1. Changing mindsets: Responsibility

What:

Explicitly require financial system actors to consider, manage and account for environmental and social risks and opportunities and real-world impacts.

Why change is needed:

Recognising that the financial system operates within a broader social and environmental system and that financial decisions have consequences for, and dependencies on, that broader system is a critical and a core aspect of a sustainable financial system. We consider it imperative that businesses and financial entities consider their impacts and dependencies on society and the environment.

Counterfactual:

Directors and Trustees prioritise shareholders and short-term shareholder returns to the detriment of other stakeholders, including the environment and society.

Desired outcomes:

- Fiduciary duty is clear, and it is understood to require consideration of, and active management of environmental and social risks, opportunities and 'real-world' impacts.
- Entities have a clear social purpose.
- Investing for environmental, social and economic benefit is as achievable as investment solely for economic benefit. Barriers to encourage purpose-led businesses and investment models have been removed.

Recommendations in action:

Mandating ESG – the UK Experience

The UK is a global leader in sustainable finance policy. At the forefront of these initiatives has been the Department of Works and Pensions (DWP) introduction of explicit requirements for trustees (of pension schemes), as part of their fiduciary duty, requiring them to take into account environmental and social issues.

To read more about this case study and the detail behind this recommendation, read the Technical Chapter here.

Chapter 1: Responsibility

Responsibility: Detailed recommendations

What:	Topics	Recommendation
Explicitly require financial system actors to consider, manage and account for environmental and social risks and opportunities and real-world impacts.	Explicitly include the consideration of environmental and social factors within fiduciary duties.	a) Initially, commission a supplementary legal opinion(s) on current obligations of other financial system actors in respect of climate change (e.g. trustees), and then obligations of all financial system actors in respect of ESG more broadly. b) Follow this with the inclusion of environmental and social factors within applicable fiduciary duty legislation. Support this through consideration of the need for differential treatment, phasing in or targeted support for SMEs and non-institutional investors. c) Provide market guidance on the legal responsibilities of financial system actors regarding incorporation of ESG factors and positive environmental and/or social outcomes. This can include amendments to existing guidance notes, and would aid in assisting market participants to understand and implement these requirements.
	Remove barriers to purpose-led businesses and investment models.	a) As part of the legal opinion(s) above, assess whether, under common law, financial system actors are expected to consider their positive environmental and/or social outcomes as part of decision-making; and if so, how perceived (or actually planned) trade-offs between financial and sustainability outcomes should be managed. b) Ākina's recommendations from their report 'Structuring for Impact' be adopted. Including: • Education and support be provided to purpose-led companies on how to effectively achieve being a purpose-led organisation within existing legal structures, thus increasing the level of trust and understanding of their environmental and social outcomes. • Education and support be provided for profit and purpose-led companies on how to measure and report on their impact, thus driving the growth of purpose-led businesses, improved environmental and social outcomes, and understanding of the extent of these outcomes. • Make improvements to legal structures to ensure all businesses have a clear legal structure that enables and supports business and investment directed towards positive environmental and/or social outcomes. This includes recommendations such as variations to the current 'for profit' model to explicitly allow businesses to trade for impact. • Other legal structure options would still be available for traditional charitable, cooperative or purely for-profit entities. This would involve amendments to the Companies Act 1993 and KiwiSaver Act to incorporate opt-in provisions for purpose-led organisations and encourage impact investment. • Provide incentives for purpose-led businesses, with initiatives such as provision of tax incentives; providing KiwiSaver investment incentives (such as the 90/10 scheme in France); and allowing a more beneficial tax treatment for income associated with achieving public good.