

13 February 2025

Corporate Governance and Intellectual Property Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment

By email: climaterelateddisclosures@mbie.govt.nz

Tēnā koe

Re: Capital Markets Reforms – Climate-Related Disclosures

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the Capital Markets Reforms Climate-related Disclosures discussion document (**Discussion Document**), prepared by the Ministry of Business, Innovation and Employment (**MBIE**).
- 1.2 The Law Society supports the intention to ensure the climate-related disclosures (**CRD**) provisions in the Financial Markets Conduct Act 2013 (**the Act**) are set at an appropriate level to encourage transition to a low-emissions economy without becoming a barrier to doing business in New Zealand; to ensure it does not negatively impact the competitiveness of the New Zealand market; and to encourage robust and useful reporting.
- 1.3 This feedback has been prepared with input from the Law Society's Commercial and Business Law Committee.¹

2 Climate-Related Disclosures

Reporting thresholds

- 2.1 The Law Society considers that alignment with the Australian regime would likely be sensible, however, capture shouldn't be reduced too far so that it risks undermining the purposes of the CRD amendments.
- 2.2 Option 1 would not achieve greater alignment with the Australian regime, so we do not recommend that option. However, Options 2 and 3 do not completely align with the Australian regime either. Option 2 would result in a lack of alignment from the time their 'group 2' joins the regime in July 2026. The threshold differences would also then increase further when their 'group 3' joins the regime in July 2027. Option 3, on the other

¹ 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/>

hand, is better aligned but fails to account for an equivalent to Australia's 'group 3' and the timeframes mean New Zealand would fall behind. The proposed reform options appear to move to reduce the total capture of the New Zealand regime whereas Australia's staged rollout intends to gradually extend capture such that smaller businesses will also end up with reporting requirements.

- 2.3 Further, we consider it would be preferable to avoid a situation in which a 'stop-start' scenario occurs, where entities move outside of capture and leave the regime but then not long after become captured again by New Zealand or Australian requirements. This can add to uncertainty, fluctuating costs and administrative needs for entities, as issuers leave but then become required to report again either here or in Australia.
- 2.4 The Law Society notes that XRB has announced it is bringing forward work on the standards and intends to make them available in December 2025. We note that there should be consistency between the thresholds and the standards and consider it may be worth waiting to see what the reporting standards look like or otherwise reviewing the standards afterwards to maintain alignment.
- 2.5 Overall, the Law Society prefers Option 3 as the most aligned with the Australian regime. We also consider that Option 3 should be amended to take account of the Australian 'group 3' entities and to review potential timeframes.

Director liability

- 2.6 It is, of course, important to promote accurate auditing and sharing of relevant information that is reasonably available. However, the major issue currently facing reporting entities is that data is not necessarily readily available (for example, from overseas funds in jurisdictions that are lagging on this kind of reform) and this makes disclosure difficult, resulting in general and conservative disclosures that are not meaningful or helpful to consumers.
- 2.7 The Law Society does not agree that removing directors' liability in relation to climate disclosures would address the issue and considers it could have the effect of suggesting that these disclosures or their accuracy are not as important as other disclosures entities must make. This would risk undermining the purpose of the CRD regime, and we do not recommend this option.
- 2.8 However, director liability provisions are currently having a chilling effect on people who may otherwise be good candidates for mid-market issuers, and we consider a change is needed in this area. In the Law Society's view, the regime needs time to build a body of experience and as such, while the discussion document suggests that Option 4 (a temporary safe harbour) may not be effective, it may be a worthwhile option because it may allow other jurisdictions time to catch up (and therefore disclosures should become easier). Further, it reflects the position in Australia.²

² Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 (Cth), proposed sections 1707C and 1707D.

Official Register

2.9 The Law Society considers the proposal to create a voluntary official register does not meet the specified objectives of the proposed reforms and will likely involve public costs that are disproportionate to the benefits.

2.10 The Law Society recommends that this proposal does not proceed.

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).

Nāku noa, nā



Taryn Gudmaz
Vice President