



On the Horizon – Briefing note on TCFD-aligned mandatory disclosure in New Zealand

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In Brief

Canadian and other regulators globally are considering how best to embed disclosure and governance of climate-related financial risks and opportunities into financial reporting. This briefing note canvasses recent legislative initiatives in New Zealand as another example of a regulatory path towards net zero. In April 2021, the New Zealand Government introduced the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill, an omnibus Bill that will amend the *Financial Markets Conduct Act 2013*, the *Financial Reporting Act 2013*, and the *Public Audit Act 2001*. The Bill will make climate-related disclosures mandatory for approximately 200 organisations that meet a NZ \$1 billion asset threshold, including most listed issuers, large registered banks, licensed insurers, and managers of investment schemes, which are designated as ‘climate reporting entities’.

The Bill is highly codified:

- It amends the *Financial Markets Conduct Act* to require climate reporting entities to annually produce ‘climate statements’ that are accessible to stakeholders and regulators, and require the signature of directors. For registered schemes, climate statements must be prepared for the separate funds of the scheme.
- The ‘explain’ part of the mandatory comply-or-explain regime creates exceptions from compliance but only where rigorous requirements are met. It requires an entity to file a statement that it has ‘reasonably determined’, in accordance with applicable climate standards, that the ‘relevant activities are not materially affected by climate change’; requires an explanation as to how the entity has reached that determination; and requires the entity to obtain an assurance report from a qualified climate disclosure assurance practitioner in relation to its determination that climate risk is not material.
- The Bill amends the *Financial Reporting Act* to enable the External Reporting Board (XRB) to prepare and issue climate-related reporting standards that align with the Financial Stability Board’s Taskforce on Climate-related Financial Disclosures framework, including determining the extent to which entities will need to disclose greenhouse gas emissions. Entities must make disclosure in accordance with these climate standards.
- The Financial Markets Authority will be responsible for the independent monitoring and enforcement of the reporting entities’ compliance with the new reporting standards.

- The XRB will be authorized also to issue guidance material on environmental, social, and governance reporting.
- The NZ \$1 billion threshold for climate risk reporting will ensure that 90% of assets under management in New Zealand are included within the disclosure system.
- If a licensed insurer does not meet the asset threshold, it will still be considered 'large' and a climate reporting entity if, in each of its two preceding accounting periods, the combined annual gross premium revenue of the insurer and its subsidiaries was more than NZ \$250 million.

The Bill passed first reading on 15 April 2021 and is now with the Select Committee on Economic Development, Science and Innovation Committee. Public consultation on the Bill ended on 28 May 2021 and the Committee is scheduled to report to NZ Parliament by 16 August 2021. The NZ Government has announced that it will publicly consult on possible wider private sector application after the legislation has been brought into force.

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Abbreviations in this memorandum

Bill	Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill
CFI	Crown financial institution
CRD	climate reporting disclosure
ESG	environmental, social, and governance
FMA	Financial Markets Authority
<i>FMCA</i>	<i>Financial Markets Conduct Act 2013, New Zealand</i>
<i>FRA</i>	<i>Financial Reporting Act 2013, New Zealand</i>
GAAP	generally accepted accounting practices, New Zealand
GHG	greenhouse gas
IFRS	International Financial Reporting Standards
MBIE	NZ Ministry of Business, Innovation, and Employment
MfE	NZ Ministry for the Environment
NZ	New Zealand
<i>PAA</i>	<i>Public Audit Act 2001, New Zealand</i>
PDS	product disclosure statement
TCFD	Taskforce on Climate-related Financial Disclosures
XRB	External Reporting Board

I. Introduction

Canadian and other regulators globally are considering how best to embed disclosure and governance of climate-related financial risks and opportunities into financial reporting in a manner that will create transparency for investors, creditors, governments and civil society, and incentivise businesses to transition towards net-zero carbon emissions in a timely and effective manner. This briefing note canvasses recent legislative initiatives in New Zealand as another example of a regulatory path towards net zero. It includes a brief summary of current initiatives in New Zealand (NZ) to implement mandatory climate-related financial disclosure. It is current to 10 June 2021. It commences with a brief background of developments in New Zealand since the Financial Stability Board’s Taskforce on Climate-related Financial Disclosures (TCFD) Final Report.¹ It then canvasses the proposed legislation implementing detailed mandatory comply-or-explain TCFD-aligned disclosure legislation, and discusses the expected timelines for introduction of new climate reporting standards.

II. Background and Developments Leading to the New Zealand TCFD-aligned Disclosure Legislation

We simply cannot get to net-zero carbon emissions by 2050 unless the financial sector knows what impact their investments are having on the climate. This law will bring climate risks and resilience into the heart of financial and business decision making.

The Honourable James Shaw,
New Zealand Climate Change Minister, April 2021²

In 2018, the NZ Productivity Commission, in its *Low-emissions Economy* report, recommended the introduction of a mandatory comply-or-explain climate-related financial disclosure system.³ It recommended that the NZ Government implement principles-based, climate-related financial disclosures, and that they should be audited and accessible to the general public.⁴ It suggested that: “Introducing mandatory climate-related financial disclosures would encourage investment that supports the transition to a low-emissions economy. These disclosures can help overcome information and inertia barriers that prevent entities from adequately addressing climate risk and capitalising on low-emissions opportunities.”⁵ The Productivity Commission concluded that disclosure is a powerful mechanism to focus reporting entities on the impacts of climate change on their own activities and it will enable investors to make decisions that accurately reflect the climate risk of those choices.⁶

In 2019, the NZ *Climate Change Response (Zero Carbon) Amendment Act* amended the NZ *Climate Change Response Act* to set amended targets for emissions reduction, which requires that net accounting emissions of greenhouse gases (GHG) in a calendar year, other than biogenic methane, are zero by the calendar year beginning on 1 January 2050 and for each subsequent calendar year; and

¹ TCFD, *Final Report, Recommendations of the Task Force on Climate-related Financial Disclosures*, (2017), [FINAL-2017-TCFD-Report-11052018.pdf \(bbhub.io\)](https://www.bbhuh.io/FINAL-2017-TCFD-Report-11052018.pdf) (TCFD Final Report).

² New Zealand Government, (13 April 2021) [NZ becomes first in world for climate reporting | Beehive.govt.nz](https://www.beehive.govt.nz/news/nz-becomes-first-in-world-for-climate-reporting).

³ New Zealand, Productivity Commission, *Low-emissions Economy* (August 2018), at 175, [Productivity-Commission Low-emissions-economy Final-Report FINAL 2.pdf](https://www.productivity.govt.nz/assets/Uploads/Commission-Low-emissions-economy-Final-Report-FINAL-2.pdf) (hereafter Productivity Commission).

⁴ *Ibid* at 199.

⁵ *Ibid* at 7.

⁶ *Ibid*.

emissions of biogenic methane are 10% less than 2017 emissions by the calendar year beginning on 1 January 2030; and are 24% to 47% less than 2017 emissions by the calendar year beginning on 1 January 2050 and for each subsequent calendar year.⁷ The NZ Climate Change Commission reported in 2021 that “current government policies do not put Aotearoa on track to meet the Commission’s recommended emissions budgets or the 2050 targets.”⁸ It reported that mandatory climate-related financial disclosure is an important step in improving transparency and information about climate risk, drawing on TCFD as international best practice for climate-related financial reporting.⁹

The NZ Government conducted a consultation from October to December 2019 as to how to implement recommendations by the Productivity Commission in respect of climate-related financial disclosures.¹⁰ The consultation discussion document suggested that the TCFD reporting framework would be the default ‘comply’, but that compliance could also be met by disclosing climate-related information under other reporting frameworks that are TCFD-aligned.¹¹ It also suggested that not complying with the TCFD in full would be permissible in year 1 only, subject to explaining why some disclosures have not been made, such as because targets and metrics are still being developed. Thereafter, non-disclosure would only be allowable on the basis of a preparer’s analysed and reported conclusion that they see themselves as not being materially affected by climate change, with an explanation as to why.¹² Its rationale for moving to mandatory disclosure included:

- The Government’s current approach has not been effective to date in that most entities in NZ’s financial markets do not disclose climate-related information, or disclose information that is of little use for decision-making purposes.
- Early voluntary adopters may have concerns about the competitive disadvantage of revealing risks to their balance sheets, creating a disincentive to disclose. A clear regulatory regime creates a level playing field.
- Mandatory reporting, using a single high-quality climate reporting framework, will promote reporting that is clear, comparable, and consistent and promote business certainty.
- Regulatory standards can help generate consistent information.

⁷ NZ Government, *Climate Change Response (Zero Carbon) Amendment Act 2019*, Royal Assent 13 November 2019); *Climate Change Response Act 2002*, Public Law, 2002 No 40 (18 November 2002), as amended January 2021. See also *Climate Change Response (Auction Price) Amendment Bill*, which received Royal Assent in March 2021, which enables a confidential reserve price to be set for auctions in the New Zealand Emissions Trading Scheme to ensure units sold at auction cannot be sold significantly below the prevailing secondary market price, *Climate Change Response (Auction Price) Amendment Act (2021/4)*, Royal Assent 12 March 2021.

⁸ NZ Climate Change Commission, *Ināia tonu nei: a low emissions future for Aotearoa*, Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022 – 2025 (21 May 2021), at 12, [Ināia tonu nei: a low emissions future for Aotearoa \(amazonaws.com\)](https://www.amazonaws.com).

⁹ *Ibid* at 248.

¹⁰ New Zealand Government, Ministry for the Environment & Ministry of Business, Innovation & Employment, *Climate-related financial disclosures – Understanding your business risks and opportunities related to climate change: Discussion document*. (October 2019) Wellington: Ministry for the Environment, [Climate-related financial disclosures discussion document \(environment.govt.nz\)](https://www.environment.govt.nz) (hereafter NZ Government 2019 Discussion Document).

¹¹ *Ibid* at 9.

¹² *Ibid*.

- A new mandatory disclosure requirement is likely to encourage the routine consideration in business and investment decisions of the effects of climate change much sooner than retaining the *status quo* would. Slow-moving companies will have to start preparing sooner than they would otherwise.
- Investors are urging governments to act.¹³

The discussion document proposed that:

105.1 As recommended by the Canadian Expert Panel on Sustainable Finance, non-disclosure would only be allowed if the entity analyses and reports that they see themselves as not being materially affected by climate change, with an explanation as to why.

105.2 In year one, it would also be permissible to not provide a full set of TCFD disclosures, subject to explaining why the disclosures are incomplete. We are proposing this because aspects of TCFD are challenging and some entities may not be able to ‘gear up’ in time to produce a full set of disclosures in the first year.¹⁴

In July 2020, the NZ Ministry of Business, Innovation, and Employment (MBIE) and the Ministry for the Environment (MfE) produced a Climate-related Financial Disclosures Regulatory Impact Assessment to help inform the main policy decisions on the contents of the legislation the Government would introduce.¹⁵ It recommended a mandatory comply-or-explain approach to climate-related financial disclosure,¹⁶ noting that the full benefits of the policy will not be achieved unless a significant proportion of climate reporting entities comply with the standards that be will issued by the XRB (External Reporting Board)¹⁷ and an independent regulator, the Financial Markets Authority (FMA), which should monitor and report on disclosures and non-disclosures and take other enforcement action, where necessary. To support compliance, the XRB and MfE undertook stakeholder engagement and education for capability building. In August 2020, Cabinet agreed to introduce mandatory climate-

¹³ *Ibid* at 34.

¹⁴ *Ibid* at 37, expressly referring to the Canadian Expert Panel on Sustainable Finance, [Expert panel sustainable finance - Canada.ca](#).

¹⁵ NZ Ministry of Business, Innovation, and Employment and the Ministry for the Environment, Regulatory impact assessment (23 July 2020), [REDACTED-CRFD-Regulatory-Impact-Assessment-July-2020.pdf \(environment.govt.nz\)](#).

¹⁶ *Ibid* at 1.

¹⁷ The XRB is an independent Crown entity established under New Zealand law, particularly the *Financial Reporting Act 2013*. The current New Zealand Accounting Standards Framework sets down a financial reporting strategy for New Zealand and establishes which suite of reporting standards and reporting tiers apply to which entities. It involves a multi-standards, multi-tiered approach, XRB, Accounting Standards Framework (June 2021), [Accounting Standards Framework » XRB](#). XRB reports that accounting standards issued by the XRB Board or the New Zealand Accounting Standards Board are the primary indicators of generally accepted accounting practices (GAAP) in New Zealand. They set out the recognition, measurement, presentation and disclosure requirements for transactions and events that are important in the preparation of financial reports—including those that may arise in specific industries. In general, entities with statutory reporting requirements must prepare financial reports based on GAAP.” “Most New Zealand-based for-profit small to medium-sized entities have no legal requirement to comply with XRB standards”, *ibid*.

related disclosures for listed issuers, large registered banks, non-bank deposit takers, licensed insurers, and registered managed investment schemes.¹⁸

On 21 September 2020, the MfE announced plans to make climate-related financial disclosures mandatory for publicly-listed companies and large insurers, banks, and investment managers.¹⁹ Reporting will be against a standard that will be issued by the XRB, developed in line with the TCFD recommendations.²⁰ The Government website announcing the initiative stated that the following entities would be required to make these disclosures:

- All registered banks, credit unions, and building societies with total assets of more than NZ \$1 billion.
- All managers of registered investment schemes with greater than NZ \$1 billion in total assets under management.
- All licensed insurers with greater than NZ \$1 billion in total assets under management or annual premium income greater than NZ \$250 million.
- All equity and debt issuers listed on New Zealand's Exchange.
- Crown financial institutions with greater than NZ \$1 billion in total assets under management.²¹

Overseas incorporated organizations will also be required to disclose in their New Zealand annual reporting.²² The Government has observed that the NZ \$1 billion threshold will ensure that 90% of assets under management in New Zealand are included within the disclosure system.²³ On 2 December 2020, the NZ Government declared a climate emergency, committing to urgent action on reducing GHG emissions.²⁴

III. Current NZ Legislative Initiatives and Timelines

In April 2021, the NZ Government introduced the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill,²⁵ which is an omnibus Bill that will amend the *Financial Markets Conduct Act 2013 (FMCA)*,²⁶ the *Financial Reporting Act 2013 (FRA)*,²⁷ and the *Public Audit Act 2001*

¹⁸ Cabinet Document, Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill: Approval for Introduction, (25 May 2021), [Financial Sector \(Climate-related Disclosures and Other Matters\) Amendment Bill: Approval for Introduction \(mbie.govt.nz\)](https://mbie.govt.nz) (hereafter Approval for Introduction).

¹⁹ NZ Government 2019 Discussion Document, note 10.

²⁰ *Ibid.*

²¹ New Zealand Government, 'New Zealand first in the world to require climate risk reporting', (15 September 2020), [New Zealand first in the world to require climate risk reporting | Beehive.govt.nz](https://www.beehive.govt.nz/news/new-zealand-first-in-the-world-to-require-climate-risk-reporting).

²² *Ibid.*

²³ *Ibid.*

²⁴ NZ Government, 'Climate emergency declaration will be matched with long-term action', (2 December 2020), [Climate emergency declaration will be matched with long-term action | Beehive.govt.nz](https://www.beehive.govt.nz/news/climate-emergency-declaration-will-be-matched-with-long-term-action).

²⁵ Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill, <https://legislation.govt.nz/bill/government/2021/0030/latest/096be8ed81aa816f.pdf> (hereafter Financial Sector Amendment Bill). It was introduced 12 April 2021, and passed first reading on 15 April 2021, it is now with the Parliamentary Select Committee.

²⁶ *Financial Markets Conduct Act 2013*, Public Act 2013 No 69, New Zealand (*FMCA*).

²⁷ *Financial Reporting Act 2013*, Public Act 2013 No 101, New Zealand (*FRA*).

(PAA).²⁸ First reading of the legislation was 15 April 2021 and the Bill was sent to Committee. Public consultation on the Bill ended on 28 May 2021 and will be considered by the Economic Development, Science and Innovation Committee, which is scheduled to report to Parliament four months and one day after its first reading, specifically, 16 August 2021.

The Bill provides for the *FRA* changes to come into force on the day after the date of the Royal Assent, allowing the XRB to issue climate standards from that date.²⁹ The *FMCA* amendments will come into force no less than one year after Royal Assent, likely in force for financial years commencing on or after 1 July 2022.³⁰ Once the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill is passed, disclosures will be required for financial years commencing in 2022, meaning that the first disclosures will be made in 2023.³¹ The changes that relate to independent assurance of GHG emissions disclosures will come into force no later than two years after Royal Assent.³²

The Financial Sector (Climate-related Disclosure and Other Matters) Amendment Bill will make climate-related disclosures mandatory for approximately 200 organisations that meet the NZ \$1 billion asset threshold, including most listed issuers, large registered banks, licensed insurers, and managers of investment schemes. In New Zealand, managed investment schemes include superannuation (pension) or workplace savings schemes, KiwiSaver, and other managed investment schemes that pool money from a number of investors who rely on the investment expertise of the manager of the investment scheme.³³ The definition of managed investment schemes in the *FMCA* is broad and includes a wide range of collective investment schemes that can be structured in different ways and may invest in a wide range of investments.³⁴ They can be open-ended (offered continuously) or close-ended (fixed number of managed investment products).³⁵

The climate disclosure obligations will be implemented by way of a new subpart 7A of the *FMCA*. The *FRA* is being amended to enable the XRB to prepare and issue climate-related reporting standards and to issue best-practice guidance on integrated reporting that can be applied by reporting entities.³⁶ The *PAA* is being amended because a small number of the 200 climate reporting entities are ‘public entities’ as defined in section 5 of that Act, such as KiwiBank, Air New Zealand, Meridian Energy and Port of Tauranga; and the Bill provides for the Auditor-General to be the service provider in relation to the assurance of GHG emissions disclosures by climate reporting entities that are also public entities.³⁷

The policy statement introducing the Bill observes:

²⁸ *Public Audit Act 2001*, No 10, New Zealand (PAA).

²⁹ Approval for Introduction, note 18 at 6.

³⁰ *Ibid* at 6.

³¹ MfE, Mandatory climate-related disclosures, (April 2021), [Mandatory climate-related disclosures | Ministry for the Environment](#). See also ESG Investor, ‘NZ Introduces Law on Mandatory Climate Disclosures’ (April 2021), [NZ Introduces Law on Mandatory Climate Disclosures - ESG Investor](#).

³² Approval for Introduction, note 18 at 6.

³³ FMA, ‘What is a managed investment scheme’, (May 2021), [Managed investment scheme manager | FMA](#). See also section 9, *FMCA*.

³⁴ *Ibid*.

³⁵ *Ibid*.

³⁶ Approval for Introduction, note 18 at 3-4. The Bill also widens the XRB membership qualification provisions to reflect the expertise relating to its new responsibilities.

³⁷ *Ibid* at 4.

Financial markets globally can play a major part in shifting investment away from emission-intensive activities and towards low-emission, resilient development pathways. However, this unprecedented economic transformation will require the disclosure of consistent, comparable, reliable, and clear information about climate-related risks and opportunities that are, for the most part, not being made available to investors at present.

The Bill will contribute to this in New Zealand by introducing mandatory climate-related disclosure requirements for certain FMC reporting entities that, under section 461K of the *Financial Markets Conduct Act 2013*, are considered to have a higher level of public accountability, including listed issuers, large banks, large non-bank deposit takers, and large insurers, and large managers in respect of managed investment schemes. The disclosures will be aligned with the framework provided by the Task Force on Climate-related Financial Disclosures and made in accordance with standards issued by the External Reporting Board (the XRB). The specific purposes of the Bill are—

- to ensure that the effects of climate change are routinely considered in business, investment, lending, and insurance underwriting decisions; and
- to help reporting entities better demonstrate responsibility and foresight in their consideration of climate issues; and
- to lead to smarter, more efficient allocation of capital, and help smooth the transition to a more sustainable, low-emissions economy.³⁸

The Honourable David Clark, Minister of Commerce and Consumer Affairs, in introducing the Bill, stated that “current lack of reliable information about the impact of climate change on business is serious, because it can lead to mispricing in the markets, the mispricing of assets, and the misallocation of capital, and that means that investors, lenders, and other decision makers cannot then make the right decisions” and the Honourable Shaw, Minister for Climate, noted the importance of the mandatory regime scheme, using TCFD disclosures as the basis, with the XRB as developer of the reporting standards.³⁹ The Ministers jointly issues a statement that “Reporting will be based on the Task Force on Climate-related Financial Disclosures (TCFD) framework, which is widely acknowledged as international best practice.”⁴⁰ Disclosures will be based on the TCFD pillars of governance, risk management, strategies, and targets and metrics.⁴¹

³⁸ Financial Sector Amendment Bill, note 25 at 2.

³⁹ The Honourable David Clark, Minister of Commerce and Consumer Affairs, in introducing the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill — Hansard First Reading (15 April 2021), [Financial Sector \(Climate-related Disclosures and Other Matters\) Amendment Bill — First Reading - New Zealand Parliament \(www.parliament.nz\)](#) and Minister Shaw, [Financial Sector \(Climate-related Disclosures and Other Matters\) Amendment Bill — First Reading - New Zealand Parliament \(www.parliament.nz\)](#).

⁴⁰ NZ Government, ‘NZ becomes first in world for climate reporting’, (13 April 2021), [NZ becomes first in world for climate reporting | Beehive.govt.nz](#).

⁴¹ TCFD Final Report, note 1.

The Bill provides for the External Reporting Board (XRB), which is the independent Crown entity that issues financial reporting standards, to issue climate reporting standards.⁴²

The standards will be underpinned by the ‘qualitative characteristics of useful information’ outlined in the XRB’s Conceptual Framework for Financial Reporting:

- 5.1 If the information is to be useful, it must be relevant and faithfully represent what it purports to represent.
- 5.2 The usefulness of information is enhanced if it is comparable, verifiable, timely and understandable.⁴³

The Bill provides for the climate disclosure regime to be implemented through the *FMCA*, mirroring provisions in Part 7 on financial reporting that already require entities to prepare and publish financial statements in accordance with New Zealand generally accepted accounting practices (GAAP);⁴⁴ and in the *FRA*, relating to auditing and assurance. The Bill also provides for the XRB to issue guidance on a wider range of environmental, social, governance (ESG) and other non-financial matters that can be applied by entities on a voluntary basis, the purpose of which is to provide preparers of financial statements with guidance on best practice ESG and related disclosures and to improve the quality of disclosures on a range of issues beyond the types of information presented in financial statements.⁴⁵ The NZ Government considers monitoring and enforcement an essential part of the policy, assigning the FMA responsibility for these functions.⁴⁶

The MBIE prepared a disclosure statement to assist with scrutiny of the Bill.⁴⁷ It notes that the full benefits of the policy will not be achieved unless a significant proportion of climate reporting entities comply with the standards that be will issued by the XRB; and the FMA, as an independent regulator, monitors and reports on disclosures and non-disclosures, and takes enforcement action where necessary.⁴⁸ To support compliance, it states that some entities may initially try to ‘explain’ as a method of non-compliance, but it believes that the level of information required to explain, including assumptions and pathways to disclosing, will mitigate this tendency to some extent.⁴⁹ It also anticipates that market pressure will influence those entities that do not disclose or disclose poorly.⁵⁰

Unique to New Zealand is that the government must consider steps that have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi. The Disclosure Statement says:

⁴² Approval for Introduction, note 18 at 1.

⁴³ *Ibid* at 1-2.

⁴⁴ IFRS Standards are required for domestic public companies, adopted via New Zealand equivalents to International Financial Reporting Standards (NZ IFRS), which are fully converged with IFRS Standards, according to IFRS Foundation, [IFRS - View Jurisdiction](#). IFRS Standards are permitted but not required for domestic public companies, which can also use NZ GAAP. *Ibid*.

⁴⁵ Approval for Introduction, note 18 at 1-2.

⁴⁶ *Ibid* at 2.

⁴⁷ NZ Ministry of Business, Innovation, and Employment, Departmental Disclosure Statement, (30 March 2021), [Financial Sector \(Climate-related Disclosures and Other Matters\) Amendment Bill – NZ Legislation: Disclosures](#) (hereafter Disclosure Statement, 2021).

⁴⁸ *Ibid* at 6.

⁴⁹ *Ibid*.

⁵⁰ *Ibid*.

Iwi/Māori participating in financial markets (through managed investment schemes, direct investments in listed debt and equity, and retail investment) will benefit from having more accurate, accessible and comparable data to inform investment decisions and engagement of scheme managers.

Benefits will largely come from the more efficient operation of financial markets and greater macro-economic financial stability. For these reasons, MBIE and MfE proactively advised the Iwi Chairs Forum and the Federation of Māori Authorities about the joint discussion document on the day that it was published.⁵¹

1. Amendments to the Financial Markets Conduct Act

Part 1 of the Bill will amend the *FMCA*, creating a new Part 7A. Part 7A contains climate-related disclosure requirements for specified reporting entities considered to have a higher level of public accountability than other FMC reporting entities under section 461K of the *FMCA*.⁵² The existing legislation lists these entities as: issuers of equity securities or debt securities under a regulated offer; managers of registered schemes, but only in respect of financial statements of a scheme or fund prepared under section 461A; listed issuers; registered banks; licensed insurers; credit unions; building societies; and FMC reporting entities specified under the provision.⁵³ These entities will be designated as ‘climate reporting entities’.⁵⁴

Climate reporting entities will be required to prepare climate statements in accordance with climate standards issued by the XRB, to obtain an assurance engagement in relation to those statements to the extent that those statements are required to relate to GHG emissions, to lodge those statements with the Registrar of Financial Service Providers, and to keep records on climate reporting disclosure.⁵⁵ There are seven subparts to the new Part 7A.

Subpart 1 contains the main overview, ongoing application, and interpretation provisions for the new Part 7A of the *FMCA*. New section 461O defines climate reporting entity for the purposes of identifying the entities to which mandatory disclosure applies. ‘Large’ in respect of entities and ‘large manager’ in respect of managers of registered schemes are also defined for the purposes of determining climate reporting entities.⁵⁶ Climate reporting entities are required to prepare climate statements in respect of themselves, their group, or, for some overseas companies, their New Zealand business or their group’s New Zealand business.⁵⁷ The climate reporting entities include:

- listed issuers of quoted equity securities or quoted debt securities or both,
- large banks, large non-bank deposit takers, and large credit unions,
- large building societies,

⁵¹ Disclosure Statement, 2021, note 47 at 7.

⁵² Financial Sector Amendment Bill, note 25 at 4.

⁵³ *FMCA*, note 26, section 461K.

⁵⁴ Financial Sector Amendment Bill, note 25, creating new section 461O, *FMCA*.

⁵⁵ *Ibid.*

⁵⁶ Financial Sector Amendment Bill, note 25, creating new sections 461P and 461Q, *FMCA*.

⁵⁷ Financial Sector Amendment Bill, note 25, creating new section 461O, *FMCA*.

- large insurers, and
- large managers in respect of managed investment schemes.⁵⁸

‘Large’ generally means that, as at the ‘balance date’ [last day of the financial year] of each of the two preceding accounting periods, the combined assets of an entity and its subsidiaries were more than NZ \$1 billion.⁵⁹ In the case of a licensed insurer, if the insurer is not large based on assets, it will still be large if, in each of its two preceding accounting periods, the combined annual gross premium revenue of the insurer and its subsidiaries was more than NZ \$250 million.⁶⁰ In the case of an entity that is a body corporate incorporated outside New Zealand, the amendments require assessment of whether its New Zealand business, or its group’s New Zealand business, is large within the meaning of the legislation and it includes the same NZ \$1 billion asset threshold, or, if an overseas company is an insurer, the same threshold of NZ \$250 million annual gross premium revenue.⁶¹

Managers of registered schemes are climate reporting entities in respect of those schemes if they hold a market services license where they have NZ \$1 billion assets under management at the balance date of the preceding two accounting periods (‘large managers’).⁶² The NZ Government observes that managers of investment schemes will make disclosures in relation to each fund they manage because it reflects the information that investors need.⁶³ Investment managers that manage multiple funds will have to access climate risk data for underlying investments.⁶⁴ The government suggests that the proposed minimum of NZ \$1 billion of assets under management in aggregate for the Bill to apply is reasonable from a compliance cost perspective, as collecting data for an aggregate portfolio also provides all the necessary information to produce fund-by-fund disclosures, spreading the cost across the full range of funds.⁶⁵

Managers of registered schemes that are climate reporting entities will be required to prepare climate statements for each separate fund of each scheme, or for the scheme itself if any liability of the manager or the scheme is not limited to a separate fund. Section 461Z of the Bill states:

- 461Z Climate statements for separate funds of registered schemes, etc
- (1) This section applies to every manager of a registered scheme that is a climate reporting entity in respect of the scheme.
 - (2) The manager must ensure that, within 4 months after the balance date of the scheme, climate statements that comply with applicable climate standards are—
 - (a) completed in relation to each separate fund of the scheme and that balance date; and

⁵⁸ *Ibid.*

⁵⁹ Financial Sector Amendment Bill, note 25, creating new section 461P(1), *FMCA*. ‘Balance date’ in the *FMCA*, section 6 “has the same meaning as in section 41 of the *Financial Reporting Act 2013*”. The *FRA*, note 27, section 5, sets out the balance date, normally, the last day of the financial year. The *FRA* section 41 states: “41 Meaning of balance date (1) The balance date of a specified entity is the close of— (a) 31 March; or (b) any other date that the directors of the entity adopt as the entity’s balance date with the approval of the Commissioner of Inland Revenue.” There must be a balance date each year.

⁶⁰ Financial Sector Amendment Bill, note 25, creating new section 461P(2), *FMCA*.

⁶¹ Financial Sector Amendment Bill, note 25, creating new section 461P(4), *FMCA*.

⁶² Financial Sector Amendment Bill, note 25, creating new sections 461O, 461Q, and 461Z, *FMCA*.

⁶³ Approval for Introduction, note 18 at 3.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

- (b) if any liabilities of the manager and the scheme are not limited to a separate fund, completed in relation to the scheme and that balance date; and
- (c) dated and signed on behalf of the manager by 2 directors of the manager or, if the manager has only 1 director, by that director.

The size of individual schemes or funds is immaterial. The definition of large manager looks at whether the assets of schemes managed by the manager and schemes managed by authorised bodies providing that service under the manager's licence total more than NZ \$1 billion as at the balance date of each of the manager's two preceding accounting periods.⁶⁶ It thus captures the manager of the registered investment scheme and all its subsidiaries. If a manager is a large manager, the authorised bodies will also be large managers.⁶⁷ Because large and large manager are defined by reference to accounting periods, an entity may be a climate reporting entity in relation to some accounting periods but not in relation to other accounting periods.⁶⁸ The total assets of a scheme are as reported in the most recent audited financial statements, prepared in accordance with GAAP, for the scheme.⁶⁹

i. Climate Risk Disclosure Record

Subpart 2 of Part 7A of the Bill proposes amendments requiring climate reporting entities to keep proper climate risk disclosure (CRD) records.⁷⁰ Every climate reporting entity must establish and maintain a satisfactory system of control of the records that it is required to keep.⁷¹ Every climate reporting entity⁷² must ensure that records are kept at all times that enable the entity to ensure that its climate statements comply with applicable climate standards;⁷³ and enable the assurance engagement to be readily and properly carried out.⁷⁴ Climate reporting entities must prepare 'climate statements' or group climate statements.⁷⁵

CRD records, or copies of them, must be retained by the climate reporting entity for a period of at least seven years after the date the records are made.⁷⁶ Every climate reporting entity must make the CRD records available at all reasonable times for inspection without charge to the entity's directors, any

⁶⁶ Financial Sector Amendment Bill, note 25, creating new section 461Q, *FMCA*.

⁶⁷ The definition of large manager in new section 461Q looks at whether the assets of schemes managed by the manager and schemes managed by authorised bodies providing that service under the manager's licence total more than \$1 billion as at the balance date of each of the manager's 2 preceding accounting periods. If a manager is a large manager, the authorised bodies will also be large managers; Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill Explanatory note, at 4-5.

⁶⁸ Approval for Introduction, note 18 at 5.

⁶⁹ Or if there are no such statements, as calculated for a date as near as possible to the balance date of the manager and as if for the purpose of preparing financial statements for the scheme in accordance with GAAP. Financial Sector Amendment Bill, note 25, creating new section 461Q(6).

⁷⁰ Financial Sector Amendment Bill, note 25, creating new section 461S, *FMCA*.

⁷¹ Financial Sector Amendment Bill, note 25, creating new section 461S(4), *FMCA*.

⁷² Financial Sector Amendment Bill, note 25, creating new section 461O(1), *FMCA*.

⁷³ Financial Sector Amendment Bill, note 25, creating new section 461S, *FMCA*. Referring to every climate reporting entity under new section 461O(1), *FMCA*.

⁷⁴ Financial Sector Amendment Bill, note 25, required by new section 461ZD, *FMCA*.

⁷⁵ Financial Sector Amendment Bill, note 25, section 461S, for entities under sections 461W to 461Y for the purposes of this Act.

⁷⁶ Financial Sector Amendment Bill, note 25, new section 461U, *FMCA*.

supervisor if the climate reporting entity is an issuer of debt securities or the manager of a registered scheme; the FMA; and any other persons authorized to inspect the CRD records of the climate reporting entity or scheme.⁷⁷

ii. Preparation of Climate Statements

Subpart 3 of new Part 7A of the Bill contains the detailed obligations of climate reporting entities to prepare climate statements.⁷⁸ Every climate reporting entity must ensure that, within four months after the balance date of the entity, climate statements that comply with applicable climate standards are completed in relation to the entity, dated and signed by two directors of the entity.⁷⁹ Group climate statements must also be prepared where the entity is in an enterprise group.⁸⁰ This part also specifies climate statement requirements for large overseas climate reporting entities that have entities in New Zealand.⁸¹

There are specific climate statement provisions relating to registered schemes.⁸² Every manager of a registered scheme that is a climate reporting entity in respect of the scheme must ensure that, within four months after the balance date of the scheme, climate statements that comply with applicable climate standards are completed in relation to each separate fund of the scheme and that balance date.⁸³ If any liabilities of the manager and the scheme are not limited to a separate fund, a climate statement must be completed in relation to the scheme and that balance date.⁸⁴ All climate statements are to be signed on behalf of the manager by two of the registered scheme's directors.⁸⁵

There are exceptions to the obligations to prepare climate statements and conditions that an entity must meet to rely on an exception.⁸⁶ Exceptions relate to whether the entity 'reasonably determines', in accordance with applicable climate standards, that the relevant activities of the entity or group 'are not materially affected by climate change'.⁸⁷ In order to qualify for an exception, the climate reporting entity must first obtain an assurance engagement with a qualified CRD assurance practitioner in relation to its determination that climate risk is not material.⁸⁸ It must deliver to the Registrar for lodgement and to the FMA, within four months of the entity's balance date, a document containing a statement by the entity to the effect that it has reasonably determined, in accordance with applicable climate standards, that the relevant activities are not materially affected by climate change; and contain an explanation as to how it has reached that determination.⁸⁹ The statement must comply

⁷⁷ Financial Sector Amendment Bill, note 25, new section 461V, *FMCA*.

⁷⁸ Financial Sector Amendment Bill, note 25, new sections 461W to 461Z, *FMCA*.

⁷⁹ Or, if the entity has only 1 director, by that director. Financial Sector Amendment Bill, note 25, new section 461W, *FMCA*.

⁸⁰ Financial Sector Amendment Bill, note 25, new section 461X, *FMCA* and clause 24(2) amending the *FRA*.

⁸¹ Financial Sector Amendment Bill, note 25, new section 461Y, *FMCA*.

⁸² Financial Sector Amendment Bill, note 25, new section 461Z, *FMCA*.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, or, if the manager has only 1 director, by that director.

⁸⁶ Financial Sector Amendment Bill, note 25, new section 461ZA, *FMCA*.

⁸⁷ *Ibid.*

⁸⁸ Financial Sector Amendment Bill, note 25, new section 461ZB(1), *FMCA*.

⁸⁹ Financial Sector Amendment Bill, note 25, new sections 461ZB((1) and (2)), *FMCA*. Pursuant to section 461H of the *FMCA*, financial statements and audit statements must be lodged (filed) with the Registrar for lodgement.

with applicable climate standards.⁹⁰ The entity seeking the exemption must also file the assurance practitioner's report.⁹¹ There are offences for knowingly failing to comply, as discussed below.

iii. Assurance engagements and assurance bodies

Subpart 4 of proposed new Part 7A of the *FMCA* relates to assurance engagements that climate reporting entities are required to obtain.⁹² There are two circumstances where an entity will be required to obtain an assurance engagement: one is if an entity wishes to rely on an exception;⁹³ and the other is in relation to climate statements that are required to disclose GHG emissions.⁹⁴ An assurance engagement under these provisions must be undertaken by a qualified CRD assurance practitioner.⁹⁵ A qualified CRD assurance practitioner must be a natural person and a member, and subject to a code of conduct and disciplinary process, of a CRD assurance body approved by the FMA.⁹⁶ However, if the climate reporting entity is a public entity pursuant to the *PAA*, the Auditor-General or its designate must carry out the assurance engagement.⁹⁷

Assurance engagements must be carried out in accordance with, and the assurance practitioner's report must comply with, applicable auditing and assurance standards.⁹⁸ Every climate reporting entity must ensure that an assurance practitioner appointed for an assurance engagement has access, at all times, to the CRD records of the climate reporting entity or scheme and any other documents of the climate reporting entity or scheme that are relevant to the assurance engagement.⁹⁹ The assurance practitioner appointed for an engagement is entitled to require from a director or an employee of the climate reporting entity the information and explanations that the assurance practitioner thinks necessary for the performance of their duties as assurance practitioner.¹⁰⁰ If the assurance practitioner's report indicates that the climate statement does not meet the statutory requirements, the assurance practitioner must send a copy of its report and the climate statement, within seven days, to the FMA, the XRB, and the supervisor with oversight of the issuer or registered scheme.¹⁰¹

Every climate reporting entity that is required to prepare an annual report under the *Companies Act 1993* or any other enactment must include, in its annual report for the period ending on the balance

⁹⁰ Financial Sector Amendment Bill, note 25, new section 461ZB(2), *FMCA*.

⁹¹ Financial Sector Amendment Bill, note 25, new section 461ZB(1), *FMCA*.

⁹² Financial Sector Amendment Bill, note 25, new sections 461ZD to 461ZO, *FMCA*.

⁹³ Financial Sector Amendment Bill, note 25, pursuant to new section 461ZB, *FMCA*.

⁹⁴ Financial Sector Amendment Bill, note 25, pursuant to new section 461ZD, *FMCA*. Section 461ZD states that: "Every climate reporting entity must ensure that the climate statements or group climate statements that are required to be prepared under any of sections 5 461W to 461Z are, to the extent that those statements are required to disclose greenhouse gas emissions, the subject of an assurance engagement carried out by a qualified CRD assurance practitioner." The XRB will set standards for reporting greenhouse gas emissions.

⁹⁵ See new section 461ZE, *FMCA*, which defines qualified CRD assurance practitioner, and new sections 461ZG to 461ZM, which relate to the carrying out of an assurance engagement, access to information by an assurance practitioner, the assurance practitioner's report, and associated offences.

⁹⁶ Financial Sector Amendment Bill, note 25, under new section 461ZP, *FMCA*. There is provision for a qualified CRD assurance practitioner to be a partnership (see new section 461ZF).

⁹⁷ Financial Sector Amendment Bill, note 25, new section 461ZE(2), *FMCA*.

⁹⁸ Financial Sector Amendment Bill, note 25, new sections 461ZG and 461ZH(1), *FMCA*.

⁹⁹ Financial Sector Amendment Bill, note 25, new section 461ZJ, *FMCA*.

¹⁰⁰ Financial Sector Amendment Bill, note 25, new section 461ZK, *FMCA*.

¹⁰¹ Financial Sector Amendment Bill, note 25, new section 461ZH(2), *FMCA*.

date, a statement that the entity is a climate reporting entity, and information on where the climate statement and climate assurance report can be accessed.¹⁰² If the climate reporting entity has relied on an exception, it must still offer access to the document laying the basis for the exemption and the assurance practitioner's report.¹⁰³

iv. Lodgement of climate statements

Subpart 5 of proposed new Part 7A of the *FMCA* requires lodgement (filing) of climate statements.¹⁰⁴ Every climate reporting entity and manager of a climate reporting entity must ensure that, within four months after the balance date of the entity, copies of the following are delivered to the Registrar for lodgement: the climate statements or group climate statements that are required to be prepared; and the assurance practitioner's report on those statements.¹⁰⁵

Subpart 6 of proposed new Part 7A of the *FMCA* empowers the FMA to approve CRD assurance bodies, whose members are eligible to be qualified CRD assurance practitioners for the purposes of the new requirements. The FMA can impose such conditions on those approvals as it thinks fit.¹⁰⁶ There are also provisions for cancellation or suspension of recognition of a CRD assurance practitioner by a CRD assurance body, and the cancellation or suspension of approval of an entity as a CRD assurance body by the FMA.¹⁰⁷

v. Civil liability for specified contraventions

Subpart 7 of new Part 7A relates to civil liability for certain contraventions of new Part 7A. It specifies that:

A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (see subpart 3 of Part 8), including a pecuniary penalty not exceeding \$1 million in the case of an individual or \$5 million in any other case.¹⁰⁸

A contravention of new section 461U (CRD records to be kept for 7 years) may give rise to civil liability, including a pecuniary penalty not exceeding NZ \$200,000 in the case of an individual or NZ \$600,000 in any other case.¹⁰⁹

¹⁰² Financial Sector Amendment Bill, note 25, new section 461ZO *FMCA*.

¹⁰³ *Ibid.*

¹⁰⁴ Financial Sector Amendment Bill, note 25, new section 461ZN, *FMCA*.

¹⁰⁵ Financial Sector Amendment Bill, note 25, new section 461ZN, *FMCA*, under sections 461W to 461Y, 461Z, *FMCA*.

¹⁰⁶ Financial Sector Amendment Bill, note 25, new section 461ZP, *FMCA*.

¹⁰⁷ Financial Sector Amendment Bill, note 25, new section 461ZQ, *FMCA*. See also new section 461ZR, *FMCA*, which addresses what happens to assurance engagements that are underway when a CRD assurance body has its approval cancelled or suspended.

¹⁰⁸ Financial Sector Amendment Bill, note 25, new section 461ZS(2), *FMCA*.

¹⁰⁹ Financial Sector Amendment Bill, note 25, new section 461ZS(4),

vi. *Enforcement authority*

There are a number of new enforcement provisions, including:

extending the ability of the FMA to make stop orders under section 462 if it is satisfied that an issuer of financial products, or a person that provides a licensed market service, has contravened any provision of the new Part 7A climate disclosure regime;¹¹⁰

extending the ability of the FMA to make direction orders if it is satisfied that, by engaging in any conduct, a person has contravened, or is likely to contravene, certain provisions of Part 7A;¹¹¹

extending the ability of the FMA to make an order relating to the ability to distribute, or otherwise make an offer under, a simplified disclosure PDS [product disclosure statement] if satisfied that the offeror or issuer has failed to comply with any provision of new Part 7A at any time during the 12 months before the order is made;¹¹²

extending the ability of the FMA to make an order in respect of an exclusion for certain offers from disclosure under Part 3 of the Act does not apply in respect of an issuer if satisfied that the issuer has failed to comply with any provision of new Part 7A at any time during the 12 months before the order is made;¹¹³

extending the defence for directors in relation to contravening certain provisions of new Part 7A;¹¹⁴

providing for regulations to be made under new Part 7A;¹¹⁵

extending the FMA's powers to grant exemptions from compliance with any provision or provisions of new Part 7A;¹¹⁶ and

the FMA, under its exemption power relating to new Part 7A, can apply the provisions to certain earlier accounting periods.¹¹⁷

¹¹⁰ Financial Sector Amendment Bill, note 25, clause 8.

¹¹¹ Financial Sector Amendment Bill, note 25, clause 9, extending the ability of the FMA to make direction orders under section 468.

¹¹² Financial Sector Amendment Bill, note 25, clause 10, extending the ability of the FMA to make an order under section 470, *FMCA*.

¹¹³ Financial Sector Amendment Bill, note 25, clause 11, extending the ability of the FMA to make an order under section 474.

¹¹⁴ Financial Sector Amendment Bill, note 25, clause 14, extending the defence for directors in section 501 to directors who, under section 534 (as amended by clause 15(2)).

¹¹⁵ Financial Sector Amendment Bill, note 25, clause 16.

¹¹⁶ Financial Sector Amendment Bill, note 25, clauses 17 and 18.

¹¹⁷ Financial Sector Amendment Bill, note 25, in clause 19, amending section 561A.

vii. *Offences for non-compliance of climate-related financial disclosures*

There are a number of offences proposed pursuant to the Bill for failure to meet mandatory climate-related financial disclosures, the provisions mirroring existing offences in respect of financial reporting and auditing and assurance. The offences cover failure to keep records or to make them available to regulatory authorities, for knowingly failing to keep climate-related disclosure records in the prescribed manner or meet disclosure requirements as set out by the government. The Bill includes infringement offences for not making those records available for inspection without charge to the entity's directors, a supervisor, the FMA or other authorised persons.¹¹⁸ The Bill lists a number of offences for failure to comply with the new requirements:

- It is an offence and an infringement offence for failing to keep CRD records in the prescribed manner. A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding NZ \$50,000.¹¹⁹
- It is an offence and infringement offence for failing to make CRD records available for inspection to the directors of the climate reporting entity, any supervisor, the FMA, and any other authorised person, and a climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding NZ \$50,000.¹²⁰
- It is an offence to knowingly fail to comply with an applicable climate standard; and a person who commits an offence is liable on conviction, in the case of an individual, to imprisonment for a term not exceeding five years, a fine not exceeding NZ \$500,000, or both; and in any other case, to a fine not exceeding NZ \$2.5 million.¹²¹
- It is an offence to fail to not give an assurance practitioner appointed for a climate-related disclosure engagement access to information; and every director of the entity that commits an offence is liable, on conviction, to a fine up to NZ \$50,000.¹²²
- It is an offence for directors or employees to fail to provide information or an explanation to the assurance practitioner; and a director or an employee who fails to comply with a requirement to provide information or an explanation can be found liable on conviction to a fine not exceeding NZ \$50,000.¹²³ There is a defence for employees that can establish that the information was not in their possession or control or that by reason of the

¹¹⁸ Financial Sector Amendment Bill, note 25, explanatory notes at 5-6.

¹¹⁹ Financial Sector Amendment Bill, note 25, new section 461T, *FMCA*.

¹²⁰ Financial Sector Amendment Bill, note 25, new section 461V, *FMCA*.

¹²¹ Financial Sector Amendment Bill, note 25, new section 461ZC, *FMCA*.

¹²² Financial Sector Amendment Bill, note 25, new section 461ZI, *FMCA*.

¹²³ Financial Sector Amendment Bill, note 25, new section 461ZK, *FMCA*.

position occupied by the employee or the duties assigned to them, they were unable to give the explanations required.¹²⁴

- It is an offence for a person who is not a qualified CRD assurance practitioner to carry out a CRD assurance engagement; and person who commits this offence is liable on conviction, in the case of an individual, to a fine not exceeding NZ \$50,000, in any other case, to a fine not exceeding NZ \$150,000.¹²⁵
- It is an offence to hold out as a qualified CRD practitioner or approved CRD assurance body; and on conviction, an individual may be ordered to pay a fine up to NZ \$50,000, and in any other case, to a fine not exceeding NZ \$150,000.¹²⁶
- It is an offence and infringement offence to fail to lodge climate statements within four months of the climate reporting entity's balance date; and a climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding NZ \$50,000.¹²⁷
- a. It is an offence for a climate reporting entity that is required to prepare an annual report under the *Companies Act* to fail to state in its annual report that the entity is a climate reporting entity; and an entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding NZ \$50,000.¹²⁸

The NZ Government reports that eight of the nine offences are strict or absolute liability offences, needed to incentivize compliance.¹²⁹ The government concluded that "It would be extremely difficult and cost prohibitive for the FMA to obtain evidence of intention or recklessness."¹³⁰

¹²⁴ Financial Sector Amendment Bill, note 25, new section 461ZK(3), *FMCA*.

¹²⁵ Financial Sector Amendment Bill, note 25, new section 461ZL, *FMCA*.

¹²⁶ Financial Sector Amendment Bill, note 25, new section 461ZM, *FMCA*.

¹²⁷ Financial Sector Amendment Bill, note 25, new section s461ZN, *FMCA*.

¹²⁸ Financial Sector Amendment Bill, note 25, new section 461ZO, *FMCA*. See also Disclosure Statement, 2021, note 47 at 8. The *Companies Act 1993*, section 208(1) lists five categories of company that must prepare annual reports. The list includes every company that is a public entity, as defined in the Public Audit Act 2001; is required to prepare financial statements under Part 7 of the Financial Markets Conduct Act 2013; has total assets of NZ \$60 million and/or annual revenue of NZ \$30 million or more. Section 209 requires all companies to which section 208 applies to send the annual report to every shareholder of the company. Public entities and FMC reporting entities are also required to publish their annual reports under other legislation.

¹²⁹ *Ibid* at 12.

¹³⁰ *Ibid*.

2. Amendments to Financial Reporting Act 2013

Part 2 of the Bill contains proposed amendments to the *FRA*.¹³¹ The most important amendments relate to the XRB's new, additional authority to issue climate standards for the purpose of the Bill and any other enactment that requires information to be prepared in accordance with those standards.¹³² It specifies that overview of financial reporting duties refer to climate-related disclosure duties under the *FMCA*.¹³³

The operative provision in the Bill is section 461W, which defines climate reporting entities that will be required to prepare the climate statements pursuant to the applicable climate standards.¹³⁴ The extent to which climate statements will be required to disclose GHG emissions, and the entities to which that requirement will apply, if not all climate reporting entities, will be set out in the climate standards currently being developed by the XRB.¹³⁵ The standards may indicate any reporting entities that not need to disclose GHG emissions.¹³⁶

Since the Government's announcement late in 2020, XRB has been building capacity and capability to deliver these standards at pace and is working towards reporting entities delivering their first disclosures in 2023.¹³⁷ XRB reports that the expectation is that the new reporting standards will build on and align with the TCFD recommendations of governance, strategy, risk management, and metrics and targets, while also taking account of international developments.¹³⁸ XRB's timeline for issuing the standards is:

¹³¹ Financial Sector Amendment Bill, note 25, Part 2, clauses 21-35.

¹³² Financial Sector Amendment Bill, note 25, Part 2, clause 22, add new section (d) to section 3, *FRA*.

¹³³ Financial Sector Amendment Bill, note 25, clause 23, amending section 4, *FRA* and clause 24 amending section 5, *FRA*.

¹³⁴ Section 461W, Climate statements must be prepared

(1) Every climate reporting entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with applicable climate standards are—

(a) completed in relation to the entity and that balance date; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

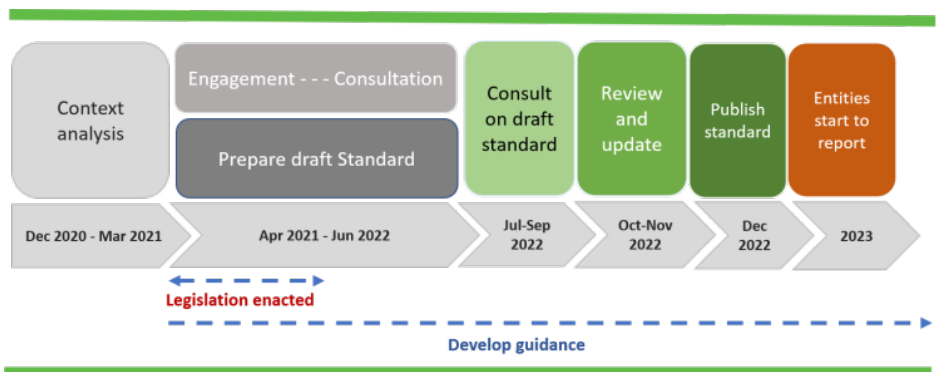
(2) However, subsection (1) does not apply to— (a) a climate reporting entity that, on the balance date referred to in subsection (1), has 1 or more subsidiaries; or (b) a large overseas climate reporting entity, unless it is a climate reporting entity under section 461O(1)(a); or (c) a person that is a climate reporting entity only under section 461O(2).

¹³⁵ Our thank you to lawyers at MinterEllisonRuddWatts in New Zealand for their helpful insights on these provisions (on file with author).

¹³⁶ *Ibid.*

¹³⁷ XRB, 'Our work to deliver Climate Related Disclosures', (June 2021), [Climate-related Disclosures » XRB](#).

¹³⁸ *Ibid.*



XRB, June 2021¹³⁹

The Bill also makes a technical amendment to the definition of applicable auditing and assurance standard, to ensure that definition applies to assurance engagements in accordance with the standard. The amendments authorize the XRB to issue climate standards relating to climate-related disclosure duties under the *FMCA*, and to define and issue standards for climate statements and group climate statements.¹⁴⁰ Definitions of climate standard, climate statements, and group climate statements are set out, and the definition of reporting entity replaced so that it applies to entities in relation to climate statements as well as in relation to financial statements.¹⁴¹

The new provisions state that the purpose of climate standards is to provide for, or promote, climate-related disclosures, in order to encourage entities to routinely consider the short-, medium-, and long-term risks and opportunities that climate change presents for the activities of the entity or the entity's group; enable entities to show how they are considering those risks and opportunities; and enable investors and other stakeholders to assess the merits of how entities are considering those risks and opportunities.¹⁴² The XRB can determine that a climate standard requires or permits an entity, in preparing climate statements or group climate statements, to exclude information from an analysis relating to a particular climate-related disclosure in circumstances where the entity, in accordance with the standard, reasonably determines that the information is immaterial to the analysis. In such instance, the climate standard must require the entity to include in the climate statements or group climate statements, in accordance with the standard, a description of the kind of information that has been excluded from the analysis; and an explanation of why the entity has determined that information is immaterial to the analysis.¹⁴³

The Bill extends the XRB's functions relating to the issue of auditing and assurance standards for purposes relating to the rules or codes of ethics of CRD assurance bodies.¹⁴⁴ Knowledge of, or experience in, sustainable development will be added to the list of qualifications that a person may have in order to be eligible to be recommended by the Minister of Commerce and Consumer Affairs for appointment as a member of the XRB.¹⁴⁵ The new provisions authorize the XRB to issue non-binding

¹³⁹ *Ibid.*

¹⁴⁰ Financial Sector Amendment Bill, note 25, clause 25(1), amending section 12, *FRA*.

¹⁴¹ *Ibid.* Climate standards are included in the Act's definition of standard by clause 24(4).

¹⁴² Financial Sector Amendment Bill, note 25, clause 28, new section 19B, *FRA*.

¹⁴³ Financial Sector Amendment Bill, note 25, clause 28, new section 19D, *FRA*.

¹⁴⁴ Financial Sector Amendment Bill, note 25, clause 25(2).

¹⁴⁵ Financial Sector Amendment Bill, note 25, clause 26 amends section 14(2), *FRA*.

guidance on certain non-financial matters; set out the purpose of climate standards and climate-related disclosures; and contain general provisions relating to climate standards, mirroring financial reporting standards.¹⁴⁶

The Minister is to review the monetary amounts related to the definitions of large and large manager in new Part 7A of the *FMCA* and require reviews of the monetary amounts in section 48 to be completed within 6, rather than 8, years of the last review.¹⁴⁷ The first review under that section is due no later than 1 April 2022.¹⁴⁸ Another amendment specifies including climate reporting entities and CRD assurance bodies in the list of persons who may be required by regulations to pay one or more prescribed levies.¹⁴⁹

3. Amendments to the Public Audit Act 2001

Part 3 of the Financial Sector Amendment Bill proposes amendments to the *PAA*.¹⁵⁰ The amendments are related to new section 461ZE(2) of the *FMCA*, which defines qualified CRD assurance practitioner.¹⁵¹ The Bill provides for the Auditor-General to act as the CRD assurance practitioner for assurance engagements required for the purposes of Part 7A *FMCA* by climate reporting entities that are public entities; and requires it, in carrying out those assurance engagements, to comply with the auditing and assurance standards, or appoint persons to do so.¹⁵²

4. A Note about pension funds

In New Zealand, a managed investment scheme pools money from a number of investors who rely on the investment expertise of the manager. A restricted scheme includes a KiwiSaver, superannuation or workplace savings scheme that has restricted membership or is closed to new members, and that is registered as a restricted scheme. All restricted schemes are managed investment schemes, and they must have a licensed independent trustee.¹⁵³ Occupational pensions are provided through superannuation schemes, either registered or unregistered, on a stand-alone basis or as a part of a

¹⁴⁶ Financial Sector Amendment Bill, note 25, clause 28 inserts new sections 19A, 19B, and 19C, *FRA*.

¹⁴⁷ Financial Sector Amendment Bill, note 25, clause 32 amends section 48 *FRA*.

¹⁴⁸ Financial Sector Amendment Bill, note 25, clause 33 amends section 49 consequential on the amendment to section 48 made by clause 32.

¹⁴⁹ Financial Sector Amendment Bill, note 25, clause 34 amends section 51 *FRA*. Clause 35(1) makes a technical amendment to the Schedule of the Act, which relates to existing transitional, savings, and related provisions, and clause 35(2) inserts a new Part into that schedule containing transitional matters for the Act that are related to the Bill.

¹⁵⁰ Financial Sector Amendment Bill, note 25, clauses 36-43.

¹⁵¹ Financial Sector Amendment Bill, note 25, clause 37 amends section 4, which relates to interpretation.

¹⁵² Financial Sector Amendment Bill, note 25, clause 38 inserts new section 15B, *PAA*. Clause 39 inserts new section 34A to provide for the persons that the Auditor-General may appoint to carry out, on the Auditor-General's behalf, those assurance engagements. New clause 34A(4) permits the Auditor-General to authorise appointed persons to exercise certain powers of the Auditor-General. Clause 40 amends section 35 to provide that the Auditor-General must not delegate the power of appointment under new section 34A. Clause 41 makes a technical amendment to section 41 (which relates to protection from liability) that relates to the changes made by this subpart. Clause 42 makes consequential amendments to section 42, to permit the charging of fees to a public entity for services under new section 15B and to allow the Auditor General to permit a person appointed as an assurance practitioner under new section 34A to recover those fees directly.

¹⁵³ FMA, Managed investment scheme manager, (21 May 2021), [Managed investment scheme manager | FMA](#).

master trust.¹⁵⁴ The total number of registered superannuation schemes in New Zealand is steadily decreasing as they are being transferred to multi-employer arrangements in order to save administration and compliance costs through outsourcing.¹⁵⁵ In addition to the pension funds covered under the above provisions as managed investment schemes, a few other developments have occurred.

In October 2020, New Zealand's public superannuation fund, the NZ \$47 billion NZ Super Fund, released a Climate Change Report into how it manages and assesses climate-related risk and opportunities in its portfolio based on the TCFD recommendations.¹⁵⁶ It updated the Super Fund's emission reduction targets through to 2025. One of the core elements of the NZ Super Fund Climate Change Investment Strategy is to reduce the carbon intensity of the Fund's investments and its exposure to fossil fuel reserves. In 2016, targets were set to reduce the Fund's emissions intensity by 20% and its exposure to potential emissions from fossil fuel reserves by 40% by 2020. It met that target and is now aiming by 2025 to reduce the emissions intensity of its portfolio by 40% and fossil fuel reserves by 80%.¹⁵⁷ The Board is ultimately responsible for setting the Fund's investment risk appetite and drives climate change objectives by including them in its Statement of Investment Policies, Standards and Procedures, and annual strategic plan.¹⁵⁸

The KiwiSaver scheme is a voluntary, work-based savings scheme intended to complement the NZ Super Fund and help increase overall retirement savings. New employees are automatically enrolled, and have eight weeks in which to decide if they wish to opt-out. The employee must choose the KiwiSaver scheme provider to where the savings should be allocated, as well as how much to contribute. The contribution rate is either 4% or 8% calculated on gross salary. Employer contributions are voluntary and subject to a vesting scale. In cases where the required contribution rate of either 4% or 8% is split between the employer and the employee, the full amount vests immediately. Employers with an existing, approved superannuation scheme may apply for exemption from automatic enrolment into the KiwiSaver. To give impetus to the uptake of the KiwiSaver scheme, the government makes an upfront contribution of NZ \$1000 to each individual account. In addition, it also contributes to paying the saver's ongoing account fees. From 2021, default KiwiSaver schemes will be required to take account of ESG factors prescribed by the Government, including publishing ESG policies and accounting for ESG investment activities.¹⁵⁹

5. Other Developments

The NZ Government has also announced that large Crown financial institutions (CFI) will be required to disclose their climate-related financial risks and opportunities, for example, the Accident

¹⁵⁴ *Ibid.*

¹⁵⁵ Wilmington plc, Pension system in New Zealand - Pension Funds Online and Organisation for Economic Co-operation and Development (OECD) - <http://www.oecd.org>.

¹⁵⁶ NZ Super Fund, 'NZ Super Fund releases Climate Change Report', (7 October 2020), NZ Super Fund releases Climate Change Report | NZ Super Fund. Its governing legislation is the New Zealand *Superannuation and Retirement Income Act 2001*.

¹⁵⁷ NZ Super Fund, Climate Change Report 2020, (October 2020), at 4, NZSF Climate Change Report 2020 (nzsuperfund.nz).

¹⁵⁸ *Ibid* at 16.

¹⁵⁹ NZ Government, 'Default KiwiSaver changes support more responsible investment', (1 March 2020), Default KiwiSaver changes support more responsible investment | Beehive.govt.nz.

Compensation Corporation, Guardians of New Zealand Superannuation, Government Superannuation Fund Authority and National Provident Fund.¹⁶⁰ It is being implemented by way of Letters of Expectations to the CFI, not through the tabled legislation.¹⁶¹ The NZ Government has also announced that it will publicly consult on possible wider private sector application after the legislation has been brought into force.¹⁶²

IV. Industry Response to Mandatory Disclosure

MfE and MBIE issued a discussion document on 31 October 2019 outlining the proposals that underpin the draft legislation, seeking submissions.¹⁶³ Of 77 submissions received, 59 submitters supported or strongly supported the proposals and ten opposed; and of business and industry respondents that will need to make disclosures, three-quarters were supportive of the proposals.¹⁶⁴ Of the 50 submissions that responded to the question of whether the TCFD framework was the most appropriate, 84% agreed it was.¹⁶⁵ Officials also held seminars in Auckland, Wellington and Christchurch, held a webinar, and participated in roundtables and meetings with key stakeholder groups.¹⁶⁶ Twenty-three submitters on the MBIE and MfE discussion document stated that large private companies should also be required to make disclosures.¹⁶⁷ Accounting firms also support TCFD-aligned mandatory reporting.¹⁶⁸ A December 2020 study by KPMG found that “just 14% of New Zealand’s locally-owned top 100 organisations, by revenue, in New Zealand claim to report in-line with the TCFD’s recommended framework compared with 50% of offshore-owned businesses.”¹⁶⁹ It notes that financial institutions are ahead of other entities, and that 42% adopt the recommendations of the TCFD.¹⁷⁰ It reported that while 32% of New Zealand agri-food organisations acknowledge the risk from climate change, 0% have adopted the TCFD recommendations, compared with 9% globally.¹⁷¹

¹⁶⁰ Approval for Introduction, note 18 at 2. ‘Asset owners’ are a diverse group that includes mutual funds, pension funds, endowment funds, hedge funds and insurance companies that invest on behalf of members in accordance with a mandate or investment strategy set out by their oversight body or their beneficiaries (institutional investors); NZ Government 2019 Discussion Document, note 10 at 62.

¹⁶¹ Approval for Introduction, *ibid.*

¹⁶² Disclosure Statement, 2021, note 47 at 2.

¹⁶³ Disclosure Statement, 2021, note 47 at 10. Approval for Introduction, note 18. For a detailed summary of the submissions and the rationale by entities and organizations for and against mandatory reporting, see Ministry for the Environment and Ministry of Business, Innovation & Employment. 2020. Climate-related financial disclosures – Understanding your business risks and opportunities related to climate change: Summary of submissions, (March 2020), Climate-related financial disclosures summary of submissions (natlib.govt.nz) (hereafter summary of submissions).

¹⁶⁴ Disclosure Statement, 2021, note 47 at 10.

¹⁶⁵ Summary of submissions, note 163 at 12.

¹⁶⁶ Disclosure Statement, 2021, note 47 at 10.

¹⁶⁷ *Ibid* at 2.

¹⁶⁸ EY, Climate-related financial disclosures - Understanding your business risks and opportunities related to climate change EY’s feedback submission December 2019, EY.pdf (natlib.govt.nz).

¹⁶⁹ KPMG, *The time has come The changing face of reporting in New Zealand - KPMG New Zealand’s Survey of Sustainability Reporting 2020*, (December 2020), at 13, The time has come (assets.kpmg).

¹⁷⁰ *Ibid* at 20.

¹⁷¹ *Ibid* at 23.

The newest consultation on the tabled Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill ended 28 May 2021. 53 submissions were received.¹⁷² Of these submissions, 45 support the legislation, three opposed and five submissions offer views for enhancing the Bill without stating support or not.¹⁷³ Eleven submissions called for TCFD standards as the new standard. Fourteen submissions asked the government to expand the legislation to cover privately-held companies.¹⁷⁴ Some concerns were expressed about whether the assurance requirements were too onerous in terms of timing and current capacity of the profession.

The NZ Institute of Directors supports the introduction of climate-related disclosures aligned with the TCFD framework.¹⁷⁵ The Bank of Zealand supports the legislation and aligning disclosure requirements to TCFD.¹⁷⁶ It notes that the NZ Government has committed to introducing mandatory TCFD-aligned climate change-related financial risk reporting for listed issuers and other financial system actors, and the External Reporting Board (XRB) has been tasked with developing more detailed reporting standards.¹⁷⁷

CPA Australia's submission supports the reporting of climate-related disclosures in accordance with climate standards to be issued by the XRB, based on the TCFD framework.¹⁷⁸ The Chartered Accountants Australia and New Zealand supports the legislation, but observes that the climate statement is expected to be in a separate document to the annual report and that where entities overseas have opted to include these types of disclosures within the annual report as recommended by the TCFD, flexibility should be allowed.¹⁷⁹ It notes that it is important to have consistency in the accepted methodology of GHG accounting, and supports the XRB's standard setting to be aligned with work being undertaken by the International Financial Reporting Standards (IFRS) Foundation to develop a climate-related financial disclosure standard. It also recommends requiring scenario analysis, aligned with the TCFD, which is not mentioned in the Bill.¹⁸⁰

The New Zealand Federation of Business and Professional Women supports the Bill.¹⁸¹ 350 Aotearoa supports mandatory climate-related risk disclosure as a mechanism to ensure extensive disclosures consistent with climate change commitments and projections, but submitted that a comply-or-explain approach is not sufficient in generating an adequate response to the climate risks faced by the

¹⁷² [Financial Sector \(Climate-related Disclosures and Other Matters\) Amendment Bill - New Zealand Parliament \(www.parliament.nz\)](https://www.parliament.nz).

¹⁷³ Our thank you to PhD student Helen Tooze for reading all 53 submissions and summarizing the core findings.

¹⁷⁴ [Financial Sector \(Climate-related Disclosures and Other Matters\) Amendment Bill - New Zealand Parliament \(www.parliament.nz\)](https://www.parliament.nz).

¹⁷⁵ NZ Institute of Directors, submission, (28 May 2021), [5058c984153fbbd864f73c8166fdefb6b440de3c \(www.parliament.nz\)](https://www.parliament.nz).

¹⁷⁶ Bank of New Zealand, submission, (28 May 2021), [aaa7faa30c7584f39f04926bf3448fb9f0fc4a7c \(www.parliament.nz\)](https://www.parliament.nz).

¹⁷⁷ *Ibid* at 34.

¹⁷⁸ CPA Australia, submission, (28 May 2021), [48f291f5e352df6ce1ab1a35a45425467025ad91 \(www.parliament.nz\)](https://www.parliament.nz).

¹⁷⁹ Chartered Accountants Australia and New Zealand, submission (28 May 2021), [3c364fe5bb750bf762ae8d55033e19acd01ed302 \(www.parliament.nz\)](https://www.parliament.nz).

¹⁸⁰ *Ibid* at 3.

¹⁸¹ New Zealand Federation of Business and Professional Women, Submission, (23 May 2021), [fee5685dfb5f87ade803ee311b72a846b15af3f6 \(www.parliament.nz\)](https://www.parliament.nz).

market.¹⁸² A number of law firms supported a mandatory comply-or-explain principles-based disclosure system for climate-related financial risks.¹⁸³ One organization of 250 lawyers stated: “We strongly support the proposed introduction of climate-related financial disclosure requirements in New Zealand and, in particular, the introduction of a mandatory disclosure regime based on the TCFD framework, which we submit is the most appropriate framework for such reporting”, suggesting the scope was too narrow and should be extended to include a wider range of entities, including privately held companies, trusts, limited partnerships, with an assets/revenue-based exemption for entities with less than NZ \$20m assets/\$10m revenue.¹⁸⁴

V. Conclusion

Careful examination of the mandatory comply-or-explain climate risk disclosure legislation in new Zealand reveals a number of important insights. The first is that the legislation creates a level playing field of requirements across a wide range of entities that are the same size. The legislation will implement proactive requirements, requiring climate reporting entities to annually file climate statements. Where they are required to report on GHG emissions, the statements must be accompanied by a written assurance report by a certified climate risk assurance professional. These provisions protect against ‘greenwashing’ as the assurance report will verify the assertions, and where the assurance professional finds that a climate reporting entity is not complying, the professional must report to regulators within a short time frame.

Where entities are seeking an exception from the requirements (the ‘explain’ part of comply-or-explain), they will be required to file documents explaining how they have conducted an assessment of materiality and their reasons for concluding there are not material climate risks, and that document must be accompanied by a written assurance report by a certified climate risk assurance professional. These provisions create incentives to comply rather than explain, particularly as the assurance professional must also report their lack of compliance to the regulator where they are not complying.

The proposed NZ legislation has a huge number of offenses for failure to comply with each aspect of the next disclosure regime, designed to create meaningful incentives to comply. While they might seem very prescriptive to other regulators, the offences sections for failure to comply with the new climate disclosure regime mirror offences under New Zealand’s financial reporting law now.

¹⁸² 350 Aotearoa Submission on Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill, (May 2021), at 2, [350 Aotearoa Submission on CRFD Bill | May 2021 \(www.parliament.nz\)](https://www.parliament.nz).

¹⁸³ Chapman Tripp, Ministry of Business, Innovation and Employment (MBIE) and Ministry for the Environment (MfE) on the Discussion Document on Climate-Related Financial Disclosure December 2019, at 5, [Chapman Tripp.pdf \(natlib.govt.nz\)](https://www.natlib.govt.nz);

¹⁸⁴ Lawyers for Climate Act, Submission, (13 December 2019), at 1, [Lawyers for Climate Action.pdf \(natlib.govt.nz\)](https://www.natlib.govt.nz), representing 250 New Zealand lawyers.

ABOUT THE CANADA CLIMATE LAW INITIATIVE

The Canada Climate Law Initiative examines the legal basis for corporate directors, officers, pension fiduciaries, and asset managers to consider, manage, and report on climate-related financial risks and opportunities, advancing knowledge on effective climate governance practice and exploring the scope and limits of fiduciary obligation in respect of climate change. It is a collaboration of the University of British Columbia (UBC) Centre for Business Law and Osgoode Hall Law School, York University; and is the Canadian partner of the global Commonwealth Climate and Law Initiative, founded at Oxford University, United Kingdom.

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