

16 July 2025

Regulatory Policy Team  
Financial Markets Authority – Te Mana Tātai Hokohoko

By email: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

Tēnā koe

Re: Review of expiring class exemption notices, and designations

## 1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the Review of expiring class exemption notices, and designations discussion document (**Discussion Document**), prepared by the Financial Markets Authority (**FMA**).
- 1.2 This feedback has been prepared with input from the Law Society's Commercial and Business Law Committee.<sup>1</sup>
- 1.3 The Law Society's comments are limited to feedback on the Financial Markets (Climate-related Disclosures – Overseas Banks and Insurers) Exemption Notice 2024.

## 2 Financial Markets Conduct (Climate-related Disclosures - Overseas Banks and Insurers) Exemption Notice 2024

- 2.1 We note that the exemption provides that climate statements or group climate statements can be dated and signed by the New Zealand-based Chief Executive Officer (**CEO**) of the exempt entity instead of requiring the signature of two directors as per section 461ZA and 461ZB of the Financial Markets Conduct Act 2013 (**the Act**). The exemption also requires the CEO to provide a statement to the Registrar confirming the climate statement has been approved for lodgement in accordance with corporate governance policies.
- 2.2 The Law Society supports the inclusion of conditions requiring a statement of authorisation. However, we note that under section 461ZG of the Act, liability for failure to comply with the climate standards lies with the Climate Reporting Entity (**CRE**) and 'every director of the entity', rather than the CEO. The exemption notice also provides

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<sup>1</sup> More information about this committee can be found on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/commercial-li/>

that the liability should not be affected by the exemption from signature.<sup>2</sup> This raises concerns about the knowledge requirement in the offence provision, whereby exemption from signature could raise issues around proving knowledge, should the climate statements be found not to comply with the applicable climate standard. This is because the offence provision requires knowledge that the statements did not comply with climate standards. The exemption may therefore operate to restrict the ability to apply section 461ZG to those directors of overseas banks and insurers that enjoy the exemption but will continue to operate as intended to other directors in the market.

- 2.3 We further note that the initial exemption application listed timing and practicality concerns, which included not having proper processes in place by the deadline of 31 July 2024, as reasons why an exemption was needed. We therefore suggest that the exemption provided should remain time-limited to enable the proper processes to be put in place rather than continuing as a permanent or extended exemption, potentially subverting the prescribed requirements of the primary legislation.
- 2.4 Alternatively, if it is preferred that the exemption is extended or made permanent, we suggest that legislative reform should be considered. We consider that a permanent exemption could undermine the objectives of the primary legislation, which mandates director signatories and was a deliberate decision made during the legislative process.<sup>3</sup> If so, it would be ultra vires on the application of standard administrative law principles.<sup>4</sup>
- 2.5 We further query whether there is any additional benefit in requiring New Zealand-based CREs to have two directors sign the climate statements, if there is 'no additional benefit in requiring two directors [of overseas banks and insurers] to sign climate statements', and if such a change in requirements should not affect potential liability.<sup>5</sup>

### 3 Next steps

- 3.1 We would be happy to answer any questions or to discuss this feedback further. Please feel free to get in touch via the Law Society's Law Reform & Advocacy Advisor, Shelly Musgrave ([shelly.musgrave@lawsociety.org.nz](mailto:shelly.musgrave@lawsociety.org.nz)).

Nāku noa, nā



Jesse Savage  
**Vice President**

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<sup>2</sup> See the Statement of Reasons in the [Financial Markets Conduct \(Climate-related Disclosures – Overseas Banks and Insurers\) Exemption Notice 2024](#).

<sup>3</sup> Per sections 461Z(1)(b), 461ZA(2)(b), 461ZB(2)(b) and (3)(b) of the Financial Markets Conduct Act 2013.

<sup>4</sup> *Unison Networks Ltd v Commerce Commission* [2007] NZSC 74.

<sup>5</sup> Above n 2.