

22 November 2021

External Reporting Board  
Climate-related Disclosures Project Steering Group  
Level 7, 50 Manners St  
Wellington

**Re: Climate-related Disclosures Governance and Risk Management Consultation Document**

1. Please find **attached** the submissions of Lawyers for Climate Action NZ Inc. (**LCANZI**) on the Climate-related Disclosures Governance and Risk Management Consultation Document (**Consultation Document**).
2. We thank the External Reporting Board (**XRB**) for the opportunity to make a submission on the Consultation Document. Our submission to XRB follows on from earlier submissions made by LCANZI in relation to the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill (the **Bill**), amending the Financial Markets Conduct Act 2013, including our oral submission to the Economic Development, Science and Innovation Committee.
3. We strongly support the draft sections on Governance and Risk Management as part of the proposed standard, Aotearoa New Zealand Climate Standard 1: Climate-related Disclosures (**NZ CS 1**) that have been outlined in the Consultation Document. However, we make specific recommendations to further improve transparency and stimulate the required shift in investment flows and broader decision-making to address the risks of climate change.
4. In summary, we make two key submissions:
  - a. **Expand the definition *primary users* to encompass a wider range of stakeholders:** The current definition of *primary users* that covers only existing and potential investors, lenders and insurance underwriters, is too narrow. It does not give effect to two core purposes of the Bill because it does not recognise the broader group of stakeholders who have a crucial role to play in smoothing the transition to a more sustainable, low emissions economy through their use of the disclosures and who have a legitimate interest in the way in which climate reporting entities (**CREs**) demonstrate foresight and responsibility in their consideration of the impact of climate change on the CREs they deal with as well as the CRE's material impact on climate change. We recommend that the XRB expand the definition of *primary users* to include a wider range of stakeholders (and at a minimum, specifically include suppliers and customers), on the basis that providers of financial capital should not be privileged over others who have a direct financial interest in the CRE.
  - b. **Expand the scope of *materiality* to encompass double materiality:** We note that the XRB is currently developing a definition of "material" and related requirements for the application of materiality to climate-related disclosures. We recommend that the XRB introduce the concept of "double materiality" into NZ CS 1, to ensure that CREs disclose not only the material impact of climate change on the entity itself, but also the entity's material impact on climate change. In doing so, we recommend that the defined terms "climate-related risks" and "climate-related opportunities" be expanded to include the risk of CREs further contributing to climate change through the externalities created by their own activities and the opportunities for CREs to contribute towards mitigating climate change through their own activities.
5. In addition to LCANZI's two core submissions, LCANZI would like to express its support of alignment with the Task Force on Climate-related Financial Disclosures (**TCFD**) recommendations and additional disclosures. We strongly support close alignment with the recommendations and guidance provided by the TCFD as a commitment to pursuing global best practice and the XRB's efforts to ensure international

compatibility, alignment with other various frameworks and standards through additional disclosure requirements in NZ CS 1.

6. Aotearoa New Zealand has already joined global climate leadership with the passing of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill. We encourage the XRB to strive further towards its goal of ensuring that the NZ CS 1 regime is sufficiently ambitious and forward-looking to ensure that organisations take a sufficiently broad view of climate-related risks and opportunities and better evaluate risks and exposures over the short, medium, and long term.
7. To discuss this further, please contact me on 021 632 260 or by email ([president@lawyersforclimateaction.co.nz](mailto:president@lawyersforclimateaction.co.nz)).

Yours faithfully,

**Jenny Cooper QC**  
**President**

## SUBMISSIONS

### 1. Introduction

- 1.1 Lawyers for Climate Action NZ Inc (**LCANZI**) is a non-profit group of over 300 lawyers. We advocate for legislation and policies to ensure Aotearoa New Zealand meets or exceeds its commitment under the Paris Agreement to achieve net zero carbon emissions as soon as possible and no later than 2050. More information about us can be found on our website: <https://www.lawyersforclimateaction.nz/>.
- 1.2 We welcome the opportunity to provide feedback on the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill (the **Bill**).

### 2. Executive summary

- 2.1 We support the draft sections on Governance and Risk Management as part of the proposed standard, Aotearoa New Zealand Climate Standard 1: Climate-related Disclosures (**NZ CS 1**) that have been outlined in the Consultation Document. However, we make specific recommendations to further stimulate the required shift in investment flows and broader market activity to address the risks of climate change.
- 2.2 In summary, we submit that:
- a. the definition of *primary users* is too narrow and should be expanded to cover a wider scope of stakeholders who can contribute to smoothing the transition to a more sustainable, low emissions economy and have a legitimate interest in understanding how CREs demonstrate responsibility and foresight in their consideration of climate-related issues through disclosures on the impact of climate change on the CREs they deal with as well as the CRE's material impact on climate change (beyond the disclosure of greenhouse gas emissions metrics). At a minimum, suppliers and customers should be added to the definition of *primary users* on the basis that providers of financial capital should not be privileged over others who have a direct financial interest in the CRE; and
  - b. the concept of materiality is defined to cover not only the impact of climate change on the CRE, but also the impact of the CRE on climate change, as has been introduced in the European Union reporting standards. We also recommend a consequential amendment to the definitions of "climate-related risks" and "climate-related opportunities" to reflect double materiality.

### 3. Definition of primary users

- 3.1 The explanatory note of the Bill provides that the specific purposes of the Bill are:
- a. to ensure that the effects of climate change are routinely considered in business, investment, lending, and insurance underwriting decisions; and
  - b. to help reporting entities better demonstrate responsibility and foresight in their consideration of climate issues; and
  - c. to lead to smarter, more efficient allocation of capital, and help smooth the transition to a more sustainable, low-emissions economy.
- 3.2 In its task of preparing the climate-related disclosure framework, LANZI submits that the XRB should have regard to these purposes.
- 3.3 LCANZI supports a comprehensive and transparent climate-related disclosure framework that is usable by a wide range of entities across all sectors of the economy, either on a voluntary basis or in contemplation of a potential future expansion of the definition of a CRE. It is important

for all stakeholders to be able to assess the climate risk of the counterparties they deal with and existing and potential investors, lenders and insurance underwriters are not the only persons that deal with CREs as counterparties. Accordingly, we recommend that the definition of *primary users* is expanded to cover a wider scope of stakeholders. This will ensure that all types of entities can make appropriate disclosures in line with NZ CS 1 and that such disclosures are relevant to all those who have a relevant interest including government, regulators, civil society, analysts, customers and employees, and the general public.

- 3.4 First, the Crown may nominate Crown Financial Institutions as CREs through a letter of expectation from their relevant Minister. We believe Crown Financial institutions should utilise the same NZ CS 1 as all other CREs. However, the current definition of *primary users* of the disclosures being limited to “existing and potential investors, lenders and insurance underwriters” does not encompass the stakeholders relevant to Crown Financial institutions, including the community members who benefit from institutions such as the New Zealand Superannuation Fund and the Accident Compensation Corporation.
- 3.5 Second, we believe the NZ CS 1 should be suitably usable by entities who are not captured by the definition of CREs under the Bill. Similarly to Crown Financial Institutions, these entities may be responsible to users beyond “existing and potential investors, lenders and insurance underwriters”, for example non-profits who wish to make climate-related disclosures aligned to NZ CS 1 would benefit from a broader definition of primary users. Broad applicability of NZ CS 1 will allow for comparisons of performance across all sectors, incentivising the rapid adoption of good practice and innovative solutions across the private, not for profit, and public sectors.
- 3.6 Third, an expanded definition of *primary users* is consistent with the purposes of the Bill on the basis that:
- a. while existing and potential investors, lenders and insurance underwriters are without doubt critical interest groups in facilitating a smooth transition to a more sustainable, low emissions economy as persons involved in capital allocation decisions, capital allocators are by no means the only stakeholder group that is capable of using (or indeed may need to use) the information contained in the disclosures to make decisions that facilitate a smooth transition and protect their own businesses. Avoiding and adapting to the impacts of climate change, and meeting emissions reductions targets will require a whole of society approach that involves decisions and actions from a wide range of users, including all government and business sectors, suppliers, researchers, customers and the public. Accordingly, capital allocators will not be the only group of people who will, nor should, use the disclosures in decision-making. Expanding the definition of *primary users* acknowledges the breadth of persons who can and should legitimately use these disclosures in their decisions;
  - b. good corporate governance now readily acknowledges that entities have responsibilities to a wider group of persons than only persons who provide them with capital or underwrite their financial risk, in order to build the trust required to succeed long term. This should be reflected in the definition of *primary users*; and
  - c. enabling the disclosures to be used by a wider range of stakeholders increases the likelihood that the effects of climate change will be routinely considered in **business** decisions, as well as in investment, lending and insurance underwriting decisions because CREs will undoubtedly make business decisions on the basis of the market behaviours of a broader range of stakeholders than only existing and potential investors, lenders and insurance underwriters.
- 3.7 We note that, in its section of the recommendations "Climate-Related Risks, Opportunities, and Financial Impacts", the TCFD refers to "investors, lenders, insurance underwriters **and other stakeholders**". Throughout the TCFD's recommendations, LCANZI identified the following "other stakeholders" expressly described by the TCFD as having a legitimate interest in the

disclosures themselves or in the outcomes of the disclosures (in terms of any alterations to governance, risk management, strategy or metrics and targets of an entity in response to scenario analysis):

- a. customers;
- b. input suppliers;
- c. potential plaintiffs in litigation (Non-Government Organisations, indigenous communities, property owners, local and state governments – and LCANZI also notes in addition, children under the United Nations Convention on the Rights of the Child);
- d. researchers (in the context of contemplated research and development);
- e. non-customer users of entity assets;
- f. output suppliers (eg transport, waste); and
- g. employees and staff.

3.8 Reinforcing the recommendation made in our submission in May 2021 to the Select Committee on the Bill, we consider the definition of *primary users* should be expanded to include a wider range of stakeholders (for example, those listed above and, at the very least, suppliers and customers) on the basis that providers of financial capital should not be privileged over others who have a direct capital interest in the CRE.

3.9 We also note that the Consultation Document recommends that CRE's assess the upstream and downstream life cycle of a product, process or service in its risk management recommendations. It follows that persons and entities that are part of the upstream and downstream life cycle (suppliers, customers, etc) are relevant stakeholders given the disclosures are proposed to contain information about them.

3.10 An expanded definition of *primary users* will facilitate all key stakeholders to make informed decisions surrounding their investments and/or supplier or consumer behaviour, and to place scrutiny on those entities that do not comply with NZ CS 1 or who engage in business activities that may be heavily impacted by climate change, do not demonstrate responsibility and foresight in their consideration of climate-related issues or otherwise behaving in a manner inconsistent with facilitating a smooth transition to a more sustainable, low emissions economy. Recognising this broader group of stakeholders as *primary users* is critical to ensuring the effects of climate change become routinely considered in business and investment decisions in New Zealand.

#### **4. Double materiality**

4.1 We note that the XRB are currently developing a definition of “material” and related requirements for the application of materiality to climate-related disclosures. We also note that XRB is “aware that the outward ‘impacts of’ an entity on climate change are also important to consider, and that such disclosures would be of interest to a wider group of stakeholders” and as such that XRB “consider that some of the potential disclosures relating to Strategy, and Metrics and Targets, extend into this area and will be consulting on these disclosures in March 2022.”

4.2 We recommend that the XRB introduce the concept of “double materiality” into all aspects of NZ CS 1 from the outset (not only in the Strategy and Metrics and Targets standard), to ensure that climate reporting entities consider and disclose not only the material impact of climate change on the entity itself, but also the entity’s material impact on climate change (beyond the disclosure of greenhouse gas emissions metrics). International reporting obligations are increasingly shifting towards “double materiality” reporting, which requires an assessment of both. A double materiality lens should be applied to Governance and Risk Management as well as Strategy and Metrics and Targets disclosures

- 4.3 For example, the European Commission published a proposal for a Corporate Sustainability Reporting Directive (CSRD) on 21 April 2021, which strengthens the existing rules introduced by the Non-Financial Reporting Directive (NFRD), and lifts sustainability reporting to be on par with financial reporting. The European Commission plans to adopt the CSRD in late 2022. The CSRD will cover 49,000 companies and applies “double materiality” (both impacts inwards and impacts outward). In addition, the Government in Switzerland has recently published climate-related disclosures rules, impacting both public and private Swiss companies from 2024, which require both a company’s financial or investment risks linked to climate change (impact inwards), and the impact that the firm’s commercial activity has on the environment (impact outward) to be disclosed.
- 4.4 The Consultation Document cites the XRB's intention to align its framework with the TCFD on the basis that those recommendations are "world leading".
- 4.5 On the basis of its world-leading status, another key benefit to adopting the TCFD recommendations is that disclosures by CREs can be expected to be consistent and comparable with the expected disclosures of our international counterparts. This is supported in the Consultation Document, which assesses the recommendation for NZ CS 1 against "international compatibility". On that basis, LKANZI recommends that the XRB adopt a framework that currently reflects global best practice in the regulatory space and would improve comparability by introducing double materiality in line with the proposed CSRD. Otherwise, one of the core purposes for adopting a global best practice framework is frustrated.
- 4.6 If the XRB intends to adopt double materiality, we recommend that the definitions of "climate-related risk" and "climate-related opportunities" be amended to reflect double materiality. This will involve:
- a. expanding the definition of "climate-related risks" to include the increased risk of climate breakdown through the material impact of the CRE on climate change through the externalities created by its activities; and
  - b. expanding the definition of "climate-related opportunities" to include the decreased risk of climate breakdown through the material impact of the CRE on mitigating climate change through emissions reductions or sequestering carbon in its activities.
- 4.7 We recommend that the XRB ensures that the NZ CS 1 regime reflects emerging global best practice as one of the foundations for adopting the TCFD recommendations by applying double materiality to ensure that organisations take a sufficiently broad view of climate-related risks and opportunities in order to better evaluate risks and exposures over the short, medium, and long term.

## 5. Final comments

- 5.1 LKANZI is happy to meet with Climate-related Disclosures Project Steering Group to discuss any aspect of our submission. To discuss this further, please contact:

**Jenny Cooper QC**

**M:** 021 632 260

**E:** [president@lawyersforclimateaction.com](mailto:president@lawyersforclimateaction.com)