MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Scott Simpson	**Portfolio**	Commerce and Consumer Affairs
Title of Cabinet paper	Amendments to the Climate-Related Disclosures Regime	**Date to be published**	14 November 2025

List of documents that have been proactively released		
Date	**Title**	**Author**
October 2025	Amendments to the Climate-Related Disclosures Regime	Office of the Minister of Commerce and Consumer Affairs
15 October 2025	Climate-Related Disclosures Regime: Proposed Amendments ECO-MIN-25-0166 Minute	Cabinet Office
29 May 2025	Regulatory Impact Statement: Capital markets – adjustments to the climate-related disclosures regime	MBIE

Information redacted **YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of confidential advice to government, legal professional privilege, international relations and negotiations.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement: Capital markets – adjustments to the climate-related disclosures regime

Decision sought	Analysis produced for the purpose of informing Cabinet decisions on adjustments to the climate-related disclosures regime.
Agency responsible	Ministry of Business, Innovation and Employment
Proposing Ministers	Minister of Commerce and Consumer Affairs
Date finalised	29 May 2025

The Government is proposing adjustments to the climate-related disclosures regime (**CRD regime**) to ensure that it is appropriate for the New Zealand context. These adjustments would:

- raise the reporting threshold for listed issuers
- remove managed investment scheme managers (**MIS managers**) from the regime
- adjust the liability settings for the regime.

Summary: Problem definition and options

What is the policy problem?

The problem is that the cost to produce climate-related disclosures is disproportionate to the perceived benefit of the disclosed information. This is caused by the reporting requirements targeting too broad a group (listed issuers), including some entities that are not a good fit for the CRD regime's current settings (MIS managers) resulting in disclosures that are not useful, combined with liability settings that add costs and do not encourage fulsome disclosure.

In this regulatory impact statement we have considered the problem and options to address it under three sub-headings – listed issuers, MIS managers and liability settings.

Government intervention is required because these settings are contained in the Financial Markets Conduct Act 2013 (**FMC Act**) and cannot be adjusted without legislative change.

The views of stakeholders are set out in the 'What consultation has been undertaken' section.

What is the policy objective?

The main objective of the proposals is to ensure that the right entities are reporting so that the CRD regime encourages our transition to a low-emissions economy through investors and entities being well-informed about climate risks and opportunities but does not become a barrier to doing business in New Zealand.

Secondary objectives are to ensure that:

a. the CRD regime does not disproportionately impact the competitiveness of New Zealand's capital markets

b. directors and climate-reporting entities (**CREs**) have the right incentives to encourage robust, useful and trustworthy climate reporting in New Zealand.

Indicators to measure success or failure would include market feedback and ongoing reviews of climate statements by the Financial Markets Authority (**FMA**) and research on the effectiveness of the regime commissioned by the External Reporting Board (**XRB**).

What policy options have been considered, including any alternatives to regulation?

The options, which were revised following consultation to take into account feedback received, are as follows:

Issue 1: Listed issuer thresholds:

- Option One: Status quo (no change from $60 million market capitalisation threshold)
- Option Two: Raise threshold to $250 million
- Option Three: Raise threshold to $550 million.

Issue 2: MIS manager reporting thresholds:

- Option One: Status quo (no change from $1 billion in total assets under management)
- Option Two: Increase threshold to $5 billion per scheme
- Option Three: Remove MIS managers from the CRD regime.

Issue 3: Liability settings:

- Option One: Status quo (no change to liability settings)
- Option Two: Disapply deemed director liability
- Option Three (a): Disapply deemed director liability and unsubstantiated representations for directors
- Option Three (b): Disapply deemed director liability and unsubstantiated representations for directors and CREs
- Option Four: Temporary modified liability
- Option Five: Disapply deemed liability and fair dealing provisions for directors.

The Minister's preferred options in the Cabinet paper are to raise the listed issuer threshold to $550 million, remove MIS managers from the CRD regime, and disapply deemed director liability and the prohibition on unsubstantiated representations for directors and CREs.

What consultation has been undertaken?

MBIE undertook public consultation from 13 December 2024 until 14 February 2025 on potential adjustments to the CRD regime. MBIE also had follow up conversations with some submitters to better understand their concerns about reporting by MIS managers.

MBIE received 93 submissions from a wide variety of submitters including CREs, peak bodies, individuals, not-for-profit organisations, academics, law firms and consultants. Submitters expressed varying views on whether there are problems with the CRD regime, what the problems are and what the best solutions might be.

In relation to listed issuer thresholds, more than half of submitters who answered the question wanted an adjustment made to the thresholds. Submitters in favour of the status quo were weighted more heavily towards those who had no experience with the regime either as a user of climate-related information or as a CRE (or advisor to a CRE). Overall MBIE considers that change is required to ensure that the costs of reporting are proportional to the benefits.

In relation to MIS managers, less than half of the submitters who answered the question in the consultation favoured increasing the thresholds. The majority of submitters in favour of the status quo did not have direct experience with the regime, either as CREs or users of the disclosures. MIS managers commented on the difficulties and usefulness of reporting. We had follow up conversations with 8 out of the 22 MIS managers potentially impacted about

their experience with the regime. These follow up discussions clarified that the information currently being produced by MIS managers was not particularly useful either for retail investors or the MIS managers themselves. It was due to this feedback that we added the option to remove MIS managers from the regime to our analysis.

In relation to the liability settings, a clear majority of submitters favoured a change to the status quo. Of the options that were consulted on, option three (disapply deemed director liability and unsubstantiated representations for directors) and option four (modified liability) looked to be preferred but it was difficult to draw definitive conclusions from the responses. This was because some submitters proposed a combination of options or caveated their response in some way.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

For MIS and liability settings the preferred option is the same. For listed issuers the preferred option is different. The Minister proposes raising the listed issuer reporting threshold to $550 million whereas MBIE recommends raising the reporting threshold to $250 million.

Summary: Minister's preferred option in the Cabinet paper

As the Minister's preferred option and MBIE's preferred option only differ in one respect we have combined the commentary below in Costs, Benefits and Balance of Costs and Benefits.

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

The regulated parties (CREs and their directors), government agencies and regulators would not incur increased costs.

There would be a non-monetised cost in the form of reduced information available to the market. In the case of investors, MIS statements would stop being required to be produced, unless MIS managers continue voluntarily reporting – otherwise, investors would no longer be able to access this information. This may also increase the chance that MIS managers do not appropriately consider their exposure to climate risks. In the case of listed issuers, if the threshold is raised, there would generally be less information available to the market about listed issuers' climate related risks and opportunities due to fewer listed issuers being required to report. Raising the threshold to $550 million (as preferred by the Minister) rather than $250 million (as preferred by MBIE) will increase this effect.

The Crown will recover a reduced levy that contributes to the FMA's funding and this reduced levy amount is higher for the Minister's preferred option than for MBIE's preferred option. Confidential advice to Government

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

The key benefits are cost savings for MIS managers and listed issuers. For MIS managers there are estimated savings of somewhere between $5.5 million to $22 million per year (if savings are between $0.25 million to $1 million per MIS manager, with 22 affected). This cost saving applies to all MIS managers that are CREs.

For the Minister's preferred option, for listed issuers there are estimated cost savings of somewhere between $8.25 million - $55 million per year (assuming a saving of between $0.15 million to $1 million per issuer, with 55 affected). For MBIE's preferred option there are estimated cost savings of between $4.2 million and $28 million per year.

There would also be a reduced regulatory role for the FMA in relation to MIS managers and some of the listed issuer group for both proposals.

The change to the liability settings would benefit all CREs and their directors. It may also indirectly benefit users of the climate statements by encouraging the production of more robust reports. We do not have monetised costs of savings for changing the director liability settings but changing the settings may result in lower legal costs to business.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

The potential benefits of the proposed changes outweigh the costs. In the case of MIS managers, the cost of producing reports that are not particularly useful would no longer be incurred. For the Minister's preferred option for listed issuers the benefits are likely to outweigh the costs with the costs of reporting being incurred by the largest issuers. However, there is an increased risk with this option that New Zealand may be perceived as withdrawing from its climate commitments. For MBIE's preferred option the benefits also outweigh the costs with less impact on information availability in the market.

The benefits of changing the liability settings outweigh the current costs in the form of conservative climate reporting with increased legal costs.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

The adjustments to the thresholds and director liability settings will be implemented via amendments to the FMC Act and the Fair Trading Act.

The FMA would continue to be responsible for regulatory oversight of the regime and the XRB would continue to be responsible for issuing standards against which the entities report.

MBIE officials, the FMA and XRB will work with stakeholders to ensure they are aware of the changes. This will include notifying CREs via email and by updating MBIE, FMA and XRB websites.

No funding is required for effective implementation. Transitional arrangements may be required.

We propose that the changes are made through the next available legislative vehicle, however, given the Government's busy legislative programme there is a risk that changes get delayed.

Limitations and Constraints on Analysis

The key limitation is that the CRD regime is in its infancy and predicting how it may develop is not straightforward. There is limited real world experience in New Zealand and overseas both in terms of preparing the reports and the benefits it may bring to individual businesses and the wider economy. There is also limited evidence currently about the impact of the regime and whether it is achieving its aims of smoothing the transition to a low-emissions economy. Additionally, we do not have information about what changes to the reporting standards could look like, or any evidence that changes would have an impact on the issues.

We have based our analysis on the information available to us, mainly from consultation, but note that:

- cost estimates are based on limited information and may not be entirely accurate
- some costs involved in reporting may reduce over time but this is also uncertain.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature: 

Gillian Sharp
Manager, Corporate Governance and Intellectual Property Policy
29 May 2025

Quality Assurance Statement

Reviewing Agency: MBIE	**QA rating:** Meets

Panel Comment:

A Quality Assurance Panel from MBIE has reviewed the Regulatory Impact Statement (RIS) prepared by MBIE titled Capital markets – adjustments to the climate-related disclosures regime on 7 May 2025.The Panel considers that the information and impact analysis summarised in the RIS meets the Quality Assurance criteria.

The panel considers that there is a logical and convincing link between the objective of the climate-related disclosure regime, the problem identified, the criteria for analysis and the recommended options. The panel notes that a strength of the analysis is the incorporation of feedback from consultation, informing the development of additional options.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Climate-related disclosures regime and regulatory framework

1. New Zealand's mandatory climate-related disclosures regime (**CRD regime**) was established in 2021, for the purpose of:

    a. ensuring that the effects of climate change are routinely considered in business, investment, lending, and insurance underwriting decisions

    b. helping reporting entities better demonstrate responsibility and foresight in their consideration of climate issues

    c. to lead to smarter, more efficient allocation of capital, and help smooth the transition to a more sustainable, low-emissions economy.

2. The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021[1] introduced the legislative framework for the CRD regime.

3. The CRD regime requires climate reporting entities (**CREs**) to prepare annual climate statements disclosing their climate-related risks and opportunities. Various civil and criminal liability provisions apply to reporting entities and their directors under the regime.

4. The first climate statements were lodged in 2024, and the second year of climate statements will be lodged throughout 2025.

Key participants in the CRD regime

5. There are several key participants in the CRD regime:

Participant	Description
Climate-reporting entities (**CREs**)	The following classes of entities that meet the definitions of large as set out in the Financial Markets Conduct Act (**FMC Act**): • registered banks, credit unions, and building societies[2] • managers of registered investment schemes[3] • licensed insurers[4] • listed issuers (publicly listed companies).[5]
External Reporting Board (**XRB**)	Issues the climate standards that the CREs must use to prepare climate statements[6]. They can issue different reporting standards for different entity types and sizes[7].

[1] This Act amended the Financial Markets Conduct Act 2013 (**FMC Act**), Financial Reporting Act 2013 (**FR Act**) and the Public Audit Act 2001.
[2] Refer section 461Q of the FMC Act
[3] Refer section 461S of the FMC Act
[4] Refer section 461Q of the FMC Act
[5] Refer section 461P of the FMC Act
[6] Aotearoa New Zealand Climate Standards » XRB
[7] Refer section 19C of the FR Act

Participant	Description
Financial Markets Authority (**FMA**)	Responsible for independent monitoring and enforcement of the CRD regime and can grant class or individual exemptions from climate reporting where appropriate.
MBIE	Responsible for the legislation.

6. Approximately 166 entities are currently required to prepare climate-related disclosures for the second year of the regime. This is made up of 24 registered banks, 0 credit unions, 1 building society, 22 managers of registered investment schemes (MIS), 17 licensed insurers and 102 listed issuers.
7. Currently all entities are required to report in accordance with the same set of standards regardless of size or entity class. The standards issued by the XRB cover four climate-related information pillars: governance, strategy, risk management, and metrics and targets, consistent with the recommendation of the Task Force on Climate-related Financial Disclosures. The XRB intends to consult on differential reporting which is likely to include different standards for different classes of entity.

The international landscape for climate reporting is not settled

8. Globally investors are demanding high quality, comparable climate and sustainability related information. However, there is not yet international consensus on the best regulatory requirements to meet the market preferences for this kind of information.
9. New Zealand was the first country to introduce a mandatory, standards based CRD regime in 2021. Since then, other jurisdictions including Australia have developed regimes. Australia has a phased implementation approach with the biggest entities reporting first for financial years starting on or after 1 January 2025. This will be followed by a second group reporting for financial years starting on or after mid-2026 and a third group reporting for financial years starting in mid-2027. Details about the Australian thresholds for their phased implementation are set out in **Annex one**.
10. Recently several jurisdictions have announced changes to, or intentions to review, their regimes to reconsider implementation timeframes or the scope of entities captured by regimes. These include:
    a. the European Commission which has announced it is reducing the number of entities that have obligations to report on ten sustainability topics (including climate change) by 75-82% and reducing the complexity of the disclosures
    b. the USA has stopped the implementation of their climate reporting rules (although California and some other states are still proceeding with their regimes).

Connection to Government priorities

11. Adjustments to climate-related disclosures are a part of a broader package of capital markets reforms which are part of the Government's *Going for Growth's* Competitive Business Settings pillar.
12. The Government's 2025 Quarter 2 Action Plan commits to Cabinet policy decisions on this work through action number 18, *take Cabinet decisions on capital markets settings to remove barriers to listing, reduce costs to firms and enable greater investment in private assets from KiwiSaver providers*.

Expected development of the status quo if no action is taken

13. Our regime is in its infancy and predicting what may happen in the future is challenging for a number of reasons:
    a. there is only limited real world experience in New Zealand and overseas, both in terms of preparing the reports and understanding the benefits it may bring to individual businesses and the wider economy
    b. the costs and burden of reporting may reduce over time as businesses become more experienced and reporting becomes more embedded – but this is not certain
    a. while it may be possible that differential reporting could assist with some issues, there is no evidence to support that this would be the case.
14. For the purposes of this regulatory analysis we assume that the legislative settings of the regime – eg the scope of entities and liability settings – will not change from the current state, meaning the problems outlined below would persist.
15. Although the XRB intends to consult on differential reporting as we do not know what any new standards might look like, when they could be implemented, or whether or to what extent they will assist in resolving the problems described in this document, we have not factored this into our analysis.

What is the policy problem or opportunity?

Stakeholder issues with the regime

16. Many CREs and industry groups have emphasised the importance of climate reporting and are supportive of a regulatory regime to mandate disclosures.
17. However, during the first year of reporting stakeholders reported issues with the regime, such as:
    - cost of compliance was disproportionate to the benefit of reporting
    - the regime was a barrier to listing on the NZX
    - reports produced by managed investment schemes (**MIS**) were not useful, and
    - director liability settings discourage CREs from disclosing certain types of useful information.

What consultation has been undertaken?

18. In response to this feedback, in December 2024 Cabinet approved a MBIE discussion document to undertake public consultation from 13 December 2024 until 14 February 2025 on potential adjustments to the regime. MBIE also had follow up conversations with some submitters to better understand their concerns about MIS manager reporting.
19. We received 93 submissions from a wide variety of submitters including CREs, peak bodies, individuals, not-for-profit organisations, academics, law firms and consultants.
20. Submitters expressed varying views on whether there are problems with the CRD regime, what the problems are and what the best solutions might be.

The policy problem

21. The costs to produce climate-related disclosures are disproportionate to the perceived benefit of the disclosed information.

22. This problem is caused by the reporting requirements targeting too broad a group (listed issuers) and including some entities that are not a good fit for the CRD regime's current settings (MIS managers) resulting in disclosures that are not useful. This is combined with liability settings that add costs and do not incentivise fulsome disclosures.

23. The problem impacts users of climate-related disclosures, and all 166 entities required to report. CREs who provided cost data in their submissions provided figures between $0.15 million and $1 million per CRE per year, meaning the estimated total cost is somewhere between $25 million and $166 million per year. It is also potentially discouraging private companies from listing on the NZX, but we do not have data on how many of these companies there are.

24. We have divided the policy problem into three parts, each of which we discuss in more detail under three sub-headings - listed issuers, managed investment schemes and liability settings.

Listed issuers

25. The CRD regime is imposing disproportionate costs on some listed issuers because the reporting threshold is set at too low a level - $60 million market capitalisation (market cap)[8]. This was set to align with the maximum market cap allowed for listing on New Zealand's alternative stock exchange – Catalist. The threshold captures approximately 28 mid-sized listed issuers between $60 million and $250 million market cap on the NZX. These issuers generally have fewer resources to absorb the compliance costs of the CRD regime compared to larger issuers. We heard through consultation that the burden imposed by CRD is a barrier to listing on the NZX which ultimately reduces the competitiveness of New Zealand's capital markets.

Costs

26. The costs of CRD reporting and compliance are significant. Listed issuers reported costs ranging between around $0.15 million and $1 million[9] during consultation. Based on this information we estimate total costs for the 102 listed issuers currently reporting to be somewhere between $15.3 million and $102 million per year.

27. Costs between $0.15 million and $1 million (annually) are very high for a company with $60 million market capitalisation. It is comparably less of an impact for larger companies.

Listings

28. The CRD settings have a competitive impact on New Zealand listed companies. Currently listed companies potentially face higher costs than their peers which are privately held (including costs associated with the CRD regime).

29. Recently there have been fewer new listings on the NZX and CRD costs (above) further discourage businesses from listing. Fewer listing of companies weakens our capital markets and undermines the effectiveness of CRD - which does not work if companies choose not to list in New Zealand.

30. Of the 26 listed issuers that made a submission, 17 agreed with the problem set out above although their views differed on appropriate solutions. Only four wanted to retain the status quo. Additionally, 10 fund managers, as intended users of the information,

[8] This is the threshold for an equity issuer. For a debt issuer, the threshold is $60 million in quoted debt. The term "market cap" has been used to refer to both thresholds in this document.

[9] Some listed issuers reported numbers per year covering initial set up, data collection, consultants and legal expertise but not internal resources and time or assurance. Whilst others incorporated these into the total figures they reported. These are very high-level estimates. It is possible these costs could reduce over time, but we have no evidence to quantify what this may look like.

agreed with the problem. Some other stakeholders (including six environmental advocacy groups or not for profits, six auditing/consultancy firms, seven individuals, four listed issuers, and four other submitters) either think it is too early to adjust the CRD regime or focused their response on alignment with Australia. Only a small number of submitters think that the issues raised by listed issuers are not as problematic as described.

Managed investment schemes

31. A managed investment scheme (**MIS**) pools money from investors and invests in a range of other assets. The threshold for reporting is $1 billion in total assets under management. If one MIS manager is a manager of multiple schemes, then the assets of all the schemes are added together to determine if the MIS manager is a CRE. A MIS manager that is a CRE prepares climate statements for every fund in each scheme that it manages. Climate statements for separate funds within a scheme may be combined in a single document[10].

32. The information being disclosed by MIS managers is not contributing to the desired policy intent. It is low-value (for investors) and has limited impact on MIS investment decisions or capital (re)allocations because it is not useful for the market. The costs of reporting are also high and disproportionate to the value being gained.

CRD not achieving policy intent for MIS managers

33. The policy intent of including MIS managers was to give investors greater information about climate impacts of the funds they were investing in and to ensure MIS managers were routinely considering climate risks and opportunities when deciding where to invest. However, the feedback in submissions and follow up conversations with MIS managers consistently reported that including MIS in the regime did not achieve the desired policy intent because:

    a. MIS managers have low influence over assets they hold. They rarely have operational control over the management of their investee companies, and can generally only influence climate outcomes through their choices about which assets to hold (e.g. divesting from certain firms or directing capital to investee companies with credible transition plans).

    b. Retail investors (the primary readers of MIS managers' climate statements) are likely to find the disclosures to be too detailed and complex. Retail investors need simpler information than sophisticated wholesale investors. Instead of CRD, these investors are likely to look for other measures that are more tangible such as MIS manager ethics (advertised on their website or social media, for example), or an investment philosophy with an ESG mandate, or what assets they actually hold.

34. In response to our consultation and in further discussions with 8 MIS managers, most submitters who commented on this aspect of the consultation (44 submitters), including MIS managers, agreed that CRD reporting for MIS was not working well. Most submitters supported the overall intent of the regime but from their experience with the regime (either as CREs, or from a user perspective) they agreed the current information is not useful.

35. Consultation indicated that MIS managers are not a good fit for the regime and are not like the other CREs. The information they are required to disclose does not target the information most relevant to them and their users. Views differed on the best solution for the problem.

[10] Refer s 461ZE of the FMC Act.

Costs

36. The regime captures, and imposes costs on, MIS managers with $1 billion in total assets under management. This currently applies to 22 MIS managers, 121 schemes, and approximately 995 funds, totalling approximately $230 billion in funds under management. Feedback from consultation suggests CRD provided by MIS managers has not been particularly useful for investors. MIS managers report very low rates of website traffic (most of which was from other MIS managers) and virtually no inquiries from retail investors on the disclosures made. Additionally, third-parties that analyse data across providers for consumers, such as Mindful Money, have said they are not currently using the information.

37. The costs of producing disclosures are significant, particularly for MIS managers with large numbers of underlying funds, or some of the smaller MIS managers captured with niche arrangements. From the information in submissions we estimate total costs for MIS managers could be somewhere around $10 million per year taking around $5.5 million per year as the lower end (presuming a cost of $0.25 million total) and $22 million per year at the higher end (taking the highest number provided by a MIS, $1 million total costs)[11]. The reported costs are high and are likely disproportionately impacting smaller MIS managers.

38. CRD costs will have an impact on competitiveness for funds and returns for investors. Fee levels are a key consideration for investors and a few MIS managers have indicated they have already had to pass the costs onto consumers, and others have said they would eventually need to pass the costs on. This would impact a significant number of New Zealand consumers, particularly those with KiwiSaver, as 25 of the largest KiwiSaver schemes are currently in the regime.

Liability settings

Background to the liability settings

39. There are a several civil and criminal liability provisions relevant to CREs and their directors in the FMC Act. Part 7A sets out the obligations specific to climate reporting. CREs may be civilly liable if they fail to prepare climate statements in accordance with the standards, get parts of the climate statements assured, lodge the statements and/or keep proper records for a certain number of years[12]. For some of these obligations, directors will have automatic deemed liability for a contravention by the entity. Deemed liability applies to the preparation, lodgement and assurance requirements (see s 534 of the FMC Act).

40. Otherwise, directors would be liable for a breach by the entity if the director has been "involved in a contravention", i.e., the director has aided and abetted, induced, or been knowingly concerned in the contravention[13].

41. In addition to the Part 7A requirements, CREs must comply with the fair dealing provisions in Part 2. At a high level, this covers misleading or deceptive conduct, false or misleading representations and, unsubstantiated representations irrespective of whether

[11] Based on their 2024 reporting costs: one smaller MIS manager reported costs of around $0.25m not including assurance, one estimated costs around $0.5m in total, larger MIS managers reported costs of up to $1m (which is considered the highwater mark), another estimated costs of around $0.075 per scheme, scaling rapidly based on the number of schemes a MIS had. All MIS managers reported costs were significant and causing a disproportionate burden. It is possible these costs could reduce over time, but we have no evidence to quantify what this may look like.

[12] Refer s 461ZK of the FMC Act

[13] See s 533 of the FMC Act for a full description of involvement in a contravention.

the representation is false or misleading. Directors would be liable if they have been 'involved' in a contravention of the entity.

42. A CRE or a director commits a criminal offence if the climate statements fail to comply with the standards and the entity or the director (as the case may be) knows that they fail to comply[14]. Criminal liability may also follow if a CRE or a director knowingly makes a false or misleading statement in the climate statements[15].

The problem

43. The liability settings are having a chilling effect on climate-related disclosures and are causing CREs and their directors to take a very risk averse approach to reporting, including by removing potentially useful information from climate statements. Stakeholders have also reported increased legal costs due to these settings. The settings are working against the purpose of the regime, which is to produce useful information for decision making with appropriate costs.

44. The liability settings for climate-related disclosures are similar to the settings for financial reporting. However, climate statements are inherently different to financial statements. Financial statements are critical for investors and are generally based on historic information about the company's financial position and performance. Investors are also likely to rely on the information contained in financial statements about the financial strength of company. Climate statements have some historic information such as emissions reporting but have a strong focus on the future which is much less certain.

45. Applying "deemed director liability" to an entity's directors for failure by the entity to meet the CRD regime requirements has caused the most concern. This liability means that if an entity has failed to prepare and lodge climate statements in accordance with the climate standards all directors are deemed to be liable for the contravention.

46. The combination of deemed director liability and the nature of the defences in the FMC Act means that all directors are having a very high degree of involvement in the production of the climate statements.

47. Entities and directors have also expressed concern about complying with s 23 of the FMC Act which prohibits unsubstantiated representations irrespective of whether the representation is false or misleading. Requiring substantiation of some elements of the climate standards can be challenging, e.g., the requirement to undertake scenario analysis to help an entity identify its climate risks, opportunities and better understand the resilience of its business model[16].

48. These liability settings are also contributing to high legal and consultancy costs, although submitters did not clearly quantify the cost. Arguably the liability settings are also contributing to a disincentive to list on the NZX. This is because there is no equivalent deemed liability for directors in Australia.

49. In response to our consultation, the majority of submitters (including CREs) considered that the liability settings should be changed. Where reasons were provided, these were generally along the lines of the description of the problem above. A minority of submitters considered either that there was not a problem with the liability settings or that it could be addressed without legislative change.

[14] Refer s 461ZG of the FMC Act
[15] Refer s 512 of FMC Act
[16] NZ CS 1 *Climate Related Disclosures,* paragraphs 11(b) and 13.

What objectives are sought in relation to the policy problem?

50. The main objective of the proposals is to ensure that the right entities are reporting so that the CRD regime encourages our transition to a low-emissions economy through investors and entities being well-informed about climate risks and opportunities but does not become a barrier to doing business in New Zealand.

51. Secondary objectives – which each contribute to the primary objective – are to ensure that:

    a. the CRD regime does not disproportionately impact the competitiveness of New Zealand's capital markets

    b. directors and CREs have the right incentives to encourage robust, useful and trustworthy climate reporting in New Zealand.

Section 2: Assessing options to address the policy problem

52. This section addresses each of the three parts of the policy problem outlined above.
53. Options have been assessed based on our understanding that the Minister of Commerce and Consumer Affairs will recommend that amendments to the monetary amounts of the reporting thresholds can be altered by Order in Council. This is to increase the flexibility of the regime. It will ensure that the thresholds remain relevant in the future including by allowing changes to be made in response to changing market conditions. We expect that the ability to adjust the monetary amounts by Order in Council will be subject to procedural safeguards such as consultation requirements and consideration of the purpose of the CRD regime and its costs.
54. Delivery of options, including monitoring and evaluation, is discussed in section 3.

Issue one: listed issuer thresholds

What criteria will be used to compare options to the status quo?

55. The criteria that are used to compare the options to the status quo are:
    a. **Effectiveness:** whether options enable a more efficient allocation of capital, and help smooth the transition to a more sustainable, low-emissions economy. This criterion considers whether investors are being appropriately informed about climate-related risks and opportunities and whether an option is likely to impact New Zealand companies' ability to do business in other markets that expect the disclosure of climate-related information.
    b. **Encourage listings in New Zealand:** whether the options encourage New Zealand companies to list rather than stay unlisted and to list in New Zealand.
    c. **Cost is proportionate:** whether the costs of options are proportionate to the benefit of reporting for listed issuers.
56. We have double weighted the 'effectiveness' criterion in our assessment. We consider this the most important criterion because it relates directly to the primary policy objective.

What scope will options be considered within?

57. The scope of options considered reflects the objectives in relation to the policy problem.
58. We consulted on options to raise the listed issuer threshold to $550 million or to raise the threshold to $550 million and then reduce it to $250 million approximately two years later. These figures were chosen because they are broadly consistent with the group 1 and group 2 reporting thresholds in Australia. Retention of $60 million would be broadly consistent with the group 3 threshold in Australia.
59. Consultation feedback indicated that raising the market cap threshold for listed issuers to $550 million and then reducing it to $250 million was too 'stop-start' and was not supported. Taking on board this feedback, we considered two options:
    a. move the market cap threshold to $250 million, or
    b. move the market cap threshold to $550 million.
60. During consultation submitters made other suggestions such as expanding the regime to unlisted companies (as is the case in Australia) or to change the market capitalisation test to be more similar to the Australian test (i.e., based on assets, revenue and employee

numbers). These are significant reforms that were not consulted on and have not been considered as part of this analysis.

What options are being considered?

Option One (status quo) - thresholds remain at $60 million market capitalisation (consultation option)

61. This option would mean no change to the listed issuer threshold settings. One hundred and two companies currently meet the definition of a large listed issuer. The current threshold roughly captures the same sized entities as Australia's regime would capture for listed issuers when it is fully phased in.

62. Of the 73 submitters that answered questions about the listed issuer settings, 25 broadly supported the status quo. Only a small number of these were not convinced there was a problem or did not think the cost of the issues being experienced outweighed the intended benefits of the regime. The reasons they gave in support of the status quo tended to be because they thought this aligned best with Australia or because they thought it was too early to look at adjusting the settings.

63. Eight others were undecided as to whether legislative change was needed or the status quo was preferred. Submitters within this group were weighted more heavily towards those who had not had experience directly with the regime either as a user of climate-related information or as a CRE (or advisor to a CRE). Included in the aforementioned figures, only two listed issuers supported no change to the legislation.

64. Forty supported some form of change to the legislation (this includes 11 submitters with preferences for legislative changes that are out of scope).

Option Two – thresholds increase to $250 million market capitalisation (added as an option following consultation)

65. This option would raise the listed issuer reporting thresholds to $250 million market cap and allow the market cap to be adjusted more easily in the future by Order in Council.

66. Listed issuers with a market cap from $60 million to $250 million would need to continue reporting until the legislation is changed, after which those with less than $250 million market cap would stop reporting. This option would not impact any issuers with a market cap higher than $250 million.

67. This change would reduce the number of listed issuers required to report from approximately 102 to approximately 74. Twenty-eight small-medium sized publicly listed companies would no longer be required to report. If this option is chosen, we consider Parliament should make these changes as soon as possible, ideally by early 2026 so that companies being removed do not continue to incur costs.

68. As discussed above this option is a modification of a proposal that was consulted on. The $250 million threshold both roughly aligns with Australia's Group 2 entities and approximately captures the NZX 50. Although it is not possible to make exact comparisons this threshold is not significantly out of step with other comparable jurisdictions.

69. The 40 submitters who supported legislative change gave several reasons for their views. These included that the cost of reporting and compliance is placing an undue burden on small-medium sized listed issuers and that the inclusion of these companies is not making, nor likely to make, a significant contribution to the effectiveness of the regime. Other themes included climate-related disclosure (**CRD**) costs being a barrier to listing

on the NZX and risking some of the smaller companies with limited operating resources or negative profitability de-listing.

70. Ten submitters' preference was to increase the threshold to $250 million, although some other submitters indicated they may have chosen this option if the staggered approach was not included in the proposal. Submitters tended to pick $250 million because they considered this figure to be a middle ground between those who are concerned that any increase to thresholds would impact the effectiveness of the regime with those who think the costs of disclosures are disproportionate to the benefits for smaller companies.
71. Submitters supportive of changing the legislation and increasing the thresholds tended to have direct experience with the regime, either as a user of information, a CRE, or a representative body.

Option Three – thresholds increase to $550 million market capitalisation (consultation option)

72. This option would raise the listed issuer reporting thresholds to $550 million market cap and allow the market cap to be adjusted more easily in the future by Order in Council.
73. Listed issuers with a market cap from $60 million to $550 million would need to continue reporting until the legislation is changed (potentially early 2026). Those with less than $550 million in market cap would then stop reporting.
74. The change would reduce the number of listed issuers required to report from approximately 102 to approximately 47. This would mean 55 small-medium sized publicly listed companies are no longer required to report. If this option is chosen Parliament should make these changes as soon as possible, ideally by early 2026 so that companies being removed do not continue to incur costs.
75. The $550 million threshold roughly aligns with the requirements for Australia's Group 1 entities to report. Although it is difficult to make exact comparisons this number is not significantly out of step with other comparable jurisdictions.
76. Nineteen submitters' preference was to increase the thresholds to $550 million; this included four MIS managers who identified as users of climate-related information because they are investors in listed companies. These submitters consider that the costs outweigh the benefits for CRD by companies under $550 million market capitalisation, which is a consideration for them as investors. Submitters generally gave the same reasons for supporting an increase to the thresholds. Preferences came down to which threshold submitters considered captured companies that have the resources to absorb the costs of reporting. Most listed issuers that responded preferred this option, along with MIS managers that invest in these companies.
77. Some submitters suggested that increasing the threshold to $550 million could create a competitive advantage with Australia as smaller companies considering listing would not face CRD reporting costs if listing on the NZX.

How do the options compare to the status quo?

Criteria	Option One – status quo No change from $60 million market capitalisation threshold	Option Two Thresholds increase to $250 million plus ability to change by Order in Council	Option Three Thresholds increase from $60 to $550 million plus ability to change by Order in Council
Effectiveness	0 x 2 = 0 Would maintain the current effectiveness of the regime. It is too early to quantify how impactful the settings would be in the long term. This allows time to see how the market is impacted by external pressures, including international demand.	0 x 2 = 0 Likely not to have a significant impact on effectiveness, as large listed companies and some mid-size listed companies would continue to have to report and it is unlikely to be perceived as a withdrawal from climate commitments or have a significant impact on New Zealand doing business internationally.	- x 2 = -2 May reduce the effectiveness of the regime as only the largest listed companies would have to report and International relations [redacted] There is a likelihood that the threshold would need to be adjusted again in the near future which reduces effectiveness.
Encourages listings in New Zealand	0 Smaller companies may be deterred from listing on the NZX because they would need to report.	+ More likely to remove barriers to listing on the NZX than the status quo as smaller companies would not have to report.	++ Would remove one of the barriers to listing on the NZX for small and medium sized companies. International relations [redacted]
Cost is proportionate	0 Smaller listed companies are caught with limited financial resources to absorb the costs of reporting and compliance.	+ Would reduce the burden for smaller listed issuers, leaving the ones most likely to absorb the costs, e.g., roughly covers the NZX 50 list (which the FMA originally recommended).	++ Would only capture the biggest companies with the most resources who are better able to absorb the costs.
Overall assessment	0	++	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

78. **We recommend Option Two:** we consider this is the best option to ensure that the right entities are reporting so that the CRD regime encourages our transition to a low-emissions economy but does not become a barrier to doing business in New Zealand or affect the competitiveness of New Zealand's capital markets.
79. Raising the threshold to $250 million would remove a barrier to listing on the NZX for smaller companies, which may result in more listings, and reduce the compliance burden for smaller listed issuers. We consider that this would not have a material impact on the effectiveness of the regime because the bigger entities would still be reporting, including the NZX 50. Additionally, some entities would continue to report voluntarily.
80. This option avoids a potential negative impact on the ability to do business internationally. International relations The option should not significantly impact the effectiveness of the regime in encouraging our transition to a low-emissions economy as the largest companies would still be required to report.
81. Although it is finely balanced, we think Option Two is preferable to Option Three. This is for the reasons outlined above and because there is less risk of a stop-start approach (for example, if the regime moves to $550 million and then is reduced, entities would fall out of the regime and then come back in). If the setting is at $250 million it could be lifted in the future without risking a stop-start approach. CREs that made submissions were very clear that certainty on whether they need to report was a key consideration.

Issue two: Managed investment scheme settings

What criteria will be used to compare options to the status quo?

82. The criteria that are used to compare the options to the status quo are:
    a. **Effectiveness:** whether options enable a more efficient allocation of capital, and help smooth the transition to a more sustainable, low-emissions economy. This criterion considers whether investors are being appropriately informed about climate-related risks and opportunities.
    b. **Cost is proportionate:** whether the cost of options are proportionate to the benefit of reporting for managed investment scheme managers.
    c. **Certainty:** whether the options provide certainty for regulated parties and financial markets.
83. We have double weighted the 'effectiveness' criterion in our assessment. We consider this the most important criterion because it relates directly to the primary policy objective.

What scope will options be considered within?

84. The scope of options considered reflects the objectives in relation to the policy problem.
85. The current threshold for a MIS to do CRD reporting is $1 billion in total assets under management, across all schemes. We consulted on raising the threshold to $5 billion in

total assets under management or $5 billion per scheme. The $5 billion per scheme figure was chosen to better align with the reporting requirements in Australia[17].

86. Information about the impact on the reporting population including the number of schemes and funds under management is set out in the table below.

Table one: Managed investment scheme reporting population under different scenarios

Reporting population	**Second reporting cycle *(based on current threshold)***	**Population if threshold was $5b per MANAGER**	**Population if threshold was $5b per SCHEME**
Number of managers	22	11	9
Number of schemes	121	56	11
Approx. Number of funds (No of funds in relevant scheme as of Dec 2024)	*~995*	*~722*	*~152*
Other information			
Approx. Value of FUM (as of Dec 2024)	*~$230b*	*~$190b*	*~$120b*
Type of schemes			
KiwiSaver	25	18	8
Managed Funds	55	24	3
Superannuation	8	7	-
Superannuation & Workplace Savings	3	2	-
Workplace Savings	3	3	-
Workplace Savings & Other	1	1	-
Other	1	1	-
Residential or commercial property	25	-	-

87. Consultation feedback indicated that there are more fundamental issues with the application of CRD to MIS managers, than just where the threshold should be. On this basis, we changed the options to consider. We removed the option to adjust the thresholds for MIS to $5 billion funds under management (**FUM**) as the option does not make enough of a difference to the total number of MIS managers required to report, and we have added an option to remove MIS from CRD entirely.

88. The two options we are considering are:

[17] In Australia asset owners (including registered schemes) must report if they have $5 billion or more in assets under management, i.e., it is a per scheme calculation. However, a registered scheme may also be required to report if it meets the Australian general reporting requirements for large entities.

a. Increase the MIS threshold to $5 billion per scheme, or

b. Remove MIS from CRD entirely.

89. We have not considered mandating other types of environmental, social and governance (**ESG**) or climate information as we do not have enough information to develop a suitable option and assess this in the context of the other disclosure and reporting obligations MIS managers already have. We consider that such a change requires significant policy work including consultation, therefore we have not considered this as part of our analysis.

What options are being considered?

Option One – status quo (consultation option)

90. This option means retaining the MIS threshold settings as they are. Twenty-two MIS managers currently meet the definition of a large MIS, capturing 121 schemes, approximately 995 funds and $230 billion FUM. This includes 25 KiwiSaver schemes, 55 managed funds, eight superannuation schemes, three superannuation and workplace savings schemes, 25 residential or commercial property schemes, and two other scheme types.

91. Forty-four submitters answered the questions on whether the legislative settings need to be adjusted. Twenty-four supported the status quo, mostly because of concerns that any reduction in numbers of MIS captured would have a negative impact on the effectiveness of the regime. Although 10 of these supported the status quo only if non-legislative changes were made, such as differential reporting. No CREs, including MIS supported the status quo without some form of other change. The remaining 20 supported some form of change to the legislation.

Option Two – thresholds increase to $5 billion per scheme (consultation option)

92. This option would amend the MIS reporting thresholds from $1 billion total assets under management to $5 billion per scheme and allow the threshold to be adjusted more easily in the future by Order in Council. This would mean a change from the current framework which requires a calculation of the total assets under management of a particular manager to apply the threshold to an individual scheme rather than all schemes under management. All MIS managers with total assets under management above $1 billion would need to continue reporting until the legislation is changed. Schemes of less than $5 billion would then stop reporting. If this option is chosen Parliament should make these changes as soon as possible, ideally by early 2026 so that companies being removed do not continue to incur costs

93. This change would reduce the number of MIS currently required to report from 22 MIS managers to nine, with 11 schemes and approximately 152 funds, and $120 billion value of FUM.

94. The threshold of $5 billion per scheme roughly aligns with Australia's settings. The United Kingdom also a similar style of mandated climate disclosures for MIS equivalents.

95. There were several overarching reasons submitters gave for supporting an increase to thresholds, including the current disclosures being expensive whilst also not being useful so that the costs are outweighing the benefits of reporting. In addition, the costs are having a disproportionate impact on smaller MIS. These sentiments were repeated in further conversations with MIS managers where they all indicated that MIS are not a good fit for the regime and expressed concerns about the high costs of reporting which are producing negligible benefits for either retail investors or themselves.

96. Of the 44 submitters that answered questions on MIS, 20 submitters' preference was to increase the thresholds. Eleven of these submitters' preference was to raise the thresholds to $5 billion per scheme, two didn't have a preference on how to raise the thresholds and seven supported increasing the thresholds to $5 billion total funds under management, although several of these submitters supported an increase to $5 billion per scheme based on follow up conversations. All but one of the MIS managers that made a submission preferred raising the thresholds.

Option Three – remove managed investment schemes from the CRD regime (added as an option following consultation)

97. This option would amend the legislation to remove MIS from the CRD regime. This means MIS would no longer be required to produce climate-related disclosures in accordance with climate standards. The 22 MIS managers currently required to report would stop reporting on a mandatory basis in compliance with the climate standards. This would mean that New Zealand is no longer aligned with Australia with respect to MIS managers. If this option is chosen Parliament should make these changes as soon as possible, ideally by early 2026 so that companies being removed do not continue to incur costs.

98. This option was chosen because the scope of the problem is more fundamental than the threshold settings. The information being disclosed by MIS managers is not contributing to the desired policy intent. It is low-value (for investors) and has limited impact on MIS investment decisions or capital (re)allocations because it is not useful for the market. The costs of reporting are also high and disproportionate to the value being gained. This is because MIS managers have low influence over assets they hold. They rarely have operational control over the management of investee companies, and generally only influence climate outcomes through their choices about which assets to hold (eg divesting from certain firms or directing capital to investee companies with credible transition plans). Additionally, retail investors are likely to find the disclosures to be too detailed and complex. Instead of CRD, these investors are likely to look for other measures that are more tangible such as MIS manager ethics, or an investment philosophy with an ESG mandate, or what assets they actually hold.

99. Because this was not one of the proposed options in the consultation submitters were not able to give feedback on this option. However, in follow up conversations with 8 MIS managers we asked if there is value in having MIS managers in the framework and what they thought would happen if MIS were removed from the framework entirely. The general sentiment in response was that although they supported the intent of the regime, they did not think MIS were a good fit and that it could make sense to exclude them from the framework. MIS would likely still continue to provide ESG information for retail investors in a format that makes sense for them and meets their needs.

How do the options compare to the status quo?

Criteria	Option One – status quo $1 billion total assets under management	Option Two Thresholds increase to $5 billion per scheme plus ability to change by Order in Council	Option Three Remove MIS from the climate-related disclosures regime
Effectiveness	0 x 2 = 0 Including MIS in the regime is currently not effective and there is a risk that continuing to include a reporting class that is not producing useful disclosures undermines the overall effectiveness of the regime.	0 x 2 = 0 Including MIS in the regime is currently not effective and there is a risk that continuing to include a reporting class that is not producing useful disclosures undermines the overall effectiveness of the regime. Changing the number of MIS required to report would not have an impact on the effectiveness.	0 x 2 = 0 Including MIS in the regime is currently not effective and there is a risk that continuing to include a reporting class that is not producing useful disclosures undermines the overall effectiveness of the regime. Removing them may even improve the effectiveness, although this is very uncertain.
Cost is proportionate	0 The cost of reporting and compliance would continue to outweigh the benefits, and costs being passed onto consumers would continue, also impacting funds' competitiveness.	0 Reduces compliance cost by limiting scope to only the MIS most able to meet costs of reporting and compliance. However, because the disclosures are not useful, the cost proportionality would not increase.	++ Removes all compliance burdens and costs; MIS are no longer required to produce reports that are not useful.
Certainty	0 There is currently uncertainty for markets and regulated parties because there are known issues with including MIS in the regime and the international landscape is in flux. Change would be anticipated but what change, timing and impact is uncertain.	0 Similar context to the status quo.	+ MIS managers and financial markets would have certainty that MIS would no longer be required to report.
Overall assessment	0	0	+++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

100. **We recommend Option 3**: Removing MIS from the CRD regime. We think this is the best option to ensure that the right entities are reporting so that the CRD regime encourages our transition to a low-emissions economy but does not become a barrier to doing business in New Zealand.

101. We think the current reporting requirements are not producing useful reporting or giving effect to the policy intent of having them in the regime. Additionally, we consider that the original rationale for including them in the regime is not supported by strong evidence that they would be an effective addition to the regime, nor that there is a strong rationale to keep them in the regime. Removing them would address all concerns about cost of disclosure and disclosures not being useful.

102. Following our initial analysis, research was published concerning the effectiveness of climate-related disclosures in New Zealand[18]. The paper concluded, in relation to MIS managers, that "there seems to be a positive effect on fund manager capital allocation, in line with the disclosure mandate once the mandate is implemented. However, the results are somewhat mixed and this effect justifies further investigation, especially as time passes and we can explore a richer data set of observations after the intervention."

103. While there are some positive indications from this report this did not change our view as noted above. The research didn't consider the usefulness of the information for retail investors nor the costs of producing the climate statements in the analysis.

104. In the medium to long term we think it is worth considering adjusting broader MIS disclosure settings to ensure retail investors have access to the information they need to make decisions that align with both their risk appetite and investing preferences, including whether climate factors are a consideration for them.

105. We have not analysed this as an option here because there are too many uncertainties about what this option would look like, and it is not feasible to develop a suitable option within the time constraints we had developing this analysis.

[18] To Disclose, or Not to Disclose: Evaluating the Effectiveness of Mandatory Climate-Related Disclosure by Sebastian Gehricke, Markus Leippold, Tobias Schimanski :: SSRN

Issue three: liability settings

What criteria will be used to compare options to the status quo?

106. The criteria that are used to compare the options to the status quo are:

    a. **Effectiveness:** whether options enable a more efficient allocation of capital, and help smooth the transition to a more sustainable, low-emissions economy. In the case of the liability settings, in order to promote this outcome, the question is whether the options help encourage the production of more robust, useful and trusted information in the climate statements.

    b. **Proportionate consequences:** are the consequences for directors and entities proportionate given the information being disclosed.

    c. **Straightforward settings:** are any changes to the liability settings straightforward and lacking in complexity.

107. We have double weighted the 'effectiveness' criterion in our assessment. We consider this the most important criterion because it relates directly to the primary policy objective.

What scope will options be considered within?

108. We considered four options as part of the consultation process. These are described below under 'what options are being considered?'.

109. Various permutations, extensions and combinations of the options, and other suggestions, were also promoted by submitters. It is not feasible to consider every possible approach suggested by submitters. However, after considering the consultation feedback we have added two options to our analysis:

    a. Option Three (b) disapply deemed liability and unsubstantiated representations for both entities and directors, and

    b. Option Five disapply deemed liability and all the fair dealing provisions for directors only.

110. Some matters that were out of scope of the consultation were also suggested, e.g., a new defence for CREs and reviewing the penalty provisions.

What options are being considered?

Option One – status quo (consultation option)

111. This option means no change to the liability settings.

112. Out of 93 submitters 62 selected one of the options for change in the consultation document. Thirteen clearly chose the status quo and 18 responses did not answer the question or didn't clearly choose an option (even if they broadly considered change might be appropriate).

113. Consultation indicated that there was a clear case for changing the liability settings.

Option Two – disapply deemed liability (consultation option)

114. This option would repeal section 534(1)(cb) of the FMC Act so that directors do not have deemed liability if a CRE breaches a CRD obligation. These are the obligations to produce climate statements in accordance with the standards, obtain assurance over the disclosures relating to greenhouse gas emissions, and lodge the climate statements.

115. Stakeholders have consistently raised deemed director liability as a significant issue and this option removes it.

116. Some submitters suggested that removing deemed liability could create an incentive for directors to limit their involvement in the preparation of climate-related disclosures as directors would only now be liable if they were "involved" in a contravention. However, we consider this is not an issue because we do not think that all directors need to be fully involved in all aspects of climate reporting for the regime to be effective. Climate statements must also be signed by two directors of the entity (unless the entity only has one director) so it would not be possible for those directors to distance themselves in any event.

Option Three – disapply deemed liability and s 23 for directors (consultation option)

117. This option would repeal section 534(1)(cb) of the FMC Act so that directors do not have deemed liability if a CRE breaches a CRD obligation. In addition, directors cannot be liable for an involvement in a contravention of s 23 (unsubstantiated representations).

118. This option goes further than Option Two and helps address wider concerns about director liability for forward looking statements by providing that these do not have to be "substantiated".

119. In the consultation, when considering the answer to the question "when considering the director liability settings, which of the four options do you prefer and why?" Options Three and Four had the most support from submitters and Option Three looked to be preferred to Option Four. However, it is difficult to draw definitive conclusions from the responses because several submitters proposed a combination of options, some caveated their response, and other submitters supported two options, ie either Option Two or Four.

Option Three (b) – disapply deemed liability and s 23 for directors and CREs (added as an option following consultation)

120. This option would repeal s 534(1)(cb) of the FMC Act so that directors do not have deemed liability if a CRE breaches a climate-related disclosure obligation. In addition, neither directors nor CREs can be liable for a contravention of s 23 (unsubstantiated representations).

121. This was not a specific option in the consultation, however we did ask submitters, if they supported Option Three, whether s 23 should be disapplied for both directors and CRE. There was a mixed response to this. Two thirds of submitters did not respond to the question (in some instances because they did not support option 3 in any event). Of those that did, more submitters favoured extending s 23 to entities than not. Those who favoured extension commented that compliance with s 23 is equally difficult for CREs and directors.

122. This option helps address concerns about both director and entity liability for forward looking statements.

123. Under both Option Three and Three (b) the surrounding liability settings remain, e.g., directors and their entities would continue to have potential civil liability for misleading and deceptive conduct and criminal liability for false or misleading statements.

124. Section 26 of the FMC Act currently provides that s 23 does not apply to a representation made in a product disclosure statement or a register entry. It would be possible for a similar approach to be taken to climate statements.

Option Four - temporary modified liability (consultation option)

125. This option would introduce temporary modified liability to protect CREs and their directors from civil actions for a certain period of time in relation to certain types of statements. This option would introduce a regime similar to the Australian model.

126. The Australian Corporations Act 2001 protects CREs and directors from civil actions by private litigants in relation to certain defined "protected statements". All forward-looking statements made for the purpose of complying with the climate standards for the first financial year for Group 1 entities (the first reporters under the regime) are protected statements. In addition, in the first three years of the regime a statement in the sustainability report, made for the purpose of complying with the climate standards, about scope 3 emissions, scenario analysis or a transition plan is also defined as a protected statement. At the end of the three-year period, the modified liability ends and the usual liability settings would apply.

Complexity

127. Some submitters proposed combining some version of option two or three with option four (modified liability). We consider that the complexities of introducing modified liability after the commencement of the regime means that it should not be introduced whether as an individual option or in combination with another option.

128. There are two aspects to this, the first relates to the difficulties of getting an agreed list of statements to which the modified liability would apply. Various suggestions for this list were made in consultation. The second, more significant issue, is that this sort of modified liability regime is designed to operate at the start of a new regime, as is the case in Australia.

129. Currently, third parties and the FMA may bring civil claims against CREs and their directors in relation to climate statements that have already been filed. All CREs have filed once and the second round of reporting would occur throughout the course of the year. The Legislation Design and Advisory Committee guidelines are clear that legislation should not have retrospective effect unless there is a strong reason for doing so and, importantly, should not interfere with accrued rights and duties. Any modified liability regime that removes third party rights should therefore only apply to future climate statements.

130. This means that third parties would have rights to bring claims in relation to the first and possibly second year of reports, then there would be a break of perhaps three years of reporting when third-party rights are removed (at least in relation to some of the statements in the climate reports) and then at the end of the modified liability period the third-party rights would be fully reinstated. We consider that it is undesirable and unnecessarily complex to introduce such a system.

Option Five – disapply deemed liability and fair dealing provisions for directors (added as an option following consultation)

131. This option was suggested by a submitter. Option Five would repeal s 534(1)(cb) so that directors do not have deemed liability if a CRE breaches a CRD obligation. In addition, the FMC Act would be amended so that directors cannot be liable for involvement in a contravention of the fair dealing provisions in Part 2. The fair dealing provisions set out the core standards of behaviour that those operating in financial markets must comply with.

132. These key provisions are s 19 (misleading and deceptive conduct generally), 20 (misleading conduct in relation to financial products), s 21 (misleading conduct in relation to financial services), s 22 (false or misleading representations) and s 23 (unsubstantiated representations). Liability for entities for the fair dealing provisions would remain.

133. Under Option Three and Three (b) only s 23 (unsubstantiated representations) is disapplied in some way.

How do the options compare to the status quo?

	Option One Status Quo	**Option Two** Disapply deemed liability	**Option Three** Disapply deemed liability and s 23 for directors	**Option Three (b)** Disapply deemed liability and s23 for directors and CREs	**Option Four** Temporary modified liability	**Option Five** Disapply deemed liability and fair dealing provisions for directors
Effectiveness	0	**0 x 2 = 0** May have some impact on encouraging more robust and useful reporting but not sufficiently different from the status quo because does not address issue of potential liability for directors and entities for forward looking statements.	**+ x 2 = ++** Would help to encourage more robust disclosures but likely to have more impact on directors than entities. Addresses liability for forward-looking statements to some extent.	**++ x 2 = ++++** Would help to encourage more robust disclosures by both directors and entities. Addresses liability for forward-looking statements to some extent.	**+ x 2 = ++** Would have some impact on encouraging more robust and useful disclosures for directors and entities, but possibly only until the end of the modified liability period. May only provide a temporary "fix".	**0 x 2 = 0** Would help to encourage more robust disclosures by directors but not entities. However, we consider trust in the climate statements would be negatively impacted if director liability for all of the fair dealing provisions is removed.
Proportionate consequences	0	**+** Removing deemed director liability improves proportionality of consequences.	**++** Also, disapplying s 23 in part improves proportionality of consequences.	**++** Also, disapplying s 23 improves proportionality of consequences.	**0** As this is temporary it doesn't make a significant impact to proportionality of consequences.	**-** Removing liability for directors for all fair dealing provisions would not result in proportionate consequences.
Straightforward settings	0	**+** Removing deemed liability removes element of complexity.	- Different rules for directors and entities introduces complexity.	**0** Introduces a change but same rules for directors and CREs and aligns with treatment of other FMC Act disclosure documents where s23 does not apply.	**- -** Complex particularly with respect to third party rights.	**-** Different rules for directors and entities introduces complexity.
Overall	0	++	+++	++++++	0	- -

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

134. **We recommend option Three (b):** disapply deemed liability and s 23 for directors and CREs is the preferred option. This option removes deemed director liability and disapplies s 23 of the FMC Act (unsubstantiated representations) for both directors and CREs. We think this strikes the right balance between providing relief to directors and entities in order to encourage more robust reporting and ensuring that there are sufficient tools for the FMA to take action for egregious behaviour.

135. We consider that Option Two does not create enough change to encourage more robust reporting. As discussed above, one of the concerns with the current liability settings is that directors and entities have similar potential liability for representations in climate statements as they do for financial statements despite climate statements containing more forward-looking information. We consider that disapplying s 23 (unsubstantiated representations) would provide some relief in this respect as it would mean that statements about the future do not have to be substantiated (for example, they cannot be challenged on the basis that there were no reasonable grounds for the representation).

136. If the recommended changes are made to the FMC Act corresponding changes may also need to be made to the Fair Trading Act which also contains similar prohibitions as the FMC Act about unsubstantiated representations. Without such changes the FMC Act amendments may not be effective as directors and entities would still have to comply with a similar provision in the Fair Trading Act.

137. Our intent when changing the liability settings is to ensure that the settings are straightforward and not overly complex. Our preferred option makes the same change to the settings for both directors and entities and is relatively easy to follow.

138. We consider that this change would not significantly impact on trust in the climate statements, or significantly increase greenwashing risks, because the surrounding liability settings would remain. Entities would still be liable if their climate statements do not comply with the climate standards and the directors would also be, but only if they were involved in the breach. Importantly, both directors and their entities would continue to have potential civil liability for misleading and deceptive conduct and criminal liability for false or misleading statements.

Other matters

139. For consistency purposes we also recommend that s 23 (unsubstantiated representations) is disapplied for voluntary reporting. The fair dealing provisions (ss 19 – 23 of the FMC Act) apply to voluntary reports and if we do not make this change then there would be an inconsistency in how compulsory and voluntary reports are treated.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

140. For MIS and liability settings the preferred option is the same. For listed issuers the preferred option is different. The Minister's preferred option is to raise the listed issuer threshold to $550 million while MBIE's preferred option is to raise the listed issuer threshold to $250 million.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

141. We have analysed the cost and benefits of the package of preferred options, as we think the impact of each change would have cross-over with the others.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated groups: CREs and their directors	No additional costs	No impact	High certainty
Regulators and government agencies: FMA, XRB, MBIE, MfE	No additional costs	No material impact	High certainty
Others: existing and potential investors, lenders and other creditors *For fiscal costs, both increased costs and loss of revenue could be relevant*	Reduced information availability for investors in MIS managers (this information of low quality currently). Less information available to the market about listed issuers' climate-related risks and opportunities.	Possible low-medium impact	High certainty
Crown	Reduction in levy funding that funds some of the costs of the FMA of approximately $700,000 GST inclusive. Confidential advice to Government	No material impact	High certainty
Total monetised costs	None	N/A	High certainty

Non-monetised costs	Overall, no additional costs for regulated groups and FMA. Possible cost to users through less information availability. Confidential advice to Government	Overall low to medium impact based on usability of information currently being produced.	Overall high certainty
Additional benefits of the preferred option compared to taking no action			
Regulated groups: Managed investment schemes (MIS) CREs and their directors	$5.5 million - $22 million of annual reduced costs for MIS managers that do not need to do climate reporting (estimate of saving of between $0.25 million - $1 million per MIS, with 22 MIS affected) Removal of MIS managers would free up time, resources and money. MIS managers can focus on other activities useful for their business and consider other information useful for retail investors.	Medium to high impact	Low certainty (numbers are estimated by submitters)
Regulated groups: Listed issuers that are CREs	$8.25 million - $55 million of annual cost reductions for listed issuers assuming between $0.15m - $1m per issuer. This saving accrues to listed issuers between $60 million and $550 million market capitalisation for climate reporting.	Medium to high impact	Low certainty (numbers are estimated by submitters)
Regulated groups: all CREs and their directors	Reduced risk of liability for CREs and their directors. We do not have monetised costs of savings for changing the director liability settings but changing the settings may result in	Medium impact	Medium certainty for liability changes

	lower legal costs to business.		
Regulators and government agencies: FMA, XRB, MBIE, MfE	Reduced regulatory role for the regulators and government agencies in relation to MIS managers and some of the listed issuer group (between $60 million and $550 million in market capitalisation).	Low impact	High certainty
Others: Existing and potential investors, lenders and other creditors	No costs passed onto investors and consumers by MIS managers and listed issuers that have been removed. Liability settings may encourage more robust and informative climate statements to be produced.	Medium impact	Medium certainty
Total monetised benefits	$13.75 million - $77 million of cost savings for MIS and listed issuers. Note, these figures are estimates.	High impact	Certainty of amount is low
Non-monetised benefits	Reduced liability risks and removal of some entities would free up director and entity time.	Overall medium impact in terms of benefits expected	Overall medium certainty as to benefits

What are the marginal costs and benefits of the preferred option in this RIS?

As MBIE's preferred option differs from the Minister's preferred option, we have also set out below the marginal costs and benefits of the preferred option in this RIS. This table is very similar to the one above.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			

Regulated groups: CREs and their directors	No additional costs	No impact	High certainty
Regulators and government agencies: FMA, XRB, MBIE, MfE	No additional costs	No material impact	High certainty
Others: existing and potential investors, lenders and other creditors *For fiscal costs, both increased costs and loss of revenue could be relevant*	Reduced information availability for investors in MIS managers (this information of low quality currently). Less information available to the market about listed issuers' climate-related risks and opportunities.	Possible low-medium impact	High certainty
Crown	Reduction in levy funding that funds some of the costs of the FMA of approximately $600,000 GST inclusive. Confidential advice to Government	No material impact	High certainty
Total monetised costs	None	N/A	High certainty
Non-monetised costs	Overall, no additional costs for regulated groups and FMA. Possible cost to users through less information availability. Confidential advice to Government	Overall low to medium impact based on usability of information currently being produced.	Overall high certainty
Additional benefits of the preferred option compared to taking no action			
Regulated groups: Managed investment schemes (MIS) CREs and their directors	$5.5 million - $22 million of annual reduced costs for MIS managers that do not need to do climate reporting (estimate of saving of between $0.25 million - $1 million per MIS, with 22 MIS affected)	Medium to high impact	Low certainty (numbers are estimated by submitters)

	Removal of MIS managers would free up time, resources and money. MIS managers can focus on other activities useful for their business and consider other information useful for retail investors.		
Regulated groups: Listed issuers that are CREs	$4.2 million - $28 million of annual cost reductions for listed issuers assuming between $0.15m - $1m per issuer. This saving accrues to listed issuers between $60million and $250million market capitalisation for climate reporting.	Medium to high impact	Low certainty (numbers are estimated by submitters)
Regulated groups: all CREs and their directors	Reduced risk of liability for CREs and their directors. We do not have monetised costs of savings for changing the director liability settings but changing the settings may result in lower legal costs to business.	Medium impact	Medium certainty for liability changes
Regulators and government agencies: FMA, XRB, MBIE, MfE	Reduced regulatory role for the regulators and government agencies in relation to MIS managers and some of the listed issuer group (between $60 million and $250 million in market capitalisation).	Low impact	High certainty
Others: Existing and potential investors, lenders and other creditors	No costs passed onto investors and consumers by MIS managers and listed issuers that have been removed. Liability settings may encourage more robust and informative climate	Medium impact	Medium certainty

	statements to be produced.		
Total monetised benefits	$9.7 million - $50 million of cost savings for MIS and listed issuers. Note, these figures are estimates.	High impact	Certainty of amount is low
Non-monetised benefits	Reduced liability risks and removal of some entities would free up director and entity time.	Overall medium impact in terms of benefits expected	Overall medium certainty as to benefits

142. For further context, we note that directors already have a general obligation to consider climate-related risks when making decisions. The CRD regime creates an overlay on top of this existing obligation. If the changes the Minister proposes are implemented directors will still have the general obligation. The costs and benefits in the table above are in addition to the costs and benefits of the existing obligation.

Section 3: Delivering an option

How will the proposal be implemented?

143. The adjustments to the thresholds and director liability settings will be implemented via amendments to the FMC Act and possibly the Fair Trading Act.

144. We propose that the new settings should take effect as soon as new legislation can be passed to maximise the impact of the change. If MIS managers are removed from the regime we consider these changes should be made by Parliament as soon as possible, ideally by early 2026 so that the MIS managers currently reporting do not continue to incur costs.

145. It is proposed to make the changes through the next available vehicle, however, there is a risk that changes get delayed.

146. The changes would not require any significant adjustments for the regulators.

147. The FMA would continue to be responsible for regulatory oversight of the regime and the XRB would continue to be responsible for issuing standards, albeit in relation to a reduced number of CREs.

148. MBIE officials, the FMA and XRB will work with stakeholders to ensure they are aware of the changes. This will include notifying CREs via email and by updating MBIE, FMA and XRB websites.

149. No new funding is required for effective implementation.

150. Climate-reporting entities pay a levy when they file their climate statements. The levy is cost recovery for the Crown and funds a portion of the costs of the FMA in exercising its regulatory role in relation to climate reporting. If fewer entities are captured by the regime there would be an estimated reduction in the total levy funding of approximately $700,000 (GST inclusive). Confidential advice to Government

How will the proposal be monitored, evaluated, and reviewed?

151. Stakeholders would continue to be able to raise concerns with officials and regulators. Officials and regulators would continue to have regular engagements with each other to discuss the operation of the regime.

152. Similar to the review proposal when the original regime was established, we recommend that the disclosure regime in its entirety be reviewed in the next three to five years. This review should include, among other things, an assessment of the classes of entity covered by the regime, the threshold settings and whether costs are proportionate.

153. The XRB would continue its research into assessing the effectiveness of the New Zealand CRD framework. In February 2025 they published an interim report by the University of Otago as part of this work. A further paper was published in May 2025.

154. The FMA is responsible for the independent monitoring and enforcement of the New Zealand CRD regime. They published their first review in December 2024. They would continue to produce these reports.

Annex one: Overview of the Australian reporting requirements

1. In Australia, reporting is being phased in over time in three groups with the biggest entities reporting first. Group 1 commences reporting for financial years beginning on or after 1 January 2025, Group 2 commences for financial years beginning on or after 1 July 2026 and Group 3 for financial years beginning on or after 1 July 2027. Whether an entity meets the requirements for a group depends on its size. This is a two-out-of-three test based on annual revenue, total assets and FTE employee numbers.

2. Further details are set out in the table below (all dollar amounts are in Australian dollars).

First annual reporting periods starting on or after	Large entities and their controlled entities meeting at least two of three criteria:			National Greenhouse and Energy Reporting (NGER) Reporters	Asset Owners (registered schemes, registrable superannuation entities and retail CCIVs)
	Consolidated revenue	EOFY consolidated gross assets	EOFY employees		
1 January 2025 Group 1	$500 million or more	$1 billion or more	500 or more	Above NGER publication threshold	N/A
1 July 2026 Group 2	$200 million or more	$500 million or more	250 or more	All other NGER reporters	$5 billion or more assets under management
1 July 2027 Group 3	$50 million or more	$25 million or more	100 or more	N/A	Refer to Group 3 reporting thresholds

3. In Australia an "asset owner" must report if the value of its assets are $5 billion or more. An asset owner is a registered scheme, superannuation entity or retail Corporate Collective Investment Vehicle. Unlike in New Zealand, the threshold in Australia is determined at the scheme level, i.e., an individual scheme must have more than $5 billion in assets under management before reporting is required. This means a fund manager with more than $5 billion in assets may not be required to report if none of their individual schemes meet the $5 billion threshold. A registered scheme may also be required to report if it meets the general reporting thresholds for large entities.