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Kia ora Finance and Expenditure Committee Secretariat

Financial Market Conduct Amendment Bill: Amendment Paper

The Institute of Directors (IoD) and Chapter Zero New Zealand appreciate the opportunity to provide this submission regarding the Amendment Paper to the Financial Market Conduct Amendment Bill.

Our director members, including those affiliated with Chapter Zero and many serving on boards responsible for both mandatory and voluntary climate-related disclosures, welcome the proposed changes, particularly those related to director liability associated with these disclosures.

The Amendment Paper removes director liability in connection with climate-related disclosure reporting, as well as under the related Fair Trading Act 1986¹. In a previous submission on climate-related disclosures, IoD and Chapter Zero New Zealand identified director liability as a significant concern within the climate-related disclosures regime. We did not consider that the unique nature of climate-related disclosures justified imposing personal criminal liability on directors, given the inherent challenges in accurately measuring the required information as the equivalent of forward-looking financial statements. This liability has resulted in increased costs for publicly listed companies due to additional legal fees and assurance requirements and has limited both the scope and utility of the resulting disclosures. These effects were evident from the [first round of reporting](#).

About the Institute of Directors

The Institute of Directors (IoD) is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community. We have over 10,500 members connected through our regional branch network and national headquarters. We believe in the power of governance to create a strong, fair and sustainable future for New Zealand.

Our role is to drive excellence and high standards in governance. We support and equip our members who lead a range of organisations from listed companies to large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good governance.

About Chapter Zero New Zealand

The IoD is proud to be the host of Chapter Zero New Zealand, the national Chapter of the Climate Governance Initiative. The Climate Governance Initiative has Chapters in over 70 countries worldwide. A Chapter is a group of board directors in a particular country or region who have formed a network dedicated to enabling and empowering chairs, non-executive and independent directors to take climate action.

Chapter Zero NZ is guided by a Steering Committee made up of high-profile business leaders and is supported by a Working Group comprising corporate partners, collaborators and other climate change organisations across Aotearoa New Zealand. The mission of Chapter Zero NZ 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".

¹

We note for completeness that this Fair Trading Act 1986 change relates only to the climate-related disclosures. It does not and should not extend to other Fair Trading Act 1986 provisions related to companies' climate or other claims for the goods and services they deliver

Similar perverse outcomes have been observed in other legislative frameworks, such as the finance sector, where director liability settings in statutes like the [Credit Contracts and Consumer Finance Act 2003](#) had lead to overly conservative lending practices, including unwarranted restrictions on lending. In addition, it is apparent that punitive liability provisions for directors have had minimal impact on improving health and safety outcomes since the enactment of the Health and Safety at Work Act 2015.

In each of these contexts, our preferred approach to climate-related disclosures as largely reflected in the Amendment Paper is:

- To rely on core directors' duties as outlined in the Companies Act 1993, including the obligations to exercise due diligence, care and skill, act in good faith, and serve the best interests of the company.
- To promote sound governance practices, as detailed in our:
 - [Four Pillars of Governance Best Practice](#)
 - [Chapter Zero New Zealand Board Toolkit](#)
 - [Health and Safety: A good practice guide](#).
- To support robust governance and board capability in relation to climate-related disclosures through a range of relevant governance development offerings.

In summary, existing directors' duties and board responsibilities more than compensate for the removal of specific director liability for climate-related disclosures. We anticipate that eliminating this liability as proposed in the Amendment Paper to the Financial Market Conduct Amendment Bill will result in more meaningful and valuable disclosures for companies, shareholders, and stakeholders, regardless of whether companies are compelled to report or choose to do so voluntarily.

Our submission is self-explanatory, and we do not wish to appear before the Finance and Expenditure Committee on it.

Ngā mihi



Guy Beatson

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