



**TCF Submission to MBIE on climate-related disclosures regime discussion document  
13 February 2025**

**Introduction**

1. Thank you for the opportunity to comment on the consultation concerning [adjustments to the climate-related disclosures regime discussion document](#).
2. This submission is provided by the Climate Change Working Group of the New Zealand Telecommunications Forum (TCF). The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies represent 95 percent of New Zealand telecommunications customers.
3. We remain supportive of the climate-related disclosures (CRD) regime and its value to primary users and public understanding of the measures entities are taking to respond to climate change. We welcome the Government's recognition of concerns about the cost of producing climate statements and the suitability of director liability settings for climate reporting, and its intention to make changes to better align with our international peers.
4. In this submission we offer thoughts on the proposals set out in Chapter 3 of the discussion document concerning CRD director liability settings.

**Director liability**

*Question 15: When considering the director liability settings, which of the four options do you prefer, and why?*

5. We support the policy intent of ensuring the compliance burden of CRDs is not excessive and that director liability is proportionate. Balancing director liability and

climate reporting disclosure is crucial for ensuring that entities are transparent about their environmental impact.

#### Preferred option

6. Of the four options, option three is the option that would better support the policy intent.<sup>1</sup> Option three would amend:
  - a. Section 534 of the Financial Markets Conduct Act (the Act) so that deemed liability no longer applies to CRDs, and
  - b. Section 23 of the Act so directors cannot be liable for aiding and abetting unsubstantiated representations.
7. Under option three entities themselves will still remain liable for disclosures that do not meet the requirements of Part 7A of the Act, and directors will also potentially remain liable for involvement in a contravention (per section 486 of the Act).

#### Rationale

8. Currently directors face deemed liability for breaches of Part 7A of the Act in relation to CRDs, including if the CRD is in breach of the climate standards, by no fault of the director. Directors cannot rely on other directors or employees as part of any defence which means a high level of personal involvement by all directors in the preparation of the CRD and surrounding due diligence process is required, which in many cases is unnecessary and disproportionate.
9. Option three improves the balance between having a regime where there are material consequences for knowingly failing to report or comply with the Act and promoting a transparent approach to CRD. Directors should not automatically be liable for a non-compliance issue when the disclosures are typically prepared at the reporting entity level. It would also better align with the Australian approach (which as noted in the discussion paper does not involve deemed liability for directors for CRD), giving New Zealand entities more equitable access to director talent and making the New Zealand market more attractive to international investors.

#### The second aspect of option three - re aiding and abetting unsubstantiated representations

10. We support the second aspect of option three (re aiding and abetting unsubstantiated representations) for similar reasons. The current section 23 liability settings are not suitable given the uncertain nature of particular aspects of CRD including forward-looking statements, such as scenario analysis and transition planning. These types of disclosures are inherently uncertain, relying on future

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<sup>1</sup> Mercury will be putting forward its own submission on this point.

scenarios and assumptions that may change over time (as opposed to backward looking content that can be substantiated).

11. Consideration could be given to limiting the disapplication of section 23 to certain categories of forward-looking representations that are inherently uncertain, such as scenario analysis and transition planning.
12. The consequential changes to section 12A of the Fair Trading Act regarding unsubstantiated representations are also supported.

#### Thoughts on option four

13. Option four as a standalone option, providing interim liability relief for certain categories of statements, would better align to the Australian approach, but would only provide temporary relief. There would also be complexity in aligning with Australia under option four, timing wise, as the New Zealand regime is already underway.
14. However, we suggest consideration be given to whether some sort of interim relief could be provided in addition to option three (see our response under Question 16 below).

*Question 16: Do you have another proposal to amend the director liability settings? If so, please provide details.*

15. MBIE and the FMA could consider providing interim relief from liability while the policy and legislative work is completed if permanent changes to the liability settings are likely to take time to implement.
16. This could involve using the FMA's standing power to make regulations under section 548(1)(h) of the Financial Markets Conduct Act to disapply section 534(2) (which creates deemed liability for directors) for CRD obligations. We suggest consideration is given to this mechanism in addition to option three.
17. This would essentially be a combination of options three and four, involving:
  - a. permanent removal of the deemed liability provisions for directors and a limited disapplication of section 23 to at least forward-looking statements (for both directors and climate reporting entities)
  - b. as well as applying a safe harbour for all section 19 and 23 breaches against civil and enforcement proceedings in connection with at least forward-looking statements for an interim period while permanent changes are implemented.

*Question 17: If the director liability settings are amended do you think that will impact on investor trust in the climate statements?*

18. We recognise that director liability helps drive quality CRD but consider investor trust would be enhanced if director liability settings are reviewed to achieve an appropriate balance which will drive more transparent reporting. If investors consider we are being more conservative because of the current strict liability settings, that potentially puts New Zealand out of step with our international counterparts and the purpose of the CRD regime.

19. As noted in the discussion paper, other forms of liability would continue to apply, and the substantive requirements of the NZ Climate Standards would still need to be met.

*Question 18: If you support Option 3, should this be extended so that section 23 is disappplied for both climate reporting entities and directors? If so, why?*

20. We support extension of the section 23 amendment to climate reporting entities for the same reasons as outlined above. If the disapplication of section 23 is not extended to climate reporting entities, there will likely still be a conservative and risk-adverse approach taken to climate reporting because of the inherent uncertainty associated with the CRD subject matter, and need to produce forward-looking statements.

21. The TCF is happy to answer any questions officials may have on the views set out in this submission. Please contact [kim.connolly-stone@tcf.org.nz](mailto:kim.connolly-stone@tcf.org.nz) in the first instance.