
23 September 2024

Hon. Simon Watts
Minister for Climate Change
Via Email: S.Watts@ministers.govt.nz
C/o Jack Boltar Jack.Boltar@parliament.govt.nz

Hon. Andrew Bayly
Minister for Commerce and Consumer Affairs
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Tēnā koe Ministers

SUBJECT: LIABILITY PROVISION IN PART 7A OF THE FINANCIAL MARKETS CONDUCT ACT 2013

We are writing to you as the steering committee of Chapter Zero New Zealand, supported by a group of leading directors, representing some of New Zealand's leading listed companies, united in our commitment to decarbonisation and prioritising climate action within our boardrooms.

The Institute of Directors (IoD) is proud to be the host of [Chapter Zero New Zealand](#), the national chapter of the Climate Governance Initiative. The mission of Chapter Zero New Zealand is to “mobilise, connect, educate and equip directors and boards to make climate-smart governance decisions, thereby creating long-term value for both shareholders and stakeholders”.

As members of Chapter Zero New Zealand and the IoD, we fully support the Government's objectives to address climate change and the introduction of mandatory climate reporting requirements. These regulations are a vital step towards a sustainable future, and we are eager to ensure their successful implementation.

However, we wish to raise a significant concern regarding the liability burden that the current climate reporting requirements are placing on directors. The climate reporting standards are resulting in due diligence processes and associated or related costs that far exceed those for financial reporting, particularly in terms of market disclosures.

In New Zealand, directors (and management involved in the preparation of disclosure reports) face deemed liability for breaches of Part 7A of the Financial Markets Conducts Act 2013 (FMCA) in relation to climate-related disclosures (CRD), including if the CRD is in breach of the climate standards, by no fault of the director. We believe New Zealand's climate reporting framework could benefit from amending Part 7A, potentially adopting a similar approach to Australia's liability provisions of short-term protections.

Australia, for example, adopted a staged approach to the introduction of the Australian Sustainability Reporting Standards, including a transition relief period with limited immunity from civil litigation (not criminal proceeding or ASIC enforcement action) for certain statements made in disclosures:

- A one-year limited immunity in respect of any civil litigations for any forward-looking climate-related statements (1707D(4)); and
- A three-year immunity against any civil litigations in relation to statements about scope 3 GHG emissions (including financed emissions), scenario analysis and a transition plan (1707D(3)(a)).

In addition, we consider the External Reporting Board should review the financial reporting processes to remove any duplication between the financial and climate-related reporting regimes.

Together, these changes could reduce the liability, complexity and duplication of efforts for companies, including those operating across both jurisdictions, especially as they relate to forward-looking disclosures, without compromising the rigour and effectiveness of our climate-related disclosures.

To this end, we would welcome the opportunity to meet with you to discuss these concerns and explore potential solutions that maintain the integrity of climate reporting while ensuring the liability on directors is manageable and proportionate.

We look forward to the opportunity to work together to achieve a balanced approach that supports both effective climate governance and the sustainable success of our businesses.

Yours sincerely,



Dame Therese Walsh DNZM
Chair
Chapter Zero NZ



Kirsten Patterson
Chief Executive
Institute of Directors