

5 November 2021

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment (**MBIE**)
PO BOX 1473,
Wellington 6140

Re: Funding of the Financial Markets Authority for Climate-related Disclosure

1. Please find **attached** the submissions of Lawyers for Climate Action NZ Inc. (**LCANZI**) on the 2021 Review of the Financial Markets Authority Funding and Levy Discussion Document dated 5 October 2021 (**Discussion Document**).
2. Our submission is limited to the proposed funding for the Financial Markets Authority (**FMA**)'s role under the new climate-related disclosures regime (**CRD Regime**), introduced via the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act, amending the Financial Markets Conduct Act 2013, the Financial Reporting Act 2013, and the Public Audit Act 2001. That Act received Royal Assent on 27 October 2021.
3. We support MBIE's proposition of additional funding for the CRD Regime. However, neither funding option proposed is realistic given the magnitude of work required.
4. In summary we submit that:
 - (a) the current funding proposals are wholly inadequate and need to be substantially increased, from the government's own resources.
 - (b) the currently proposed funding will not allow the FMA to adequately:
 - (i) employ and develop a team skilled with the expertise needed to navigate through the first few years of mandatory reporting;
 - (ii) provide sufficient guidance to reporting entities in the first few reporting periods of CRD Regime; and
 - (iii) monitor companies on reporting misleading information, including general checks and balances.
 - (c) formalising the funding in July 2022 is too late and needs to be as soon as possible and no later than 1 March 2022; and
 - (d) the funding should be at least equivalent to what is proposed in the Financial Markets (Conduct of Institutions) Bill (**CoFI Bill**).
5. Aotearoa New Zealand claims to be a world leader with the introduction of the CRD Regime. We strongly urge MBIE to reconsider increasing the current funding proposition to ensure the CRD Regime regime is successful.
5. We thank MBIE for the opportunity to make a submission on the Discussion Document.
6. To discuss this further, please contact me on [Privacy of natural persons](#) or by email ([Privacy of natural persons](#)).

Yours faithfully,

A handwritten signature in black ink, appearing to read "Jenny Cooper". The signature is written in a cursive, flowing style with a large initial 'J'.

Jenny Cooper QC
President

Submission: Funding of the Financial Markets Authority for Climate-related Disclosure

Introduction

- 1 LCANZI is a society comprising over 350 lawyers and an additional number of non-lawyer associate members. Our goals are to:
 - (a) raise public awareness and understanding of the threat of climate change;
 - (b) advocate for legislation and policies to ensure Aotearoa New Zealand meets or exceeds its commitment under the Paris Agreement and achieves net zero carbon emissions as soon as possible; and
 - (c) facilitate free or reduced cost legal assistance to community groups working to fight climate change.
- 2 We welcome the opportunity to provide feedback on the Discussion Document. Our submission will focus primarily on the funding allocated towards Climate-related disclosures (**CRD**), in relation to the recent CRD Regime.

Executive Summary

- 3 We support MBIE's proposal of additional funding of the FMA. However, neither of the propositions in the Discussion Document provide sufficient funding for the FMA to carry out its role under the CRD Regime properly. More Crown resources are needed to effectively monitor and guide companies through the transition. It is particularly important the funding comes from the Crown given the high amount of public good benefit which will follow.
- 4 Aotearoa New Zealand has been praised around the world as a leader for the CRD Regime. The Government is presented with a unique opportunity to set the global standard, which comes with the responsibility of ensuring the FMA is sufficiently resourced to monitor the regime. Adequate funding will allow entities to become more sustainable by factoring the short, medium and long term impact change into their business decisions.
- 5 In summary, we submit that:
 - (a) the current funding proposals are wholly inadequate and need to be substantially increased, from the government's own resources.
 - (b) the current funding will not allow the FMA to adequately:
 - (i) employ and develop a team skilled with the expertise needed to navigate through the first years of the CRD Regime and the challenges this will present;
 - (ii) provide sufficient guidance to reporting entities in the first few reporting periods of the CRD Regime; and
 - (iii) monitor companies on reporting misleading information, including general checks and balances.
 - (c) formalising the funding in July 2022 is too late and needs to be from March 2022; and
 - (d) the funding should be at least equivalent to what is proposed in relation to the CoFI Bill, because the need is if anything greater.

The FMA's important role

- 6 The New Zealand Government has made it clear they are serious about the success of the CRD Regime. The next step in the success of the CRD Regime is the practical impact. Forming early uptake and momentum among all stakeholders will help to promote the confident and informed

participation of businesses, investors, and consumers in the financial markets. Aotearoa New Zealand has only one chance to start the CRD Regime on the right foot.

- 7 Under the CRD Regime, it is the FMA who has the lead role amongst government agencies. The Discussion Document itself states that the “FMA’s independent monitoring, guidance on compliance expectations and enforcement of the CRD regime will be an essential part of promoting high quality climate reporting.”
- 8 If the FMA is not provided with adequate funding now, this will make it difficult for the CRD Regime to be successful.

Timing of funding – currently too late

- 9 The progression of the CRD Regime has been rapid, and the level of communication between the FMA and climate reporting entities has not developed to the level required. Our concern is that the FMA will not have time to properly prepare for and deliver the requirements of its role under the CRD Regime.
- 10 Until the funding is introduced, the FMA will continue to be restricted in its ability to put in place proper guidance. Given that climate statements could be required to be disclosed by some reporting entities for the financial reporting periods starting in 2023, the current timeline (with funding to be formalised in July 2022) will not allow sufficient preparation time.
- 11 Preparatory work will be required by some reporting entities from the beginning of the first reporting period in the CRD Regime, not the end. That means the FMA should be engaging now, to assist the financial sector understand the CRD Regime in order for it to be successfully implemented.
- 12 Accordingly, we submit that the FMA needs to be funded for the CRD Regime from March 2022.

Level of funding and comparison to CoFI Bill funding

- 13 The FMA is the only governing body and stakeholder of the CRD Regime framework that will have oversight of all trends, challenges, internal considerations and effective company processes that reporting entities are undertaking. It will also have an important co-ordinating role to ensure data is available, and the reporting serves its purpose.
- 14 The total funding for the “proactive” approach (Option 1) proposed under the Discussion Document for the CRD Regime in years 2022/2026 is \$1.790million. This is far too little, given the importance of climate change to Aotearoa New Zealand, both to our environment and to our economy, and the leadership role the FMA will need to adopt for the CRD Regime to be successful.
- 15 In contrast, the same proactive approach for CoFI for the same time period is \$6.847 million. Notably, the Discussion Document includes 10 key objectives on what this funding would enable, while only 5 objectives are included for CRD. However many of the CRD points are not easily quantifiable such as to “engage and inform the market through guidance on compliance expectations and thematic monitoring”.
- 16 The framework of providing CRD Regime guidance will need to develop over time as the varying levels of reporting approaches by entities becomes further detailed. By contrast, the goals of the CoFI funding are more directed at compliance and evaluation such as authorising entities that meet the licensing criteria and have sufficient capability to operate in financial markets.
- 17 LKANZI acknowledges the importance of the CoFI Bill, however, we cannot point to any logical reasons for the magnitude of difference between the two funding sources, especially given the level of tasks and higher degree of uncertainty associated with the CRD Regime. If anything, for the reasons spelled out below, there is a case for CRD Regime funding being higher than CoFI.
- 18 Accordingly, we submit that the funding should be at least equivalent to the CoFI Bill, if the New Zealand Government is serious about being a world leader in its climate change effort.

Importance of FMA capability to deliver the CRD Regime – ie people

- 19 LKANZI is concerned that the tight timeframe for implementation will be insufficient for the FMA to recruit the right people and undertake adequate preparation, especially if funding is tight.

- 20 The FMA building a committed team to educate the climate disclosure reporting community on best practise is key to providing adequate guidance, and will take time. This will also need to include analysing the information from reporting entities to continuously improve understanding. The FMA will need to move rapidly, from its current standing start. Given the expertise, training and time intensive work required, the current proposition of eight additional full-time staff for 2025/2026 in CRD Option 1 is not sufficient.
- 21 The Discussion Document does not adequately consider the difficulty of attracting sufficient staff with the required technical expertise and the subsequent training required to ensure they are market leaders. As employees develop their skills and expertise they will become more valuable to financial services businesses and other corporates making them harder to retain. We note this may be beneficial to the grand scheme of entities reporting correctly, however it does not serve the FMA's purpose of maintaining competent staff.
- 22 There will be over 200 reporting entities and especially the smaller ones, under the CRD Regime will need much more guidance and support. Factoring in there may be FMA employees who do not stay until 2025/2026, the number needs to be much higher than proposed.
- 23 We acknowledge it is difficult to determine an exact figure for additional staff, but we cannot see proper justification for CoFI requiring such a greater number (102 proposed staff are included in CoFI Option 1).
- 24 FMA has already been building its CoFI capability – in contrast to the standing start for the CRD Regime. Further, the regulated community (banks and insurers) under CoFI have had a long preparatory period, and many have the support of parent companies in Australia where similar initiatives have already been rolled out. In contrast, under the CRD Regime, Aotearoa New Zealand is claiming to lead the world, so cannot draw on developed expertise overseas.
- 25 Accordingly, we cannot see any justification for the magnitude of difference between the people resources proposed between CoFI and the CRD Regime, especially considering the CoFI Bill is coming into force two years after the CRD Regime. If anything, the funding for the CRD Regime should be higher than the CoFI regime.

The need for adequate funding for guidance to reporting entities – currently too little

- 26 It is vital that the FMA is properly funded to give support and provide guidance to the climate reporting entities in order to correctly prepare for the new regime in the financial year. Climate statements will be key to how entities communicate material information to stakeholders. The FMA will need to work closely with entities on the scope and nature of these statements and general disclosure.
- 27 How this develops is vital for stakeholders being educated on the relevant risks for the entity allowing accurate capital allocation decisions to be made. With sufficient resources, the FMA will have the ability to take a role which is not restricted to regulation and enforcement action but rather one which allows providing guidance, communicating compliance expectations and having increased engagement with slower moving industry players.
- 28 The Discussion Document states that the “FMA's independent monitoring, guidance on compliance expectations and enforcement of the CRD regime will be an essential part of promoting high quality climate reporting”. LCANZI agrees there is a strong link between guidance and high-quality climate reporting, but considers that the practical application of taking companies through the process is far more resource intensive than currently anticipated.

Limited resources risks a limited focus

- 29 With limited resources as proposed, the FMA would likely limit its activities to targeting entities which fail to file the mandated climate statement after the event, and may not have capacity to critique and provide constructive feedback on reports which make inaccurate or unintentionally misleading statements.
- 30 The feedback process cannot take second priority if entities are to develop good reporting standards. Misleading information is inconsistent with section 3(b) of the FMA being to promote and facilitate the development of fair, efficient and transparent financial markets.

31 Given the unprecedented nature of the CRD Regime, the feedback component of the FMA's role is crucial to helping entities in their initial years of producing climate statements. Especially for entities who only require guidance to improve the accuracy of their reports. There is a risk that, as the CRD Regime develops, the quality of reports will decrease if the FMA does not have the time and resources to monitor misleading reports.

32 It would be highly detrimental to the success of the CRD Regime if the FMA is restricted in this area. With sufficient resources, the FMA will have the ability to take a role which is not restricted to regulation and enforcement action but rather one which educates relevant sectors and stakeholders towards best practises and provides the wider industry with direction.

Final comments

33 The Aotearoa New Zealand Government has made it clear they are serious about the success of the CRD Regime and this has received considerable publicity around the world. The next step is to ensure the CRD Regime is implemented and maintained as successfully as possible.

34 While LCANZI supports most points raised in the Discussion Document, we consider the proposed funding is wholly insufficient to ensure the success of the CRD Regime and therefore should be increased and formalised as soon as possible.

35 LCANZI is happy to meet with MBIE and/or the FMA to discuss any aspect of our submission. To discuss this further, please contact:

Jenny Cooper QC

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