Climate-related financial disclosures

UNDERSTANDING YOUR BUSINESS RISKS AND OPPORTUNITIES RELATED TO CLIMATE CHANGE

Discussion document

Ministry for the Environment
Manatū Mō Te Taiao
MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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New Zealand Government

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Foreword

The Government is committed to acting on climate change. We want to build a more sustainable economy that is better for the environment, creates jobs and improves New Zealanders' lives.

We also want to show global leadership by demonstrating to other countries that New Zealanders can be better off while taking action to reduce our impact on the climate. We have a responsibility to provide a stable climate for future generations.

In its report *Low-emissions Economy* (August 2018), the Productivity Commission recommended the introduction of a mandatory (comply-or-explain) climate-related financial disclosure system. This recommendation was underpinned by two ideas. First, disclosures are a powerful mechanism to focus reporting entities on the impacts of climate change on their own activities. Second, disclosure enables investors to make decisions that accurately reflect the climate risk of those choices.

Some New Zealand companies have taken the lead by disclosing climate change information. However, a report published by the McGuinness Institute indicates that the great majority of large companies do not provide any information, disclose only small amounts of information or are reporting in an ad hoc way.

This situation needs to change. It is clear that climate change factors can pose serious risks for companies and investors. Climate-related issues must be tackled at the board level by directors who are committed to understanding the relationship between climate change and their companies' long-term success, including how they will:

- manage risks
- identify and seize climate-related business opportunities
- disclose reliable information about the risks and opportunities to investors.

This discussion document is intended to provide financial institutions and entities participating in financial markets with certainty on future direction of travel on this issue.

It asks four key questions: What are the arguments for retaining the status quo, versus introducing new mandatory disclosures? What should be disclosed? Which entities should be disclosing? When should they start disclosing?

We are keen to know your views on these and other issues before taking proposals to Cabinet. We encourage you to make submissions.

Hon Kris Faafoi
Minister of Commerce and Consumer Affairs

Hon James Shaw
Minister for Climate Change

The purpose of this discussion document

In 2017, the Minister for Climate Change Issues, Minister of Finance, and Minister of Economic Development requested the Productivity Commission "identify options for how New Zealand could reduce its greenhouse gas emissions through a transition towards a lower emissions future, while at the same time continuing to grow incomes and wellbeing". In 2018, the incoming Minister for Climate Change signalled a more ambitious agenda and asked the Commission to include the target of achieving net-zero emissions by 2050 in its analysis.

The Productivity Commission released its final report in August 2018. The report included a recommendation that "the Government should implement mandatory (on a comply-or-explain basis), principles-based, climate-related financial disclosures by way of a standard under section 17(2)(iii) of the Financial Reporting Act 2013. These disclosures should be audited and accessible to the general public".

The Government is seeking feedback on proposals for how we would give effect to this recommendation; this discussion document outlines those proposals. We (the Government) are also using the document to stimulate discussion and action on climate-related financial disclosures. In order to inform the discussions:

- **chapter 1** outlines why there is an international drive for financial market participants and financial institutions to make climate-related financial disclosures
- **chapter 2** outlines our views about the objectives and problem definition
- **chapter 3** discusses existing climate-related reporting obligations in New Zealand
- **chapter 4** discusses the links between fiduciary duties and climate change
- **chapter 5** provides a fuller discussion of our proposals
- **appendices A – G** provide further background information
- **a glossary** provides definition of terms used in the document.

Timeframes and next steps

This consultation ends at 5pm on Friday, 13 December 2019.

Process following consultation

The feedback from this consultation will inform the Government's final decisions about the proposed regime on climate-related financial disclosures. After the consultation period has ended:

- Ministry for the Environment and Ministry of Business, Innovation and Employment officials will prepare a report that summarises the submissions and recommends changes in response
- Ministry for the Environment and Ministry of Business, Innovation and Employment officials will then seek agreement from Cabinet to make the recommended changes.

If Ministerial and Cabinet approval is given, officials will begin the process of introducing new regulation.

Executive summary

The Intergovernmental Panel on Climate Change (IPCC) has stated that achieving the Paris Agreement goal of limiting global temperature increases to 1.5°C will involve a wide portfolio of mitigation options, including **disinvestment** in high greenhouse gas (GHG)-emitting products, processes and activities, and increased **investment** in new technologies, energy efficiency and clean energy sources.[1]

This discussion document is premised on the idea that financial markets worldwide, including New Zealand, will make a significant contribution towards achieving these investment outcomes. However, this can only be achieved if financial market participants identify, understand, assess, manage and routinely disclose all material information about the impacts that climate change is having and will have on their businesses.[2] Impacts on businesses can include physical changes arising from climate change, such as greater coastal flooding, and transition risks and opportunities that arise, such as stranded fossil fuel assets, new technology innovation and government policy changes.

Governments and financial markets around the world are developing ways to address this issue. New Zealand is now considering how to ensure the market has the information it needs, in a form that is useful for investors, creditors, insurers and other users of annual reports, to allocate investments in a way that contributes to a low-emissions, climate-resilient economy.

The Productivity Commission's report

In its *Low-emissions Economy* report, the Productivity Commission recommended that the Government endorse the recommendations of the Taskforce on Climate-related Financial Disclosures as one avenue for disclosure (R7.3) and implement a mandatory (comply-or-explain) principles-based disclosure system (R7.4).[3] The Government's response to the Productivity Commission's report, the Climate Action Plan, agrees with R7.3 and has agreed to investigate R7.4.[4]

Agreeing to investigate R7.4 does not mean the Government is questioning whether financial institutions and other entities that participate in New Zealand financial markets should be disclosing material climate-related financial information. Rather, it is about understanding how best to achieve this outcome.

The key issues and our proposals

Table 1 outlines the key issues and our proposals discussed in this document for a climate-related financial reporting regime. These points are investigated more thoroughly in chapter 5: Designing a comply-or-explain disclosure system for New Zealand**.** We would like to hear your feedback on these proposals.

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1 IPCC, 2018.

2 TCFD, 2019.

3 Productivity Commission, 2018. pp 191–199.

4 New Zealand Government, 2019.

We are aware that practical application of the Task Force on Climate-related Financial Disclosures (TCFD) framework is still new. We do not expect that the information made available through disclosures will be consistent and comparable from day one. Rather, we view this as a dynamic process in which the overall quality will improve and disclosures will converge over time, through learning-by-doing. It is our view that the best way to accelerate this process is if all relevant entities start reporting as soon as is practicable.

Table 1: Proposals for a climate-related financial reporting regime

Issue	Proposals based on what we currently know and understand
Status quo versus new mandatory (comply-or-explain) reporting	The adoption of principles-based mandatory (comply-or-explain) climate-related financial disclosures (consistent with the Productivity Commission's recommendation (R7.4)).
Disclosures that would satisfy the comply element	The TCFD reporting framework would be the default 'comply'. 'Comply' would also be met by disclosing climate-related information under other reporting frameworks that are TCFD-aligned.
When it would be acceptable to explain	Not complying with the TCFD in full would be permissible, in year 1 only, subject to explaining why some disclosures have not been made, eg, 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.
Who would it apply to	Consistent with the TCFD's recommendations, the disclosure system would apply to: listed issuers, banks, general insurers, asset owners and asset managers.
An exemption for smaller entities	We have not formed a view, to date, about whether smaller entities should be excluded from the comply-or-explain regime.
Exemption criteria	Annual revenue, total assets or a combination of the two could be used if there were to be an exemption for smaller entities.
Commencement and transition	Mandatory (comply-or-explain) regime would come into effect for financial years commencing on or after six months after the regulations are introduced.
The role of the government	There are important roles for the government in relation to guidance, education, monitoring and reporting. These activities might be carried out by Ministry for the Environment (MfE), Ministry of Business, Innovation and Employment (MBIE) or the Financial Markets Authority (FMA). The Climate Change Commission might have a role in relation to scenario analysis.
Implementation	Climate-related financial disclosures would be implemented by way of Order-in-Council on the recommendation of the responsible Minister.
Publication of climate-related reports	Climate-related financial information should be disclosed in annual reports in a level of detail appropriate to the needs of users of annual reports, and with the use of cross-references or mappings to assist users to locate further detailed information if needed.
Independent assurance	With the possible exception of greenhouse gas emissions disclosures, the Government should not consider imposing mandatory assurance obligations until (a) it becomes clearer what users may want from assurance engagements, and (b) standard setters have responded to user demand with new or amended standards and guidance material.

Chapter 1: The context

Climate change has been a market and regulatory failure

1. The United Nations Environment Programme (UNEP) Finance Initiative has noted that climate change is referred to by leading economists as the greatest market failure in human history, with potentially disruptive implications on the social well-being, economic development and financial stability of current and future generations.[5]

2. Regulatory failure has also contributed to climate change. Global warming was identified in the 1980s, but governments did not adopt strategies and policies to slow fossil fuel consumption. Many governments instead subsidised the coal, oil and gas industries and provided incentives that encouraged the use of fossil fuels.

3. At the international level emissions have continued to rise, although some countries are now reducing emissions, or reducing emission intensity per unit of gross domestic product (GDP). UNEP published a report in November 2018 stating that greenhouse gas (GHG) emissions have to peak by 2020 and decline rapidly thereafter to limit the increase in the global average temperature to no more than 1.5°C above pre-industrial levels. However, based on current Nationally Determined Contributions made under the Paris Agreement, global emissions are not even estimated to peak by 2030, let alone by 2020.[6]

4. A recent study from Westpac New Zealand found that taking early and planned action on climate change could save $30 billion by 2050, compared with taking delayed, then abrupt action later.[7] Taking action now means we can smooth the transition to a low-emissions economy, reducing the potential for sudden, drastic economic shocks.

5. Many organisations incorrectly perceive the implications of climate change to be long term and, therefore, not necessarily relevant to decisions made today. As a result, the risks of climate change and the opportunities from tackling climate change are not being adequately factored into business and investment decisions. This is hampering large-scale investment into the mitigation of and adaptation to the impacts of climate change.

The Productivity Commission report

6. In 2017, the Minister for Climate Change Issues, Minister of Finance, and Minister of Economic Development requested the Productivity Commission "identify options for how New Zealand could reduce its GHG emissions through a transition towards a lower emissions future, while at the same time continuing to grow incomes and wellbeing".[8] In 2018, the incoming Minister for Climate Change signalled a more ambitious agenda and asked the Commission to include the target of achieving net-zero emissions by 2050 in its analysis.[9]

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5 UNEP Finance Initiative.

6 UNEP, 2018. p XV.

7 Westpac NZ, 2018.

8 Terms of Reference, 2017.

9 Productivity Commission, 2018. v.

7. The Productivity Commission report *Low-emissions Economy* expressed a clear need for urgent action on climate change. It stated that the impacts of climate change threaten the wellbeing of all humanity and that time is running out because ultimately the problem of global warming will be too acute, have had too much impact, or be too late to reverse.[10]

8. The Productivity Commission identified four areas for transforming New Zealand to a low-emissions economy: emissions pricing, laws and institutions, regulation and policies, and innovation and investment. Climate-related financial disclosure issues are covered in chapter 7 of *Low-emissions Economy*, which relates to investment. Two of the five recommendations in chapter 7 relate to climate-related financial reporting – see figure 1.

Figure 1: The Productivity Commission's recommendations

R7.3	The Government should endorse the recommendations of the Task Force on Climate-related Financial Disclosures as one avenue for the disclosure of climate risk.
R7.4	The Government should implement mandatory (on a comply or explain basis), principles-based, climate-related financial disclosures by way of a standard under section 17(2)(iii) of the Financial Reporting Act 2013. These disclosures should be audited and accessible to the general public.

Source: Productivity Commission, 2018.

9. The Productivity Commission provided the following rationale for R7.4:

> 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. They can also help to stop investors valuing assets or investment opportunities incorrectly, resulting in misdirected finance or stranded assets.[11]

The Government's response

10. The Government has agreed to R7.3 and agreed to investigate R7.4 as part of its Climate Action Plan.

11. Agreeing to R7.3 signals the Government's commitment to the idea that high quality climate-related financial disclosures can make a significant contribution to transforming New Zealand to a low-emissions, climate-resilient economy.

12. Agreeing to investigate R7.4 will help New Zealand reach the point where high-quality climate-related financial disclosures are routinely made, consistent with international best practice. This requires consideration of 'what' should be reported and 'who' should be reporting.

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[10] Productivity Commission, 2018. pp 1 & 3.

[11] Productivity Commission, 2018. p 7.

The links between climate change reporting, financial reporting and other forms of reporting

Financial reporting

13. The scope of general purpose financial reports (GPFRs) is clearly defined and is well understood, comprising financial statements, along with accompanying notes that disclose significant accounting policies and other explanatory information.[12]

14. Broad concern has been expressed internationally in recent years that the information contained in GPFRs relates mainly to past performance. There are also concerns that financial reports can be voluminous and complex, and have other limitations as a means of communicating with investors and other users. Integrated reporting, and sustainability and climate-related reporting frameworks have been developed in response to some or all of these concerns.

Integrated reporting

15. Integrated reporting is about explaining how an entity creates value over the short, medium and long term using a combination of quantitative and qualitative information, much of it forward-looking. It is founded on the idea that an entity can best tell its value creation story in terms of six capitals – financial, manufactured, intellectual, human, social relationship and natural capital. An integrated report aims to explain how the entity draws on the six capital inputs and show how its activities transform them into outputs – see figure 2.

Sustainability reporting

16. A sustainability report is a report about the economic, environmental and social impacts caused by an entity's activities. It also usually discloses the entity's values and governance model, and demonstrates the link between its strategy and its commitment to a sustainable global economy. The main objective is to help entities measure, understand and communicate their economic, environmental, social and governance performance, set goals, and manage change more effectively.[13] Numerous sustainability reporting frameworks have been developed since the 1990s.

Climate-related financial disclosures

17. Climate-related disclosure regimes imposed by governments over the last decade or so have mostly focused on the impact that the entity has had on the environment. A report published by the Organisation for Economic Cooperation and Development (OECD) and the Climate Disclosure Standards Board in 2015 analysed corporate climate change reporting schemes in G20 countries. It stated that 15 G20 members had mandatory climate reporting schemes in place, but that most were limited in scope. Most schemes required only a fraction of a company's climate-related information to be disclosed, focussing mainly on reporting direct GHG emissions.[14]

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[12] External Reporting Board, 2019. See the definition of "Complete Set of Financial Statements" in paragraph 10.

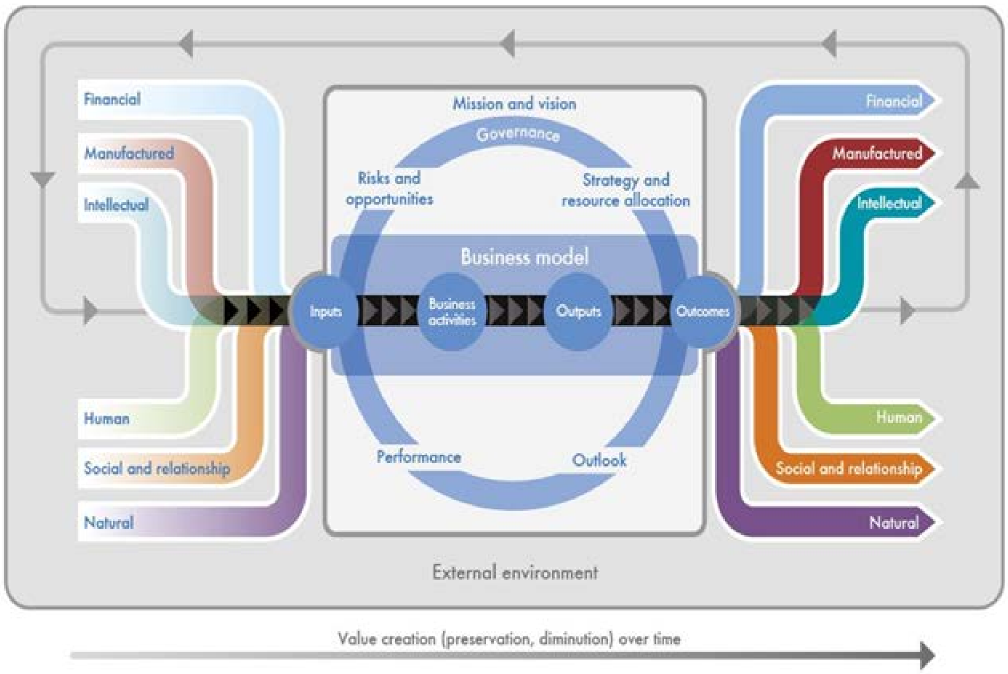
[13] Global Reporting Initiative website.

[14] OECD and CDSB, 2015. pp 7-8.

18. There has been increasing acknowledgment of the need to disclose comprehensive forward-looking information to help inform business and investment decisions. For example:

> Climate change disclosures in corporate reports are common, including disclosure of [GHG] emissions and other metrics measuring the impact of an organisation on the environment. But what is often missing is the link to the financial implications of climate change, both current and in the future. GHG disclosures in themselves are not adequate enough for investors to fully understand a company's exposure to climate-related risks and opportunities as well as its strategies for managing them.[15]

Figure 2: Integrated reporting



Source: Integrated Reporting, 2013.

The Task Force on Climate-related Financial Disclosures

19. In April 2015, the G20 asked the Financial Stability Board to convene public and private sector participants to review how the financial sector could take account of climate-related issues. The Financial Stability Board established the Taskforce on Climate-related Financial Disclosures (TCFD) in December 2015 and asked it to develop voluntary, consistent climate-related financial risk disclosures for use by companies in providing information to investors, lenders, insurers and other stakeholders.

20. The TCFD identified two types of risks: transition and physical risks.

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[15] Leka, 2017.

Transition risks

21. The TCFD set out the following business risks in transitioning to a low-emissions, climate-resilient economy:

    21.1 policy risk, due to evolving policy actions by governments and regulators

    21.2 litigation risk, due to an increase in climate-related litigation claims

    21.3 technology risk, due to the significant impact of climate-related technological improvements or innovations

    21.4 market risk, due to shifts in supply and demand in response to climate-related risks and opportunities

    21.5 reputational risk, due to changing customer or community perceptions about whether an organisation is contributing to or detracting from the transition to a lower-emissions economy.

Physical risks

22. The TCFD stated that there may be financial implications for entities as a consequence of direct damage to assets, and indirect impacts from supply chain disruption. These risks can be either event-driven (eg, the increased severity of extreme weather events) or driven by longer term shifts in climate patterns that may cause sea level rise or chronic heat waves.

23. The TCFD also noted that entity performance may be affected by changes in water availability (sourcing and quality), changes in food security, and extreme temperature changes that impact on the entity's premises, operations, supply chain, transport needs and employee safety.

The TCFD's main messages

24. The covering letter in the TCFD final recommendations report from the Chairman of the TCFD to the Chairman of the Financial Stability Board noted that:

> [The report] establishes recommendations for disclosing clear, comparable and consistent information about the risks and opportunities presented by climate change. Their widespread adoption will ensure that the effects of climate change become routinely considered in business and investment decisions. Adoption of these recommendations will also help companies better demonstrate responsibility and foresight in their consideration of climate issues.[16]

25. The TCFD's framework appears in figure 3. It outlines the links between climate-related risks and opportunities and financial impacts for businesses.

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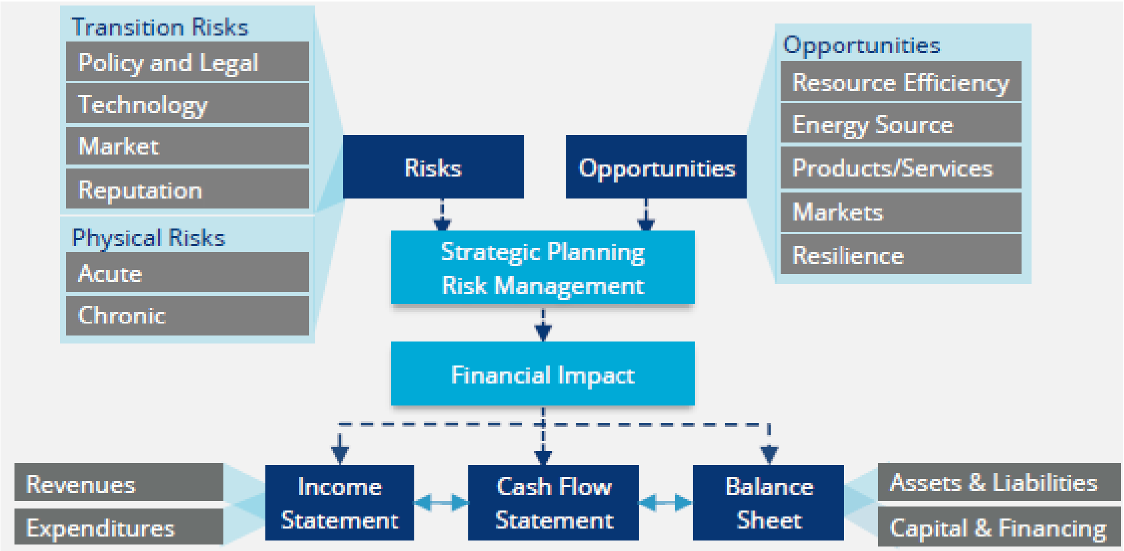
[16] TCFD, 2017a. Covering letter from Michael R. Bloomberg to Mark Carney.

Figure 3: The TCFD framework



Source: Task Force on Climate-related Financial Disclosure, 2017a

The TCFD's recommendations

26. The TCFD states that its recommendations "aim to be ambitious, but also practical for near-term adoption".[17] They are structured around four thematic areas that represent the core elements of how organisations operate: governance, strategy, risk management, and metrics and targets. The TCFD recommended 11 sets of disclosures within the four thematic areas – see figure 4.

Figure 4: The TCFD's recommended disclosures

Governance	Strategy	Risk Management	Metrics and Targets
Disclose the organization's governance around climate-related risks and opportunities.	Disclose the actual and potential impacts of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning where such information is material.	Disclose how the organization identifies, assesses, and manages climate-related risks.	Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material.
Recommended Disclosures	**Recommended Disclosures**	**Recommended Disclosures**	**Recommended Disclosures**
a) Describe the board's oversight of climate-related risks and opportunities.	a) Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term.	a) Describe the organization's processes for identifying and assessing climate-related risks.	a) Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process.
b) Describe management's role in assessing and managing climate-related risks and opportunities.	b) Describe the impact of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning.	b) Describe the organization's processes for managing climate-related risks.	b) Disclose Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas (GHG) emissions, and the related risks.
	c) Describe the resilience of the organization's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario.	c) Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization's overall risk management.	c) Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.

Source: Task Force on Climate-related Financial Disclosure, 2017a

17 TCFD, 2017a.

Scenario analysis

27. Strategy recommendation (c) relates to scenario analysis. The TCFD Technical Supplement provides the following rationale for including scenario analysis:

> For many organisations, the most significant effects of climate change are likely to emerge over the medium to longer term but their timing and magnitude are uncertain. This uncertainty presents challenges for individual organisations in understanding the potential effects of climate change on their businesses, strategies and financial performance. To appropriately incorporate the potential effects in their planning processes, organisations need to consider how their climate-related risks and opportunities may evolve and the potential implications under different conditions. One way to do this is through scenario analysis.[18]

28. The TCFD recommends that organisations use, at a minimum, a scenario of a global temperature increase of 2°C. It also recommends using other scenarios most relevant to the organisation's circumstances, such as scenarios related to Nationally Determined Contributions under the Paris Agreement, business-as-usual (greater than 2°C) scenarios, physical climate risk scenarios, or other challenging scenarios.[19]

International recognition and support for the TCFD

29. The TCFD's recommendations are widely regarded as best practice for climate-related financial disclosures. The reasons have been summarised as follows:

> The TCFD recommendations create a structure through which companies can better identify, manage and disclose climate-related risks and opportunities. This exercise produces useful information for companies themselves, investors and other stakeholders.
>
> The TCFD helps companies to make the link between climate change and the resulting financial impacts to their business, specifically encouraging the quantification of associated risks. The recommendations are not prescriptive… Rather, they enable companies to engage in a constructive exercise that aids internal decision-making…
>
> The TCFD facilitates a more forward-thinking, strategic approach, as opposed to retrospective data reporting. Many investors will agree that the quality of sustainability reporting is currently inadequate. Often, the problem isn't the lack of information. It's that the information provided isn't relevant, consistent or comparable. When done thoughtfully, reporting in line with the TCFD recommendations can begin to address that problem.[20]

30. The TCFD recommendations have been widely endorsed by diverse stakeholders, including companies, banks, insurers, institutional investors, stock exchanges, professional accounting bodies (including Chartered Accountants Australia and New Zealand (CA ANZ),[21] NGOs, regulators and governments – see appendix A.

31. It is also clear that there is a building momentum by governments and regulators towards mandatory disclosure. The European Union and the United Kingdom (UK) have

[18] TCFD, 2017c. p 1.

[19] TCFD, 2017c. p 2.

[20] Likhtman quoted in Lemmon, 2019.

[21] A4S TCFD Statement of Support.

already signalled their intent. The UK Government has set out an expectation for all listed companies and large asset owners to disclose in line with TCFD by 2022. A joint taskforce of UK regulators is exploring mandatory disclosure.[22]

32. The TCFD has also been endorsed by the Network for Greening the Financial System, which is a network of central banks and supervisors, including the Reserve Bank of New Zealand. The Network published a report in April 2019 stating that climate-related risks are a source of systemic financial risk,[23] so it falls squarely within their mandates to ensure that the financial system is resilient to these risks. The report states that the Network's members:

   32.1 collectively pledge their support for the TCFD recommendations

   32.2 encourage all companies issuing public debt or equity as well as financial sector institutions to disclose in line with the TCFD recommendations

   32.3 recommend that policymakers and supervisors consider further actions to foster a broader adoption of the TCFD recommendations and the development of an internationally consistent environmental disclosure framework.

What the TCFD reported in 2018 and 2019

33. The TCFD reviewed its own efforts to promote the adoption of its framework in Status Reports for 2018[24] and 2019.[25] Both reports state that although support for and use of the TCFD recommendations is growing rapidly, progress must be accelerated.

Alignment between TCFD with other reporting frameworks

34. Many concerns have been expressed about the multiplicity of sustainability and climate change reporting systems. For example:

   34.1 Ceres has stated that the sheer number and variety of sustainability disclosure options can confuse corporate reporters and other stakeholders.[26]

   34.2 The Chairman of the International Accounting Standards Board has stated that "there are too many [sustainability reporting] standards and initiatives… This leads to a lot of confusion among users and companies themselves… With so many standards, the potential for disclosure overload is enormous. Consolidation is clearly needed".[27]

   34.3 The Chair of the Corporate Reporting Dialogue, which comprises seven leading financial and non-financial reporting bodies, has referred to the "alphabet soup" of acronyms and standards that have made it harder for companies to prepare effective and coherent disclosures that meet the information needs of

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22 HM Government, 2019b. pp 8 & 23–25.

23 Network for Greening the Financial System, 2019. pp 1 & 5–6.

24 TCFD, 2018.

25 TCFD, 2019.

26 Ceres, 2018. p 4.

27 Hoogervorst, 2019.

capital markets and society. “Users and investors are getting frustrated, as they don’t know what standards to follow. Pressure for change is coming from the market itself”.[28]

The Better Alignment Project

35. The Corporate Reporting Dialogue has taken a first coordinated step towards resolving this problem. In late 2018, the Dialogue announced a two-year Better Alignment Project focusing on driving better alignment in the corporate reporting landscape.[29] The aim is to make it easier for companies to prepare effective and coherent disclosures that meet the information needs of capital markets and society.

36. CDP, the Global Reporting Initiative and the Sustainability Accounting Standards Board, which are the three Dialogue members with sustainability reporting frameworks, have committed to map their standards and frameworks against the TCFD recommendations, and better align their metrics, where possible, across all their reporting frameworks, taking into account the different focuses and audiences. The project also includes consideration of the way that the frameworks published by two of the other Dialogue members (the International Integrated Reporting Council and Climate Disclosure Standards Board) can be used to promote further integration between financial and non-financial reporting.

37. In June 2019, the Dialogue announced the findings from an online survey and a series of roundtables held in 11 countries with businesses and investors[30] - see appendix B. Participating delegates at the roundtables:

    37.1 showed a clear appreciation of the importance of TCFD

    37.2 confirmed that many stakeholders found the proliferation of indices, questionnaires, surveys and frameworks for the disclosure of ESG information and data overwhelming

    37.3 reaffirmed an urgent call from the market to unravel and solve inconsistencies in metrics for climate change reporting.

38. However, many stated that they struggled to report against the recommendations, especially scenario analysis.

Alignment of the Principles for Responsible Investment with TCFD

39. The Principles for Responsible Investment (PRI) Association has integrated new climate-related indicators based on the TCFD recommendations into its 2019 Reporting Framework.[31] The PRI has also announced that TCFD-based reporting will, from 2020, become “mandatory to report, but voluntary to disclose” for PRI signatories[32] in relation

[28] Mackintosh, 2019.

[29] Corporate Reporting Dialogue, 2018.

[30] IIRC, 2019.

[31] PRI, 2018.

[32] Twenty-nine New Zealand-based entities (8 asset owners and 21 investment managers) are signatories – Search undertaken on 3 September 2019, using “Zealand” as the keyword tinyurl.com/yyfsktbt.

to three of its climate risk indicators. Signatories will be able to keep their responses private or make them public.[33]

40. A review by the PRI of how the TCFD framework integrates into existing regulation and soft law in Brazil, Canada, the European Union, Japan, the UK and the United States notes that each market has taken a different approach to regulation and policy dealing with the disclosure of climate-related risks. The report states that, despite these differences, TCFD is compatible with those existing requirements.[34]

Conclusions about alignment

41. It is clear that the International Accounting Standards Board and leading international sustainability reporting organisations have prioritised aligning their frameworks with the TCFD. The research carried out to date indicates that there are high levels of compatibility and that full alignment is achievable.

International approaches to climate-related financial disclosures

42. The New Zealand Government is not alone in considering how best to implement TCFD-aligned disclosures, although if new mandatory disclosure requirements were to be introduced it would place New Zealand in the vanguard of countries exploring this.

43. Article 173-VI of the French Energy Transition and Green Growth Law strengthened mandatory carbon disclosure requirements for listed companies and introduced carbon reporting for asset owners and investment managers. Although this is not currently aligned with the TCFD, a report by the French Accounting Standards Board proposes to synthesise reporting standards at the national, EU and global levels and to define a standard "extra-financial" reporting structure, building on existing standards, including the TCFD recommendations.[35]

44. The UK formally endorsed the TCFD in September 2017 and has set out an expectation in its Green Finance Strategy for all listed companies and large asset owners to disclose in line with the TCFD by 2022. It has also established a joint taskforce with UK regulators, chaired by the Government, which will examine the most effective way to approach disclosure, including exploring the appropriateness of mandatory reporting, and committed to examine progress on implementation of the TCFD recommendations by the end of 2020.[36] This builds on existing requirements for all quoted and unquoted companies and limited liability partnerships to report on energy use, GHG emissions and emissions intensity.[37]

45. Canada's recent report from its Expert Panel on Sustainable Finance has multiple recommendations relating to the TCFD and how its outcomes sought can be best

33 PRI, 2019.

34 Baker McKenzie and PRI, 2017. pp 8 & 5–6.

35 de Cambourg et al, 2019.

36 HM Government, 2019b.

37 HM Government, 2019a.

achieved in a Canadian context. This includes a proposal for Canada to implement the TCFD recommendations on a ‘comply-or-explain’ basis.[38]

46. The European Union is considering reopening the EU Non-Financial Reporting Directive (NFRD), which would likely make TCFD disclosure mandatory. Its non-binding guidelines already include strong ties to the TCFD recommendations.[39]

47. A different approach has been taken in Australia, which is not based on government regulation but which has been successful in driving the uptake of TCFD disclosure. An Australian Senate Committee published an inquiry in 2017[40] recommending that the Australian Securities and Investments Commission (ASIC) review its guidance in line with the TCFD, which it has done.[41] In addition, the Australian Securities Exchange (ASX) and the Australian Accounting Standards Board (AASB) have released guidelines that make it clear they expect the TCFD recommendations should be considered and followed[42] and the Reserve Bank of Australia and the Australian Prudential Regulation Authority have also strongly endorsed TCFD implementation. This is underpinned by a greater volume of climate change litigation in Australia than in New Zealand. For example, claims were filed against Commonwealth Bank of Australia for not disclosing climate change related financial risk.[43] There is also currently an active claim against the Australian Retail Employees Superannuation Trust for failure to sufficiently disclose their investment strategy relating to climate change risk.[44] This is supported by the influential Hutley Opinion, discussed in Chapter 4: Directors’ legal obligations and climate change.

Conclusions

48. We have drawn the following main conclusions:

    48.1 Climate change presents material financial risks, both transitional and physical, to many businesses.

    48.2 Responding to climate change presents investment opportunities in areas such as: renewable energy, energy efficiency, adaptation of infrastructure, and land use in farming and forestry.

    48.3 Climate change is not material to every company of scale. However, it is not possible to know that without first testing the proposition.

    48.4 Businesses that identify and manage material climate-related information will be better placed to manage risks and seize opportunities.

    48.5 Capital will be allocated more efficiently and profitably if entities disclose material climate-related risks and opportunities to investors.

    48.6 Pressure is building from institutional investors for companies to make climate-related disclosures, and is likely to continue to increase.

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38 Expert Panel on Sustainable Finance, 2019.

39 European Commission, 2019.

40 Commonwealth of Australia, 2017.

41 ASIC 2019a & 2019b.

42 ASX, 2019 and AASB & AUASB, 2018.

43 Kaye, 2017.

44 McVeigh v Retail Employees Superannuation Pty Ltd [2019] FCA 14.

48.7 The TCFD recommendations have received widespread support and are considered best practice for climate-related financial reporting.

48.8 As the understanding of, and approaches to, climate-related issues improve, so too will the quality of climate-related financial reporting.

48.9 As the number of entities disclosing high quality climate-related information increases, companies whose disclosures do not meet expectations will increasingly be subject to scrutiny from investors. Climate-related financial reporting will only be fully effective when the effects of climate change are routinely considered in business and investment decisions.

Questions

1.	Is the TCFD reporting framework the most appropriate framework for New Zealand?
2.	Do you agree with the conclusions we have drawn at the end of chapter 1?

Chapter 2: Objective and problem definition

Objective

49. The Government's objective is to move to a position where the effects of climate change become routinely considered in business and investment decisions in New Zealand. This can be achieved when businesses that participate in financial markets disclose clear, comparable, consistent, timely and understandable information about the risks and opportunities presented by climate change.

Problem definition

The market does not currently have the information it needs

50. Achieving the Paris Agreement goal of limiting global temperature increases to 1.5°C will involve a wide portfolio of mitigation options, including **disinvestment** in high greenhouse gas (GHG) emitting products, processes and activities, and increased **investment** in new technologies, energy efficiency and clean energy sources. Financial markets worldwide will make a significant contribution towards achieving these investment outcomes.

51. As stated by the Governor of the Bank of England and former Chairman of the Financial Stability Board, Mark Carney, for markets to do what they do best – allocate capital effectively and dynamically – they need the right information. When risks are unknown or ill-defined, the market cannot allocate resources in an efficient and profitable manner.[45]

52. The Task Force on Climate-related Financial Disclosures (TCFD) final recommendations report stated that climate change is:

> …one of the most significant, and perhaps most misunderstood, risks that organisations face today… While it is widely recognised that continued emission of [GHGs] will cause further warming of the planet and this warming could lead to damaging economic and social consequences, the exact timing and severity of physical effects are difficult to estimate. The large-scale and long-term nature of the problem makes it uniquely challenging, especially in the context of economic decision making. Accordingly, many organisations incorrectly perceive the implications of climate change to be long term and, therefore, not necessarily relevant to decisions made today.[46]

53. This reflects the situation in New Zealand: a situation that needs to change. A December 2018 report from the Investor Group on Climate Change (IGCC) notes that financial markets in New Zealand and globally are largely misaligned with climate change imperatives. There is a capital misallocation, due to issues ranging from market short-termism, asset mispricing, lack of information and awareness across financial markets and a number of other systemic barriers. The report also found that there has not yet

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45 Carney, 2019. p 3.

46 TCFD, 2017a.

been the same level of debate or stakeholder pressure in New Zealand, compared with overseas[47] – see appendix C.

The status quo is not delivering information at the required pace

54. A working paper published by the McGuinness Institute demonstrates that there is very little high quality climate-related reporting in New Zealand. This study of 384 'significant' New Zealand private and public sector organisations states the great majority of entities did not disclose climate change information and of those that did, most only disclosed a small amount. It also notes that those disclosures were inconsistently presented across entities and so were not comparable or complete.[48]

55. Submissions on the Productivity Commission's draft *Low-emissions Economy* report also demonstrated that the current voluntary approach to disclosing climate change information is not driving change with sufficient urgency:

    55.1 The Insurance Council of New Zealand stated that even though it could be argued compulsion is not necessary because boards already have a fiduciary duty to report on material climate change impacts, "it is evident that few companies do report these risks or take a sufficiently long view, and certainly there is no consistent, clear and comparable reporting".[49]

    55.2 The Energy Management Association, Contact Energy and Meridian Energy, Responsible Investment Association Australasia and the Sustainable Business Network also stated that there were problems with the status quo and expressed support for new mandatory disclosure requirements.

The challenges of the status quo on disclosure

56. There are two main reasons why retaining the status quo is likely to lead to under-reporting of the climate-related information in financial markets:

    56.1 Companies may worry about opening themselves up to competitive disadvantage by revealing risks to their business if their competitors are not doing the same. Some entities may worry that they will be punished by investors for their honesty.

    56.2 Even if existing (sometimes referred to as 'voluntary') incentives were strong enough, such as directors' duties, it may be counter-productive if there are a variety of reporting standards adopted that are not comparable. Investors need to be able to compare how companies in the same sector are evaluating and managing their climate risks, so they can back their convictions on climate change with their money. If information is not comparable, that would undermine the value of reporting.

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47 IGCC, 2018a.

48 McGuinness Institute, 2018. pp 52–53.

49 New Zealand Productivity Commission, 2018. pp 196–197.

The benefits of adopting TCFD early

57. Increasingly, organisations are considering the business benefits of adopting TCFD-aligned disclosures. For example, accounting firm EY has stated: "The earlier companies embark on the journey, the better. Assessing climate-related risks and opportunities can be complex, and may require detailed analysis. However, disclosing information on climate change scenario planning not only addresses the TCFD recommendations, but also provides companies with the new inputs into business strategy and planning, which enhances internal capability and processes."[50] This is explored further in appendix D.

Concerns about introducing mandatory reporting

58. Some stakeholders indicated support for retaining the status quo in submissions to the Productivity Commission's draft report in 2017. Chartered Accountants Australia and New Zealand (CA ANZ) stated that it strongly supports climate-related reporting but does not regard additional regulation and mandatory disclosures to be the appropriate solution to concerns about disclosures not being made in practice. CA ANZ further stated there was a general lack of awareness and understanding about the impact of climate change on organisations, but once this was overcome, the existing framework enables appropriate reporting. CA ANZ also noted that the full effects of the recent introduction of the NZX Corporate Governance Code and the related ESG guidance note were yet to be seen.

59. There will be cost and resourcing implications for affected entities who are not already considering their long-term climate change risks and opportunities, which may give rise to concerns about the introduction of new mandatory disclosure requirements. We discuss this further in chapter 5, section K.

60. A range of views were expressed at a workshop held by IGCC in Auckland in 2018. One view was that while market leaders will respond voluntarily, regulation might be needed for 'laggards'. Others supported a transition (learning and experimentation) phase for business, with the 'threat' of regulation[51]
– see appendix E.

Questions

3.	Do you agree with the objective as set out above?
4.	Should other objectives also be considered?
5.	Do you agree with the problem definition? Are there other aspects we should consider?

[50] Nelson, 2019.

[51] IGCC, 2018a.

Chapter 3: Climate-related reporting obligations in New Zealand

61. There are currently no express statutory requirements on New Zealand entities to make climate-related financial disclosures. However:

    63.1 it appears that the Government could use a regulation-making power under the Reserve Bank of New Zealand Act 1989 to require registered banks to publish climate-related financial information[52]

    63.2 companies and listed issuers have obligations to disclose material information under the Companies Act 1993 and the NZX Main Market/Debt Market Listing Rules[53]

    63.3 the Climate Change Response (Zero Carbon) Amendment Bill (the Zero Carbon Bill)[54] proposes related but distinct information-gathering mechanisms, including:

        61.3.1 an 'adaptation reporting' power that would apply to a relatively small number of public and private sector entities

        61.3.2 a regular National Climate Change Risk Assessment, which will help to inform priorities for action in a National Adaptation Plan – see appendix F.

62. We outline and discuss obligations for companies and listed issuers below.

The Companies Act 1993

63. Section 208(1) of the Companies Act lists five categories of company that must prepare annual reports. The list includes every company that:

    63.1 is a public entity, as defined in the Public Audit Act 2001

    63.2 is required to prepare financial statements under Part 7 of the Financial Markets Conduct Act 2013 (i.e. financial market conduct (FMC) reporting entities)

    63.3 has total assets of $60 million and/or annual revenue of $30 million or more.[55]

64. 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.

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[52] Reserve Bank of New Zealand Act 1989, section 81.

[53] NZX. 2019a. p 24.

[54] At the time of publishing, this is currently awaiting its second reading

[55] The dollar thresholds are one third of these amounts for certain overseas companies.

65. Section 211 prescribes the contents of the annual report. Section 211(1)(a) includes a requirement to:

> …describe, so far as the board believes is material for the shareholders to have an appreciation of the state of the company's affairs and will not be harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in the nature of the business of the company or any of its subsidiaries…

66. Section 211(3) provides for shareholders to agree, subject to a 95 per cent supermajority, that the company need not comply with some of the disclosure requirements in subsection (1), including the requirements of paragraph (a). The opt-out is not available to public entities and FMC reporting entities.

67. We have not found any case law that specifically refers to section 211(1)(a). However, there is commentary on section 211 in *Mitre 10 (New Zealand) Ltd v Registrar of Companies*.[56] Although this case largely related to the opt-out power under section 211(3), it included the following broader comment about section 211:

> [17] It was common ground between counsel that the legislative history of s 211 does not provide any enlightenment about its purpose; both were agreed that its purpose and meaning must be taken from its text and context.

68. The Law Commission commented on the purpose of section 211 in Company Law Reform and Restatement, which was published in 1989. This report included a draft Companies Act (to replace the Companies Act 1955), including draft section 177, which was later enacted as section 211 of the 1993 Act without any significant changes. In commenting on draft section 177, the Law Commission stated that:

> This section substantially changes the current Act and is an attempt to make sure that shareholders receive all possible useful information, subject only to the need to protect the company from harm. The annual report must describe any changes to the business undertaken by the company and any change in accounting policies made since the date of the previous annual report. It must include the annual accounts and entries in the interests' register since the previous annual report.[57]

NZX Main Market/Debt Market Listing Rules

69. The NZX Main Market/Debt Market Listing Rules[58] include rules that govern disclosure to the market by way of their annual reports (Rules 3.7–3.8) and continuous disclosure (Rule 3.1). The Listing Rules are supported, among other things, by the **NZX Corporate Governance Code** (the NZX Code)[59], the **Environmental, Social and Governance (ESG) Guidance Note**[60] and the **Continuous Disclosure Guidance Note**.[61]

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56 CIV-2005-404-004968, 28 October 2005.

57 Law Commission. *Report No. 9.* Paragraph 611.

58 NZX, 2019a. p 24.

59 NZX, 2017.

60 NZX, 2019b.

61 NZX, 2019c.

70. Rule 3.7 prescribes the content for the annual report that an issuer of quoted debt or equity securities must lodge within three months of the end of its financial year. Rule 3.8 prescribes additional requirements for issuers of equity securities. It requires an equity issuer to disclose whether it has complied with each recommendation in the NZX Code, or state which recommendations were not followed and explain why they were not followed.

The NZX Code

71. The purpose of the NZX Code is "to promote good corporate governance, recognising that boards are in place to protect the interests of shareholders and to provide long-term value".

72. The NZX Code is structured around eight principles. Principle 4 relates to reporting and disclosure. Recommendation 4.3 relates to financial reporting, including the reporting of material non-financial information in annual reports. It states that:

> Financial reporting should be balanced, clear and objective. An issuer should provide non-financial disclosure at least annually, including considering material exposure to environmental, economic and social sustainability risks and other key risks. It should explain how it plans to manage those risks and how operational or non-financial targets are measured.

73. The commentary on recommendation 4.3 states that "if an issuer chooses a formal framework to report on ESG factors, it should report against a recognised international reporting initiative, such as the Global Reporting Initiative guidelines or Integrated Reporting".[62]

74. The NZX Code also explains what "comply-or-explain" means in this context. It states that the Listing Rules encourage issuers to adopt the NZX Code but do not force them to do so. This allows the issuer the flexibility to adopt other corporate governance practices considered more suitable by the Board. The NZX Code also states that if a particular recommendation is not appropriate for an issuer, given its size or stage of development, the issuer can explain why it has chosen not to adopt the recommendation and the alternative measures it has in place.[63]

75. The Financial Markets Authority's Corporate Governance handbook takes the same approach.[64]

ESG Guidance Note

76. The ESG Guidance Note is aimed at assisting main market issuers to comply with recommendation 4.3 of the NZX Code. It provides a resource to NZX issuers to understand the benefits of environmental, social and governance (ESG) reporting, provides information about global frameworks, and supports the effective communication of ESG opportunities and risks to investors and other stakeholders.

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[62] NZX, 2017. pp 19–20.

[63] NZX, 2017. pp 4 & 3.

[64] Financial Markets Authority, 2018.

Continuous disclosure

77. Continuous disclosure seeks to ensure the timely release of material information by companies listed on the Main Board and Debt Market. Rule 3.1.1 of the Listing Rules states that once an issuer becomes aware of any material information relating to it, the issuer must promptly and without delay release that material information through the Market Announcement Platform.[65]

78. The Continuous Disclosure Guidance Note states that the obligation to disclose material information promptly and without delay is a fundamental obligation placed on issuers. It addresses the key elements of this obligation, including providing guidance on how to assess whether information is material. It also states that:

> There can be no definitive list of the type of information that is material... The material information test is based on what a reasonable person would expect to happen [to the price of the issuer's quoted financial product] upon the release of information... This is a forward-looking inquiry… based on the information available before the release of the relevant information.[66]

Conclusions on the NZX Listing Rules

79. NZX listed entities are required to disclose material climate-related financial information in their annual reports. However, they have discretion about whether to present the information in accordance with an established international reporting framework, such as Integrated Reporting, or in an ad hoc manner. The NZX Listing Rules do not explicitly require listed issuers to disclose the full set of information recommended by the Task Force on Climate-related Financial Disclosures (TCFD).

Questions

6.	What are the implications of section 211 of the Companies Act 1993 for the disclosure of material climate-related information in annual reports?
7.	What are the implications of the NZX Listing Rules for the disclosure of material climate-related information by (a) equity issuers, and (b) debt issuers?
8.	How should proposed adaptation reporting under the Climate Change Response (Zero Carbon) Amendment Bill and the climate-related financial reporting disclosures proposed in this discussion document best work together?

[65] Rule 3.1.2 lists several exceptions to rule 3.1, for example where the release of the information would be a breach of law or would disclose a trade secret.

[66] NZX. 2019c. pp 6–8.

Chapter 4: Directors' legal obligations and climate change

80. This chapter considers the links between directors' legal obligations and climate change risk. The Aotearoa Circle has commissioned law firm Chapman Tripp to prepare an opinion on this topic, ultimately for public release.[67] We have not referred to the opinion because it was not publicly available before this discussion document was finalised.

81. We do, however, summarise legal opinions about the state of the law in Australia and legal analyses published by the Commonwealth Climate and Law Initiative (CCLI) relating to the law in Australia, Canada, South Africa and the UK[68] as New Zealand's courts frequently look to case law from other common law jurisdictions, particularly Australia.

The Australian legal opinions

82. Noel Hutley SC and Sebastian Hartford-Davis prepared two legal opinions for the Australian Centre for Policy Development, the first in October 2016[69] and a supplementary opinion in March 2019, updating the first opinion.[70]

2016 opinion

83. Hutley and Hartford-Davis considered climate risk in the context of section 180(1) of the Australian Corporations Act 2001, which requires directors to exercise their powers and discharge their duties with the degree of care and diligence that would be exercised by a reasonable director in the relevant circumstances.[71]

84. They concluded that, as a matter of Australian law, company directors should consider the impact of climate change risks on their business, where they intersect with the interests of the company. They concluded it conceivable that directors who fail to consider climate change risks could be found liable for breaching their duty of care and diligence in the future.[72] Hutley and Hartford-Davis said:

> We cannot offer any guidance in the abstract on the circumstances of a particular director or company, or even a sector. However, at a general level, our opinion is that directors are well advised at least to consider the possible effect of climate change risks on their business… To consider climate change risks actively, and disclose them properly, will reduce exposure to liability, and maximise the potential for exercising the 'business judgment' rule.[73]

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67 Chapman Tripp, 2019.

68 Barker, 2018; Sarra, Williams, 2018; Reddell, 2018; Stalker, Garton, 2018.

69 Hutley & Hartford Davis, 2016. Paragraph 1.

70 Hutley & Hartford Davis, 2016.

71 This provision is much the same as section 137 of the New Zealand Companies Act 1993.

72 Hutley & Hartford Davis, 2016. Paragraphs 2–3.

73 Hutley & Hartford Davis, 2016. Paragraphs 35 & 52.

85. Hutley and Hartford-Davis also stated that the Australian Securities Exchange (ASX) Listing Rules arguably require directors of listed issuers to take climate changes and other sustainability risks into account where those risks are, or may be, material to the interests of the company.[74] They noted that the ASX has issued a guidance note recommending that a listed entity "should disclose whether it has any material exposure to economic, environmental and social sustainability risks on a comply-or-explain basis".[75]

2019 supplementary opinion

86. The supplementary opinion outlines five material developments since October 2016:

86.1 Coordinated interventions by Australian regulators, which have led to a striking degree of alignment in relation to the financial and economic significance of climate risks.

86.2 Significant changes in financial reporting frameworks, including publication of the Task Force on Climate-related Financial Disclosures (TCFD) recommendations, a joint Australian Accounting Standards Board/Auditing and Assurance Standards Board (AASB/AUSB) guide on disclosing material climate-related risks in general purpose financial reports,[76] and updated ASX Corporate Governance Principles and Recommendations identifying climate change as an environmental risk which should be disclosed, where material.[77]

86.3 Increasing investor and community pressure to disclose and mitigate climate-related risks.

86.4 Developments in the state of scientific knowledge pointing to increasing concerns about the gravity and probability of climate risks that directors need to consider.

86.5 Developments in relation to litigation risks.

87. Hutley and Hartford-Davis concluded that:

> The developments [since October 2016] suggest that we are now observers of a profound and accelerating shift in the way that Australian regulators, firms and the public perceive climate risk… In our opinion, these matters elevate the standard of care that will be expected of a reasonable director. Company directors who consider climate change risks actively, disclose them properly and respond appropriately will reduce exposure to liability...
>
> It is increasingly obvious that climate change is and will inevitably affect the economy, and it is increasingly difficult in our view for directors of companies of scale to pretend that climate change will not intersect with the interests of their [companies]. In turn, that means that the exposure of individual directors to 'climate change litigation' is increasing…[78]

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[74] Hutley & Hartford Davis, 2016. Paragraph 51.

[75] Hutley & Hartford Davis, 2016. Paragraph 12.

[76] Australian Government & Australian Accounting Standards Board, 2018. pp 6–7.

[77] ASX Corporate Governance Council, 2019. p 28.

[78] Hutley & Hartford Davis, 2019. Paragraphs 4 & 22.

The CCLI country papers

88. The country papers published by the CCLI in April 2018 are presented in a standard format. The key findings are similar across countries:

 88.1 **Duty of trust and loyalty** – Where climate risk poses a foreseeable and material risk to the company, directors could breach the duty of trust and loyalty to the company if they:

  88.1.1 fail to consider it

  88.1.2 fail to do so adequately

  88.1.3 unreasonably fail to act on an assessment of the risk.

 88.2 **Duty of competence** – Three of the four papers conclude directors who overlook or disregard climate risk, risk failing to discharge their duty to act with due care and diligence.[79]

 88.3 **Duty of disclosure** – The disclosure requirements vary from country to country, depending on the requirements imposed under company law, securities law, stock exchange rules and prudential regulation. Nevertheless, there is a common theme around potential liability for making misleading disclosures.

 88.4 **Establishing liability** – There are significant challenges in bringing a claim against directors for climate risk mismanagement. The risks of directors' liability exposure for failing to govern for climate-related risks, however, cannot be dismissed.

 88.5 **Conclusions** – The arguments presented in the four papers have not been tested by the courts in any of the four countries. However, directors, trustees and other fiduciaries can avoid potential liability by identifying risks, and where they do exist, develop strategies to mitigate them.

CCLI paper on liability risks

89. In 2017, the CCLI published Concerns misplaced: Will compliance with the TCFD recommendations really expose companies and directors to liability risk?[80] It considered whether compliance with the TCFD framework would increase liability risks for companies and their directors. Not only did the authors reject this proposition, they also concluded that complying with the TCFD recommendations reduces liability risks because:

> "[they help] directors assess and manage climate risk in accordance with their duties, and report that risk as required by existing disclosure laws... Astute directors will embrace the [TCFD] recommendations and recognise that climate-risk disclosure as a key component of financial reporting is the 'new normal'.[81]

[79] The exception is the South African country paper, Reddell, 2018. It states that there is a shortage of judicial precedent in relation to this duty in South Africa.

[80] Stalker et al, 2017.

[81] Stalker et al, 2017. p 17.

Other commentary on liability risks

90. Others have expressed similar views on liability risks, including the Investor Group on Climate Change (IGCC)[82] and the Australian Securities and Investments Commission (ASIC) Commissioner, John Price.[83]

91. Russell Picot, Special Advisor to the TCFD, has responded to concerns that scenario analysis could be interpreted as a forecast, and if proved inaccurate, could lead to directors being sued by investors. Picot's reported response is that this argument is more an excuse for not reporting than a valid reason for not doing so. The TCFD is not asking for a financial forecast, only for companies to explain how their businesses might be affected under different scenarios.[84]

Conclusions

92. The CCLI noted, in relation to its legal analyses for Australia, Canada, South Africa and the UK that:

> The significant commonalities in the laws and legal systems of each of the four countries make the [CCLI's] work and outcomes readily transferable. They each operate a common law legal system. Their corporate governance laws are based on common fiduciary principles. Whilst their laws may differ at the margins, legal developments and judicial precedents are influential in each other's jurisdictions.[85]

93. Our preliminary position is that this statement also broadly applies to New Zealand. Like those countries, New Zealand directors' legal obligations are derived largely from English law. The New Zealand courts frequently look to case law from other common law jurisdictions, particularly Australia.

Questions

9.	Do directors' legal obligations in New Zealand result in consideration, identification, management and disclosure of climate-related risks?
10.	Do you agree with the legal opinion prepared for the Aotearoa Circle?

82 Investor Group on Climate Change. 2018b. pp 1 & 6.

83 Price, 2018.

84 This statement is attributed to Picot, without citation, in Eccles and Krzus. 2018 and in Schmalenbach Business Review, 2018.

85 All four 2018 country papers, Commonwealth Climate and Law Initiative, 2018.

Chapter 5: Designing a comply-or-explain disclosure system for New Zealand

This chapter provides a fuller discussion of the issues related to designing a disclosure system that are summarised in the executive summary, comprising:

A. the status quo versus new mandatory reporting requirements

B. disclosures that would satisfy a ‘comply’ requirement

C. when it would be acceptable to explain

D. who it would apply to

E. whether there should be an exemption for non-large entities

F. where disclosures would be made

G. independent assurance

H. commencement and transition

I. the legislative means for implementing reporting

J. the role of the government

K. costs relating to climate-related financial disclosures.

A. The status quo versus new mandatory reporting requirements

Arguments in favour of the status quo

94. In favour of continuing with the current voluntary approach, there are already legal obligations and increasing market and regulatory pressures for companies to consider climate change risks and, in some cases, disclose those risks. These include:

94.1 The NZX Main Market/Debt Market Listing Rules, which require (on a comply-or-explain basis) equity issuers to disclose material exposure to environmental, economic and social sustainability risk and other key risks – see chapter 3.

94.2 Legal opinions and analyses from other common law jurisdictions. These indicate that climate risks are increasingly becoming litigation risks for company directors and trustees – see chapter 4.

94.3 Rapidly increasing pressure on companies to disclose decision-useful climate-related information because institutional investors, banks and insurers are increasingly viewing climate as a financial risk that needs to be managed. Entities that do not seek to identify, manage and disclose material climate-related risks may find it increasingly difficult to refinance existing debt or raise new debt.

94.4 Growing appreciation that boards which think and act strategically about climate-related risks and opportunities and disclose them to the market are likely to benefit – see appendix D.

94.5 Pressure on registered banks and licensed insurers from the Reserve Bank of New Zealand to report voluntarily. The Reserve Bank's climate change strategy includes actions to seek to identify opportunities to enhance disclosure of climate risks in New Zealand.[86]

Arguments in favour of mandatory reporting

95. There are several arguments for adopting a new mandatory (comply-or-explain) disclosure system:

95.1 The current approach has not been effective to date. Most entities that participate in New Zealand's financial markets do not disclose climate-related information, or disclose information that is of little use for decision-making purposes.[87] Legal obligations are often unclear or ignored.

95.2 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.

95.3 Mandatory reporting, using a single high-quality climate reporting framework, will promote reporting that is clear, comparable and consistent and promote business certainty. It is unlikely that this outcome will be achieved under the current system, because entities will use different frameworks or report in ad hoc ways, undermining the ability to make more informed decisions in the financial markets. Regulatory standards can help generate consistent information.

95.4 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.

95.5 Investors are urging governments to act. For example, the 2018 Global Investor Statement to Governments on Climate Change, signed by 345 institutional investors representing US$30 trillion in assets, called on global leaders to commit to implementing the Task Force on Climate-related Financial Disclosures (TCFD) recommendations in their jurisdictions no later than 2020.[88]

95.6 As noted by the Network for Greening the Financial System (NGFS), climate change is one of many sources of structural change affecting the financial system. However, it has distinctive characteristics that mean it needs to be considered and managed differently, which favour not relying on a wait-and-see approach. These include far-reaching impact in breadth and magnitude, foreseeable nature, irreversibility and dependency on short-term actions.[89]

96. We propose new mandatory (comply-or-explain) disclosure requirements as the preferred option, based on the reasons given above. Government intervention will raise expectations and should accelerate progress.

86 Reserve Bank of New Zealand.

87 McGuinness et al, 2018. Chapter 3.

88 theinvestoragenda.org/wp-content/uploads/2018/09/GISGCC-FINAL-for-GCAS-with-signatories.pdf.

89 Network for Greening the Financial System, 2019.

97. Largely or solely relying on market forces is too risky, given that urgent action is needed to invest in new technologies, energy efficiency and clean energy sources, and disinvest away from high greenhouse gas-emitting products, processes and activities.

Questions

11.	Do you favour the status quo or new mandatory disclosure requirements?
12.	If a mandatory approach is adopted, do you agree with the Productivity Commission that a mandatory (comply-or-explain) principles-based disclosure system should be adopted?
13.	If the status quo is retained, how can government and investors be confident that risks would be routinely considered in business and investment decisions?

B. Disclosures that would satisfy a 'comply' requirement

98. In its final report, published in June 2017, the TCFD made recommendations around four themes, which represent the core elements of how organisations operate: governance, strategy, risk management, and metrics and targets. It recommended eleven sets of disclosures within those four thematic areas – see figure 4.

99. We propose that the TCFD recommendations should be the 'comply' element of a new mandatory (comply-or-explain) disclosure regime, because:

99.1 the TCFD framework is regarded as international best practice in the area of climate-related disclosures

99.2 it is principles-based and provides flexibility to consider individual entities' circumstances and rapidly evolving best practice

99.3 requiring disclosures in accordance with TCFD will promote clear, consistent and comparable reporting.

100. Extended external reporting and sustainability frameworks that are aligned with TCFD would also be acceptable under this regime. We propose that the Government would specify a list of aligned frameworks that could be used.

101. We do not consider that there are any viable alternatives to TCFD (and TCFD-aligned frameworks) for the 'comply' element for two main reasons:

101.1 There are no alternative internationally recognised principles-based climate-related financial disclosure frameworks. This is why the Financial Stability Board, at the request of the G20, established the TCFD.

101.2 There are compelling arguments for not adopting a New Zealand-specific disclosure regime. Modern economies rely on cross-border transactions and the free flow of capital. Imposing unique requirements on New Zealand entities when it is clear that the rest of the world is increasingly adopting TCFD will add cost, complexity and risk for New Zealand businesses operating internationally. It is very unlikely that overseas financial institutions would spend time studying the minutiae of a unique New Zealand approach. Our expectation is that they would demand that information be prepared in accordance with the TCFD recommendations.

102. The TCFD framework was developed as a voluntary framework. However, we consider that it is suitable for mandatory application because it is principles-based. We are not proposing a more prescriptive or rules-based approach because:

102.1 some of those rules might not fit with some entities' circumstances

102.2 this would likely add cost, complexity and risk for New Zealand businesses, particularly those operating internationally

102.3 the existing guidance material available for use in relation to TCFD disclosures would be more difficult for New Zealand businesses to apply

102.4 New Zealand-specific rules could, over time, become incompatible with international best practice as it evolves. It might be useful to add more specific requirements at a later date, but only in response to international developments.

Materiality

The TCFD states:

> "Organizations should determine materiality for climate-related issues consistent with how they determine the materiality of other information included in their annual financial filings. The Task Force cautions organizations against prematurely concluding that climate-related risks and opportunities are not material based on perceptions of the longer-term nature of some climate-related risks."[90]

The recommended Risk Management (b) disclosure includes describing how materiality determinations are made within the reporting organisation. The TCFD approach implies that the definition of "materiality" contained in the IASB Conceptual Framework for Financial Reporting should be adopted by New Zealand and other countries that have adopted International Financial Reporting Standards. This definition states that "information is material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general purpose financial reports make on the basis of those reports."

Questions

14.	Do you consider the TCFD framework to be best practice in relation to climate-related financial disclosures?
15.	What are your views about whether the TCFD's recommended disclosures will provide useful information to institutional investors and other users?
16.	Do you think the proposed disclosure system will encourage disclosing entities to make better business decisions?
17.	Is the definition of materiality in the IASB Conceptual Framework for Financial Reporting appropriate for this purpose?

[90] TCFD, 2017b.

C. When it would be acceptable to explain

103. 'Comply-or-explain' is used in corporate governance regulation and financial supervision. It is based on the idea that one size does not fit all. Rather than imposing binding laws, regulators set out a recommended code, which entities may either comply with, or if they do not comply, explain why not. This provides regulated entities with the opportunity to use alternative disclosure approaches or not comply with some or all of the code, subject to explaining why. This approach can lower implementation costs and allow entities to adapt their reporting to new trends and developments.[91]

104. This rationale does not apply to the TCFD framework, because it is principles-based and flexible, and there are no reasons to depart from it. In addition:

 104.1 permitting the use of more than one reporting framework would make it much more difficult for users to compare disclosures across entities

 104.2 permitting departures from TCFD would increase the risk that entities will give perfunctory explanations for non-compliance.

105. We propose that:

 105.1 As recommended by the Canadian Expert Panel on Sustainable Finance,[92] 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.

Questions

18.	What comments do you have on our proposal that non-disclosure would only be allowable on the basis of the entity's analysed and reported conclusion that they see themselves as not being materially affected by climate change, with an explanation as to why?
19.	What are your views about providing a transition period where incomplete disclosures would be permissible?
20.	If there is to be a transition period, what are your views on it being for one financial year?

91 Christensen et al. 2019. p 89.

92 Expert Panel on Sustainable Finance, 2019.p 17. Recommendation 5.1.

D. Who it would apply to

106. The Productivity Commission did not express a view about which classes of entity the mandatory (comply-or-explain) disclosure regime should apply to. We propose that it should apply to the entities identified by the TCFD, comprising:

    106.1 all entities with public debt or equity, to provide decision-useful information to investors and shareholders to facilitate good economic decision-making

    106.2 banks, because they are exposed to climate-related risks and opportunities through lending and other financial intermediary activities, and through their own operations

    106.3 general insurers, including reinsurers, because their underwriting and investment risks and opportunities are changing due to rising sea levels, changing climate patterns and a potential increase in the number of weather-related natural catastrophes

    106.4 asset owners (ie, institutional investors), because they sit at the top of the investment chain and, therefore, have an important role to play in influencing the organisations in which they invest to provide better climate-related financial disclosures

    106.5 asset managers (ie, investment managers) because:

        106.5.1 their shareholders need to understand enterprise-level risks and opportunities, and how these are manage

        106.5.2 their clients need to understand the impact of climate change on product and investment strategies.

107. As the TCFD framework and this regime are designed to use the levers available in financial markets to drive a change in investment patterns, large greenhouse gas-emitters and other entities of scale would not be within scope unless they were listed issuers. However, private companies are not exempt from the impacts of climate change, and may receive direct and indirect pressure from insurers and capital-providers to identify and manage climate-related risks and opportunities. For example, many insurers are refusing to insure new coal plants, and premiums are rising for coastal properties. It is important for all businesses, whether in scope of this regime or not, to consider the impact of climate change on their businesses.

Questions

21.	Should all of the following classes of entity be subject to mandatory (comply-or-explain) climate-related financial disclosures: listed issuers, registered banks, licensed insurers, asset owners and asset managers?
22.	Should any other classes of entity be required to disclose?

E. Whether there should be an exemption for smaller entities

108. Some entities in these categories are relatively small and there are issues around whether the benefits of making climate-related disclosures are outweighed by the costs. Alternatively, all entities should be managing their climate risks, so mandatory disclosure would have the effect of requiring relatively small entities to do what makes business sense.

109. We have not formed any views, to date, on whether there should be a small entity exemption and, if so, which proxy or proxies would be suitable. However, annual revenue (measuring economic activity), total assets (measuring economic size) or a combination of the two would appear to be the best options if there were to be an exemption for smaller entities.

110. We would also propose that should an exemption apply, any dollar thresholds used as a proxy for economic significance would be required to be increased from time-to-time to take inflation into account. This approach is used for financial reporting purposes. Section 48 of the Financial Reporting Act 2013 provides for certain revenue and asset dollar amounts to be increased in accordance with movements in the Consumers Price Index no less than eight years since the amounts were last changed.

Questions

23.	Should there be an exemption for smaller entities?
24.	If there were to be an exemption: (a) What criterion or criteria should be used: annual revenue, total assets, a combination of the two, or some other measure or measures? (b) Which dollar amount or amounts would be appropriate? (b) Should there be a requirement to adjust for inflation from time-to-time?

F. Where the disclosures would be made

111. The TCFD states that climate-related information should be included in entities' mainstream annual financial filings because:

111.1 in most G20 jurisdictions, companies with public debt or equity have a legal obligation to disclose material information in their financial filings, including material climate-related information

111.2 disclosure in mainstream financial filings should foster shareholder engagement and, therefore, promote a more informed understanding of climate-related risks and opportunities by investors and others

111.3 it will help ensure that appropriate controls govern the production and disclosure of the required information, including review by the chief financial officer and audit committee, as appropriate.[93]

112. The TCFD noted in its 2018 Status Report that there have been accessibility issues with reporting to date. Information related to around half the recommended disclosures was found in sustainability reports and around one third in financial filings. For example, disclosure on climate-related metrics and targets was two to three times more likely to be found in a sustainability report.[94] The TCFD recommended that companies consider providing cross-references or mappings to help users find relevant information.

113. We propose that there should be a stand-alone TCFD report within the entity's annual report, because the information has important linkages to the financial statements and to the general commentary in annual reports about governance, strategy and risk management. This should be provided in a level of detail appropriate to the needs of annual report users. We also consider that the entity should be able to include cross-references or mappings to information located elsewhere, such as other sections of the annual report, or other reports published by the entity, such as sustainability reports, or detailed descriptions of scenario analysis assumptions published on the entity's website.

114. We also propose an entity that assesses that it is not required to make climate-related disclosures under comply-or-explain would disclose in the annual report why they have not complied.

Questions

25.	What are your views about our proposal to have a stand-alone climate-related financial disclosure report within the entity's annual report?
26.	What are your views about providing for disclosing entities to include cross-references or mappings within that report to assist users to find relevant information?
27.	What are your views about requiring explanations for non-compliance to be included in the annual report?

G. Independent assurance

115. Assurance increases users' confidence in the credibility of disclosed information. An assurance practitioner seeks to obtain enough appropriate assurance evidence to conclude how the disclosed information has been measured or evaluated.

116. Assurance providers offer two levels of assurance: reasonable assurance and limited assurance, which are defined in appendix G. Appendix G also identifies the New Zealand equivalents of international auditing and assurance standards that may be relevant to the assurance of climate-related financial disclosures.

93 TCFD, 2017a. iv & pp 17, 33, 41 & 53; TCFD, 2017b. pp 1, 3, 11 & 69; TCFD, 2018. ii & p 3.

94 TCFD, 2018. p 14.

Discussion of assurance issues

117. The Productivity Commission recommended that the disclosures should be audited.[95] However, the TCFD stated that:

> Disclosures should be defined, collected, recorded, and analysed in such a way that the information reported is verifiable to ensure it is high quality. For future-oriented information, this means assumptions used can be traced back to their sources. **This does not imply a requirement for independent external assurance**; however, disclosures should be subject to internal governance processes that are the same or substantially similar to those used for financial reporting.[96]

118. An argument for the Productivity Commission's recommendation is that independent assurance promotes market confidence because it enables users to evaluate information and make decisions with higher levels of confidence. However, we do not propose imposing mandatory assurance at this stage, for the following reasons:

    118.1 It is difficult to know what should be prescribed because TCFD is relatively new and it is unclear what users' demand for assurance might be. It will take time for the uncertainty to diminish as users learn from experience about the classes of information that are assurance priorities for them and what type of assurance they are looking for.

    118.2 Assurance practitioners may not have the necessary tools to assure all information contained in a TCFD report, particularly information that is qualitative and/or forward-looking.

119. The assurance reports in integrated reports and sustainability reports that we have seen have all been limited assurance engagements, and their scope has been limited to historic information. See, for example, the Combined Independent Auditor's and Limited Assurance Report[97] in Sanford's Integrated Annual Report, and the assurance report in the International Integrated Reporting Council's integrated report for 2018.[98]

120. Work being carried out by the International Auditing and Assurance Standards Board (IAASB) indicates that it is too early to consider mandatory assurance. The IAASB started this project in January 2018 in response to concerns that assurance practitioners find it challenging to assure emerging forms of reporting that increasingly provide non-financial information, and that users find it difficult to interpret those assurance reports.

121. The IAASB has identified 10 key challenges and established an Extended External Reporting Task Force to look into them.[99] The ultimate output of the project will be to publish non-binding guidance in support of ISAE 3000 (Revised): *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*.

122. We propose that the Government should not impose mandatory assurance obligations due to the demand and supply-side uncertainties. Consideration should not be given to mandatory assurance until (a) it becomes clearer what users want, and (b) assurance

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[95] Assurance, not audit, is the correct term in the context of non-financial information.

[96] TCFD, 2017a. p 53.

[97] Sanford, 2019. pp 156–165.

[98] IIRC, 2018.

[99] IAASB, 2018. pp 18–21.

standards setters have responded to user demand with new or amended standards and guidance material. The issue of mandatory assurance could be reconsidered within three years of a mandatory disclosure regime coming into force, at which time there would be two years of data to draw upon.

123. There may, however, be a case for mandatory assurance of greenhouse gas (GHG) emissions disclosures, which is one of the TCFD's recommended Metrics and Targets disclosures. This may be feasible because the IAASB has published a GHG emissions assurance standard (ISAE 3410: *Assurance Engagements on Greenhouse Gas Statements*).

Questions

28.	Should there be mandatory assurance in relation to climate-related financial disclosures?
29.	Which classes of information should be subject to assurance if it were to be mandatory?
30.	Do you consider that assurance should be required in relation to GHG emissions disclosures?
31.	Is limited assurance the only practicable approach in relation to TCFD disclosures, or is reasonable assurance also feasible?
32.	If we do not introduce mandatory assurance when a disclosure system comes into effect, should it be reconsidered in the future?

H. Commencement and transition

124. There are two considerations in setting the dates for implementing a new mandatory (comply-or-explain) disclosure requirement: the need for urgent action, and the need to provide businesses with sufficient time to prepare for the changes.

125. We propose that new mandatory (comply-or-explain) climate-related financial disclosures would come into effect for financial years commencing six months on or after the date that the regulations are introduced.

Example timeline for reporting against the TCFD framework

If regulations were introduced on **1 July 2021** then company X, with a balance date of 31 March, would first be required to include climate-related financial disclosures in its annual report for the financial year (FY) ending on **31 March 2023**.

If company X did not feel able to disclose fully against the TCFD framework in 2023 (because it did not yet have sufficiently clear data on its emissions or scenario analysis for example), it could include a statement to this effect in its FY 22/23 annual report. Company X would then be expected to report fully against the TCFD framework, on a comply-or-explain basis, in its FY 23/24 annual report.

From FY 23/24, company X could not use the 'explain' component to say it was not reporting because it lacked data. It could only use this to explain why, having undertaken due diligence, it found that climate change was not material to its business.

Company X might disclose fully against TCFDs earlier than this, because of existing legal obligations as discussed in Chapters 3 & 4, or because it sees the benefits in doing so early.

126. These issues regarding commencement and transition link to two other issues discussed earlier in this chapter. The first is the discussion under the heading "C. When it would be acceptable to explain", that in year one only, it would be permissible to not provide a full set of disclosures, subject to explaining why the disclosures are incomplete. Second is the discussion under the heading "E. Whether there should be an exemption for smaller entities". We are seeking views on whether smaller entities should be provided with two years, rather than one year to transition to full disclosure, if there were to be no exemption.

Questions

33.	What comments do you have on the proposal to bring the disclosure system into effect for financial years commencing six months on or after the date that the regulation is introduced?
34.	Do you consider that smaller entities should be provided with a longer transition if there were to be no exemption for them? If so, how long should that additional period be?

I. The legislative means for implementing reporting

127. The External Reporting Board (XRB) does not have the power to issue accounting standards on climate-related financial disclosures. However, it could be given this power because section 17(2)(iii) of the Financial Reporting Act 2013 provides for an Order-in-Council to be made authorising the XRB to issue standards on "the social, environmental and economic context in which an entity operates". The Productivity Commission recommended that the disclosure regime be implemented by way of a standard under that section.

128. We do not favour this approach because:

128.1 There are no indications from overseas, to our knowledge, that other countries see this as a function for accounting standards setters.

128.2 While an Order-in-Council could empower the XRB to make climate-related reporting standards, it could not require the XRB to do so because it is an independent Crown entity. If the Government wants certainty, then it would need to control the process.

129. Our view is that it would be better for the Government to introduce legislation for new mandatory (comply-or-explain) disclosure requirements to be implemented by Order-in-Council on the recommendation of the responsible Minister.

Question

35.	Do you have any views about the legislative means for implementing new mandatory (comply-or-explain) disclosure requirements?

J. The role of the Government

130. The Government will have a crucial role in supporting entities to comply with a TCFD disclosure system by providing guidance and education material, and monitoring and reporting on the quality of climate-related financial disclosures.

131. It is almost inevitable that the quality of reporting will initially be of widely varying quality. We also expect that the overall standard of reporting will increase over time, because:

131.1 Preparers will learn by doing, both individually and through collective experience.

131.2 There will be increasing availability of general and sector-specific guidance material produced by international organisations, governments, civil society and commercial providers.

132. Governments can help to accelerate quality disclosure through providing guidance. TCFD guidance material is starting to be produced overseas. For example, the PRI has partnered with think tanks and academic institutions to produce publicly available climate scenario tools,[100] the European Commission has published guidance on reporting climate-related information as a supplement to its guidelines on non-financial reporting[101] and Japan's Ministry of Economy, Trade and Industry has published general and sector-specific TCFD guidance as a first step towards promoting TCFD implementation in Japan.[102]

133. Overseas guidance material will be useful for New Zealand entities, but it will not be sufficient. Our view is that the New Zealand Government has a crucial role in supporting reporting entities through the transition period and raising the quality of reporting over time by:

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[100] The PRI has partnered with think tanks and academic institutions to produce free-to-use climate scenario tools. The PRI also provides information about commercially available climate scenario tools on its website.

[101] European Commission, 2019.

[102] Ministry of Economy, Trade and Industry of Japan, 2018.

133.1 Publishing guidance and education material, which will be particularly important in relation to scenario analysis. Guidance will be required about the potential medium- and long-term impacts of climate change on New Zealand, both nationally and regionally, and a wide range of expertise will be needed.

133.2 Monitoring and reporting on disclosures, including highlighting examples of high quality reporting practices and identifying areas for improvement.

134. A government agency might be able to provide guidance on when it is appropriate to explain rather than comply, and whether there should be an exemption for smaller entities. It could be argued that there will be greater need for government guidance, education, monitoring and reporting if there were to be no exemption.

135. We have not formed views to date about which government agency or agencies should be responsible for guidance, education, monitoring, reporting and any other related functions. The Ministry for the Environment (MfE), the Ministry of Business, Innovation and Employment (MBIE) and the Financial Markets Authority (FMA) are all possibilities. The Climate Change Commission might also have a limited role in relation to scenario analysis guidance.

Questions

36.	Do you consider that there is a role for government in relation to guidance, education, monitoring and reporting?
37.	Are there other activities that a government agency could usefully carry out?
38.	Which government agency or agencies will be best able to carry out these functions?
39.	What would you need to assist you with a full set of TCFD disclosures?

K. Costs relating to climate-related financial disclosures

136. We are seeking information about the cost implications of requiring entities to prepare TCFD reports. Information about total cost is of some interest, however, information about net costs will be much more useful. To illustrate:

136.1 If Company A would have disclosed in full accordance with the TCFD recommendations without being required to do so by the Government, the costs associated with these mandatory disclosure requirements would be zero or close to zero.

136.2 If Company B would have carried out a TCFD analysis for internal governance, strategy and risk management purposes, but not disclosed it, the net costs would be limited to the costs associated with disclosure.

136.3 If Company C would have made climate disclosures, but not in accordance with TCFD, the costs would be the difference between the cost of fully complying with TCFD and the cost of the alternative approach.

137. The net cost approach is more complicated and subjective. However, costs will be significantly overstated if the total cost approach were to be used because there is

increasing momentum to disclose climate-related financial information. Ideally we would be able to make reasonable estimates of the difference in costs under the current system, whereby organisations may be reporting under directors' duties, and a new mandatory disclosure requirement. However, we are relying on submitters to provide us with information that will assist us in making reasonable estimates of dollar amounts.

138. Costs could be materially different for different classes of reporting entity and within classes of reporting entity. For example:

138.1 An asset owner might need to obtain significant amounts of information from entities in which it invests about their climate-related risks and opportunities, in order to adequately understand its own climate-related risks and opportunities.

138.2 A listed primary production company may be more focused on the direct impacts of climate change, such as changes in water availability and increased frequency and severity of extreme weather events.

138.3 In addition to direct impacts, a listed manufacturing company may need to consider indirect impacts such as supply chain risks.

139. We are aware that practical application of the TCFD framework is still new. We do not expect that the information made available through disclosures will be consistent and comparable from day one. Rather, we view this as a dynamic process in which the overall quality will improve and disclosures will converge over time, through learning-by-doing. It is our view that the best way to accelerate this process is if all relevant entities start reporting as soon as is practicable.

Questions

40.	What information do you have about the cost implications relating to these proposals?
41.	What information do you have about costs for specific types of reporting entities?

General Question

42.	Do you have any other comments?

Appendix A: Support for the Task Force on Climate-related Financial Disclosures framework

The Task Force on Climate-related Financial Disclosures (TCFD) recommendations have been widely endorsed by diverse stakeholders. For example:

- Member firms of the Big 4 global accounting networks have expressed support.[103]
- The Investor Agenda states that overall support for the TCFD had grown to 824 organisations, including the world's largest banks, asset managers and pension funds, responsible for assets of US$118 trillion, as of July 2019.[104]
- Climate Action 100+ has asked the world's largest corporate GHG emitters to align themselves with the TCFD recommendations.[105]
- The Global Commission on the Economy and Climate has stated that companies and investors should be required, as a matter of good corporate practice, to disclose their climate-related risks and how their business strategy is compatible with the Paris Agreement, following the TCFD recommendations.[106]
- The High Level Expert Group on Sustainable Finance has recommended that the European Union should endorse the TCFD guidelines and implement them at the EU level. "A first priority should… [be] for the EU to make the voluntary experimentation with TCFD disclosure as short and as effective as possible".[107]
- The Alliance for Corporate Transparency has stated that European legislation ought to clarify the requirement for the disclosure of companies' long term transition plans to a zero-carbon economy and their economic implications, in line with TCFD.[108]
- The CEO of the Principles for Responsible Investment has stated that "it is increasingly important for investors to incorporate emerging mega risks such as climate change into their view of the future. TCFD provides the best available framework for systematically including climate-related risks and opportunities into investment strategy".[109]
- The Investor Group on Climate Change has stated that TCFD will provide a useful framework for the evolution of corporate and investor disclosure for years to come.[110]

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103 See, for example, Deloitte, 2018*;* Ernst & Young Australia, 2017. p 2.; KPMG International, 2017; PwC, 2018. p 1.

104 Investor Agenda*,* 2019. p 15.

105 Climate Action 100+.

106 New Climate Economy. 2018. p 15.

107 High Level Expert Group on Sustainable Finance, 2018. p 24.

108 Alliance for Corporate Transparency, 2019. p.60.

109 PRI, 2019.

110 IGCC, 2017.

Appendix B: Findings of the Corporate Reporting Dialogue on alignment with the Task Force on Climate-related Financial Disclosures

In September 2019, the Corporate Reporting Dialogue released a report mapping the alignment between the three participants' reporting frameworks and standards against the Task Force on Climate-related Financial Disclosures (TCFD) recommendations. The report states that there is strong alignment between the participants' frameworks and standards and the TCFD, and also between each other.[111] It states that:

- the TCFD's seven principles for effective disclosure[112] are harmonious and complementary with the participants' frameworks and standards, with the mapping showing no sources of conflict
- the participants' frameworks are well aligned with the TCFD's 11 recommended disclosures, which are comprehensively covered by the frameworks and standards
- there are no substantive differences between 35 of the TCFD's 50 illustrative example metrics and the three participants' indicators
- overall, 40 of the TCFD's 50 metrics are fully or reasonably covered by the three participants' indicators
- the participants identified three areas of future work that will be discussed and further agreed upon by the participants:
    - developing a taxonomy to guide users on the meaning of different terminologies and methods used within the participants' frameworks and standards, including articulating commonalities and interrelationships
    - building an online, interactive tool that brings together the frameworks and standards, allowing users to understand how they can be used individually and/or together effectively for different reporting purposes
    - convening a formal technical forum for the participants to benefit from further exchange of developments, ideas and plans between and across technical teams, therein promoting greater long-term alignment.

The Chair of the Dialogue, Ian Mackintosh, stated that there has been consistent feedback from a number of constituents that what is really needed is one strong, internationally-recognised and used set of standards for environmental, social and governance (ESG) reporting. However, he also stated that the Better Alignment Project may not be able to resolve this issue in its present form.

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111 Corporate Reporting Dialogue, 2019.

112 TCFD, 2017a. Appendix 3.

Appendix C: Increasing pressure to make climate-related disclosures

Financial institutions are increasingly pressuring companies to disclose climate-related risks.

PwC UK states that prominent investors, such as BlackRock and State Street, have made climate change a top priority and are using their voting power to get investees to disclose against the Task Force on Climate-related Financial Disclosures (TCFD).[113] KPMG notes that many banks, pension funds, asset managers, insurers and others have put growing pressure on companies to apply the TCFD recommendations and hundreds of companies have signed up to doing so.[114]

HSBC Global Asset Management states that it actively encourages better disclosure and that those companies in its portfolios that continually fail to disclose according to TCFD or CDP guidelines may see investors voting against the company.[115]

Vanguard Group's investment stewardship officer stated:

> Our support for [shareholder resolutions at AGMs to require companies to disclose how climate change could affect their business and asset valuations] is not a matter of ideology. It's a matter of economics. To the extent there are significant risks to a company's long-term value proposition, we want to make sure there is long-term disclosure of those risks to the market.[116]

Mercer Investments noted in its annual European Asset Allocation Survey for 2018 that increasing numbers of European pension schemes are considering the financial impact of climate change, up from five per cent in 2017 to 17 per cent in 2018. They state that 'regulatory nudges' are likely to have played a role, with the United Kingdom Pension Regulator, European Commission and TCFD all making statements encouraging investors to consider the physical and policy risks posed by climate change.[117]

There is also growing pressure on investor organisations to disclose their risks. The Investor Agenda's website invites asset owners and managers to commit to making public disclosures based on TCFD guidance by 2020.[118] Seventy four had made that commitment by 11 April 2019. The partner organisations that established the Investor Agenda state that they intend to produce annual reports on the actions taken by investor organisations, and the outcomes achieved.[119]

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113 PwC, 2018. p 1.

114 KPMG. 2018. p 1.

115 The Investor Agenda, 2019. p 14.

116 Kerber, 2017.

117 Mercer Investments, 2018, p 2.

118 The Investor Agenda: theinvestoragenda.org/areas-of-impact/investor-disclosure/.

119 The Investor Agenda: theinvestoragenda.org/.

Appendix D: The benefits of adopting Task Force on Climate-related Financial Disclosures early

EY posted an item on its main website in January 2019:

> Almost all sectors of the economy face major disruption from climate transition and climate impacts over the coming years. Yet, a majority of companies in key economies are still not engaging seriously with these risks, or positioning themselves to take advantage of potential opportunities. With investors paying increasing attention, this is likely to affect their valuation even before the impacts are fully realised.
>
> The earlier companies embark on the journey, the better. Assessing climate-related risks and opportunities can be complex, and may require detailed analysis. However, disclosing information on climate change scenario planning not only addresses the TCFD recommendations, but also provides companies with the new inputs into business strategy and planning, which enhances internal capability and processes.[120]

KPMG's Global Head of Sustainability Services has stated that:

> Pressure on firms to up their game on [climate-related financial] disclosure is growing by the day. Some investors are already taking a hard line approach to demanding disclosure; some countries are considering regulation to mandate it; and some financial regulators have warned that failure to identify and manage climate risk is a breach of a Board's fiduciary duty. In this context, we encourage firms to move quickly. Those that don't could very soon start to lose investors and find the cost of capital and insurance cover escalates quickly.[121]

The Chief Executive Officer of CDP stated:

> There is no doubt that more companies need to act quickly and the pace of change needs to accelerate… disclosure of quality data is crucial to support this progress. It leads to smarter decisions and informs companies and governments of the actions they need to take…
>
> Make no mistake: we are at a tipping point in the low-carbon transition. There are enormous opportunities to be had for the companies that are positioning themselves at the leading edge of this tipping point; and enormous risks for those that haven't yet taken action.[122]

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[120] Nelson, 2019.

[121] Blasco, 2017.

[122] CDP, 2017. p 5.

Appendix E: New Zealand businesses, business organisations and climate-related disclosures

New Zealand businesses

A small number of New Zealand companies have published climate-related information. Meridian Energy was the first New Zealand listed issuer to publish a (standalone) Task Force on Climate-related Financial Disclosures (TCFD) report.[123] Z Energy[124] and Contact Energy[125] are among the companies that have included some climate-related financial information in their annual reports. We understand that other entities are currently in the process of preparing their first TCFD reports.

New Zealand business organisations

Several business organisations with New Zealand membership have been established to promote business leadership and collective action on climate change. This includes trans-Tasman organisations that have New Zealand members, and New Zealand-based organisations.

Although there may be others, we have identified two business organisations that are promoting climate-related financial disclosures (the Investor Group on Climate Change and the Climate Leaders Coalition) and one that recommends that organisations assess their internal systems against the TCFD recommendations (the Sustainable Business Council).

As noted in chapter 4, the Aotearoa Circle has published a legal opinion about directors' legal obligations and climate change.

The Investor Group on Climate Change

The Investor Group on Climate Change (IGCC) is a collaboration of Australian and New Zealand institutional investors and advisors. It has a Working Group on Disclosure that aims to support investors to increase the disclosure of climate-related financial information. The Working Group on Disclosure also promotes investor take-up of the TCFD framework.[126]

The IGCC published reports on the proceedings of workshops held in Australia and New Zealand, including workshops in which climate-related reporting was discussed. This includes a report on the workshop held in Auckland in October 2018 that focused on scaling-up and accelerating low-emissions, climate-resilient investment by New Zealand investors.[127]

123 Meridian, 2019.

124 Z Energy, 2019. pp 37-40.

125 Contact Energy, 2019. pp 33-34.

126 Investor Group on Climate Change. 2018c. p 7.

127 Investor Group on Climate Change, 2018a.

The report notes that financial markets in New Zealand and globally are largely misaligned with climate change imperatives. There is a capital misallocation, due to issues ranging from market short-termism, asset mispricing, lack of information and awareness across financial markets and a number of other systemic barriers.

The report also includes a section about governance, accountability and disclosure.[128] It notes, among other things, that:

- there is a growing awareness and recognition in New Zealand that climate change is a financially-material business and investment issue, increasingly driven by stakeholder values and demand
- understanding and managing climate-related risks and opportunities is seen as central to the discharge of governance, fiduciary and stewardship duties; there is a spectre of directors' personal liability in the future for failure to properly consider and disclose
- local legal experts have indicated that they expect New Zealand will follow the global trend to consider physical and transition impacts of climate change
- arguably there is already a requirement to consider these issues under the Companies Act 1993, Financial Markets Conduct Act 2013, Trustee Act 1956 and in explicit NZX corporate governance guidance; even so, there is a case for financial regulators to clarify or make this explicit, and to send a strong signal to the market
- there has not yet been the same level of debate, or stakeholder pressure in the New Zealand market, compared with overseas
- mandatory climate reporting could be on the horizon; regardless, the threat of adverse ratings or 'hostile analytics' by research houses and ratings agencies provides an incentive to disclose
- the (voluntary) TCFD framework is becoming the internationally accepted approach for disclosure regarding exposure to, and management of, climate change related (physical and transition) risk and opportunities and associated financial impacts.

The IGCC report also notes there were different views among workshop participants on the best approach for New Zealand. While market leaders will respond voluntarily, some thought that regulation may be necessary for 'laggards'. Others supported a transition (learning and experimentation) phase for business, with the 'threat' of regulation. In terms of approach, it was observed that the horse has probably already bolted in favour of the TCFD framework.

The Climate Leaders Coalition

The Climate Leaders Coalition was launched in July 2018 to promote business leadership and collective action on climate change. One hundred and nine chief executives signed the original 2017 joint statement, committing their organisations to measure and publicly report their GHG emissions, set a public emissions reduction target and work with suppliers to reduce their emissions.

In July 2019, the Coalition launched a second, higher ambition pledge, stating that it hopes to transition new and existing signatories to actively:

- measure their greenhouse gas footprint, have the data independently verified by a third party and make the information publicly available

[128] Investor Group on Climate Change, 2018a. pp 9–10.

- adopt targets grounded in science that will deliver substantial emissions reductions so their organisations contribute to New Zealand being carbon neutral by 2050. These targets will be considered in current planning cycles
- assess their climate change risks and publicly disclose them
- proactively support their people to reduce their emissions
- proactively support their suppliers to reduce their emissions.[129]

The Sustainable Business Council

The Sustainable Business Council operates under the auspices of BusinessNZ. It is the New Zealand member of the World Business Council for Sustainable Development that advocates doing business based on sustainability principles.[130] When joining, members make a commitment to reduce their greenhouse gas emissions and build sustainability into their purchasing decisions. They are required to introduce annual reporting practices, which outline their progress on ESG and economic issues.[131]

The Sustainable Business Council has published a guide[132] that presents a "sustainability governance maturity matrix". It "provides a practical diagnostic tool for directors to assess the level of maturity by which sustainability has been integrated into their organisation, and to identify critical steps for improvement."

The guide provides examples of leading New Zealand practice. It also includes a checklist of 50 questions to help support organisations build their sustainable development capability, including:

- eight questions about environmental, social and governance (ESG) reporting (questions 37–44) covering such matters as whether the organisation's internal reporting systems reflect and support the external reporting expectations of key stakeholders, the key messages that should be communicated to stakeholders, the use of formal reporting frameworks (eg, Integrated Reporting and the Global Reporting Initiative (GRI) standards), metrics and obtaining assurance on non-financial disclosures
- four questions about the financial risks of climate change (questions 33–36), including one about reviewing the organisation's practices against the TCFD recommendations. None of the questions prompt organisations to consider publishing TCFD information.

The Aotearoa Circle

The Aotearoa Circle comprises private and public sector leaders committed to priority actions that will halt and reverse the decline of New Zealand's natural resources.

The Aotearoa Circle's first project is the Sustainable Finance Forum, which is looking to develop a roadmap for realigning New Zealand's financial system with sustainability goals. It is planning to release an interim report on sustainable finance in October 2019 and a final report in mid-2020.

The Aotearoa Circle has also commissioned law firm Chapman Tripp to prepare an opinion on directors' legal obligations (as well as trustees and investment managers) and climate change, which was published on 31 October 2019.

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129 Climate Leaders Coalition, 2019.

130 Sustainable Business Council, 2018.

131 www.sbc.org.nz/about/how-we-work.

132 Sustainable Business Council. 2018.

Appendix F: Adaptation reporting and the National Climate Change Risk Assessment under the Zero Carbon Bill

The Climate Change Response (Zero Carbon) Amendment Bill (Zero Carbon Bill) proposes that the Minister for Climate Change[133] will have the power to gather information and require disclosures from certain organisations about how they are preparing for, and responding to, the effects of climate change.

The number of entities likely to be subject to both the proposed adaptation reporting power and this proposed regime on climate-related financial disclosures is relatively small, consisting largely of some lifeline utilities (as defined in Schedule 1 of the Civil Defence Emergency Management Act 2002), public service organisations and council controlled organisations. The Zero Carbon Bill lists the organisations subject to the adaptation reporting power in section 5ZV(4) of the legislation.

Several submissions made by business, industry and local government during the public consultation preceding the introduction of the Zero Carbon Bill raised concerns about the risks of duplicating existing reporting obligations, and recommended that there was merit in aligning the adaptation reporting power with existing reporting frameworks. Some submitters specifically referred to the Task Force on Climate-related Financial Disclosures (TCFD) framework.

The Final Report of the Environment Committee, published on 21 October 2019 recommended aligning the TCFD framework and adaptation reporting power.[134] Revisions to the Zero Carbon Bill arising from this recommendation would make it clear that organisations may repurpose disclosures made using the TCFD framework to answer information requests made under the adaptation reporting power. This would reduce duplication and increase efficiency. Alignment of both reporting obligations may encourage organisations subject to the adaptation reporting power to make climate-related financial disclosures.

The Zero Carbon Bill would also require a National Climate Change Risk Assessment (NCCRA) to assess the current and future risks and opportunities to New Zealand from the impacts of climate change. The NCCRA as proposed will focus on climate change risks and opportunities at the national scale.[135] The first NCCRA is scheduled to be completed by mid-2020. Information gathered under the adaptation reporting power will be available for subsequent NCCRAs. Each NCCRA will be followed by a National Adaptation Plan.

Although we are not seeking submissions on the adaptation reporting power through this discussion document, we are interested in hearing about how to best align adaptation

[133] In its report to the House (21 October 2019), the Environment Select Committee recommended that the Climate Change Commissions should also have this power. New Zealand Parliament, 2019. At the time of publishing the Bill is awaiting its second reading.

[134] New Zealand Parliament, 2019.

[135] Ministry for the Environment, 2019a.

reporting prescribed in the Zero Carbon Bill with the climate-related financial disclosure obligations proposed in this discussion document. See question 8.

Appendix G: Audit and assurance standards and their application to climate-related disclosures

There are two forms of assurance: reasonable assurance and limited assurance.

Reasonable and limited assurance

Under a **reasonable assurance engagement**, the practitioner aims to reduce the risk to an acceptably low level that disclosed information is free from material misstatement as the basis for a positive form of expression of the practitioner's conclusion; eg, "We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our opinion." The risk is never reduced to nil.

A **limited assurance engagement** is less thorough and detailed than a reasonable assurance engagement. The practitioner collects less evidence but sufficient for a negative expression of the practitioner's conclusion; eg, "Based on the work performed, as described in the report, nothing has come to our attention to indicate that…". The practitioner normally achieves this by performing different or fewer tests than required for reasonable assurance or using smaller sample sizes for the tests performed.

The External Reporting Board has issued standards that can be used in relation to auditing of or assuring climate-related financial disclosures. Those standards, which are the New Zealand equivalents of standards issued by the International Auditing and Assurance Standards Board (IAASB), are discussed below.

IAASB auditing standards

Auditing standards can apply to climate-related disclosures, depending on the circumstances. Any material disclosures about climate-related risk and any financial impact reflected in the financial statements would be audited as part of an annual audit.

Auditors read and consider other information presented in the annual report other than the financial statements. Auditors need to respond appropriately if they identify material inconsistencies, or the other information appears to be materially misstated. This is a requirement under ISA 720 (NZ) (Revised): *The Auditor's Responsibility Relating to Other Information*.[136]

Auditors may also consider climate-related risks as part of their risk assessment, applying ISA (NZ) 315 (Revised): *Identifying and Assessing Risks of Material Misstatement through Understanding the Entity and its Environment*, and/or the relevance of such risks to accounting estimates under ISA (NZ) 540: *Auditing Accounting Estimates and Related Disclosures*.[137]

136 AASB & AUASB, 2018. p 10.

137 PwC Australia, 2019.

IAASB assurance engagement standards

Two New Zealand equivalents of international assurance engagement standards can be used in relation to reasonable or limited assurance of climate-related disclosures:

- ISAE (NZ) 3000 (Revised): *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* is a general standard for the assurance of non-financial information. It will usually be the applicable standard if climate-related disclosures are made outside the financial statements, for example in a sustainability report.
- ISAE (NZ) 3410: *Assurance Engagements on Greenhouse Gas Statements* is a standard specifically relating to greenhouse gases and energy use. It can be used for simple engagements (eg, electricity used in an office) and complex engagements (eg, emissions by several entities in a supply chain).[138]

[138] Chartered Accountants Australia and New Zealand, 2013. p 9.

How to give your views

The Government welcomes your feedback on this consultation document. The questions throughout the document and repeated below are a guide only. You do not have to answer all the questions, and all comments are welcome.

To ensure others clearly understand your point of view, you should explain the reasons for your views and give supporting evidence if needed.

You can make a submission in two ways.

1. Use our online submission tool, available at www.mfe.govt.nz/consultations/climate-related-financial-disclosures. **This is our preferred way to receive submissions.**
2. Write your own submission. Include:

- the title of the consultation: "Climate-related financial disclosures - Understanding your business risks and opportunities related to climate change"
- your name or organisation
- your postal address or email address
- your telephone number.

If you are emailing your submission, send it to **crfd@mfe.govt.nz** as a PDF or Microsoft Word document (2003 or later version).

If you are posting your submission, send it to: Climate-related financial disclosures consultation, Ministry for the Environment, PO Box 10362, Wellington 6143.

Submissions close at 5pm on Friday, 13 December 2019.

For more information

Please direct any queries to: Email: crfd@mfe.govt.nz Postal: Ministry for the Environment, PO Box 10362, Wellington 6143.

Publishing and releasing submissions

All or part of any written submission (including names of submitters) may be published on the Ministry of Business, Innovation and Employment's website, www.mbie.govt.nz, or the Ministry for the Environment's website, www.mfe.govt.nz. Unless you clearly specify otherwise in your submission, the Ministries will consider that you have agreed to have your submission and your name posted on its website.

Contents of submissions may be released to the public under the Official Information Act 1982, if requested. Please let us know if you do not want some or all of your submission released, stating which part(s) you consider should be withheld and the reason(s) for withholding the information.

Under the Privacy Act 1993, people have access to information held by agencies about them. Any personal information you send to the Ministries with your submission will only be used in relation to matters covered by this document. In your submission, please indicate if you prefer we do not include your name in the published summary of submissions.

Consolidated list of questions

Chapter 1

Q.1 Is the TCFD reporting framework the most appropriate framework for New Zealand?

Q.2 Do you agree with the conclusions we have drawn at the end of chapter 1?

Chapter 2

Q.3 Do you agree with the objective as set out above?

Q.4 Should other objectives also be considered?

Q.5 Do you agree with the problem definition? Are there other aspects we should consider?

Chapter 3

Q.6 What are the implications of section 211 of the Companies Act 1993 for the disclosure of material climate-related information in annual reports?

Q.7 What are the implications of the NZX Listing Rules for the disclosure of material climate-related information by (a) equity issuers, and (b) debt issuers?

Q.8 How should proposed adaptation reporting under the Climate Change Response (Zero Carbon) Amendment Bill and the climate-related financial reporting disclosures proposed in this discussion document best work together?

Chapter 4

Q.9 Do directors' legal obligations in New Zealand result in consideration, identification, management and disclosure of climate-related risks?

Q.10 Do you agree with the legal opinion prepared for the Aotearoa Circle?

Chapter 5

Q.11 Do you favour the status quo or new mandatory disclosures?

Q.12 If a mandatory approach is adopted, do you agree with the Productivity Commission that a mandatory (comply-or-explain) principles-based disclosure system should be adopted?

Q.13 If the status quo is retained, how can government and investors be confident that risks would be routinely considered in business and investment decisions?

Q.14 Do you consider the TCFD framework to be best practice in relation to climate-related financial disclosures?

Q.15 What are your views about whether the TCFD's recommended disclosures will provide useful information to institutional investors and other users?

Q.16 Do you think the proposed disclosure system will encourage disclosing entities to make better business decisions?

Q.17 Is the definition of materiality in the IASB Conceptual Framework for Financial Reporting appropriate for this purpose?

Q.18 What comments do you have on our proposal that non-disclosure would only be allowable on the basis of the entity's analysed and reported conclusion that they see themselves as not being materially affected by climate change, with an explanation as to why?

Q.19 What are your views about providing a transition period where incomplete disclosures would be permissible?

Q.20 If there is to be a transition period, what are your views on it being for one financial year?

Q.21 Should all of the following classes of entity be subject to mandatory (comply-or-explain) climate-related financial disclosures: listed issuers, registered banks, licensed insurers, asset owners and asset managers?

Q.22 Should any other classes of entity be required to disclose?

Q.23 Should there be an exemption for smaller entities?

Q.24 If there were to be an exemption:

(a) What criterion or criteria should be used: annual revenue, total assets, a combination of the two, or some other measure or measures?

(b) Which dollar amount or amounts would be appropriate?

(c) Should there be a requirement to adjust for inflation from time-to-time?

Q.25 What are your views about our proposal to have a stand-alone climate-related financial disclosure report within the entity's annual report?

Q.26 What are your views about providing for disclosing entities to include cross-references or mappings within that report to assist users to find relevant information?

Q.27 What are your views about requiring explanations for non-compliance to be included in the annual report?

Q.28 Should there be mandatory assurance in relation to climate-related financial disclosures?

Q.29 Which classes of information should be subject to assurance if it were to be mandatory?

Q.30 Do you consider that assurance should be required in relation to GHG emissions disclosures?

Q.31 Is limited assurance the only practicable approach in relation to TCFD disclosures, or is reasonable assurance also feasible?

Q.32 If we do not introduce mandatory assurance when a disclosure system comes into effect, should it be reconsidered in the future?

Q.33 What comments do you have on the proposal to bring the disclosure system into force for financial years commencing six months on or after the date that the regulation is introduced?

Q.34 Do you consider that smaller entities should be provided with a longer transition if there were to be no exemption for them? If so, how long should that additional period be?

Q.35 Do you have any views about the legislative means for implementing new mandatory (comply-or-explain) disclosure requirements?

Q.36 Do you consider that there is a role for government in relation to guidance, education, monitoring and reporting?

Q.37 Are there other activities that a government agency could usefully carry out?

Q.38 Which government agency or agencies will be best able to carry out these functions?

Q.39 What would you need to assist you with a full set of TCFD disclosures?

Q.40 What information do you have about the cost implications relating to these proposals?

Q.41 What information do you have about costs for specific types of reporting entities?

Q.42 Do you have any other comments?

Glossary

Alliance for Corporate Transparency	The Alliance for Corporate Transparency project analyses how European companies disclose information necessary for understanding their impact on society and the environment, as required by the EU Non-financial Reporting Directive. It serves as guidance to companies and regulators, and provides data to substantiate the discussion on the standardisation of sustainability disclosure, which is in turn also a prerequisite for sustainable finance.
Aotearoa Circle	The Aotearoa Circle comprises private and public sector leaders committed to priority actions that will halt and reverse the decline of New Zealand's natural resources.
Asset manager	Asset managers, also called investment managers, are hired by clients to invest assets on their behalf. Asset managers act as fiduciaries and invest within the guidelines specified by their clients. The clients bear most of the risks to which an asset manager's investments are exposed.
Asset owner	Asset owners are a diverse group that includes mutual funds, pension funds, endowment funds, hedge funds and insurance companies. They invest on behalf of members in accordance with a mandate or investment strategy set out by their oversight body or their beneficiaries. Also known as an institutional investor.
Auditing and Assurance Standards Board (AUASB)	The Auditing and Assurance Standards Board is responsible for developing standards and related guidance for Australian auditors and providers of other assurance services.
Australian Accounting Standards Board (AASB)	The Australian Accounting Standards Board is responsible for developing, issuing and maintaining Australian accounting standards and related pronouncements.
Australian Securities and Investments Commission (ASIC)	The Australian Securities and Investments Commission is an independent government body that regulates and enforces Australian company and financial services laws.
Australian Securities Exchange (ASX)	The Australian Securities Exchange is Australia's primary securities exchange.
CDP	CDP (formerly the Carbon Disclosure Project) is a not-for profit organisation that is backed by a significant number of institutional investors. It collects, assesses, reports and discloses information on the environmental performance of corporates, cities and regions.
Ceres	Established in 1989 as the Coalition for Environmentally Responsible Economies, Ceres is a US-based sustainability organisation that works with investors and companies, focusing on climate change, water scarcity and pollution, human rights abuses and other sustainability issues.

Chartered Accountants Australia and New Zealand (CA ANZ)	Chartered Accountants Australia and New Zealand is a professional accounting body with about 120,000 members worldwide, including 30,000 New Zealand members.
Climate Action 100+	Launched in December 2017, Climate Action 100+ is an investor initiative aimed at ensuring that the world's largest corporate greenhouse gas (GHG) emitters take necessary action on climate change. The Climate Action 100+ agenda has been backed by more than 320 investors with US$33 trillion in assets under management.
Climate Change Commission	The Climate Change Commission will be established as an independent Crown entity under the Zero Carbon Bill, to guide New Zealand's transition. As well as fulfilling monitoring functions, it will provide expert advice to the government on emissions budgets and progress towards our emissions reduction target.
Commonwealth Climate and Law Initiative (CCLI)	The CCLI is a research, education and outreach project focused on Australia, Canada, South Africa and United Kingdom. The CCLI examines the legal basis for directors and trustees to take account of physical climate change risk and societal responses to climate change under prevailing statutory and common laws.
Comply-or-explain	'Comply-or-explain' is an approach used in corporate governance regulation and financial supervision. Rather than imposing binding laws, regulators set out a code, which entities may either comply with, or if they do not comply, explain why they do not.
Corporate Reporting Dialogue	The Corporate Reporting Dialogue is a platform, convened by the International Integrated Reporting Council, to promote greater coherence, consistency and comparability between corporate reporting frameworks, standards and related requirements. The other members are four sustainability and climate-related reporting standards and frameworks bodies (CDP, Climate Disclosure Standards Board, Global Reporting Initiative and Sustainability Accounting Standards Board), the International Accounting Standards Board and the International Organisation for Standardisation. The Financial Accounting Standards Board, which sets accounting standards in the United States, participates as an observer.
Environmental, social and governance (ESG) reporting	ESG reporting is a generic term for reporting systems that are aimed at providing investors with information to assist in evaluating corporate behaviour and future financial performance. Although there is no internationally agreed definition, ESG reporting can cover such matters as: • waste and pollution, resource depletion, deforestation, GHG emissions and climate change

	• employee relations and diversity, working conditions, health and safety, and local communities • board structure and performance, director and executive remuneration, executive or company diversity, donations and political lobbying.
Extended External Reporting (EER)	EER encapsulates many forms of reporting, including, but not limited to, integrated reporting, sustainability reporting and non-financial reporting about environmental, social and governance matters. Such reports may be prepared under legislative or regulatory requirements and established frameworks, standards and guidance issued by international or national standard setters.
External Reporting Board (XRB)	The External Reporting Board is an independent Crown entity constituted under the Financial Reporting Act 2013. It issues legally binding financial reporting standards and auditing, assurance and ethical standards.
Financial Markets Conduct Act 2013	The Financial Markets Conduct Act 2013 provides the foundation for the regulation of capital markets and financial services in New Zealand.
Financial Reporting Act 2013	The Financial Reporting Act 2013 provides the foundation for general purpose financial reporting in New Zealand.
Financial Stability Board	The Financial Stability Board monitors the global financial system and makes recommendations about how to improve it. Its members comprise: • central banks, financial sector regulators and treasuries from 25 jurisdictions • four international financial institutions • six international standard-setting and other bodies.
G20	The G20 is an international forum of governments and central bank governors from 19 countries and the European Union. It aims to address international financial stability issues.
General purpose financial report/reporting (GPFR)	A general purpose financial report is a report that is prepared in accordance with generally accepted accounting practice. The purpose of GPFR is to aid investors and other users that need financial information for their decision-making but are unable to demand it.
Generally accepted accounting practice (GAAP)	Generally accepted accounting practice is a term used internationally to describe the body of regulation that governs how general purpose financial reports must be prepared. In New Zealand, GAAP comprises the financial reporting standards, conceptual frameworks and other authoritative notices issued by the External Reporting Board (XRB).

Greenhouse gas (GHG) emissions	Greenhouse gas emissions are emissions into the atmosphere of gases (eg carbon dioxide, methane and nitrous oxide) that contribute to the greenhouse effect.
Global Commission on the Economy and Climate	This Commission is an international initiative that examines how countries can achieve economic growth while dealing with the risks posed by climate change. It comprises former heads of government and finance ministers, and leaders in the fields of economics, business and finance.
Global Reporting Initiative (GRI)	The Global Reporting Initiative is an independent organisation that pioneered sustainability reporting in 1997. Its sustainability reporting framework is aimed at helping businesses and governments understand and communicate their impact on critical sustainability issues, such as climate change, human rights and corruption.
GRI Standards	GRI Standards are issued by the Global Sustainability Standards Board. They describe approaches to materiality and management reporting, and provide disclosure guidance for a comprehensive range of sustainability issues.
High Level Expert Group on Sustainable Finance (HLEG)	The HLEG was established by the European Commission in December 2016. It was asked, among other things, to provide advice to the Commission on how to steer the flow of public and private capital towards sustainable investments.
Institutional investor	See *asset owner*.
Integrated reporting	An integrated report provides information about how an entity's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation of value in the short, medium and long term.
Intergovernmental Panel on Climate Change (IPCC)	The Intergovernmental Panel on Climate Change is the United Nations body that assesses and reports on the science related to climate change.
International Accounting Standards Board (IASB)	The IASB is an independent standards setting body that develops and issues International Financial Reporting Standards (IFRS). 144 countries, including New Zealand, require public companies to report in accordance with IFRS.
International Integrated Reporting Council (IIRC)	The IIRC is a global coalition of regulators, investors, companies, standard setters, professional accounting bodies and NGOs. Its mission is to establish *integrated reporting* and thinking within mainstream business practice as the norm in the public and private sectors.
Investment manager	See *asset manager*.
Investor Agenda	The Investor Agenda provides guidance for investors on how to transition financial capital to low-carbon opportunities, and a mechanism to report on their progress. The aim is to make it easy for investors, businesses, policymakers and other stakeholders to see which organisations have taken voluntary action in relation to climate change, and which initiatives they

	have committed to in the areas of investment, corporate engagement, disclosures and policy advocacy.
Investor Group on Climate Change (IGCC)	The Investor Group on Climate Change is a collaboration of Australian and New Zealand institutional investors and advisors, managing over AU$2 trillion in assets. It focuses on the impact that climate change has on the financial value of investments.
Limited assurance	See Appendix 7.
Listed issuer	A debt or equity issuer that is listed on the NZX.
Materiality	Materiality, relevance and faithful representation are the three fundamental qualitative characteristics of useful financial information. The *IASB Conceptual Framework for Financial Reporting* states that "information is material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general purpose financial reports make on the basis of those reports."
MBIE	The Ministry of Business, Innovation and Employment.
MfE	The Ministry for the Environment.
Nationally Determined Contributions (NDCs)	Nationally Determined Contributions are the commitments that signatory countries to the Paris Agreement made to reduce national emissions and adapt to the impacts of climate change.
National Climate Change Risk Assessment (NCCRA)	The Climate Change Response (Zero Carbon) Amendment Bill would require a regular National Climate Change Risk Assessment to be carried out to assess the risks and opportunities to New Zealand arising from the physical impacts of climate change.
Network for Greening the Financial System (NGFS)	The NGFS is a network of central banks and supervisors comprising 34 members (including the Reserve Bank of New Zealand) and five observers. Its purpose is to help strengthen the global response to meet the goals of the Paris Agreement and enhance the role of the financial system to manage risks and mobilise capital for green and low-carbon investments.
Non-financial reporting	Non-financial reporting is information (both quantitative and qualitative), other than the financial statements and accompanying notes, that appear in an entity's annual report.
NGO	Non-governmental organisations are usually not-for-profit organisations that are independent of governments and international governmental organisations. They are active in such areas as human rights, education, health care, public policy, social policy and environmental protection.
NZX	NZX Limited operates New Zealand's primary securities exchange.
NZX Code	The NZX Corporate Governance Code covers eight principles that reflect internationally accepted corporate governance

	practices. They are intended to protect the interests and provide long term value to shareholders while also seeking to reduce the cost of capital for issuers.
OECD	The Organisation for Economic Co-operation and Development has 36 member countries, including New Zealand. Its mission is to promote policies that will improve the economic and social well-being of people around the world.
Paris Agreement	The Paris Agreement was adopted within the United Nations Framework Convention on Climate Change in 2015. It deals with GHG emissions mitigation, adaptation and finance. The long-term goal is to keep the increase in global average temperature to well below 2°C above pre-industrial levels, and aim to limit the increase to 1.5°C.
Principles for Responsible Investment (PRI)	The Principles for Responsible Investment Association was launched in 2006 as an investor initiative in partnership with the UN Environment Programme Finance Initiative and the UN Global Compact. The PRI works with an international network of signatories to put its six principles of responsible investment into practice. The aim is for investor signatories to understand the investment implications of environmental, social and governance (ESG) factors and incorporate them into their investment and ownership decisions.
Reasonable assurance	See Appendix 7.
Scenario analysis	Scenario analysis is a process of analysing possible future events by considering alternative possible outcomes. Scenario analysis enhances the flexibility or resilience of strategic plans by considering and better understanding how a business might perform under different future states.
Stranded (fossil fuel) assets	Assets that have suffered from unanticipated or premature write-downs, devaluation or conversion to liabilities.
Sustainability Accounting Standards Board (SASB)	The SASB was founded in 2011 to develop and disseminate sustainability accounting standards that aim to help businesses to identify, manage and communicate financially material sustainability information to their investors. The SASB's standards are aligned with the United States of America's generally accepted accounting practice (GAAP).
Task Force on Climate-related Financial Disclosures (TCFD)	The TCFD was established by the Financial Stability Board in 2015, at the request of the G20, with the purpose of developing voluntary, consistent climate-related financial risk disclosures for use by companies in providing information to investors, lenders, insurers and other stakeholders.

TCFD Recommendations Report[139]	*Final report: Recommendations of the Task Force on Climate-related Financial Disclosures* sets out a framework to help businesses disclose climate-related financial information.
TCFD Implementation Report[140]	*Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures* provides more detailed information about compliance with the TCFD's disclosure framework, including directions, additional recommendations and guidance material.
TCFD Technical Supplement[141]	*Technical Supplement: The Use of Scenario Analysis on Disclosure of Climate-Related Risks and Opportunities* provides guidance about how to use scenario analysis, and provides information about publicly available climate-related scenarios.
World Business Council for Sustainable Development	The World Business Council for Sustainable Development is an association of private sector organisations comprising 200 businesses with combined revenue of US$8.5 trillion and 19 million employees. It aims to accelerate the transition to a sustainable world through six work programmes. It operates a global network of 70 national business councils, including New Zealand's Sustainable Business Council.

[139] TCFD Final Recommendations Report.

[140] TCFD Implementing the Recommendations Report.

[141] TCFD Final Supplement.

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