

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

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill that will amend the Financial Markets Conduct Act 2013, the Financial Reporting Act 2013, and the Public Audit Act 2001. The Bill is introduced under Standing Order 267(1)(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. This single broad policy is to broaden non-financial reporting by requiring and supporting the making of climate-related disclosures by certain FMC reporting entities and supporting related matters.

The potentially disastrous effects of climate change for biodiversity and humanity are well documented. In 2018, the Intergovernmental Panel on Climate Change noted that human activities have already caused global warming of 1°C above pre-industrial conditions, and are on track to cause at least 1.5°C warming between 2030 and 2052. Greenhouse gas concentration will continue to increase via positive feedbacks, such as melting permafrost and the release of stored methane, resulting in further delay of temperature-reducing responses.

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

The Bill will contribute to this in New Zealand by introducing mandatory climate-related disclosure requirements for certain FMC reporting entities that, under section 461K of the Financial Markets Conduct Act 2013, are considered to have a higher level of public accountability, including listed issuers, large banks, large non-bank

deposit takers, and large insurers, and large managers in respect of managed investment schemes. The disclosures will be aligned with the framework provided by the Task Force on Climate-related Financial Disclosures and made in accordance with standards issued by the External Reporting Board (the **XRB**).

The specific purposes of the Bill are—

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

The Bill also provides for the XRB to issue guidance on a wider range of environmental, social, governance (**ESG**), and other non-financial matters that can be applied by entities on a voluntary basis. The purposes of these provisions are—

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

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=30>

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment and the Ministry for the Environment produced a regulatory impact assessment on 13 July 2020 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/regulatory-impact-statements/climate>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for—

- most of *Part 2*, which amends the Financial Reporting Act 2013, and a consequential amendment made by *section 43(1)* to come into force on the day after Royal assent; and
- the rest of the Bill to come into force on a date or dates set by Order in Council, but no later than 1 year after Royal assent (except in the case of *subpart 1 of Part 3*, which amends the Public Audit Act 2001) or 2 years after Royal assent (in the case of that subpart).

Part 1 of the Bill amends the Financial Markets Conduct Act 2013. The timing of these amendments depends on the External Reporting Board (the **XRB**) issuing climate standards under the Financial Reporting Act 2013 (as amended by *Part 2* of the Bill) and this is the reason for commencement by Order in Council with a mandatory backstop commencement of 1 year after Royal assent. Parts of *Part 1*, and *subpart 1 of Part 3*, depend on preparatory work required to put in place the assurance regime for climate statements that entities (**climate reporting entities**) will be required to prepare under *new Part 7A* of the Financial Markets Conduct Act 2013. This is the reason for commencement by Order in Council with a mandatory backstop commencement of 2 years after Royal assent.

See also *new clauses 92 to 94* inserted into Schedule 4 of the Financial Markets Conduct Act 2013 by *clause 20(2)* and *Schedule 1* of this Bill. These are transitional and application provisions. The effect of these clauses is that—

- a climate reporting entity will not be required to prepare climate statements or group climate statements (**climate statements**) under *new Part 7A* for itself, its group, or in relation to registered schemes that it manages, nor to start keeping associated records (**CRD records**), until accounting periods of the entity or scheme that start on or after the XRB first issues a climate standard that applies to the entity or scheme;
- duties imposed on climate reporting entities in *new Part 7A* relating to assurance engagements will not apply until a date set by Order in Council or 2 years after Royal assent, whichever is earlier.

Part 1

Amendments to Financial Markets Conduct Act 2013

Clause 3 provides that *Part 1* amends the Financial Markets Conduct Act 2013.

Clause 4 amends the overview in section 5 and *clause 5* amends section 6, which is the main interpretation section.

Clause 6 amends section 351 in relation to listed issuers. Existing section 351(1)(ab) allows regulations to be made that remove certain listed issuers from the list of FMC reporting entities under section 451(1)(d) and provide for replacement or modified financial reporting requirements to apply to those listed issuers. Because a person must be an FMC reporting entity to be a climate reporting entity under the new provi-

sions that this Bill inserts into the Act, *new section 351(1)(ab)(ii)* is inserted so that the regulations may provide for replacement or modified climate-related disclosure requirements for those listed issuers.

New Part 7A

Clause 7 is a key provision, inserting *new Part 7A* into the Act. *New Part 7A* contains climate-related disclosure requirements for certain FMC reporting entities considered to have a higher level of accountability under existing section 461K. These entities are defined in *new section 461O* as climate reporting entities. Broadly, *new Part 7A* provides for climate reporting entities to prepare climate statements in accordance with climate standards issued by the XRB, to obtain an assurance engagement in relation to those statements to the extent that those statements are required to relate to greenhouse gas emissions, to lodge those statements with the Registrar of Financial Service Providers (the **Registrar**), and to keep CRD records.

New Part 7A is in 7 subparts.

Subpart 1 contains the main overview, ongoing application, and interpretation provisions for *new Part 7A*. *New section 461O* defines climate reporting entity for the purposes of identifying the entities to which *new Part 7A* applies, and *new sections 461P* and *461Q* define large and large manager for the purposes of that definition.

Climate reporting entities under *new section 461O(1)* are required to prepare climate statements in respect of themselves, their group, or (for some overseas companies) their New Zealand business or their group's New Zealand business. These entities include—

- listed issuers of quoted equity securities or quoted debt securities;
- certain other persons (for example, registered banks and licensed insurers) if they are large.

“Large” generally means that, as at the balance date of each of the 2 preceding accounting periods, the combined assets of an entity and its subsidiaries were more than \$1 billion. In the case of a licensed insurer, if the insurer is not large on account of assets it will still be large if, in each of its 2 preceding accounting periods, the combined annual gross premium revenue of the insurer and its subsidiaries was more than \$250 million. “Large”, in the case of an entity that is a body corporate incorporated outside New Zealand, looks at whether its New Zealand business, or its group's New Zealand business, is large.

Managers of registered schemes may be climate reporting entities in respect of those schemes under *new section 461O(2)*. (A manager may also be a climate reporting entity under *new section 461O(1)*.) Broadly, managers of registered schemes will be climate reporting entities in respect of those schemes, and required to prepare climate statements for each separate fund of each scheme (or for the scheme itself if any liability of the manager or the scheme is not limited to a separate fund), if they are “large managers”; the size of individual schemes or funds is immaterial. The definition of large manager in *new section 461Q* looks at whether the assets of schemes

managed by the manager and schemes managed by authorised bodies providing that service under the manager's licence total more than \$1 billion as at the balance date of each of the manager's 2 preceding accounting periods. If a manager is a large manager, the authorised bodies will also be large managers.

Because large and large manager are defined by reference to accounting periods, an entity may be a climate reporting entity in relation to some accounting periods but not in relation to other accounting periods.

Subpart 2 of new Part 7A relates to CRD records.

In *subpart 3 of new Part 7A*,—

- *new sections 461W to 461Z* contain the obligations of climate reporting entities to prepare climate statements (discussed broadly under the notes for *subpart 1* above):
- *new section 461ZA* sets out exceptions to the obligations to prepare climate statements under any of *new sections 461W to 461Z* and *new section 461ZB* sets out conditions that an entity must meet to rely on an exception. Exceptions relate to whether the entity reasonably determines, in accordance with applicable climate standards, that the relevant activities (for example, the activities of the entity or group) are not materially affected by climate change:
- *new section 461ZC* contains offences for knowingly failing to comply with climate standards issued by the XRB.

Subpart 4 of new Part 7A relates to assurance engagements that climate reporting entities are required to obtain under *new Part 7A*. *New Part 7A* contains 2 circumstances where an entity would be required to obtain an assurance engagement: one is in *new section 461ZB* (and applies if an entity wishes to rely on an exception); the other is in *new section 461ZD*, which relates to climate statements to the extent that those statements are required to disclose greenhouse gas emissions.

An assurance engagement under *new Part 7A* must be undertaken by a qualified CRD assurance practitioner: *see new section 461ZE*, which defines qualified CRD assurance practitioner, and *new sections 461ZG to 461ZM*, which relate to the carrying out of an assurance engagement, access to information by an assurance practitioner, the assurance practitioner's report, and associated offences. Among other things,—

- a qualified CRD assurance practitioner must be a natural person and a member, and subject to a code of conduct and disciplinary process, of a CRD assurance body approved by the FMA under *subpart 6 of new Part 7A*:
- there is provision for a qualified CRD assurance practitioner to be a partnership (*see new section 461ZF*):
- assurance engagements must be carried out in accordance with, and the assurance practitioner's report must comply with, applicable auditing and assurance standards (*see new sections 461ZG and 461ZH(1)*).

In *subpart 5 of new Part 7A*,—

- *new section 461ZN* requires a climate reporting entity to lodge copies of climate statements and the assurance practitioner's report on those statements with the Registrar:
- *new section 461ZO* requires a climate reporting entity (other than a manager in respect of climate statements prepared in relation to registered schemes) to provide information in its annual report about where climate statements, etc, can be accessed.

In *subpart 6 of new Part 7A*,—

- *new section 461ZP* empowers the FMA to approve as CRD assurance bodies entities whose members are eligible to be qualified CRD assurance practitioners for the purposes of *new Part 7A*, and to impose such conditions on those approvals as the FMA thinks fit:
- *new section 461ZQ* contains provisions relating to the cancellation or suspension of recognition of a CRD assurance practitioner by a CRD assurance body, and the cancellation or suspension of approval of an entity as a CRD assurance body by the FMA:
- *new section 461ZR* relates to what happens to assurance engagements that are underway when a CRD assurance body has its approval cancelled or suspended.

Subpart 7 of new Part 7A relates to civil liability for certain contraventions of *new Part 7A*.

Other amendments

Clauses 8 to 19 contain amendments relating to enforcement, regulations, and exemptions that are consequential on, or related to, the insertion of *new Part 7A*. These amendments include,—

- in *clause 8*, extending the ability of the FMA to make stop orders under section 462 if it is satisfied that an issuer of financial products, or a person that provides a licensed market service, has contravened any provision of *new Part 7A*:
- in *clause 9*, extending the ability of the FMA to make direction orders under section 468 if it is satisfied that, by engaging in any conduct, a person has contravened, or is likely to contravene, certain provisions of *new Part 7A*:
- in *clause 10*, extending the ability of the FMA to make an order under section 470 (relating to the ability to distribute, or otherwise make an offer under, a simplified disclosure PDS) if satisfied that the offeror or issuer has failed to comply with any provision of *new Part 7A* at any time during the 12 months before the order is made:
- in *clause 11*, extending the ability of the FMA to make an order under section 474 that clause 19 of Schedule 1 of the Act (which contains an exclusion for certain offers from disclosure under Part 3 of the Act) does not apply in respect

of an issuer if satisfied that the issuer has failed to comply with any provision of *new Part 7A* at any time during the 12 months before the order is made:

- in *clause 14*, extending the defence for directors in section 501 to directors who, under section 534 (as amended by *clause 15(2)*), are treated as contravening certain provisions of *new Part 7A*:
- in *clause 16*, providing for regulations to be made for certain purposes under *new Part 7A*:
- in *clause 18*, extending the FMA's powers to grant exemptions to include a power to grant exemptions from compliance with any provision or provisions of *new Part 7A*. *Clause 17* makes a related amendment:
- in *clause 19*, amending section 561A so that exemptions granted by the FMA under its exemption power relating to *new Part 7A* may apply to certain earlier accounting periods (as they can now in relation to FMA-granted financial reporting exemptions).

The amendments in *clauses 12, 13, and 15(1), (3), and (4)* are consequential.

Clause 20 amends Schedule 4 of the Act, which relates to transitional, savings, and related matters. *New Part 7* is inserted into that schedule (*see above under clause 2* for notes on that new Part).

Part 2 Amendments to Financial Reporting Act 2013

Clause 21 provides that *Part 2* amends the Financial Reporting Act 2013.

There is 1 key group of amendments to the Act, and a few smaller themes. The key group of amendments relates to the XRB's new, additional, functions relating to the issue of climate standards for the purpose of any enactment that requires climate statements or other information to be prepared in accordance with those standards.

Clause 22 amends the purpose in section 3 and *clause 23* amends the overview of financial reporting duties in section 4 to, in each case, refer to climate-related disclosure duties under the Financial Markets Conduct Act 2013.

Clause 24 amends section 5, which relates to interpretation. A technical amendment is made to the definition of applicable auditing and assurance standard, to ensure that definition applies to assurance engagements in accordance with the standard. Definitions of climate standard, climate statements, and group climate statements are inserted, and the definition of reporting entity replaced so that it applies to entities in relation to climate statements as well as in relation to financial statements. Climate standards are included in the Act's definition of standard by *clause 24(4)*.

Clause 25(1) amends section 12 to add functions relating to the issue of climate standards to the existing functions of the XRB.

The effect of *clause 25(2)* is to extend the XRB's functions relating to the issue of auditing and assurance standards for purposes relating to the rules or codes of ethics of CRD assurance bodies.

Clause 26 amends section 14(2) to add knowledge of, or experience in, sustainable development to the list of qualifications that a person may have in order to be eligible to be recommended by the Minister of Commerce and Consumer Affairs (the **Minister**) for appointment as a member of the XRB.

Clause 27 replaces a heading consequential on the addition of the concept of climate standards into the Act.

Clause 28 inserts *new section 19A*, which relates to guidance, and *new sections 19B to 19D*, which relate to climate standards.

New section 19A will allow the XRB to issue non-binding guidance on certain non-financial matters.

New section 19B sets out the purpose of climate standards and climate-related disclosures.

New section 19C contains general provisions relating to climate standards (and mirrors section 15 of the Act, which applies to financial reporting standards).

New section 19D imposes an obligation on the XRB that will result in requirements for entities' climate statements in certain circumstances (*see new section 19D(2)*).

Clause 29 amends section 27 to give section 27(2) effect for climate standards, and to remove an unnecessary reference to accounting.

Clauses 30 and 31 make technical changes related to the structure of the Act (based on the introduction of climate standards into the Act).

Clause 32 amends section 48 to—

- require the Minister to review the monetary amounts related to the definitions of “large” and “large manager” in *new Part 7A* of the Financial Markets Conduct Act 2013; and
- require reviews of the monetary amounts in section 48 to be completed within 6, rather than 8, years of the last review. (The first review under that section is due no later than 1 April 2022.)

Clause 33 amends section 49 consequential on the amendment to section 48 made by *clause 32*.

Clause 34 amends section 51, to include climate reporting entities and CRD assurance bodies in the list of persons who may be required by regulations to pay 1 or more prescribed levies.

Clause 35(1) makes a technical amendment to the Schedule of the Act, which relates to existing transitional, savings, and related provisions, and *clause 35(2)* inserts a new Part into that schedule containing transitional matters for the Act that are related to this Bill.

Part 3 Amendments to other Acts

Subpart 1—Public Audit Act 2001

Clause 36 provides that *subpart 1 of Part 3* amends the Public Audit Act 2001.

The amendments are related to *new section 461ZE(2)* of the Financial Markets Conduct Act 2013 (inserted by *clause 7* of the Bill), which defines qualified CRD assurance practitioner.

Clause 37 amends section 4, which relates to interpretation.

Clause 38 inserts *new section 15B*, which—

- provides for the Auditor-General to be, and act as, the CRD assurance practitioner for assurance engagements required for the purposes of *new Part 7A* of the Financial Markets Conduct Act 2013 by climate reporting entities that are public entities; and
- requires the Auditor-General, in carrying out those assurance engagements, to comply with the auditing and assurance standards that apply.

Clause 39 inserts *new section 34A* to provide for the persons that the Auditor-General may appoint to carry out, on the Auditor-General's behalf, those assurance engagements. *New clause 34A(4)* permits the Auditor-General to authorise appointed persons to exercise certain powers of the Auditor-General.

Clause 40 amends section 35 to provide that the Auditor-General must not delegate the power of appointment under *new section 34A*.

Clause 41 makes a technical amendment to section 41 (which relates to liability) that relates to the changes made by this subpart.

Clause 42 makes consequential amendments to section 42, to permit the charging of fees to a public entity for services under *new section 15B* and to allow the Auditor-General to permit a person appointed as an assurance practitioner under *new section 34A* to recover those fees directly.

Subpart 2—Related and consequential amendments

Clause 43 and *Schedule 3* make related and consequential amendments to 3 other Acts.

Hon Dr David Clark

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Climate-related disclosures for certain FMC reporting entities with higher level of public accountability

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Related and consequential amendments

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act **2021**.

2 Commencement

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(1) The following parts of this Act come into force on the day after Royal assent:

(a) **Part 2**, other than **sections 32(1) and 33**:

(b) **section 43(1)**.

(2) The rest of this Act comes into force on a date or dates set by Order in Council.

(3) However,—

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(a) any part of this Act, other than **subpart 1 of Part 3**, that has not come into force by the first anniversary of Royal assent comes into force then:

(b) any part of **subpart 1 of Part 3** that has not come into force by the second anniversary of Royal assent comes into force then.

(4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15

Part 1

Amendments to Financial Markets Conduct Act 2013

3 Principal Act

This Part amends the Financial Markets Conduct Act 2013.

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4 Section 5 amended (Overview)

After section 5(1)(g), insert:

(ga) **Part 7A** provides for climate-related disclosure obligations:

5 Section 6 amended (Interpretation)

(1) In section 6(1), insert in their appropriate alphabetical order:

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applicable climate standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

climate reporting entity has the meaning set out in **section 4610**

climate statements has the same meaning as in section 5(1) of the Financial Reporting Act 2013

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CRD assurance body means an entity approved under **section 4612P**

- CRD records** means the records that a climate reporting entity is required to keep by **subpart 2 of Part 7A**
- group climate statements** has the same meaning as in section 5(1) of the Financial Reporting Act 2013
- large overseas climate reporting entity**, in **Part 7A**, means a body corporate that—
- (a) is incorporated outside New Zealand; and
 - (b) is a climate reporting entity under **section 461O(1)(b) to (e)** (*see section 461P(3) and (4)*)
- Part 7A climate-related disclosure provision** means any of the provisions specified in **section 461ZS(3) or (4)**
- qualified CRD assurance practitioner**, in relation to an assurance engagement under **Part 7A**, has the meaning set out in **section 461ZE**
- separate fund**, in Parts 7 and **7A**, has the meaning set out in section 461A(2)
- (2) In section 6(1), replace the definition of **group** with:
 - group**,—
 - (a) in Part 7 and **subpart 1 of Part 7A**, means a group comprising an FMC reporting entity and its subsidiaries:
 - (b) in **Part 7A** (other than **subpart 1**), means a group comprising a climate reporting entity and its subsidiaries
 - (3) In section 6(1), definitions of **licensed insurer** and **subsidiary**, replace “Part 7” with “Parts 7 and **7A**”.
- 6 Section 351 amended (Regulations modifying this Part or Part 7 for licensed markets)**
- (1) In the heading to section 351, after “7”, insert “**or 7A**”.
 - (2) Replace section 351(1)(ab) with:
 - (ab) providing that section 451(1)(d) does not apply in respect of persons that are listed issuers only in respect of a licensed market or class of licensed markets, and providing for replacement or modified requirements to apply relating to—
 - (i) accounting records and financial reporting:
 - (ii) CRD records and climate-related disclosures (for those listed issuers that would otherwise be climate reporting entities under **section 461O(1)(a)**):
- 7 New Part 7A inserted**
- After Part 7, insert:

Part 7A

**Climate-related disclosures for certain FMC reporting entities with
higher level of public accountability**

Subpart 1—Overview, application, and interpretation

461N Overview	5
(1) This Part provides for climate reporting entities to—	
(a) keep proper records relating to their obligations to make climate-related disclosures; and	
(b) prepare climate statements; and	
(c) to the extent that those statements are required to disclose greenhouse gas emissions, obtain an assurance engagement in relation to those statements; and	10
(d) lodge those statements.	
(2) This Part also contains—	
(a) exceptions that relate to cases where climate change does not materially affect the activities of, for example, an entity or a separate fund of a registered scheme:	15
(b) provisions relating to assurance practitioners for assurance engagements under this Part.	
(3) This section is only a guide to the general scheme and effect of this Part.	20
461O Meaning of climate reporting entity	
(1) In this Act, a person who is an FMC reporting entity that, under section 461K, is considered to have a higher level of public accountability than other FMC reporting entities is a climate reporting entity if that person is 1 or more of the following:	25
(a) a listed issuer of quoted equity securities or quoted debt securities (or both) (but <i>see</i> section 351(1)(ab)):	
(b) a registered bank that is large under section 461P :	
(c) a licensed insurer that is large under section 461P :	
(d) a credit union that is large under section 461P :	30
(e) a building society that is large under section 461P .	
(2) In this Act, a manager of a registered scheme is a climate reporting entity in respect of the scheme if—	
(a) the manager is a large manager under section 461Q ; and	
(b) section 461K(1)(b) applies to the manager in respect of the scheme.	35

461P Meaning of large

- (1) For the purposes of this Part, a registered bank, credit union, or building society (A) is **large** in respect of an accounting period if, as at the balance date of each of the 2 preceding accounting periods, the total assets of A and A's subsidiaries (if any) exceed \$1 billion. 5
- (2) For the purposes of this Part, a licensed insurer is **large** in respect of an accounting period if at least 1 of the following paragraphs applies to the licensed insurer:
- (a) as at the balance date of each of the 2 preceding accounting periods, the total assets of the licensed insurer and its subsidiaries (if any) exceed \$1 billion: 10
- (b) in each of the 2 preceding accounting periods, the annual gross premium revenue of the licensed insurer and its subsidiaries (if any) exceeds \$250 million.
- (3) However, if a registered bank, credit union, building society, or licensed insurer is an overseas company,— 15
- (a) **subsections (1) and (2)** do not apply; and
- (b) the overseas company is large for the purposes of this Part if its New Zealand business, or its group's New Zealand business, is large under **subsection (4)**. 20
- (4) The New Zealand business of an overseas company or its group is **large** in respect of an accounting period if at least 1 of the following paragraphs applies (calculated as if the New Zealand business were an entity):
- (a) as at the balance date of each of the 2 preceding accounting periods, the total assets of the New Zealand business exceed \$1 billion: 25
- (b) the overseas company is a licensed insurer and, in each of the 2 preceding accounting periods, the annual gross premium revenue of the New Zealand business exceeds \$250 million.
- (5) In this section, **overseas company** means a body corporate that is incorporated outside New Zealand. 30

461Q Meaning of large manager

- (1) For the purposes of this Part, a manager (A) of a registered scheme that holds a market services licence is a **large manager** in respect of an accounting period of A if, as at the balance date of each of A's 2 preceding accounting periods, the total assets of the following schemes exceed \$1 billion: 35
- (a) all schemes for which A is manager; and
- (b) all schemes for which the manager is an authorised body that provides the service of acting as a manager of a registered scheme under A's market services licence.

- (2) If A is a large manager, every manager described in **subsection (1)(b)** is also a **large manager**. 5
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- Example**
- Company A holds a licence that covers acting as a manager of registered schemes. A's subsidiaries, B and C, also provide this service under A's licence (as authorised bodies). 5
- The assets of the schemes for which A is manager total \$700 million on the balance date of each of A's 2 preceding accounting periods (the **relevant balance dates**).
- The assets of the schemes managed by B total a further \$300 million, and the assets of the schemes managed by C total \$200 million, on each of the relevant balance dates. 10
- The total assets therefore exceed \$1 billion. A is a large manager. B and C are also large managers.
-
- (3) **Subsections (4) and (5)** apply if— 15
- (a) a manager and a scheme managed by the manager have different balance dates; and
 - (b) the manager becomes, or ceases to be, a large manager.
- (4) If the manager was not a large manager in respect of an accounting period (**AP1**) but becomes a large manager in respect of the next accounting period (**AP2**), the manager— 20
- (a) is not treated as a large manager in respect of the scheme in relation to the accounting period of the scheme that starts in AP1 and ends in AP2 unless **paragraph (b)** applies:
 - (b) must be treated as a large manager in respect of the scheme in relation to the accounting period of the scheme that starts in AP1 and ends in AP2 if— 25
 - (i) the manager was not the manager of the scheme at the start of that accounting period of the scheme; and
 - (ii) the manager at the start of that accounting period of the scheme was a climate reporting entity in respect of the scheme. 30
- (5) If the manager was a large manager in respect of an accounting period (**AP3**) but ceases to be a large manager in the next accounting period (**AP4**), the manager must be treated as a large manager in respect of the scheme in relation to the accounting period of the scheme that starts in AP3 and ends in AP4. 35
- (6) In this section, the **total assets** of a scheme are—
- (a) as reported in the most recent audited financial statements, prepared in accordance with generally accepted accounting practice, for the scheme; or
 - (b) if there are no such statements, as calculated— 40

- (i) for a date as near as possible to the balance date of the manager;
and
- (ii) as if for the purpose of preparing financial statements for the
scheme in accordance with generally accepted accounting prac-
tice.

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461R Miscellaneous provisions relating to application

- (1) If a person ceases to be a climate reporting entity during an accounting period,
that person must be treated as continuing to be a climate reporting entity in
relation to that accounting period for the purposes of this Act and every other
enactment.
- (2) Nothing in this Part requires a climate reporting entity to ensure the completion
of climate statements or group climate statements and the lodgement of those
climate statements in relation to an accounting period that ended before the
accounting period in which that person became a climate reporting entity.

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Subpart 2—CRD records

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461S Climate reporting entities must keep proper CRD records

- (1) Every climate reporting entity under **section 4610(1)** must ensure that there
are kept at all times records that will enable—
 - (a) the climate reporting entity to ensure that the climate statements of the
climate reporting entity comply with applicable climate standards; and
 - (b) the assurance engagement required by **section 461ZD** to be readily and
properly carried out.
- (2) Every manager that is a climate reporting entity in respect of a registered
scheme must ensure that there are kept at all times records that will enable—
 - (a) the manager to ensure that the climate statements relating to the regis-
tered scheme comply with applicable climate standards; and
 - (b) the assurance engagement required by **section 461ZD** to be readily and
properly carried out.
- (3) Every climate reporting entity to which an exception in **section 461ZA**
applies must ensure that there are kept at all times records that—
 - (a) will enable the climate reporting entity to ensure that—
 - (i) the determination required by **section 461ZA** is made in accord-
ance with applicable climate standards; and
 - (ii) the document required by **section 461ZB(1)(b)** complies with
section 461ZB(2) and (3); and
 - (b) will enable the assurance engagement required by **section**
461ZB(1)(a) to be readily and properly carried out.

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(4) Every climate reporting entity must establish and maintain a satisfactory system of control of the records that it is required to keep under this section.

(5) In this section,—

climate statements of the climate reporting entity means the climate statements or group climate statements that are required to be prepared under any of **sections 461W to 461Y** for the purposes of this Act

climate statements relating to the registered scheme means the climate statements of the separate funds of the scheme or the climate statements of the scheme that are required to be prepared under **section 461Z** for the purposes of this Act.

461T Manner in which CRD records to be kept

(1) Every climate reporting entity must keep the CRD records in the prescribed manner (if any).

(2) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

461U Period for which CRD records to be kept

CRD records, or copies of them, must be retained by the climate reporting entity for a period of at least 7 years after the date the records are made.

461V Inspection of CRD records

(1) Every climate reporting entity must make the CRD records available, in the prescribed manner at all reasonable times for inspection without charge, to—

(a) the directors of the climate reporting entity; and

(b) any supervisor (if the climate reporting entity is an issuer of debt securities or the manager of a registered scheme); and

(c) the FMA; and

(d) any other persons authorised or permitted by an enactment to inspect the CRD records of the climate reporting entity or scheme.

(2) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

(4) **Subsection (1)(d)** does not limit **section 461ZJ(1)(b)**.

Subpart 3—Preparation of climate statements

*Climate statements of climate reporting entities***461W Climate statements must be prepared**

- (1) Every climate reporting entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with applicable climate standards are— 5
- (a) completed in relation to the entity and that balance date; and
 - (b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.
- (2) However, **subsection (1)** does not apply to— 10
- (a) a climate reporting entity that, on the balance date referred to in **subsection (1)**, has 1 or more subsidiaries; or
 - (b) a large overseas climate reporting entity, unless it is a climate reporting entity under **section 4610(1)(a)**; or
 - (c) a person that is a climate reporting entity only under **section 4610(2)**. 15

Example

A company (incorporated in New Zealand and with no subsidiaries) is a large manager of 2 registered schemes.

The company is also a large registered bank, so **subsection (2)(c)** does not apply. **Subsection (1)** applies to the company (and see **section 461Z**, which also applies to the company in respect of its registered schemes). 20

461X Group climate statements must be prepared

- (1) **Subsection (2)** applies to every climate reporting entity in relation to a balance date of the entity if the entity has, on that balance date, 1 or more subsidiaries. 25
- (2) The climate reporting entity must ensure that, within 4 months after that balance date, group climate statements that comply with applicable climate standards are—
- (a) completed in relation to the group and that balance date; and
 - (b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director. 30
- (3) However, **subsection (2)** does not apply to—
- (a) a large overseas climate reporting entity, unless it is a climate reporting entity under **section 4610(1)(a)**; or
 - (b) a person that is a climate reporting entity only under **section 4610(2)**. 35

461Y Climate statements for large overseas climate reporting entities

- (1) This section applies to every large overseas climate reporting entity, unless it is a climate reporting entity under **section 461O(1)(a)**.
- (2) The climate reporting entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with applicable climate standards are—
 - (a) prepared for its New Zealand business as if that business were conducted by a company formed and registered in New Zealand; and
 - (b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.
- (3) However, if the climate reporting entity has, on that balance date, 1 or more subsidiaries, **subsection (2)** does not apply and instead the entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with applicable climate standards are—
 - (a) prepared for the group’s New Zealand business as if the members of the group were companies formed and registered in New Zealand; and
 - (b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.
- (4) **Subsection (3)** does not limit any obligation under this subpart of a subsidiary of the climate reporting entity.

Climate statements relating to registered schemes

461Z Climate statements for separate funds of registered schemes, etc

- (1) This section applies to every manager of a registered scheme that is a climate reporting entity in respect of the scheme.
- (2) The manager must ensure that, within 4 months after the balance date of the scheme, climate statements that comply with applicable climate standards are—
 - (a) completed in relation to each separate fund of the scheme and that balance date; and
 - (b) if any liabilities of the manager and the scheme are not limited to a separate fund, completed in relation to the scheme and that balance date; and
 - (c) dated and signed on behalf of the manager by 2 directors of the manager or, if the manager has only 1 director, by that director.
- (3) However, if the manager was not the manager of the scheme at the start of the scheme’s accounting period, **subsection (2)** applies to the manager only if the manager of the scheme at the start of the scheme’s accounting period was a climate reporting entity in respect of the scheme.

*Exceptions***461ZA Exceptions for climate reporting entities not materially affected by climate change**

- (1) A climate reporting entity (A) is not required to prepare climate statements or group climate statements under **section 461W or 461X** for an accounting period if, in accordance with applicable climate standards, A reasonably determines that the activities of A or A's group (as relevant) are not materially affected by climate change. 5
- (2) A climate reporting entity (A) is not required to prepare climate statements or group climate statements under **section 461Y** for an accounting period if, in accordance with applicable climate standards, A reasonably determines that the activities of A's New Zealand business or A's group's New Zealand business (as relevant) are not materially affected by climate change. 10
- (3) A climate reporting entity (A) is not required to prepare climate statements for a separate fund under **section 461Z(2)(a)** for an accounting period for the scheme if, in accordance with applicable climate standards, A reasonably determines that the activities of the fund are not materially affected by climate change. 15
- (4) A climate reporting entity (A) is not required to prepare climate statements for a registered scheme under **section 461Z(2)(b)** for an accounting period for the scheme if, in accordance with applicable climate standards, A reasonably determines that the activities of the scheme are not materially affected by climate change. 20
- (5) Every exception in this section is subject to the conditions in **section 461ZB**.

461ZB Conditions applying to exceptions 25

- (1) A climate reporting entity (A) may not rely on an exception in **section 461ZA** that applies to A unless—
- (a) A obtains an assurance engagement with a qualified CRD assurance practitioner in relation to A's determination under that section; and
- (b) A prepares a document that complies with **subsections (2) and (3)**; and 30
- (c) A delivers to the Registrar for lodgement, and to the FMA, within 4 months of A's balance date, a copy of—
- (i) the document referred to in **paragraph (b)**; and
- (ii) the assurance practitioner's report. 35
- (2) The document required by **subsection (1)(b)** must—
- (a) contain a statement by A to the effect that A has reasonably determined, in accordance with applicable climate standards, that the relevant activities are not materially affected by climate change; and

- (b) contain an explanation by A as to how A has reached that determination.
- (3) The document (including A’s statement and explanation contained in the document) must comply with applicable climate standards.
- (4) In **subsection (2), relevant activities** means,—
 - (a) if A is relying on an exception in **section 461ZA(1)**, the activities of A or A’s group: 5
 - (b) if A is relying on an exception in **section 461ZA(2)**, the activities of A’s New Zealand business or A’s group’s New Zealand business:
 - (c) if A is relying on the exception in **section 461ZA(3)**, the activities of the fund: 10
 - (d) if A is relying on the exception in **section 461ZA(4)**, the activities of the scheme.

Offences

461ZC Offence to knowingly fail to comply with climate standards

- (1) A climate reporting entity and every director of the entity commit an offence if— 15
 - (a) any of the following fail to comply with an applicable climate standard:
 - (i) the climate statements of the entity prepared under **section 461W**:
 - (ii) group climate statements in relation to a group comprising the entity and its subsidiaries prepared under **section 461X**: 20
 - (iii) the climate statements or group climate statements prepared by the entity under **section 461Y**:
 - (iv) in the case of a manager of a registered scheme, the climate statements for any separate fund or for the scheme prepared under **section 461Z**: 25
 - (v) the document prepared by the entity under **section 461ZB** or the determination made by the entity under **section 461ZA** to which the document relates; and
 - (b) the entity or the director (as the case may be) knows that the climate statements or group climate statements fail, or the document or determination fails, to so comply when those statements are, or when that document is, lodged. 30
- (2) A person who commits an offence under **subsection (1)** is liable on conviction,— 35
 - (a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$500,000, or both; and
 - (b) in any other case, to a fine not exceeding \$2.5 million.

Subpart 4—Assurance engagements

461ZD Assurance engagement required for parts of climate statements relating to greenhouse gas emissions

Every climate reporting entity must ensure that the climate statements or group climate statements that are required to be prepared under any of **sections 461W to 461Z** are, to the extent that those statements are required to disclose greenhouse gas emissions, the subject of an assurance engagement carried out by a qualified CRD assurance practitioner. 5

461ZE Meaning of qualified CRD assurance practitioner

- (1) For the purposes of this Act, **qualified CRD assurance practitioner**, in relation to an assurance engagement under this Part, means a natural person who— 10
- (a) is a member of an entity that is for the time being approved as a CRD assurance body; and
 - (b) is subject to the code of conduct and disciplinary process of the CRD assurance body; and 15
 - (c) has the expertise, technical competence, and qualifications that are specified in applicable auditing and assurance standards as required in order to carry out the assurance engagement; and
 - (d) is recognised by the CRD assurance body, in accordance with the rules of that body, as having that expertise and technical competence and those qualifications. 20
- (2) However, if the climate reporting entity is a public entity under the Public Audit Act 2001, the Auditor-General or any other person who may act as the CRD assurance practitioner under that Act is the person who must carry out the assurance engagement (and is the only qualified CRD assurance practitioner in respect of that assurance engagement). 25
- (3) None of the following persons is qualified for appointment as the qualified CRD assurance practitioner for an assurance engagement that a climate reporting entity obtains under this Part:
- (a) a director, an officer, or an employee of the climate reporting entity: 30
 - (b) a person who is in partnership with, or in the employment of, a person specified in **paragraph (a)**;
 - (c) a liquidator or a person who is a receiver in respect of the property of the climate reporting entity;
 - (d) a person who is, by virtue of **paragraphs (a) to (c)**, disqualified for appointment as assurance practitioner for an assurance engagement that a related body corporate obtains under this Part. 35

461ZF Appointment of partnership for assurance engagement

- (1) A partnership may be appointed by the firm name to be the assurance practitioner for an assurance engagement required by a climate reporting entity under this Part if all or some of the partners are persons who are qualified CRD assurance practitioners under **section 461ZE(1) and (3)**. 5
- (2) The appointment of a partnership by the firm name is treated, despite **section 461ZE**, as the appointment of all the partners in the firm from time to time.
- (3) However, if the partnership includes persons who are not qualified CRD assurance practitioners under **section 461ZE(1) and (3)**, the persons who are not qualified must not carry out the assurance engagement. 10

Compare: 2013 No 101 s 37

461ZG Assurance engagement must be carried out in accordance with auditing and assurance standards

An assurance practitioner must, in carrying out an assurance engagement under this Part, comply with all applicable auditing and assurance standards. 15

461ZH Assurance practitioner's report

- (1) The assurance practitioner's report on the climate statements or group climate statements prepared by an entity under any of **sections 461W to 461Z**, or for an assurance engagement under **section 461ZB**, must comply with the requirements of all applicable auditing and assurance standards. 20
- (2) If the assurance practitioner's report indicates that the requirements of this Part have not been complied with, the assurance practitioner must, within 7 working days after signing the report, send a copy of the report, and a copy of the climate statements or group climate statements to which it relates, or a copy of the document referred to in **section 461ZB**, to— 25
- (a) the FMA; and
 - (b) the External Reporting Board; and
 - (c) in the case of a climate reporting entity that is an issuer of debt securities or a manager of a registered scheme, the supervisor.

461ZI Assurance engagement may cover other parts of climate statements 30

- (1) **Section 461ZD** does not prevent the assurance engagement from covering the whole, or other parts, of the climate statements or group climate statements.
- (2) If an assurance engagement does cover the whole, or other parts, of the statements,— 35
- (a) the assurance practitioner's report must separately identify the matters that are required to be the subject of the assurance engagement under **section 461ZD**; and

- (b) this subpart applies, with any necessary modifications, in relation to the whole of the assurance engagement.
- (3) In this section, **other parts**, in relation to climate statements or group climate statements, means any part or parts of those statements that are not required by **section 461ZD** to be the subject of the assurance engagement. 5

Assurance practitioner access to information

461ZJ Climate reporting entity must give assurance practitioner access to information

- (1) Every climate reporting entity must ensure that an assurance practitioner appointed for an assurance engagement under this Part has access, at all times, to— 10
- (a) the CRD records of the climate reporting entity or scheme; and
- (b) any other documents of the climate reporting entity or scheme that are relevant to the assurance engagement.
- (2) If a climate reporting entity contravenes **subsection (1)**, every director of the entity commits an offence and is liable on conviction to a fine not exceeding \$50,000. 15
- (3) In any proceeding against a director for a contravention of **subsection (1)**, it is a defence if the director proves that—
- (a) the climate reporting entity took all reasonable steps to ensure that subsection would be complied with; or 20
- (b) the director took all reasonable steps to ensure that the climate reporting entity complied with that subsection; or
- (c) in the circumstances, the director could not reasonably have been expected to take steps to ensure that the climate reporting entity complied with that subsection. 25

Compare: 2013 No 101 s 38

461ZK Assurance practitioner may require information and explanations from director or employee

- (1) An assurance practitioner appointed for an assurance engagement under this Part is entitled to require from a director or an employee of the climate reporting entity the information and explanations that the assurance practitioner thinks necessary for the performance of their duties as assurance practitioner. 30
- (2) A director or an employee who fails to comply with a requirement to provide information or an explanation under **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$50,000. 35
- (3) In any proceeding against an employee for failing to comply with a requirement to provide information or an explanation under **subsection (1)**, it is a defence if the employee proves that—

- (a) the employee did not have the information required in their possession or under their control; or
- (b) by reason of the position occupied by the employee or the duties assigned to them, they were unable to give the explanations required.

Compare: 2013 No 101 s 39

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Offences concerning unqualified persons

461ZL Offence for unqualified CRD assurance practitioner to act

- (1) A person who acts as an assurance practitioner in relation to an assurance engagement under this Part commits an offence if the person is not a qualified CRD assurance practitioner in relation to the assurance engagement.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$50,000;
 - (b) in any other case, to a fine not exceeding \$150,000.

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Compare: 2013 No 101 s 39A

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461ZM Offence to hold out as qualified CRD assurance practitioner or as approved CRD assurance body

- (1) A person must not hold out that the person is—
 - (a) recognised for the purposes of **section 461ZE(1)(d)** if the person is not so recognised; or
 - (b) approved as a CRD assurance body if the person is not so approved; or
 - (c) qualified to act as the assurance practitioner in relation to an assurance engagement under this Part if the person is not a qualified CRD assurance practitioner in relation to the assurance engagement.
- (2) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$50,000;
 - (b) in any other case, to a fine not exceeding \$150,000.

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Compare: 2013 No 101 s 39B

Subpart 5—Lodgement of climate statements

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461ZN Lodgement of climate statements

- (1) Every climate reporting entity must ensure that, within 4 months after the balance date of the entity, copies of the following are delivered to the Registrar for lodgement:
 - (a) the climate statements or group climate statements that are required to be prepared under any of **sections 461W to 461Y**; and

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- (b) the assurance practitioner's report on those statements.
- (2) Every manager that is a climate reporting entity in relation to a registered scheme must ensure that, within 4 months after the balance date of the scheme, copies of the following are delivered to the Registrar for lodgement:
- (a) the climate statements that are required to be prepared under **section 461Z**; and 5
- (b) the assurance practitioner's report on those statements.
- (3) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$50,000.
- (4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8). 10

461ZO Information about climate statements of climate reporting entities to be made available in annual report

- (1) Every climate reporting entity under **section 461O(1)** that is required to prepare an annual report under the Companies Act 1993 or any other enactment must include, in its annual report for the period ending on the balance date,— 15
- (a) a statement that the entity is a climate reporting entity for the purposes of this Act; and
- (b) the address of, or a link to, the Internet site where copies of the following can be accessed:
- (i) the climate statements or group climate statements prepared by the entity under any of **sections 461W to 461Y**; and 20
- (ii) the assurance practitioner's report on those statements.
- (2) However, if the climate reporting entity has relied on an exception in **section 461ZA**, the address or link required by **subsection (1)(b)** is the address of, or link to, the Internet site where copies of the following can be accessed: 25
- (a) the document referred to in **section 461ZB**; and
- (b) the assurance practitioner's report.
- (3) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$50,000.
- (4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8). 30
- (5) In this section, **annual report** includes a concise annual report.

Subpart 6—CRD assurance bodies

461ZP FMA may approve CRD assurance bodies

- (1) The FMA may, in accordance with the regulations, approve in writing an entity as a CRD assurance body for the purposes of this Act if the FMA is satisfied that— 35
- (a) the entity's members include natural persons who—

- (i) have, in relation to 1 or more types of assurance engagements under this Part, the expertise, technical competence, and qualifications that are specified in applicable auditing and assurance standards as required in order to carry out those assurance engagements; and 5
- (ii) are subject to a professional code of conduct in relation to those actions; and
- (iii) are subject to a disciplinary process that enforces compliance with the code of conduct; and
- (b) the entity satisfies any further requirements that are prescribed for the purposes of this paragraph. 10
- (2) An entity may be approved by the FMA as a CRD assurance body in relation to 1 or more (or all)—
- (a) classes of climate reporting entities:
- (b) types of information to which climate statements or group climate statements, or parts of those statements, relate: 15
- (c) classes of assurance engagements.
- (3) The application for approval must be made in the prescribed manner.
- (4) The FMA’s power to approve an entity as a CRD assurance body includes a power to— 20
- (a) impose conditions on the approval; and
- (b) vary, revoke, add to, or substitute any such conditions at any time.
- (5) The conditions referred to in **subsection (4)** may be any conditions that the FMA thinks fit.
- 461ZQ Cancellation or suspension of recognition or approval** 25
- (1) A CRD assurance body may,—
- (a) in accordance with its rules, cancel or suspend its recognition of a person for the purposes of **section 461ZE(1)(d)** if the body considers that the grounds for cancellation or suspension specified in its rules are satisfied:
- (b) cancel its recognition of a person for the purposes of **section 461ZE(1)(d)** on the written request of the person. 30
- (2) The FMA may—
- (a) cancel or suspend its approval of an entity as a CRD assurance body if the FMA considers that the entity does not satisfy, or no longer satisfies, the requirements for approval specified in **section 461ZP(1)(a)** or prescribed for the purposes of **section 461ZP(1)(b)**: 35
- (b) cancel or suspend its approval of an entity as a CRD assurance body if the FMA considers that the entity has failed to comply with any conditions imposed under **section 461ZP(4)**:

- (c) cancel its approval of an entity as a CRD assurance body on the written request of the CRD assurance body.
- (3) A suspension under **subsection (1)** is for the period that the CRD assurance body thinks fit or until the person satisfies any requirements specified by the body. 5
- (4) A suspension under **subsection (2)** is for the period that the FMA thinks fit or until the entity satisfies any requirements specified by the FMA.
- (5) If a CRD assurance body cancels the recognition of a person, the body may give a written notice to the person stating that the person may not apply to be re-recognised before the expiry of a specified period (and that notice is binding on the person). 10
- (6) If the FMA cancels the approval of an entity as a CRD assurance body, the FMA may give a written notice to the entity stating that the entity may not apply to be re-approved before the expiry of a specified period (and that notice is binding on the entity). 15

461ZR Effect of cancellation or suspension of approval on recognition of assurance practitioners

- (1) **Subsection (2)** applies to a person—
- (a) who is a member of an entity whose approval as a CRD assurance body is cancelled or suspended; and 20
- (b) who, immediately before the cancellation or suspension, was acting or had been appointed to act as a qualified CRD assurance practitioner in relation to an assurance engagement under this Part; and
- (c) who is not recognised for the purposes of **section 461ZE(1)(d)** by any other approved CRD assurance body. 25
- (2) The FMA may, in the prescribed circumstances and on application in the prescribed manner, authorise the person to act or to continue to act as a qualified CRD assurance practitioner in relation to the assurance engagement.

Subpart 7—Civil liability for certain contraventions of this Part

461ZS Part 7A climate-related disclosure provisions

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- (1) All of the provisions specified in **subsections (3) and (4)** are **Part 7A** climate-related disclosure provisions.
- (2) A contravention of any of the provisions listed in **subsection (3)** may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding \$1 million in the case of an individual or \$5 million in any other case. 35
- (3) For the purposes of **subsection (2)**, the provisions are the following:

- (a) **section 461S** (climate reporting entities must keep proper CRD records):
- (b) **sections 461W to 461Z** (climate statements and group climate statements must be prepared):
- (c) **section 461ZD** (parts of climate statements must be subject to assurance engagement): 5
- (d) **section 461ZN** (climate statements must be lodged).
- (4) A contravention of **section 461U** (CRD records to be kept for 7 years) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding \$200,000 in the case of an individual or \$600,000 in any other case. 10
- 8 Section 462 amended (When FMA may make stop orders)**
In section 462(1)(ga), after “7”, insert “or **7A**”.
- 9 Section 468 amended (When FMA may make direction orders)**
After section 468(1)(f), insert: 15
(fa) a **Part 7A** climate-related disclosure provision:
- 10 Section 470 amended (FMA may order that simplified disclosure PDS may not be used)**
After section 470(1)(b), insert:
(ba) any provision under **Part 7A**: 20
- 11 Section 474 amended (FMA may order that exclusion for offers of products of same class as quoted products does not apply)**
After section 474(1)(b), insert:
(ba) any provision under **Part 7A**:
- 12 Section 485 amended (What are civil liability provisions)** 25
After section 485(g), insert:
(ga) a **Part 7A** climate-related disclosure provision:
- 13 Section 490 amended (Maximum amount of pecuniary penalty)**
After section 490(2)(f), insert:
(fa) a **Part 7A** climate-related disclosure provision (other than **section 461U**): 30
- 14 Section 501 amended (Additional disclosure or financial reporting defence for directors who are treated as contravening)**
(1) In the heading to section 501, after “reporting”, insert “or climate-related disclosure”. 35

- (2) In section 501(1)(a), replace “and 461H” with “461H, **461W to 461Z, 461ZD, and 461ZN**”.

15 Section 534 amended (Directors treated as having contravened in case of defective disclosure or financial reporting contravention)

- (1) In the heading to section 534, replace “**or financial reporting contravention**” with “**, financial reporting contravention, or climate-related disclosure contravention**”. 5
- (2) After section 534(1)(ca), insert:
(cb) a climate reporting entity has contravened any of **sections 461W to 461Z, 461ZD, and 461ZN** (climate-related disclosure obligations); or 10
- (3) In section 534(3),—
(a) after “FMC reporting entity,”, insert “climate reporting entity,”; and
(b) after “(ca),”, insert “**(cb)**,”.
- (4) In section 534(5), after “FMC reporting entity,”, insert “climate reporting entity,”. 15

16 New section 546A inserted (Regulations for purposes of Part 7A (climate-related disclosures))

After section 546, insert:

546A Regulations for purposes of Part 7A (climate-related disclosures)

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for either or both of the following purposes: 20
(a) prescribing further requirements for the purposes of **section 461ZP(1)(b)**:
(b) prescribing circumstances for the purposes of **section 461ZR(2)**. 25
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

17 Section 554 amended (Regulations or exemptions may require compliance with generally accepted accounting practice, standards, or FMA frameworks or methodologies) 30

- (1) After section 554(1)(b), insert:
(ba) a climate standard:
- (2) In section 554(2), after “a financial reporting standard,”, insert “a climate standard,”.
- (3) In section 554(3), insert in its appropriate alphabetical order: 35
climate standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

- 18 Section 556 amended (FMA may grant exemptions)**
 In section 556(1)(a), replace “7” with “**7A**”.
- 19 Section 561A amended (Financial reporting exemptions)**
- (1) Replace the heading to section 561A with “**Financial reporting and climate-related disclosure exemptions**”. 5
- (2) After section 561A(1), insert:
- (1A) An exemption granted under this subpart in relation to any provision of **Part 7A** may, if the FMA thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the climate statements or group climate statements for that period are required to be lodged under that Part. 10
- (3) In section 561A(2), after “7”, insert “or **7A**”.
- 20 Schedule 4 amended**
- (1) In Schedule 4, clause 1(1), insert as the last paragraph: 15
- (g) **Part 7** provides for transitional provisions relating to the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act **2021**.
- (2) In Schedule 4,—
- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and 20
- (b) make all necessary consequential amendments.

Part 2

Amendments to Financial Reporting Act 2013

- 21 Principal Act**
 This Part amends the Financial Reporting Act 2013. 25
- 22 Section 3 amended (Purpose)**
- (1) In section 3(b), after “financial reporting standards”, insert “, climate standards,”.
- (2) After section 3(c), insert:
- (d) provide for standard provisions relating to climate-related disclosure duties under the Financial Markets Conduct Act 2013. 30
- 23 Section 4 amended (Overview of financial reporting duties)**
- (1) In the heading to section 4, after “reporting”, insert “and other”.
- (2) After section 4(2), insert:

- (2A) This Act also provides for various matters relating to climate-related disclosure duties under the Financial Markets Conduct Act 2013, including defining climate statements and group climate statements and providing for the Board to prepare and issue climate standards.
- (3) In section 4(3), after “duties”, insert “, and of this Act in relation to climate-related disclosure duties”. 5
- 24 Section 5 amended (Interpretation)**
- (1) In section 5(1), replace the definition of **applicable auditing and assurance standard** with:
- applicable auditing and assurance standard**, in relation to an audit or an assurance engagement, means an auditing and assurance standard that applies to the audit or the assurance engagement in accordance with the standard 10
- (2) In section 5(1), insert in their appropriate alphabetical order:
- applicable climate standard**, in relation to a reporting entity and to an accounting period or an interim accounting period of a reporting entity, means a climate standard that applies to the reporting entity and to the accounting period or the interim accounting period in accordance with the climate standard 15
- climate reporting entity** has the same meaning as in **section 4610** of the Financial Markets Conduct Act 2013
- climate standard** means a climate standard issued by the Board under section 12; and includes an amendment to a climate standard that is issued by the Board 20
- climate statements**, in relation to a reporting entity and a balance date, means the climate-related disclosures for the entity as at the balance date, or in relation to the accounting period ending at the balance date, that are required to be prepared in respect of the entity by an applicable climate standard 25
- CRD assurance body** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013
- group climate statements**, in relation to a group and a balance date, means the climate-related disclosures for the group as at the balance date, or in relation to the accounting period ending at the balance date, that are required to be prepared in respect of the group by an applicable climate standard 30
- (3) In section 5(1), replace the definition of **reporting entity** with:
- reporting entity**—
- (a) means an entity whose financial statements, group financial statements, reports, or other information is required by any enactment to comply, or be prepared in accordance, with generally accepted accounting practice or non-GAAP standards; or 35

(b)	means an entity whose climate statements, group climate statements, reports, or other information is required by any enactment to comply, or be prepared in accordance, with applicable climate standards	
(4)	In section 5(1), definition of standard , after paragraph (a), insert:	
(aa)	a climate standard; or	5
25	Section 12 amended (Functions of Board)	
(1)	After section 12(a), insert:	
(aa)	to prepare and, if it thinks fit, issue climate standards for the purposes of any enactment that requires climate statements or group climate statements, or a statement, report, or other information to comply, or be prepared in accordance, with climate standards:	10
(2)	Replace section 12(b)(ii) with:	
(ii)	the purposes of any rules or codes of ethics of an association of accountants, or of a CRD assurance body, where those rules or codes require the members of the association, or the members of the body, to comply with those standards; or	15
26	Section 14 amended (Membership of Board)	
	In section 14(2), replace “or law” with “law, or sustainable development”.	
27	Subpart 2 heading in Part 2 replaced	
	In Part 2, replace the subpart 2 heading with:	20
	Subpart 2—Standards	
28	New sections 19A to 19D and cross-heading inserted	
	After section 19, insert:	
19A	Guidance for purposes of non-financial reporting	
(1)	The Board may issue non-binding guidance that relates to non-financial reporting on 1 or more of the matters in section 17(2)(a)(i) to (iv).	25
(2)	The purpose of the guidance is to facilitate best practice reporting on those matters.	
(3)	The guidance—	
(a)	must not be inconsistent with any financial reporting standard or authoritative notice; and	30
(b)	must state that it is non-binding.	
(4)	Subsection (1)—	
(a)	applies regardless of whether an Order in Council is made under section 17(2):	35

- (b) does not limit the general powers of the Board.

Climate standards

19B Purpose of climate standards and climate-related disclosures

The purpose of climate standards is to provide for, or promote, climate-related disclosures, in order to—

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- (a) encourage entities to routinely consider the short-, medium-, and long-term risks and opportunities that climate change presents for the activities of the entity or the entity's group; and
- (b) enable entities to show how they are considering those risks and opportunities; and
- (c) enable investors and other stakeholders to assess the merits of how entities are considering those risks and opportunities.

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19C Climate standards

- (1) Climate standards may—
- (a) have general or specific application;
- (b) differ according to differences in time or circumstance.
- (2) A climate standard may be expressed to apply to all reporting entities or groups or to specified classes of reporting entities or groups.
- (3) A climate standard may specify the accounting periods or interim accounting periods in relation to which the standard applies.

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19D Requirements if climate standards require or permit information to be excluded from analysis if immaterial

- (1) This section applies if a climate standard requires or permits an entity, in preparing climate statements or group climate statements, to exclude information from an analysis relating to a particular climate-related disclosure in circumstances where the entity, in accordance with the standard, reasonably determines that the information is immaterial to the analysis.
- (2) The climate standard must require the entity to include in the climate statements or group climate statements, in accordance with the standard,—
- (a) a description of the kind of information that has been excluded from the analysis; and
- (b) an explanation of why the entity has determined that information is immaterial to the analysis.
- (3) This section does not limit **section 19B or 19C**.

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- 29 Section 27 amended (When standards and authoritative notices take effect)**
In section 27(2)(a), replace “accounting,” with “climate-related.”
- 30 Section 44 amended (Purpose)**
Repeal section 44(b). 5
- 31 New subpart 6 heading in Part 2 inserted**
In Part 2, after section 47, insert:
- Subpart 6—Monetary amounts adjusted for inflation**
- 32 Section 48 amended (Minister must regularly review amounts to take into account inflation)** 10
(1) In section 48(1)(a), replace “and section 64(2) of the Friendly Societies and Credit Unions Act 1982” with “section 64(2) of the Friendly Societies and Credit Unions Act 1982, and **sections 461P and 461Q** of the Financial Markets Conduct Act 2013”.
- (2) In section 48(3), replace “8” with “6”. 15
- 33 Section 49 amended (Order may amend amounts)**
After section 49(h), insert:
- (i) amending the amounts specified in **sections 461P and 461Q** of the Financial Markets Conduct Act 2013;
- (j) amending the amounts in the example in **section 461Q** of the Financial Markets Conduct Act 2013. 20
- 34 Section 51 amended (Levies)**
After section 51(3)(f), insert:
- (fa) climate reporting entities; and
- (fb) CRD assurance bodies; and 25
- 35 Schedule amended**
(1) In the Schedule, replace the cross-heading above clause 1 with:
- Part 1**
Provisions relating to Financial Reporting Amendment Act 2014
- (2) In the Schedule,— 30
- (a) insert the Part set out in **Schedule 2** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Part 3 Amendments to other Acts

Subpart 1—Public Audit Act 2001

- 36 Principal Act**
This subpart amends the Public Audit Act 2001. 5
- 37 Section 4 amended (Interpretation)**
- (1) In section 4, insert in their appropriate alphabetical order:
appointed CRD assurance practitioner means a person appointed under **section 34A** to carry out 1 or more assurance engagements under **section 15B**
climate reporting entity has the same meaning as in **section 461O** of the Financial Markets Conduct Act 2013 10
- (2) In section 4, definition of **Auditor-General**, after “appointed auditor”, insert “or appointed CRD assurance practitioner”.
- 38 New section 15B inserted (CRD assurance practitioner for public entities)**
After section 15A, insert: 15
- 15B CRD assurance practitioner for public entities**
- (1) The Auditor-General is, and must from time to time act as, the CRD assurance practitioner for an assurance engagement required for the purposes of **Part 7A** of the Financial Markets Conduct Act 2013 by a climate reporting entity that is a public entity. 20
- (2) In carrying out an assurance engagement under **subsection (1)**, the Auditor-General must (at a minimum) comply with the auditing and assurance standards that apply to the assurance engagement.
- 39 New section 34A inserted (Appointment of CRD assurance practitioners)**
After section 34, insert: 25
- 34A Appointment of CRD assurance practitioners**
- (1) The Auditor-General may from time to time appoint any of the following persons or bodies to act as a CRD assurance practitioner and to carry out, under **section 15B**, 1 or more assurance engagements required for the purposes of **Part 7A** of the Financial Markets Conduct Act 2013 by a climate reporting entity that is a public entity, on the Auditor-General’s behalf: 30
- (a) an employee of the Auditor-General:
- (b) a person qualified to be a CRD assurance practitioner under **section 461ZE(1) and (3)** of the Financial Markets Conduct Act 2013:

- (c) a partnership eligible to be appointed under **section 461ZF(1)** of that Act.
- (2) If a partnership is appointed under **subsection (1)(c)** for an assurance engagement,—
 - (a) the appointment of the partnership is to be treated as an appointment of all the persons who are partners in the firm from time to time; and 5
 - (b) the persons who are not qualified to be appointed as CRD assurance practitioners under **section 461ZE(1) and (3)** of the Financial Markets Conduct Act 2013 must not act as CRD assurance practitioners for the assurance engagement. 10
- (3) An appointment must be in writing and may be made subject to any restrictions and conditions that the Auditor-General thinks fit.
- (4) The Auditor-General may authorise an appointed CRD assurance practitioner to exercise such of the powers listed in section 34 in relation to the public entity concerned as the Auditor-General specifies in the appointment. 15

40 Section 35 amended (Delegation of powers)

After section 35(2)(a), insert:

- (aa) the power of appointment of CRD assurance practitioners under **section 34A**; or

41 Section 41 amended (Protection from liability) 20

In section 41(1)(c), replace “or not” with “or an appointed CRD assurance practitioner or neither”.

42 Section 42 amended (Audit fees)

- (1) In section 42(1), after “15,”, insert “**15B**,”.
- (2) In section 42(3), after “auditor”, insert “or an appointed CRD assurance practitioner”. 25
- (3) Replace section 42(4) with:
- (4) The public entity must pay any fees to the Auditor-General, or to the appointed auditor or the appointed CRD assurance practitioner, on the completion of the whole or any part of the audit or assurance engagement when requested in writing to do so. 30

Subpart 2—Related and consequential amendments

43 Related and consequential amendments

- (1) Amend the Act specified in **Part 1 of Schedule 3** as set out in that schedule.
- (2) Amend the Acts specified in **Part 2 of Schedule 3** as set out in that schedule. 35

Schedule 1

New **Part 7** inserted into Schedule 4 of Financial Markets Conduct
Act 2013

s 20(2)

Part 7		5
Provisions relating to Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021		
91	Definitions of large and large manager may take into account accounting periods that commence before commencement of clause	
	In sections 461P and 461Q , a reference to preceding accounting periods may include an accounting period regardless of whether the accounting period commenced before, on, or after the commencement of this clause.	10
92	Climate-related disclosures for climate reporting entities under section 461O(1)	
(1)	The following provisions of this Act apply to a climate reporting entity under section 461O(1) in respect of accounting periods of the entity that commence on or after the date on which the External Reporting Board issues the first climate standard that applies to the entity:	15
	(a) subpart 2 of Part 7A (which relates to CRD records):	
	(b) subpart 3 of Part 7A (which relates to preparation of climate statements):	20
	(c) subpart 5 of Part 7A (which relates to lodgement of climate statements).	
(2)	The provisions listed in subclause (1) do not apply to a climate reporting entity under section 461O(1) in respect of accounting periods of the entity that commence before the date on which the External Reporting Board issues the first climate standard that applies to the entity.	25
93	Climate-related disclosures relating to registered schemes	
(1)	The following provisions of this Act apply to a climate reporting entity under section 461O(2) in respect of accounting periods of a registered scheme that commence on or after the date on which the External Reporting Board issues the first climate standard that applies to the scheme:	30
	(a) subpart 2 of Part 7A (which relates to CRD records):	
	(b) subpart 3 of Part 7A (which relates to preparation of climate statements):	35

- (c) **subpart 5 of Part 7A** (which relates to lodgement of climate statements).
- (2) The provisions listed in **subclause (1)** do not apply to a climate reporting entity under **section 461O(2)** in respect of accounting periods of a registered scheme that commence before the date on which the External Reporting Board issues the first climate standard that applies to the scheme. 5
- 94 Assurance engagement obligations relating to climate statements and exceptions do not apply until earlier of date set by Order in Council and 2 years after Royal assent**
- (1) The provisions listed in **subclause (2)** apply on and from the earlier of the following dates (and that date has effect despite the commencement of those provisions): 10
- (a) a single date set by Order in Council made under this clause; and
- (b) the date that is the second anniversary of the date on which the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act **2021** receives the Royal assent. 15
- (2) The provisions are—
- (a) **section 461ZB(1)(a) and (c)(ii)** (which relates to assurance engagement matters as conditions of exceptions):
- (b) **section 461ZD** (which relates to assurance engagements required for parts of climate statements relating to greenhouse gas emissions): 20
- (c) **section 461ZN(1)(b) and (2)(b)** (which relates to delivering a copy of the assurance practitioner’s report to the Registrar for lodgement):
- (d) **section 461ZO(1)(b)(ii) and (2)(b)** (which relates to including in the annual report the address of, or a link to, the Internet site where the assurance practitioner’s report can be accessed). 25
- (3) The Governor-General may, by Order in Council, set a single date for the purposes of this clause.
- (4) An Order in Council made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 30
- 95 Application of assurance engagement obligations to accounting periods**
- (1) The **Part 7A assurance engagement obligations** apply to a climate reporting entity under **section 461O(1)** in relation to the following accounting periods of the entity:
- (a) an accounting period that commenced before, but ends on or after, the effective date of those obligations: 35
- (b) accounting periods that commence on or after the effective date of those obligations.

- (2) The **Part 7A assurance engagement obligations** apply to a climate reporting entity under **section 461O(2)** in relation to the following accounting periods of a registered scheme:
- (a) an accounting period that commenced before, but ends on or after, the effective date of those obligations: 5
 - (b) accounting periods that commence on or after the effective date of those obligations.
- (3) In this clause,—
- effective date**, in relation to the **Part 7A** assurance engagement obligations, means the date on and from which, by virtue of **clause 94(1)**, those obligations apply 10
- Part 7A assurance engagement obligations** means the provisions listed in **clause 94(2)**.

Schedule 2

New Part 2 inserted into Schedule of Financial Reporting Act 2013

s 35(2)

	Part 2	
	Provisions relating to Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021	5
4	Interpretation	
	In this Part, 2021 Amendment Act means the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 .	
5	Guidance may apply to accounting periods that commence before section 19A commences	10
	Guidance issued by the Board in accordance with section 19A (as inserted by section 28 of the 2021 Amendment Act) may apply in relation to—	
	(a) accounting periods that commence before, but end on or after, the commencement of section 19A :	15
	(b) accounting periods that commence on or after the commencement of section 19A .	
6	Standards may apply to accounting periods that commence before clause commences	
	Standards issued by the Board in accordance with this Act as amended by Part 2 of the 2021 Amendment Act may apply in relation to—	20
	(a) accounting periods that commence before, but end on or after, the commencement of this clause:	
	(b) accounting periods that commence on or after the commencement of this clause.	25
7	Transitional provisions relating to review of monetary amounts in sections 461P and 461Q of Financial Markets Conduct Act 2013	
(1)	Subclause (2) applies if section 32(1) of the 2021 Amendment Act (which amends section 48(1)(a) of this Act) comes into force before 1 April 2022.	
(2)	The monetary amounts in sections 461P and 461Q of the Financial Markets Conduct Act 2013 do not need to form part of the first review under section 48(2) of this Act.	30
(3)	Subclause (4) applies—	
	(a) if the monetary amounts in sections 461P and 461Q of the Financial Markets Conduct Act 2013 do not form part of the first review under section 48(2) of this Act:	35

- (b) despite the date on which **section 33** of the **2021** Amendment Act (which amends section 49 of this Act) comes into force.
- (4) The Minister's recommendation (if any) under section 48(1)(b), after conducting the first review, must not include a recommendation for the purposes of **section 49(i) or (j)**.

Schedule 3
Related and consequential amendments

s 43

Part 1

**Consequential amendment to come into force on day after Royal
assent** 5

Climate Change Response Act 2002 (2002 No 40)

In section 4(1), replace the definition of **entity** with:

entity, in relation to a group, means—

- (a) a reporting entity within the meaning of **paragraph (a)** of the definition of that term in section 5 of the Financial Reporting Act 2013; or 10
- (b) a subsidiary (within the meaning of section 5 of the Financial Reporting Act 2013) of a reporting entity referred to in **paragraph (a)**

Part 2

**Amendments to come into force on earlier of date set by Order in
Council and first anniversary of Royal assent** 15

Financial Markets Authority Act 2011 (2011 No 5)

In section 4, definition of **financial markets participant**, after paragraph (b)(iv), insert:

- (v) a climate reporting entity (within the meaning of **section 4610** of the Financial Markets Conduct Act 2013); and 20

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

In section 238(1)(b), replace “from being—” with “—”.

Replace section 238(1)(b)(i) with:

- (i) from being— 25
 - (A) an FMC reporting entity for the purposes of the Financial Markets Conduct Act 2013 by virtue of section 451(1)(h) of that Act:
 - (B) a climate reporting entity for the purposes of the Financial Markets Conduct Act 2013 by virtue of **section 4610(1)(c)** of that Act: 30

In section 238(1)(b)(ii), before “an issuer”, insert “from being”.

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

Wellington, New Zealand:

Published under the authority of the New Zealand Government—2021