

Departmental Disclosure Statement

Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment (MBIE).

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

30 March 2021

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Part One: General Policy Statement

The Financial Sector (Climate-related Financial Disclosures and Other Matters) Amendment Bill (the **Bill**) is 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 is introduced under Standing Order 267(1)(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The potentially disastrous effects of climate change for biodiversity and humanity are well documented. In 2018, the Intergovernmental Panel on Climate Change noted that human activities have already caused global warming of 1°C above pre-industrial conditions, and are on track to cause at least 1½°C warming between 2030 and 2052. Greenhouse gas (**GHG**) concentration will continue to increase via positive feedbacks, such as melting permafrost and the release of stored methane, resulting in further delay of temperature-reducing responses.

Financial markets globally can play a major part in the required unprecedented economic transformation in shifting investment away from emission-intensive activities and towards low-emission, resilient development pathways. However, it 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 financial 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 (**TCFD**) and made in accordance with standards issued by the External Reporting Board (**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.

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 purposes of these provisions are—

- to provide those who prepare financial statements with guidance on best practice ESG and related disclosures
- to improve the quality of disclosures on a range of issues beyond the types of information presented in financial statements.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<ul style="list-style-type: none"> • Recommendations of the Task Force on Climate-related Financial Disclosures, Task Force on Climate-related Financial Disclosures, June 2017 • Analysis of Climate Change Reporting in the Public and Private Sectors, Working Paper 2018/03, McGuinness Institute/Te Honongawaka, July 2018 • Low Emissions Economy, Productivity Commission, August 2018 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	n/a

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<i>Climate-related Financial Disclosures Regulatory Impact Assessment</i> was authored by the Ministry for the Environment (MfE) and MBIE in July 2020 and can be accessed on MfE's website .	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The RIS did not meet the threshold for Treasury RIA Team assessment. It was assessed by a joint MBIE/MfE review panel.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>MfE and MBIE obtained limited and incomplete information about potential costs. The RIS referred to in response to Q.2.3 included the information that was able to be obtained. One of the quantification challenges was that the costs can vary significantly depending on the nature of the climate reporting entity's business (e.g. insurance compared with energy) and the maturity of the entities' existing sustainability and risk reporting practices.</p> <p>There were also differing views among stakeholders about whether the extent the obligations associated with the policy should be seen as investment rather than a cost of compliance. Some took the view that factoring the long term impact of climate change on their businesses imposes no compliance costs because it is sound strategy and should improve long term performance and risk management.</p> <p>Although the RIS did not include analysis of the size of the potential benefits, several non-monetary benefits were identified. Regulators and wider government will gain increased market transparency and, as a result, greater financial stability. Through better information provision, we expect more efficient financial markets with less climate-related risk.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The RIS notes that the full benefits of the policy will not be achieved unless:</p> <ul style="list-style-type: none"> • a significant proportion of climate reporting entities comply with the standards that be will issued by the XRB; and • an independent regulator (the Financial Markets Authority) monitors and reports on disclosures and non-disclosures and takes other enforcement action, where necessary. <p>To support compliance, the XRB and MfE are undertaking concerted stakeholder engagement and education for capability building. Some entities may initially try to 'explain' as a method of non-compliance, but the level of information required to explain, including assumptions and pathways to disclosing will mitigate this to some extent. We also anticipate that market pressure will come to bear on those entities who do not disclose or disclose poorly.</p> <p>A requirement for greenhouse gas emissions disclosures to be independently assured by a qualified assurance practitioner also impact on the costs and benefits of the Bill.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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There are no international climate-related disclosure obligations. However, implementing the policy will contribute to achieving New Zealand's nationally determined contribution under the Paris Agreement of 2015, which relates to climate change mitigation, adaptation and finance. It will, in particular, help New Zealand achieve Article 2(1)(c) of the Paris Agreement; making financial flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

We have also considered the potential for international obligations on climate disclosures to be agreed in future, for example at the UN Climate Change Conference (COP26) in Glasgow from 1-12 November 2021.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps 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?

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.

The policy does not have immediate Te Tiriti implications. Some iwi KiwiSaver schemes would be in scope in principle, via existing FMC reporting obligations. However, no iwi organisations have assets under management of more than \$1 billion, which is the threshold for application of the disclosure regime to managed investment schemes. This situation may change over time.

Iwi/Māori were invited to participate in consultation on these proposals alongside other stakeholders and notice of the consultation was included in a regular MfE iwi newsletter.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill provides for the climate disclosure regime to be implemented through a new Part 7A of the FMC Act. Many of the new sections in Part 7A are similar to existing sections:</p> <ul style="list-style-type: none"> • in Part 7 of the FMC Act, which relates to financial reporting; and • in the FR Act, relating to auditing and assurance. <p>This approach, of taking existing provisions, and duplicating them (in terms of the substance of the offence, whether a defence is available and the maximum fine or penalty) has been applied in relation all but two of the offence provisions in new Part 7A, as outlined below:</p> <ol style="list-style-type: none"> New s461T: It is an offence and an infringement offence for failing to keep climate reporting disclosure (CRD) records in the prescribed manner – new offence. New s461V: It is an offence and infringement offence for failing to make CRD records available for inspection to the directors of the Climate Reporting Entity (CRE), any supervisor, the Financial Markets Authority (FMA) and any other authorised person – modelled on s459 of the FMC Act. New s461ZC: It is an offence to knowingly fail to comply with an applicable climate standard – modelled on s461I of the FMC Act. New s461ZJ: It is an offence to fail to not give an assurance practitioner appointed for a climate-related disclosure (CRD) engagement access to information – modelled on s38 of the FR Act. New s461ZK: It is an offence for directors or employees to fail to provide information or an explanation to the assurance practitioner – modelled on s39 of the FR Act. New s461ZL: It is an offence for a person who is not a qualified CRD assurance practitioner to carry out a CRD assurance engagement – modelled on s39A of the FR Act. New s461ZM: It is an offence to hold out as a qualified CRD practitioner or approved CRD assurance body – modelled on s39B of the FR Act. New s461ZN: It is an offence and infringement offence to fail to lodge climate statements within 4 months of the climate reporting entity's balance date – modelled on existing s461H of the FMC Act. New s461ZO: It is an offence for a CRE 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 CRE – new offence. 	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted about these provisions as part of the offence and penalty vetting process.</p> <p>It considers that the proposed infringement offences and the existing infringement offences in the FMC Act depart from the best practice for how infringement regimes are constructed. The proposed infringement fees are significantly higher than the guidance recommends (\$3,000). The Ministry of Justice guidance sets this amount because infringement offences are penalties handed out by enforcement officers rather than a court.</p> <p>The Ministry of Justice considers matters that require a more significant penalty to be best dealt with by way of the court where certain elements must be proven before the penalty is applied and to ensure the individual has the opportunity to raise evidence to defend themselves. While the bodies that may have to pay these penalties are large and well resourced, the Ministry of Justice considers that infringement offences are not appropriately used in this context.</p> <p>Further, the Ministry of Justice considers that there is an issue of certainty in the provisions as there is nothing on the face of the legislation to demarcate when to apply an infringement offence or go by way of the full criminal offence.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
3.5.1. Was the Privacy Commissioner consulted about these provisions?	n/a

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>MfE and MBIE issued a discussion document on 31 October 2019 outlining the proposals that underpin the policy of the Bill. 77 submissions were received. 59 submitters supported or strongly supported the proposals. 10 opposed or strongly opposed them. Of business and industry respondents that will need to make disclosures, three-quarters were supportive of the proposals.</p> <p>Officials also held seminars in Auckland, Wellington and Christchurch, held a webinar and participated in roundtables and meetings with key stakeholder groups.</p> <p>The consultation process did not lead to any fundamental design changes for the proposed disclosure system. However, the proposals in the discussion document have been modified or developed in the following ways:</p> <ul style="list-style-type: none">• Dollar thresholds for excluding smaller banks, non-bank deposit takers, insurers and managers of investment schemes have been added – those entities are included only if they have assets or assets under management of more than \$1 billion.• The FMA and NZX have been given scope to make exemptions, including making an exemption subject to conditions.• The XRB (not Parliament or the Governor-General) will determine the implementation date via the climate standard(s) it issues. <p>Consultation also confirmed that the Government has a critical role in supporting reporting entities and promoting compliance. The Ministry for the Environment has been actively developing guidance material in support of the scenario analysis element of the TCFD's reporting framework.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Legislation Design and Advisory Committee (LDAC) was consulted prior to policy decisions being sought. LDAC stated that the policy objective should clearly align with the legislation that is proposed to be amended, and asked officials to consider the appropriate enforcement options. The Bill is consistent with this advice and other more specific advice.</p> <p>There was also consultation prior to the policy being developed and while the Bill was being prepared with two regulators with key roles in promoting the effectiveness of the Bill:</p> <ul style="list-style-type: none">• The XRB was consulted in relation to its role of making climate standards that will underpin the disclosure regime.• The FMA was consulted in relation to its role of enforcing the disclosure regime, including monitoring and reporting on disclosures. <p>MBIE and the Ministry for the Environment also consulted on the policy with the Treasury, Ministry of Justice, Reserve Bank and Energy Efficiency & Conservation Authority. MBIE consulted with the Office of the Auditor-General on the Bill.</p> <p>No further testing is needed before the Bill is introduced.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>Clause 34 adds CREs to the list of entities that can be levied for the purpose of funding the XRB. It does so by amending the existing levies provision of the FR Act 1993 (s51). CREs obtain benefits from having high quality standards that require them to make reliable disclosures that promote clear, consistent and comparable reporting.</p> <p>Schedule 3 adds CREs to the definition of 'financial markets participant' in the Financial Markets Authority Act 2011. This change means that CREs are added to the list of entities that can be levied to fund the FMA. This change is being made because the FMA will be responsible for monitoring, reporting on and otherwise enforcing climate-related disclosures.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
<p>Although we have answered 'no', Schedule 2 validates the XRB issuing exposure draft climate-related standards and otherwise consulting on them before the Act comes into force.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>Eight of the nine offences listed in response to Q3.4 are strict or absolute liability offences. This approach is needed to incentivise compliance. It would be extremely difficult and cost prohibitive for the FMA to obtain evidence of intention or recklessness.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>First, subpart 4 of Part 9 of the FMC Act provides for the granting of exemptions from a range of requirements under the Act. Adding Part 7A via this Bill means that climate-reporting entities can be exempted from climate reporting obligations. It will, for example, provide for 'foreign exempt issuers' to be exempted from climate reporting obligations. These issuers' home exchanges are domiciled overseas, and they are deemed to meet the NZX Listing Rule requirements subject to them complying with the requirements of their home exchange.</p> <p>Second, s554 of the FMC Act states that certain types of conditions can be included in exemption regulations or notices issued under subpart 4 of Part 9. Clause 17 of the Bill adds 'a climate standard' to section 554, meaning that an exemption can be made subject to compliance with one or more climate standards issued by the XRB.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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