

14 February 2025

Ministry for Business, Innovation, and Employment
via e-mail: climaterelateddisclosures@mbie.govt.nz

Submission on Capital Markets Reforms – climate related disclosures

1. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We represent participants from across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios. We enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net zero carbon emissions by 2050.
2. This document constitutes our brief submission on the [Capital Markets Reforms](#) – climate related disclosures.

Submission

Overarching comment on voluntary reporting

3. Our interest in this consultation is in the clear and appropriate regulatory responses to policy problems that affect the energy resources sector. We recently [submitted](#) on the proposed Regulatory Standards Bill with our views on what constitutes a disproportionate response, resulting in regulatory failure.
4. What has been proposed in this consultation is *proportionate*. The problems outlined in the discussion document include:
 - a excessive and disproportionate reporting costs for mandatory reporting entities;
 - b misalignment with Australian reporting requirements, leading to competitive disadvantage;
 - c director liability settings causing overly risk averse behaviour.
5. Based on the problems identified, the proposals will likely address the problems identified without negative impact. We submit some reflections from the perspective of those companies that are *not* mandatory reporting entities. Some of our members have reported voluntarily with the goal of using the

standards to guide them through a process of being as prepared as possible for the impacts of climate change.

6. We hope these comments are helpful in providing feedback from companies who volunteer information. In our view, the fact that some companies volunteer information is a success story.
7. We support the proposals in principle as they aim to promote useful reporting. They do this without impacting the competitiveness of New Zealand's capital markets, reducing incentives to report, or creating administrative burden.
8. We would be concerned with proposals that sought to make it harder for companies to disclose their information, added little benefit to climate change mitigation or adaptation, or unintentionally incentivised companies to hide or misconstrue information because the costs of reporting become too onerous and the system too invasive.

Chapter 2 – reporting

9. **Problem: Reporting thresholds are too low compared to Australia –** Alignment with Australia would help for clarity, but alignment with global standards would be equally important long term.
10. We support the move to two yearly reporting.
11. **Problem: Excessive cost of reporting –** Time spent working on this project has been well spent. However, there are three main areas where efficiency could be improved by providing good guidance and consultation:
 - a to understand and correctly interpret the standards;
 - b establish good processes for developing climate scenarios and to evaluate financial impacts; and
 - c to obtain and integrate climate data into business systems.
12. **Problem: Focus is on compliance rather than positive action to prepare the business for climate change impacts –** The process of reporting has driven a good focus on climate resilience for some organisations that are reporting voluntarily. Allowing companies to provide a “please explain” for any requirements that do not make sense for that company could reduce unnecessary compliance work and we support that proposal.

Chapter 3 – climate related disclosures (CRD) regime

13. **Problem: Director liability too high leading to a risk averse approach and high legal costs** – Directors of companies that provide voluntary disclosures are still bound by Financial Markets Conduct Act 2013 standards and the main source of legal risk is misleading or unsubstantiated representations through the Fair Trading Act. The Climate Reporting Entity ('CRE') liability includes deemed director liability whereby a CRE's directors may be deemed liable for breaches of Part 7A by the CRE, and face criminal liability for certain offences, which includes knowing failure to comply with the New Zealand Climate Standards. This additional liability adds cost and has the potential to incentivise companies to disclose less.
14. Reducing director liability would more greatly align with Australia. Unlike the New Zealand mandatory CRD regime, the Australian regime provides for no deemed liability for directors but merely a general obligation to take reasonable steps to ensure compliance. The regime also provides for a 'safe harbour' regime for CREs, directors and employees, which provides one-year limited immunity from civil claims by private litigants for forward-looking climate-related statements, and three-year immunity against civil claims by private litigants in relation to 'protected statements' (covering scope 3 Greenhouse Gas emissions, scenario analysis, and transition planning).

Concluding comments

15. Thank you for the opportunity to make a submission on your Capital Markets Reforms. We would be happy to discuss anything further with you.