Adjustments to the climate-related disclosures regime

Submission on discussion document:

Your name and organisation

Name	S9(2)(a)
Date	10 February 2025
Organisation (if applicable)	The Warehouse Group
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The Warehouse Group's response to discussion document proposals and questions

Introduction

The Warehouse Group welcomes the opportunity to provide feedback on the MBIE consultation on adjustments to the climate-related disclosures (CRD) regime.

Founded by Sir Stephen Tindall in 1982, The Warehouse Group has evolved from a single store into one of New Zealand's largest retail groups. Our brands - The Warehouse, Warehouse Stationery, and Noel Leeming - have over 200 stores and generate $3 billion in sales. We are an important employer in New Zealand, with over 10,000 team members, and we have a deep understanding of both our customers and the communities we serve.

As a founding signatory of the Climate Leaders Coalition, we support the goals of the Paris Agreement and are committed to helping New Zealand achieve net-zero emissions by 2050.

The past few years have underscored the urgent reality of climate change in New Zealand - from the devastating Auckland floods to the impacts of Cyclone Gabrielle on the East Coast, as well as more recent events overseas like severe floods in Spain and wild-fires in Los Angeles. It is clear that climate change is already affecting us, and we all have a role to play in addressing it. However, combating this issue will require the collective efforts of policymakers, industry, brands, NGOs, and consumers.

Our vision is to make sustainable living easy and affordable for everyone. In 2022, we launched our 2040 Sustainable Living Plan, a bold roadmap to make our products more sustainable, improve packaging recyclability, and reduce emissions and waste, aiming for a low-carbon, zero-waste business.

We became the first major retailer in New Zealand to achieve carbon neutrality in 2019 (and the third in the world). We have since diverted over 70% of our operational waste from landfills, switched all our light passenger fleet to electric vehicles, and, in partnership with Lodestone Energy, are transitioning all our sites and stores to solar power. This will address over 70% of our Scope 1 and 2 emissions. We are also engaging with suppliers on GHG emissions as part of our efforts to reduce Scope 3 emissions.

We recognise the importance of transparent climate-related reporting in driving a low-emissions, climate-resilient economy. For this reason, The Warehouse Group supports the CRD regime's fundamental goal of promoting transparency around climate-related risks and opportunities to enable more informed business and investment decisions.

The global transition to a low-emissions economy requires robust climate-related disclosures, and New Zealand has shown leadership in this area. Maintaining this leadership is crucial for international competitiveness and access to capital.

While we believe several improvements could be made to the CRD regime, we have genuine concerns with the proposals put forward by MBIE. We support continuous improvement but caution against premature changes that could undermine the regime's effectiveness and result in unintended consequences particularly regarding raising reporting thresholds. We outline our views on the key elements of the consultation proposals below.

We welcome the opportunity for further engagement on these topics and are happy to provide additional information or clarification as needed.

Timing of review and regime maturity

The regime has completed its first year of implementation and is now entering its second year. We believe the current review is premature and making changes pre-emptively - particularly with respect to raising reporting thresholds - could undermine the regime's objectives and lead to unintended consequences.

With numerous key developments on the horizon, including the release of much-needed guidance on specific CRD aspects (e.g. transition planning and financial impacts), there are many complex and moving parts. The MBIE consultation outlines some options and reliefs related to the issues that fall under the XRB's remit, alongside recent amendments to adoption provisions. Some of the proposed changes in this consultation also intersect with those made by the XRB. Given that other parts of the reporting regime are still evolving, with official guidance yet to be issued on some aspects, and that the full implications are not yet clear, we believe it is too early for such a review.

Recommendations:

- We advocate for allowing more time for the regime to mature before making substantial changes. This would provide opportunity to gather more meaningful data about effectiveness and costs and allow organisations to establish efficient processes.
- We suggest it would be more appropriate to conduct a review in 2-3 years, by which time more evidence on the regime's impact and effectiveness will be available.

Reporting thresholds

We recognise the need to draw a line for inclusion in the reporting regime, but it is essential to strike the right balance. While transparent reporting is crucial, it should not absorb resources that are necessary for driving transformation and achieving low-carbon outcomes. We also support aligning more closely with Australia's new regime, but we believe it is unfair that certain businesses listed on the NZX, as well as those in New Zealand subject to the Australian regime, are required to report, while sizable non-listed New Zealand businesses are not.

New Zealand's reporting system should be fairer, more predictable, and aligned with how most other markets have approached reporting thresholds. We do not believe the current proposals achieve this. Specifically, market capitalisation is not a helpful indicator for determining reporting thresholds. New Zealand's current thresholds also do not align with the Australian framework and attempts to compare them are not particularly useful.

Market capitalisation often reflects investor sentiment, stock price fluctuations, and market volatility, rather than the true size or economic impact of a business. As a result, companies with a relatively small environmental footprint may fall under the regime due to inflated market value, while larger companies with significant environmental risks may fall outside.

Moreover, market capitalisation can fluctuate greatly, causing companies to move in and out of the reporting regime from year on year, leading to uncertainty and disruption in long-term planning, which undermines investor confidence. If the threshold were raised from $60m to $550m, this issue would be even more pronounced, with many NZX-listed companies potentially shifting in and out of

compliance based on volatile market conditions. This creates an unfair advantage for non-reporting companies, which can capitalise on the disclosures of those required to report, gaining strategic insights without bearing compliance costs. This imbalance undermines fair competition, as companies with similar operational impact face unequal obligations based on market capitalisation.

Our own business is a case in point: currently, our market capitalisation is below $550m, although historically we have been above that threshold. The proposal in Option 3, which raises the threshold to $550m and then drops it to $250m in 2028, is also unhelpful, especially as we are already in the second year of the regime.

In line with Australia's approach (and most other markets), we believe that revenue and company size/scale offer clearer, fairer, and more reliable reporting thresholds. We also think a phased timeline, with smaller organisations being transitioned in last, is reasonable. These requirements should also extend to non-listed businesses in New Zealand.

One further point: We understand that the XRB plans to consult on differential climate-related reporting standards, exploring the potential use of section 19C of the Financial Reporting Act to issue new or amended standards tailored to different classes of climate reporting entities based on entity characteristics and size. This would seem to be a more sensible approach to address any concerns about the impact of the regime for certain organisations and further reinforces how premature this review and consultation on reporting thresholds feels.

Recommendations:

- We advocate for bringing reporting thresholds in line with Australia, using revenue and company size/scale, with similar transitional timescales. If this isn't possible in the short term, we recommend maintaining current thresholds. This would ensure New Zealand maintains comprehensive coverage of climate risks while supporting international competitiveness. Any changes should avoid creating further gaps in coverage that could impact capital flows or lead to regulatory arbitrage opportunities.
- We support the exploration of differential reporting standards through the XRB process, which could help address compliance cost concerns while maintaining the integrity of the regime. This approach should ensure size-appropriate requirements while maintaining consistency in core disclosures.

Legislative framework

We strongly recommend maintaining threshold settings in primary rather than secondary legislation. Certainty and stability in regulatory requirements are essential for effective long-term planning and investment. Moving thresholds to secondary legislation would introduce political uncertainty and could undermine confidence in the regime. International experience demonstrates that stable regulatory frameworks are crucial for building market confidence and supporting the development of robust reporting practices.

Recommendation:

- We strongly recommend that the reporting thresholds remain in primary legislation.

Director liability

The relationship between liability settings and disclosure quality is complicated. We acknowledge concerns about liability having the potential to drive a risk-averse disclosure, recognising that overly stringent liability provisions may discourage meaningful forward-looking statements and scenario analysis – crucial for effective climate risk and opportunities management.

While our business is committed to transparency and doing the right thing, we feel the current director liability settings go too far. Along with external assurance, they are significant drivers of compliance costs. We also worry these settings may deter younger talent from taking on directorships in New Zealand.

We of course acknowledge that a level of liability helps ensure rigorous and credible disclosures. Removing deemed liability for directors would still mean that the organisation would remain liable for non-compliant disclosures. Directors are likely to wish to avoid the risk of third-party action against their companies after all.

Reducing director liability would bring greater alignment with Australia's regime, which does not impose deemed liability but instead requires directors to take reasonable steps to ensure compliance. The Australian approach also includes a 'safe harbour' provision, granting limited immunity for forward-looking climate-related statements, including scope 3 emissions, scenario analysis, and transition planning. A similar approach in New Zealand would address a major concern we have: directors being liable for forward-looking statements in the same way as historical financial statements. This could lead to overly cautious reporting, which is problematic given the evolving and uncertain nature of climate reporting, especially for Scope 3 emissions. Organisations that are trying to make the best-informed decisions should not be penalised for doing so.

We do not believe any of the proposals in the discussion document are ideal, but on balance we favour Option 3 as it removes deemed liability and addresses some of our other concerns. However, we strongly advocate for a more enduring safe harbour provision for specific forward-looking disclosures, such as scenario analysis, transition planning, and long-term targets particularly for Scope 3 emissions, to build confidence in disclosing these complex and uncertain projections.

If a permanent safe harbour provision is not possible, we recommend at least a five-year period of immunity, which would allow the regime to mature and give businesses the space to develop supporting processes and practices without the overhanging risk of litigation, while also helping to accelerate the move towards a low-emissions, climate-resilient economy.

Recommendation:

- On balance, we favour Option 3 as it removes deemed liability and helps address some of our other concerns; and
- We advocate for the introduction of a permanent safe harbour provision for specific forward-looking disclosures (e.g. scenario analysis, transition planning, long-term targets). If a permanent provision is not possible, we recommend a minimum of five years of immunity to allow the regime to mature without undue risk of litigation, while also helping to accelerate the move towards a low-emissions, climate-resilient economy.