New Zealand Banking Association
Te Rangapū Pēke

Submission

to the

Ministry of Business, Innovation and Employment

on the

Discussion Document: *Adjustments to the climate-related disclosures regime*

14 February 2025

NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE
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About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following seventeen registered banks in New Zealand are members of NZBA and support this submission:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
- Bank of New Zealand
- China Construction Bank (New Zealand) Limited
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- Industrial and Commercial Bank of China (New Zealand) Limited
- KB Kookmin Bank Auckland Branch
- Kiwibank Limited
- MUFG Bank Ltd
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (**MBIE**) on the Discussion Document: *Adjustments to the climate-related disclosures regime* (**Consultation**). NZBA commends the work that has gone into developing the Consultation.

Climate reporting entity and director liability settings

5. NZBA supports amending the Financial Markets Conduct Act 2013 (**FMCA**) so that section 534 no longer applies to climate-related disclosures (**CRD**).

6. We agree that this provision is not suitable for the nature of climate reporting, as noted at, e.g., paragraph 100 of the Consultation. In our view, the proposed change would:

    6.1. reflect the novel nature of the CRD regime and the forward looking, uncertain nature of the disclosures required;

    6.2. help to give climate-reporting entities (**CREs**) and their directors the confidence to take a more innovative and ambitious approach to climate reporting; and

    6.3. lead to more proportionate costs and involvement by directors.

7. This change is consistent with the Government's stated objective of ensuring that directors have the right incentives to encourage robust and useful reporting, and will ultimately benefit primary users.

8. As addressed in the Consultation, the potential liability for directors is similar under both the CRD and financial reporting regimes. However, unlike the financial reporting regime, the CRD regime is both novel and requires disclosures that are often forward-looking, subject to a high level of uncertainty and difficult to substantiate. In this context, it is not in our view appropriate for directors to be deemed personally liable where a CRE fails to comply with the disclosure requirements.

9. Additionally, where directors are deemed personally liable for contraventions by an entity, this may lead to overly conservative approaches to compliance. Deemed liability therefore limits the ability of directors and CREs to take an exploratory or innovative approach – which could be highly valuable in relation to climate statements.

10. There are defences to deemed liability under section 534. To ensure these defences are available to directors, CREs need to establish extensive due diligence processes. This generates high legal and consultancy costs and requires a disproportionately high level of involvement by directors.

11. We note that, as mentioned in the Consultation, there is no deemed director liability in Australia. The proposed change would therefore result in closer alignment between the New Zealand and Australian liability regimes.

12. Overall, we consider it is important to ensure the liability settings support good quality disclosures. While maturity of reporting is expected to develop as the regime beds in, we recognise that climate reporting is inherently qualitative and forward-looking, with current liability settings potentially driving a risk-averse approach to reporting.