



COVERSHEET

Minister	Hon Dr Duncan Webb	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Climate-related disclosures regulations: filing fee and technical matters	Date to be published	2 October 2023

List of documents that have been proactively released

Date	Title	Author
August 2023	Climate-related disclosures regulations: filing fee and technical matters	Office of the Minister of Commerce and Consumer Affairs
August 2023	Cost Recovery Impact Statement: Regulations to introduce a fee for lodging climate statements	MBIE
16 August 2023	Cabinet Economic Development Committee DEV-23-MIN-0179 Minute	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of Legal professional privilege and Confidential advice to Government.

In confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Climate-related disclosures regulations: filing fee and technical matters

Proposal

1. This paper seeks policy decisions on:
 - 1.1. technical matters relating to the climate-related disclosures register **(Register)**; and
 - 1.2. a fee to lodge climate statements or any notification of exempt status on the Register.
 2. This paper also proposes an increase in the appropriation for Commerce and Consumer Affairs: Registration and Provision of Statutory Information departmental appropriation within Vote Business, Science and Innovation, for the cost of implementing and running the Register, funded by the proposed fee
- Confidential advice to Government

Relation to government priorities

3. The proposals in this paper link to the Government's priority of meeting net-zero emissions by 2050 as identified in the *Climate Change Response Act 2002*. The regulations proposed in this paper are designed to implement the climate-related disclosures regime introduced in the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (**CRD Act**). The CRD Act amends the Financial Markets Conduct Act (**FMC Act**), Financial Reporting Act 2013 and Public Audit Act 2001.
4. The objective of the CRD Act, as described in the general policy statement to the CRD Bill, is to
 - 4.1. ensure that the effects of climate change are routinely considered in business and investment decisions;
 - 4.2. help reporting entities better demonstrate responsibility and foresight in their consideration of climate issues; and
 - 4.3. lead to smarter, more efficient allocation of capital, and help smooth the transition to a more sustainable, low emissions economy.

Executive Summary

5. The CRD Act requires climate reporting entities (**CREs**) to lodge annual climate statements. These climate statements will be held on a new Register. I propose regulations covering various technical matters relating to the operation of the

Register. I also propose charging CREs a fee of \$340.00 (excluding GST) to lodge their climate statements or any notification of their exempt status on the Register.

6. The fee will meet the Registrar's costs of providing the service of lodging the climate statements and keeping the climate statements on the Register. [REDACTED]

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[REDACTED]
[REDACTED]

The Climate-related Disclosures Regime

Background to the new disclosures regime

7. The CRD Act introduced a climate-related disclosures regime in New Zealand for CREs, which comprise listed issuers, registered banks, licensed insurers, credit unions, building societies and investment scheme managers that are "large". Under s 461Z of the FMC Act, CREs must prepare 'climate statements' disclosing their climate-related risks and opportunities. Under s 461ZI, the CREs must deliver the climate statements to the Registrar of Financial Service Providers (**Registrar**) for lodgement within four months after the reporting entity's balance date (or end of financial year).
8. The Registrar is an employee of the Ministry of Business, Innovation and Employment (**MBIE**). The Register will be managed by the New Zealand Companies Office, a business unit of MBIE.
9. The first climate statements will be lodged with the Registrar in early 2024.
10. From October 2024, CREs will also be required to get the parts of their climate statements relating to greenhouse gas emissions independently assured. The assurance report must also be delivered to the Registrar for lodgement within four months after the balance date of the entity.
11. The Financial Markets Authority (**FMA**) is the regulator of the climate-related disclosures regime. The FMA is responsible for the independent monitoring and enforcement of the regime.

The Register

12. Pursuant to section 595 and clause 8 of Schedule 2 of the FMC Act, the Registrar may keep any registers that he or she considers necessary for the purposes of the FMC Act. Section 3 sets out the main purposes of the FMC Act, which are to:
 - 12.1. promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
 - 12.2. promote and facilitate the development of fair, efficient and transparent financial markets.
13. The Registrar considers it necessary to keep a register to support the climate-related disclosures regime and has approved the establishment of the Register

which will contain the climate statements (and notifications of exempt status) that will be lodged with the Registrar.

Proposed regulations

14. I propose new regulations to help implement the climate-related disclosures regime. These regulations will prescribe:
 - 14.1. the purpose for which a search of the Register may be carried out;
 - 14.2. the search criteria for the Register;
 - 14.3. the information to be contained in the Register about CREs;
 - 14.4. when amendments to the Register must be made; and
 - 14.5. the fee payable in respect of lodgement of climate statements or notification of exempt status delivered to the Registrar.
15. In addition to the regulations proposed in this Cabinet paper relating to the new Register, Cabinet has previously agreed [CAB-22-MIN-0508 refers] that MBIE should consult on an exposure draft of regulations relating to the climate-related disclosures regime. These other regulations relate to record keeping and infringement fees. Consultation on an exposure draft was open from 21 June 2023 to 12 July 2023. I will take a Cabinet paper to the Cabinet Legislation Committee in August 2023 seeking agreement for these regulations to be submitted to the Executive Council.

Regulations relating to the operation of the Register

16. Section 548(1)(k) of the FMC Act provides for regulations to be made prescribing procedures, requirements, and other matters, not inconsistent with the Act, for any register kept under the Act, including matters described below.

Searching the Register

17. Under clause 12 of Schedule 2 of the FMC Act, a search of the register may only be carried out for a prescribed purpose.
18. I propose that the Register may be searched:
 - 18.1. to obtain information displayed on the Register (e.g., in the climate statements or any notification of exempt status);
 - 18.2. to assist any person –
 - 18.2.1 in the exercise of the person’s powers under the FMC Act or any other enactment; or
 - 18.2.2 in the performance of the person’s functions or duties under the FMC Act or any other enactment.

Search criteria for the Register

19. I propose that the search criteria for the Register be:

- 19.1. CRE name;
- 19.2. CRE New Zealand Business Number (NZBN); and
- 19.3. scheme name (if the CRE is an investment scheme manager).

Information to be contained on the register

20. I propose that the information to be contained in the Register about each CRE is:
 - 20.1. CRE legal name;
 - 20.2. CRE NZBN (if any);
 - 20.3. the climate statements or notification of exempt status (as explained in paragraphs 34 - 39 below) lodged by the CRE;
 - 20.4. the assurance report on the climate statements (from October 2024);
 - 20.5. the CRE's balance date to which the climate statements or exemption relate; and
 - 20.6. if the CRE is an investment scheme manager, the scheme or schemes managed by the investment scheme manager. (Investment scheme managers are required to produce climate statements for each separate fund in each scheme that they manage unless they consolidate reporting at the scheme level.)

Amendments to the Register

21. Certain amendments to the Register may be made under clause 11 of Schedule 2 of the FMC Act. Regulations may also specify that the Registrar must make amendments to the Register in specified circumstances.
22. Schedule 2 allows the Registrar to amend the Register if CREs that are issuers (as defined in the FMC Act) notify the Registrar of information that is different from the information entered on the Register. I propose that, if a CRE that is not an issuer informs the Registrar of information that is different from the information entered on the Register, the Registrar must amend the Register in specified circumstances (where those circumstances put the CRE in a substantially similar position to an issuer).

Total costs of the Register

23. MBIE has assessed the total operating costs of the Register over a five-year period to be \$0.714 million. The operating costs of the Register comprise information technology costs, education and business operations costs. These costs will be met through a combination of the filing fee for climate statements (for the service of lodging the climate statements on the Register) [REDACTED]

Confidential advice to Government [REDACTED]

Fee to lodge climate statements

24. Section 548(1)(o) of the FMC Act provides for regulations to be made prescribing fees payable in respect of any matter under the Act, which includes lodgement of climate statements (or any notification of exempt status).

Calculation of the fee

25. I propose a fee of \$340.00 (GST exclusive) paid by CREs to lodge their annual climate statements (or notification of exempt status, refer to discussion in paragraphs 34 - 39).
26. When setting the fee, I have considered what costs can be reasonably attributed to providing the service, that is, receiving and processing the climate statements (or notification of exempt status) and putting these documents on the new Register. The Legislation Design and Advisory Committee (LDAC) guidelines are clear that fees must bear a proper relation to the cost of providing the relevant service or function. Operating costs that exceed this amount may be more properly collected as a levy, i.e., these costs are more akin to a tax.
27. The service to CREs being provided in this instance is lodging climate statements on the Register. The costs to the Registrar of receiving and processing the climate statements and keeping these on the Register is estimated to be \$0.286 million over a five-year period. The costs have been calculated over a five-year period in order to spread the initial set-up costs.
28. The fee has been calculated as follows:

Service costs over five years	Estimated CREs per year	Filings over five-year period	Annual filing fee (GST exclusive)
\$0.286 million	170	850	\$340.00

29. I consider that the proposed fee of \$340.00 (GST exclusive) can be reasonably considered to reflect the costs of providing the service of lodging the climate statements and keeping the climate statements on the Register.

Analysis

30. More detail and analysis about the proposed fee can be found in the Cost Recovery Impact statement (CRIS) in Appendix 1.

Who will pay?

31. CREs are defined with reference to certain asset and revenue-based definitions in the FMC Act. All CREs are large businesses as described at paragraph 7.
32. MBIE and the FMA continue to analyse the number of reporting entities that will meet the required thresholds each year on an ongoing basis. Currently MBIE and the FMA estimate 160 to 180 CREs per year will file climate statements.

The filing fee has therefore been calculated based on an average of 170 CREs per year.

33. Investment scheme managers are required to prepare climate statements for each fund in a scheme unless they choose to consolidate reporting at the scheme level. An investment scheme manager may also manage more than one scheme. This means that investment scheme managers may file more than one set of climate statements. However, they will only be charged one fee.

Exemptions

34. The FMA may, on terms and conditions that it thinks fit, exempt any person or class of persons from parts of the FMC Act including the climate reporting provisions (see section 556 of the FMC Act). The FMA has consulted on exempting certain foreign exempt issuers from the reporting requirements in the CRD Act. Foreign exempt issuers are companies that are listed on a recognised foreign exchange and have a secondary listing and foreign exempt issuer status on New Zealand's Exchange. Companies meeting the requirements for the exemption may elect to use the exemption or to prepare climate statements.
35. I propose that companies electing to use the exemption will still pay a filing fee as it is intended that the terms of the FMA exemption will require the CRE to give notice to the Companies Office of their exempt status. This notice will be placed on the Register. It is likely that only a small number of companies might qualify for this exemption.
36. As discussed, CREs that qualify for the class exemption for foreign exempt issuers may choose whether they will rely on the exemption or not. The Register will be a repository of information about the entities that are eligible for and rely on the exemption. Notices will be required to be lodged every year.
37. It is possible that the FMA may grant other class or individual exemptions given its exemption powers. Those affected CREs should also pay the proposed fee if the FMA makes it a condition of the exemption that the relevant CREs must notify the Companies Office of their exempt status. These notices will also be placed on the Register.
38. MBIE has considered the work required for MBIE staff to review a climate statement and the work required to review a notification of exempt status and have estimated that this will take a similar amount of time. I therefore propose that the same fee is charged.
39. The Registrar undertakes a high-level check of the climate statements and any notification of exempt status but does not assess the contents of the climate statements. It is the FMA's role as regulator to assess the disclosures in the climate statements and to determine if conditions for an exemption are met.

Timing

40. The first climate statements will be lodged between 1 January and 30 April 2024. The new fee needs to be in place by early 2024 so that the fee may be

charged when the first climate statements are lodged. Confidential advice to Government

Other Register costs

41. As noted above, MBIE has assessed the total operating costs of the Register over a five-year period to be \$0.714 million. The proposed fee of \$340.00 (GST exclusive) paid by CREs to lodge their annual climate statements (or notification of exempt status) will recover approximately \$0.286 million of the five-year operating costs of the Register (or \$0.057 million annually) as the cost of providing the service. Confidential advice to Government

Companies Office Fees and Levies

42. As noted, the Register will be maintained by the Companies Office. Last year, the *Companies (Levies) Amendment Act 2022* amended the *Companies Act 1993* to provide a legislative framework for the Companies Office to move to a new hybrid cost-recovery model balancing fees and levies for all its services.

Confidential advice to Government

43. Confidential advice to Government

44. As discussed below, MBIE originally consulted on a fee to lodge climate statements reflecting full cost recovery. Legal professional privilege

45. As the fee for filing climate statements on the Register needs to be in place in January 2024 when the first statements are due to be filed, I am seeking Cabinet's approval for that fee now. Confidential advice to Government

Consultation

46. MBIE has carried out targeted consultation on a fee proposal. A discussion paper titled *Climate Related Disclosures – Proposed Climate Statement filing fee* was sent to all CREs as identified by the FMA. The discussion document

proposed a climate statement filing fee of \$740.00 (GST exclusive) on the basis that the total operating costs of the Register would be met by the fee. As discussed above, the fee proposal has since been revised.

47. Two responses to the consultation were received. The first submitter noted that arguably it was not completely clear that CREs receive direct benefits from having the new Register in place but acknowledged the simplicity of identifying reporting entities rather than potential investors who may also get benefits from reporting. This submitter also asked if consideration could be given to combining the fee with other fees being charged by the FMA as the regulator. If this fee proposal is agreed, CREs will be charged by the Companies Office for the new fee and the FMA levy at the same time, i.e. both will be charged as part of the process of lodging climate statements. The FMA levy is discussed below.
48. The second submitter queried whether a new register for climate statements was needed and whether instead existing registers (such as the Companies Register and Disclose Register) could be used for filing climate statements.
Legal professional privilege
[REDACTED]
49. The second submitter also suggested that filing fees for managed investment schemes should be paid per scheme rather than per fund.
50. I agree with the second submitter that fees should not be charged per fund. As noted above, I propose to charge one fee to each investment scheme manager regardless of the number of climate statements they are required to file. This is a fair approach to dividing the cost of the register between CREs. It also aligns with how the FMA levy is charged.
51. A review of the fee against actual costs and number of filings will be conducted as part of the routine review of Companies Office fees which is planned within the next five years.

Communications with CREs

52. When MBIE consulted with CREs a fee of \$740.00 (excluding GST) was proposed. MBIE will communicate with the CREs about the revised expected fee. Given the fee will be less than originally proposed, I don't expect this to cause any concerns.

Related amendments to levies under the FMA Act

53. The *Financial Markets Authority (Levies) Regulations 2012 (FMA Regulations)* were amended in 2022 to provide for a levy on CREs that is currently collected by the FMA. The FMA levy gives effect to Budget 2022 decisions that a portion of the FMA's costs in relation to its new statutory functions under the climate-related disclosures regime should be recovered from levy payers.
54. Cabinet has agreed that a change to the FMA Regulations should be made so that the Companies Office, rather than the FMA, will collect the FMA levy [LEG-

22-MIN-0129 and CAB-22-MIN-0302 refers]. When the FMA levy was introduced, it was intended that the levy would only be collected by the FMA on a temporary basis until the Companies Office could implement system changes to collect the FMA levy when the climate statements are lodged. [REDACTED]

Confidential advice to Government
[REDACTED]
[REDACTED]

55. The Companies Office will pass the FMA levy to the Crown as non-tax revenue.

Financial Implications

Increase in funding in the appropriation

56. The cost to the Registrar to develop the Register is \$0.485 million capital and \$0.035 million operating expenditure. The total ongoing operating cost is \$0.134 million expenditure in 2023/24 and \$0.123 million annually from 2024/25 and outyears.
57. I propose an increase in the departmental appropriation Commerce and Consumer Affairs: Registration and Provision of Statutory Information within Vote Business, Science and Innovation by \$0.169 million in 2023/24 and \$0.123 million in 2024/25 and outyears to provide for the costs the Registrar will incur to meet their obligations under the CRD Act.

Legislative Implications

58. Regulations are required to implement the proposals. Before regulations may be made, I am required to consult with the FMA (under section 549 of the FMC Act). MBIE has undertaken this consultation on my behalf.
59. The FMA did not make any significant comments on the proposals. They questioned some technical matters which were resolved between MBIE and the FMA.

Cost of Living Implications

60. This paper has no cost of living implications. The fee will only be charged to large CREs.

Use of consultants

61. No consultants were used in the development of the policies in this paper.

Impact Analysis

62. The Treasury's Regulatory Impact Analysis team has determined that the proposals relating to the new climate related disclosures register (other than the proposal to introduce a fee to fund the register) is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

63. A CRIS was prepared in relation to the introduction of a new fee to be paid by CREs. This is attached at Appendix 1. The MBIE Regulatory Impact Analysis panel determined that the CRIS meets the regulatory impact evaluation criteria.
64. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met. The potential emissions impact is indirect and unable to be accurately quantified.

Human Rights

65. There are no material human rights, gender or disability issues.

Consultation

66. In preparing this Cabinet paper, MBIE has consulted with the FMA, Ministry for the Environment and the Treasury. The Department of Prime Minister and Cabinet was informed.

Proactive Release

67. Subject to any appropriate redactions, this paper will be proactively released on MBIE's website within 30 working days of Cabinet's approval.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that the first climate statements will be lodged by CREs between 1 January and 30 April 2024;
2. **note** that regulations relating to the Register need to be introduced by January 2024 so that the fee and the other technical regulations relating to the Register are in place before the Register is operational and the first climate statements are lodged;
3. **note** that section 549 of the FMC Act requires that the responsible Minister consult with the FMA before recommending regulations under section 548 of the FMC Act as proposed;
4. **note** the advice of the Minister for Commerce and Consumer Affairs that the consultation requirement has been met;

Purpose to search the Register

5. **note** that pursuant to clause 12 of Schedule 2 of the FMC Act a search of the Register may only be carried out for a prescribed purpose;
6. **note** that section 548(1)(k) of the FMC Act provides that regulations may be made prescribing procedures and requirements for registers kept under the FMC Act;

7. **agree** that the Register may be searched:
 - 7.1. to obtain information displayed on the Register (e.g., in the climate statements or any notification of exempt status);
 - 7.2. to assist any person –
 - 7.2.1. in the exercise of the person’s powers under the FMC Act or any other enactment; or
 - 7.2.2. in the performance of the person’s functions or duties under the FMC Act or any other enactment;

Search of the Register

8. **note** that clause 12 of Schedule 2 of the FMC Act provides that the Register may be searched by reference to prescribed criteria;
9. **note** that section 548(1)(k) of the FMC Act allows regulations to be made prescribing search criteria for the Register;
10. **agree** that the search criteria of the Register be:
 - 10.1. CRE name;
 - 10.2. CRE New Zealand Business Number (**NZBN**); and
 - 10.3. scheme name (if the CRE is an investment scheme manager);

Information to appear on the Register

11. **note** that section 548(1)(k) of the FMC Act provides that regulations may be made prescribing information to be contained in the register;
12. **agree** that the information to be contained in the Register about each CRE is:
 - 12.1. CRE legal name;
 - 12.2. CRE NZBN (if any);
 - 12.3. the climate statements or notification of exempt status lodged by the CRE;
 - 12.4. the assurance report on the climate statements (from October 2024);
 - 12.5. the CRE’s balance date to which the climate statements or exemption relate; and

- 12.6. if the CRE is an investment scheme manager, the scheme or schemes managed by the investment scheme manager. (Managed investment scheme managers will either produce climate statements for each separate fund in a scheme or they will consolidate reporting at a scheme level);

Amendments to the Register

13. **note** that section 548(1)(k) of the FMC Act provides that regulations may be made prescribing circumstances in which amendments must be made to the Register;
14. **agree** that if a CRE that is not an issuer informs the Registrar of information that is different from the information entered on the Register, the Registrar must amend the Register in specified circumstances (where those circumstances put the CRE in a substantially similar position to an issuer);

New fee

15. **note** that regulations may be made prescribing fees and charges payable in respect of the Register pursuant to section 548(o) of the FMC Act;
16. **agree** to introduce a fee of \$340.00 (GST exclusive) charged to each CRE when they lodge their climate statements or notification of exempt status with the Registrar, for the cost of the Registrar providing the service to the CRE;
17. Confidential advice to Government

Financial implications

18. **agree** to the increase in spending for costs to be incurred by the Registrar of Financial Service Providers to establish and maintain a register of climate-related disclosure statements under the FMC Act;
19. **approve** the following changes to appropriations to give effect to the policy decisions in recommendations 16 and 18 above with no corresponding impact on the operating balance and net debt:

Vote Business, Science and Innovation Minister of Commerce and Consumer Affairs	\$m – increase/(decrease)				
	2023/24	2024/25	2025/26	2026/27	2027/28 & Outyears

Departmental Output Expenses: Commerce and Consumer Affairs: Registration and Provision of Statutory Information (funded by revenue other)	0.169	0.123	0.123	0.123	0.123
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20. **agree** that the proposed changes to appropriations for 2023/24 above be included in the 2023/24 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

Legislative implications

21. **authorise** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations in paragraphs 7, 10, 12, 14 and 16;
22. **authorise** the Minister of Commerce and Consumer Affairs to make decisions consistent with the policy decisions in this paper on any matters that may arise during the drafting process, including transitional arrangements; and
23. **note** that the Minister of Commerce and Consumer Affairs will seek final approval of the regulations from Cabinet as soon as practicable.

Authorised for lodgement

Hon Dr Duncan Webb

Minister of Commerce and Consumer Affairs

Appendix 1 – Cost Recovery Impact Statement