BUDDLE FINDLAY

Mandatory climate-related financial disclosures in New Zealand

Jan Etwell, Scott Abel, Simon Jensen, Lara Wood, Rebecca Green

10 May 2021

Current Status

On 15 September 2020, the Government announced that Cabinet had agreed to introduce a mandatory climate-related financial disclosure regime that would require captured financial entities to report against a standard developed by the External Reporting Board (XRB). XRB is an independent Crown Entity responsible for accounting and auditing and assurance standards in New Zealand.

If the regime is approved by Parliament, captured financial entities such as listed issuers, registered banks, licensed insurers and Crown financial institutions, among others, may be required to start making disclosures by the 2023/24 financial year.

The disclosure regime will be implemented through an amendment to the Financial Markets Conduct Act 2013. The Financial Markets Authority will be responsible for the independent monitoring, reporting and enforcement of the regime.

On 13 April 2021, the Financial Sector (Climate-related Disclosure and Other Matters) Amendment Bill was introduced to Parliament, with its first reading in the same week. Further details on this legislation, including key concepts and definitions, are outlined below.

We will regularly update this page with developments.

Background

Productivity Commission Inquiry

On 26 April 2017, the Government released a Terms of Reference addressed to the Productivity Commission, requesting an inquiry into how New Zealand could transition into a lower net-emissions economy.

This inquiry followed New Zealand ratifying the Paris Agreement and submitting its first Nationally Determined Contribution (NDC) on 4 October 2016, with the Terms of Reference citing New Zealand's target under the first NDC to reduce greenhouse gas emissions by 30 percent below 2005 levels by 2030 and other existing international obligations. In 2018, the incoming Minister for Climate Change requested that the Productivity Commission include a target of net-zero emissions by 2050 in its analysis.

The Productivity Commission published its 'Low-emissions economy' final report in August 2018 (Low Emissions Report), as well as other materials produced during the inquiry. The Low Emissions Report identified information barriers relating to climate change as one of the drivers of a "systemic overvaluation of emission-intensive activities" and one of the key barriers to low emissions investment.

The Low Emissions Report recommended the introduction of a mandatory climate-related financial disclosure regime to overcome this information barrier and encourage investment that supports the transition to a low-emissions economy.

Government's Climate Action Plan

On 3 August 2019, the Government announced its Climate Action Plan in response to the Productivity Commission’s inquiry. As part of this announcement, the Government also published its response to the Low Emissions Report as well as other supporting materials outlining the steps it intended to take to implement the recommendations in the report.

The Government response agreed with the Low Emissions Report's recommendation that material financial risks and opportunities associated with climate change should be disclosed. The response stated that high quality disclosures will help investors, lenders and insurers make decisions and incentivise reporting entities to manage risks and pursue opportunities that arise due to climate change.

The response identified that certain details such as the class of entities the disclosure requirements should apply to and the nature of information that should be disclosed would require stakeholder consultation.

Public Consultation

On 31 October 2019, the Government opened public consultation and released a discussion paper, 'Climate-Related Financial Disclosures: Understanding Your Business Risks And Opportunities Related To Climate Change' that sought feedback on its proposals from potential reporting entities, amongst others. The discussion paper specifically requested submissions on issues such as the suitability of a disclosure regime, the class of entities, nature of information, exemption criteria and commencement dates.

As part of the consultation process, the Ministry for the Environment (MFE) and the Ministry of Business, Innovation and Employment (MBIE) also held four public events and hosted a public webinar.

Summary of Submissions

Following the closure of the consultation period on 13 December 2019, MFE and MBIE released a document containing a summary of the submissions on the proposals.

The summary found that most submissions (77 percent) supported the proposals, favouring a new mandatory, principles-based (comply-or-explain) disclosure requirement which aligned with the recommendations made by the Task Force on Climate-related Financial Disclosures.

The summary document concluded that it would use the submissions to inform its final decision on the disclosure regime and seek cabinet approval to make any necessary changes and begin the process of introducing new legislation.

Details about the Disclosure Regime

Task Force on Climate-related Financial Disclosure's Recommendations

The Task Force on Climate-related Financial Disclosures (TCFD) is an industry-led taskforce created in 2015 by the G20's Financial Stability Board to develop consistent climate-related financial disclosures for use by companies in providing information to lenders, insurers, investors and other stakeholders and to allow reporting entities to understand their climate-related risk.

In June 2017, the TCFD presented its recommendations report (the TCFD Recommendations) setting out a disclosure framework. The TCFD Recommendations are structured around four thematic areas that represent core elements of how organisations operate (governance, strategy, risk management, and metrics and targets). The TCFD recommendations are considered international best practice for climate-related financial reporting and are already being used in New Zealand and other countries on a voluntary basis.

Scenario analysis is a key element of the TCFD Recommendations – this is a requirement that reporting entities describe the resilience of the organisation’s strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario (ie a pathway consistent with holding the increase in the global average temperature to 2°C above pre-industrial levels).

Reporting and Disclosure Requirements

Under the proposed climate-related financial disclosure regime, reporting would be against a standard that is to be developed in accordance with the TCFD Recommendations. The External Reporting Board (XRB) will develop, consult on and issue new reporting standards and implementation guidance material to assist businesses required to disclose. XRB is an independent Crown Entity responsible for accounting and auditing & assurance standards in New Zealand.

MFE will work with regulated parties on how to undertake the scenario analysis component of the disclosures.

Disclosures by required entities will be made on a "comply-or-explain" basis. Effectively this means that where the required information is not available or the relevant disclosures cannot be made following best endeavours, the entities can explain rather than disclosing.

Scope and Implementation of the Regime

The Financial Markets Authority will be responsible for independent monitoring, reporting and enforcement of the new climate-related financial disclosure regime.

The organisations that would be required to make disclosures under the draft amendment legislation are "climate reporting entities", which include:

- All registered banks, credit unions, and building societies with total assets of more than $1b
- All managers of registered investment schemes with greater than $1b in total assets under management
- All licensed insurers with greater than $1b in total assets under management or annual premium income greater than $250m
- All equity and debt issuers listed on the NZX
- Crown financial institutions with greater than $1b in total assets under management.

The $1b threshold has been set in order to ensure approximately 90 percent of assets under management in New Zealand are captured within the disclosure regime.

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

The Bill was introduced to Parliament on 12 April 2021 and had its first reading two days later. It proposes to amend the Financial Markets Conduct Act 2013, the Financial Reporting Act 2013, and (to a lesser extent) the Public Audit Act 2001. We outline below the key parts of the Bill.

Climate reporting entity

The Bill will apply to "climate reporting entities", which include (among others) a registered bank, a credit union, or a building society. A climate reporting entity will have disclosure, record keeping and reporting obligations.

Disclosure and Record Keeping

The Bill inserts a new Part 7A into the Financial Markets Conduct Act 2013, which sets out the disclosure obligations of a climate reporting entity. These disclosure obligations include preparing and maintaining records of certain climate related disclosures (CRD), for example climate statements. CRD records must be retained for a period of at least seven years and must be available for inspection at all reasonable times.

In guidance published on its website, MBIE estimates that around 200 entities will be caught by the CRD requirement. The proposed penalties for knowingly failing to comply with climate standard obligations are significant, including, for an individual, a term of imprisonment for a maximum of five years or a fine not exceeding $500,000 (or both), and in any other case, a fine not exceeding $2.5m. These are currently outlined in clause 461ZC of the Bill in its current form.

Reporting Standards

The Bill inserts new provisions into the Financial Reporting Act 2013, which impose additional reporting requirements on an entity. Note that this definition of "entity" as currently contained in the Financial Reporting Act 2013 is wider than a "climate reporting entity"; it includes (among other things) a company, a trust, a retirement village, and the Crown.

One of the key changes is the introduction of a concept of "climate standards", which is essentially the amendment of the existing definition of "standard" to extend it to require an entity to give consideration to the risks and opportunities climate change presents. The climate standards as currently drafted in the Bill have a broad application, but it is unclear if they will remain this way.

Public Audit Act 2001

The Bill inserts new provisions into the Public Audit Act 2001, which give the Auditor General responsibility to act as an assurance practitioner for the CRD assurances of public entities pursuant to the Financial Markets Conduct Act 2013.

Next steps

The Economic Development, Science, and Innovation Committee launched a public consultation on 21 April 2021 and is currently accepting submissions on the Bill in anticipation of its second reading.

We will update this page as the Bill progresses through Parliament. The Bill's progress through Parliament can also be found on the New Zealand Parliament website.

Auckland

188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659