australian requirements apply to listed and unlisted companies
- Option 3 may exclude entities falling within the Australian equivalent of Group 3
- The smaller entities that would be temporarily excluded from the CRD regime would have already been reporting for 2 years. It would seem sensible for those entities coming into the modified CRD regime in early 2028 to at least continue with certain elements of the reporting requirements in the meantime.
- As mentioned, the Australian regime is more onerous and detailed in parts. For example, there is less phasing in of reporting requirements and disclosure of quantification of financial impacts is more demanding
- See comment above about whether close alignment with the absolute size of Australian reporting entities omits consideration of the relative size of entities in relation to the markets that they operate in.

Please also see the discussion in response to Questions 7 and 10 about the scale of climate risks that the global and New Zealand economies may be facing. Over the medium term and beyond, companies that have the knowledge of and are able to respond to the considerable climate related risks and opportunities that are to come will be better positioned to protect their financial position and contribute positively to New Zealand. Aligning with Australian thresholds in absolute terms does not seem to take this into account.

Other points that warrant further exploration in relation to appropriate issuer thresholds are the other sources of pressure that may apply to New Zealand listed (and unlisted) entities that a regular cadence of some level of climate reporting would support. These include:

- not only being part of the value chain of Australian entities, but also being part of the value chain of reporting entities in other parts of the world. For example, EU and California have introduced sustainability reporting requirements that are likely to impact New Zealand corporates indirectly if not directly. It is notable that these regimes can also apply to private companies. We note the MFAT observation in relation to the EU sustainability disclosure regime:

	"This means that even if a New Zealand or other non-EU company is not directly in-scope, they may still be asked to provide information to support their European suppliers and business partners to comply with the new due diligence rules."[1] *[emphasis added]* - it seems likely that requests for climate-related information from lenders and investors will only increase as the finance sector seeks to improve the information available to assess their own climate-related risks and opportunities. This aligns with the issues already raised in paragraphs 46 and 53 of the Discussion Document. As mentioned, we are supportive of adjustments to reduce the cost burden of reporting, especially on smaller reporting entities . However, we are of the view that differential reporting is likely to be able to address these concerns with fewer unintended consequences. Please also see our response to question 5 below.
	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
4	Our preferred option is differential reporting, with adjustments and centralised support provided to ensure that costs at the levels reported in the Discussion Document are not required on an ongoing basis. Please also see our response to question 5 below.
	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?
5	We support lowering the burden on smaller listed entities and believe that the setting and application of thresholds at which reporting requirements apply could be part of a differential reporting regime.
	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?
6	Yes, we are of the view that some listed issuers would still choose to voluntarily report. Numerous listed issuers started reporting on a voluntary basis before the CRD regime came into place. We see no reason why this would not continue. Whilst we are of the view that some listed issuers may still choose to voluntarily report, one disadvantage to voluntary reporting is its inconsistency and lack of comparability of disclosure content. If one listed entity reports under a mandatory climate disclosure regime and another listed entity in the same industry reports voluntarily, it may be challenging to compare the relative climate risks and opportunities of the two entities. In addition, voluntary reporting is sometimes incomplete, further reducing comparability. These challenges reinforce our view that a differential mandatory reporting regime is preferable. Differential reporting could be based on components of reporting, that apply to varying degrees or with different frequency depending on size of reporting entity. Please also see our response to question 15 below that highlights an issue that if the directors' liability regime is changed, voluntary reporting could expose directors who choose voluntary climate reporting to different liability for similar content as those within the scope of a mandatory regime. This is a potential negative consequence that, in our view, needs to be considered carefully.

[1] https://www.mfat.govt.nz/en/trade/mfat-market-reports/corporate-sustainability-due-diligence-reporting-and-disclosure-in-the-european-union-october-2024

	What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime?
7	It is clear that the mandatory climate reporting regime has elevated knowledge about and consideration of climate-related risks through the senior management and board in reporting entities. This, in our view, is a key advantage of listed issuers being in a regulated climate reporting regime because the legal requirements provide a structure to ensure that this happens. This increased awareness allows entities to consider risks now and have a chance to prepare for risks that will increase in future years. Reporting supports recognised fiduciary duties of directors to consider climate risk and also helps meet stakeholder expectations that climate-related information forms part of external disclosures. The often-quoted World Economic Forum Global Risk Report[2] shows that concern about environmental and climate risks dominates the medium term (10 year) outlook on risk. It takes time to embed new knowledge and to ensure that climate-related risks and opportunities are considered alongside other business risks consistently and progress made in New Zealand climate reporting entities in this area needs to capitalised on.  As for disadvantages, climate reporting is clearly a challenging and time-consuming area. The speed with which the CRD regime came into force may have played a part in that challenge for the first year. Another disadvantage for the finance sector, in particular, is access to good data and insights, which it is recognised will improve over time. In addition, the CRD regime seemed clearer to apply to corporate reporting entities, especially given that the readers of their reports are sophisticated institutional investors.
8	**Do you have information about the cost of reporting for investment scheme managers?**

[2] https://reports.weforum.org/docs/WEF_Global_Risks_Report_2025.pdf

	Some information. SHIFT was involved in supporting internal teams in investment scheme managers, as well as supporting law firms providing legal review. However, we defer to individual submissions of reporting entities. We note that costs should stabilise as the CRD regime embeds and could be reduced for smaller entities by differential reporting and potentially for all investment scheme managers by other adjustments to reporting requirements for this sector. For example, the burden in relation to scenario analysis could be reduced and the assurance requirement for Scope 3 financed emissions could be reconsidered. Although outside the scope of this submission, the problem has been raised that investment scheme managers often rely on data from highly resourced third party data providers (for example, MSCI, ISS ESG and Sustainalytics) and do not have the means to audit data outputs. The UK Financial Conduct Authority now has an authorisation process for data reporting service providers[3] that could warrant further consideration.
9	**Do you have information about consumers being charged increased fees due to the cost of climate reporting?**
	We do not have any information on this point.
10	**When considering the reporting threshold for investment scheme managers, which of the three options do you prefer, and why?**

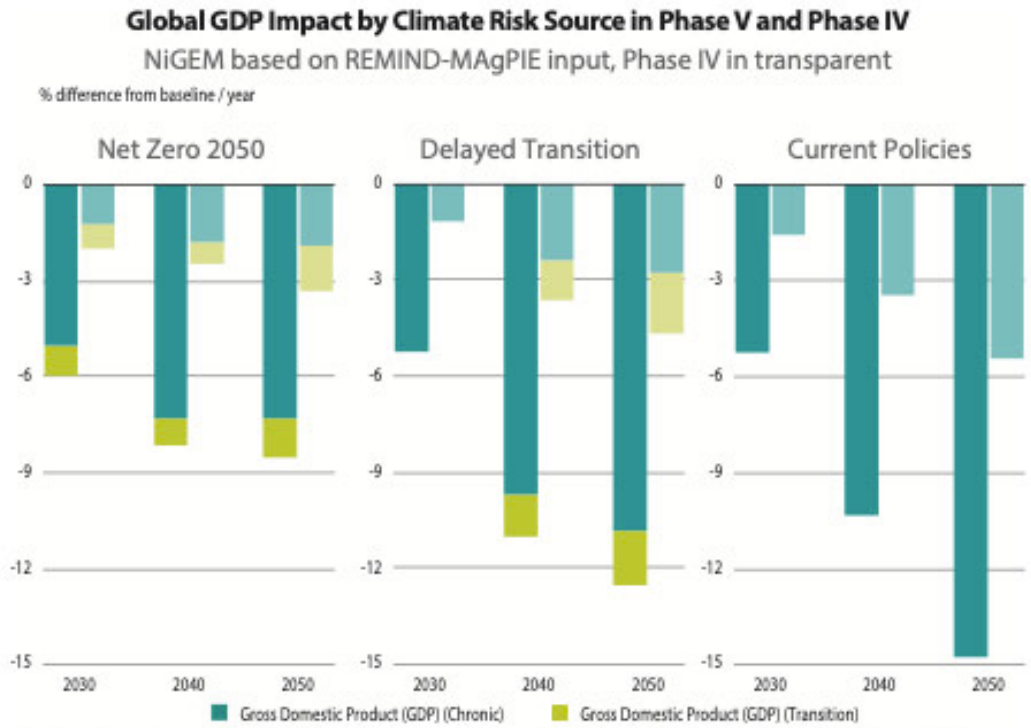
[3] https://www.fca.org.uk/markets/data-reporting-services-providers-drsps

None of the three options are preferred, for the reasons we explain below. We prefer that the XRB addresses concerns raised in the Discussion Document through differential reporting.

Option 1: Of the 3 options, we would support Option 1 but with adjustments and differential reporting. We support considering adjustments to the CRD regime as it applies to investment scheme managers as a whole to reduce costs and increase usefulness and comparability across the industry. Differential reporting could apply fewer or less frequent requirements to the smaller investment scheme managers.

Option 2: Although comparison to Australian thresholds may be superficially compelling, the Australian and New Zealand fund management markets are distinct. Investor eligibility based on residence and other rules are dictated by a regulatory framework in each country. In addition, the scale of these markets and potential systemic impact differs markedly, with the Australian fund management industry being roughly 10+ times the size of that in New Zealand based on funds under management. When considering the potential range of application of the CRD regime, it seems relevant to consider the size, market position and impact of the schemes in their relevant market, not only by reference to the absolute size of schemes.

Climate-related risks and opportunities are expected to be very significant for the investment sector and global economy. The chart below is from the Network for Greening the Financial System (NGFS)[4], shows estimations of loss to global GDP from **chronic** physical risks only approaching -15% of global GDP by 2050 based on a current policies scenario. The NGFS estimation for GDP loss from **acute** physical risks is an additional -8% based on a current policies scenario. This is just one source of estimation, which has its limitations, but the reason for briefly touching on this complex area is to illustrate that it will be in the retail investors' interests to have their savings managed by investment scheme managers who are equipped to track and respond to risks and opportunities that could have such significant impact on investors' returns.



Note: The above figure shows how GDP is impacted across scenarios compared with a hypothetical (and impossible) baseline scenario in which no transition or physical risks occur. This baseline scenario represents a world in which climate change does not occur. Thus, climate change has a negative impact on GDP in every plausible scenario, but the magnitude of the losses differs across them.

	A further consideration noted in paragraph 73 of the Discussion Document, refers to a survey of retail investors showing a clear preference that funds provide information on the impact of investments on climate change. Along similar lines, last year's Responsible Investment Association Australasia survey showed '*Three-quarters of consumers are interested in investments that have a positive impact on the climate, environment and society*' and that a '*growing number of investors understand that it is good investment practice for fund managers to integrate the risks of climate change*'[5]. If only 9-12 investment scheme managers in New Zealand report of climate-related risks, opportunities and metrics, that narrows the potential investable universe for retail investors who have an interest in this area. For the reasons above, we do not support Option 2 (or 3). ***Option 3:*** For similar reasons as above, we do not support Option 3. In addition, in our view, another issue with Option 3 is that introducing a threshold based on the size of a scheme introduces the possibility that the climate-related risk processes can differ for two schemes managed by the same manager. Finally, we recognise that one of the issues for investment scheme managers has been producing information that is considered useful to 'primary users', with those users considered to be retail investors. Adjustments to the CRD regime as it applies to investment scheme managers and / or differential reporting could enhance the usefulness of disclosures to primary users as well as reducing the burden to investment scheme managers. Exploring this potential route seems preferable to the blunt increases in threshold suggested in Option 2 or 3.
	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
11	Yes. If differential reporting were used to relieve the costs and burdens particularly for smaller investment scheme managers, we would support Option 1. We strongly support differential reporting and also adjustments of reporting requirements as they apply to investment scheme managers, not only to reduce costs but also to build on experience and also increase usefulness and comparability of reporting.
	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?
12	This could be considered in less haste as part of differential reporting. It was very apparent working with a range of smaller investment scheme managers that they had vastly less resources at their disposal than larger investment scheme managers. It is possible that the smallest group of investment scheme managers could have reporting obligations pared back significantly, to balance the positives of embedding the basics and providing metrics that can inform investors with the constraints of their leaner organisations. However, adjustments to address efficiency and comparability could be investigated for the entire sector.
	When considering the location of the thresholds, which Option do you prefer and why?
13	On balance, ***Option 1*** – thresholds to be located in primary legislation in the FMC Act.

[4] https://www.ngfs.net/system/files/2025-01/NGFS%20Climate%20Scenarios%20for%20central%20banks%20and%20supervisors%20-%20Phase%20V.pdf

[5] https://responsibleinvestment.org/wp-content/uploads/2024/07/Voices-of-Aotearoa-Demand-for-Ethical-Investment-in-New-Zealand-2024.pdf

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 an adjustment mechanism is proposed, it would be more appropriate then that the thresholds and the adjustment mechanics are both put into secondary legislation. There should be limited objective adjustment criteria, which may need to take into account both local and global conditions, the latter being more relevant in the case of global investments.

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 prefer Option 1, but on the basis that additional guidance is issued to assist climate reporting entities and directors in complying with the CRD regime, and in particular guidance in respect of substantiation of representations in climate statements and meeting the fair presentation principles set out in New Zealand Climate Standard 3 (NZ CS3) as we propose in response to question 16 below. We note the challenges of the initial year of climate reporting as described in the Discussion Document. However, we consider that the other proposed options for director liability settings, particularly given the existing defences that are available to a director in relation to deemed contravention under section 534 of the Financial Markets Conduct Act (FMCA) and an alleged involvement in a breach by a climate reporting entity of section 19 or 23 of the FMCA, are too blunt and may give rise to unintended consequences or will not create any significant change. In particular: - We do not support amending FMCA to disapply section 534 to climate-related disclosures on the basis that climate statements contain forward-looking statements. We note that forward-looking statements can be included in other documents to which section 534 applies. Therefore, we are of the view that directors' concerns in respect of forward-looking statements in climate-related disclosures are better addressed through guidance rather than the blunt approach of amending the FMCA to address this. - We also do not support amending section 23 of the FMCA to disapply this section to climate reporting entities and/or their directors for the following reasons: o this change will expose entities and the directors of such entities that voluntarily report to different liability settings for similar content set out in public information. Please see our response to question 6 above regarding entities choosing to voluntarily report; o this change is not in line with the principles to achieve fair presentation as set out in NZ CS3. Though, we note that the fair presentation principles as set out in NZ CS3 also seem to be contributing to the concerns; and o in our view, this amendment would impact on investor trust in the climate statements. As noted below – we support guidance to provide comfort in this area.

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

	As climate reporting is a complex and new area, we propose that additional guidance is issued to assist climate reporting entities and directors in complying with the CRD regime. In particular, we propose that guidance that focuses on first, the substantiation requirements as they apply to representations in climate statements and secondly, the fair presentation principles set out in NZ CS3 is issued.
	
	There are a number of areas where expectations in respect of substantiation and meeting the fair presentation principles could usefully be clarified including, for example:
	- Reliance on reasonably sourced information from third parties
	  o Climate reporting entities need to rely on third party information and do not have the resources to substantiate and verify this content and ensure it is free from error or misstatement. Very few climate reporting entities have a climate expert or scientist available to them, nor do they have the internal resource to check information from public or paid data sources.
	  o In particular, we are of the view that further clarity for investment scheme managers who rely on external investment data providers for data and metrics would be welcome.
	- The construction and substantiation of climate scenarios for scenario analysis. It is not within the resources of most New Zealand reporting entities to 'construct' or substantiate these scenarios. See comments above about use of reasonable sources and potentially further guidance and support.
	- Guidance on how to apply fair presentation principles in relation to the complex areas noted above, in particular those of accuracy and verifiability. It has been challenging for reporting entities to address sometimes granular disclosure requirements whilst feeling confident of meeting those NZ CS 3 principles.

17	**If the director liability settings are amended do you think that will impact on investor trust in the climate statements?**
	We are of the view that amending section 23 of the FMCA in particular to disapply it to climate reporting entities and/or their directors will impact on investor trust in the climate statements given the perceived increased risk of the climate statements including unsubstantiated representations and potential greenwashing.
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 do not support Option 3 for the reasons we have set out in our response to question 15 above.
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?**
	Whilst we support Option 1 as noted above, Option 4 has some appeal but also raises significant issues. We have concerns about Option 4 also applying to the FMA and that it would again introduce a differentiated liability system between mandatory and voluntary climate statements. This would be particularly exaggerated if the reporting thresholds are significantly increased.
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)**
	We do not support Option 4 and have responded in relation to its extension to the FMA above.

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?
	We observed climate statements referring to parent company climate statements, which was helpful but registering the parent company climate statements in the same location seems more likely to confuse than help.
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?
	No opinion. But on the face of it, this may be less confusing that the option in 21.
Final comments	
23	Please use this question to provide any further information you would like that has not been covered in the other questions.
	Please see cover letter.