ICNZ Insurance Council of New Zealand

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Committee Secretariat
Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington

Emailed to: edsi@parliament.govt.nz

Dear Madam/Sir,

ICNZ submission on the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill 2021

Thank you for the opportunity to submit on the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill (the Bill).

The Insurance Council of New Zealand (ICNZ) represents general insurers and reinsurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars' worth of New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, cyber insurance, commercial property, and directors and officers insurance).

Please contact Tim Grafton (tim@icnz.org.nz) if you have any questions on our submission or require further information. We would like to appear before the Select Committee to speak to this submission.

Submission

Overarching comments

Support for disclosure

ICNZ supports the disclosure of climate-related information. Climate change impacts are occurring today, and extreme impacts will become more frequent over time reflective of the concentration of greenhouse gases in the atmosphere and how much global temperatures increase above pre-industrial times. Climate-related exposure either is or will become material information to disclose in financial reports. Listed companies already have a legal obligation to report material information.

Disclosing material climate-related information fulfils several critical roles. It informs investment decisions leading to an efficient allocation of capital as the world transitions to a low carbon

environment. It identifies risks that need to be managed either by avoiding, controlling, accepting, or transferring risk to insurance. So, insurers play a critical role by pricing risk to signal the need for adaptation or risk reduction measures to be taken. Insurance helps encourage a more resilient New Zealand. Climate disclosure also informs opportunities to develop and invest in alternative activities such as those that will reduce greenhouse gas emissions.

Unless there is transparent disclosure of material climate-related information on a comparable basis it is likely the world will not transition or may not transition as quickly as it needs to a low carbon future. The results could be catastrophic. Unless this disclosure occurs the economic transition to a low carbon world will be volatile and unpredictable. This is not a desirable state for financial markets. The purpose of the Bill is therefore endorsed.

Challenges for a new regime

It is noteworthy that this Bill is the first in the world to mandate reporting under the framework established by the Taskforce on Climate-related Disclosures (TCFD). For many reporting entities this will require them to create new systems and ways of capturing this information for the first time. Even with the best intentions, the introduction of a totally new approach and the uncertainties inherent in making decisions over the short, medium, and long-term futures may lead to errors and incorrect assumptions initially. Indeed, the Financial Markets Authority in France, Autorite des Marches Financiers (AMF) noted[1] recently the challenges major insurers and other financial sector companies were finding in reporting under the TCFD framework. This had resulted in variability in the level of completeness in reporting. For example, the AMF states with respect to scenario analysis, a key tool for informing future climate-related risks based on probable futures, that no consensus exists on a methodology and that the analysis is accompanied by significant assumptions and that data is still unreliable and incomplete. It also noted that scenario analysis is complex, very time-consuming and requires qualified personnel.

These matters illustrate that it will take time for climate-related disclosure to reach widespread maturity, noting also that reporting entities will be at different stages of development. We are concerned therefore that there is a real risk of underestimating the time it will take to achieve the desired levels of reporting.

Another critical point to bear in mind is the need for alignment and consistency with the way individual entities conduct their own climate-related stress testing, how the prudential regulator, the Reserve Bank of New Zealand (RBNZ) requires such testing to be carried out, the requirements of regulators in other jurisdictions and international guidance. We envisage this to be a time-consuming process.

In completing this work, it will be important to ensure, that as much as possible, one consistent approach is adopted to avoid duplication, unnecessary complexity and undermining the credibility of the regime.

Challenges surrounding insurance specific issues- physical, transition and liability risks related to climate change.

It is widely acknowledged that there is a level of complexity for insurance with respect to climate-related exposure due to the nature of the services provided. This complexity encompasses physical, transitional and liability risks.

[1] TCFD Reporting in the Financial Sector, December 2020, Autorite des Marches Financiers.

Physical exposure includes the physical assets they underwrite that are exposed to climate change, for example, houses areas that become flood-prone due to changes in climate.

Transitional exposure will arise from the change in asset values that insurers own or invest in because of climate change. Asset values of sectors with more intense use of carbon face the risk of value loss in the transition to a low carbon economy. It will also include socio-economic changes in society, such as, changes in customer preferences and behaviour or regulatory market interventions, the timing and nature of which is very challenging to anticipate. Insurers are not alone in also facing transition risks related to the changing value of assets and investments as climate changes but are exposure to greater moral hazard where these changes alter client behaviour making claims more likely.

To add to this, the data necessary to perform analysis in the context of climate scenarios is not always readily available and poor in New Zealand.

Further, in the context of insurance climate-related litigation risks, work in this area by some of the world's leading experts is still preliminary in developing methodologies to assess them[2]. Liability exposure arises from the range of liability policies insurers underwrite which cover the liability of their customers. This may give rise to liability claims from third parties against the insured in years to come for the failure to address climate-related issues that gave rise to losses for those third parties.

Liability insurance claims are typically long-tail, that is, they take many years to come to light, quantify and resolve, sometimes even decades as was the case with asbestos claims. It is extremely difficult to estimate the likelihood that climate litigation will be brought against an insured plaintiff, the chance that the case will rule in the plaintiff's favour and the cost of any remedy sought. In contrast, there is more comfort assessing insured physical risks, which are dependent upon high quality granular data and the use of tools like catastrophe models, as the level of uncertainty is somewhat less. While insurers are the most familiar with these approaches, they would be novel to many other reporting entities.

It is also worth noting that the Intergovernmental Panel on Climate Change (IPCC) will be issuing in 2021/22 its Sixth Assessment Report (AR6). This will provide the most up-to-date estimates of climate impact scenarios as reflected in the IPCC's Representative Concentration Pathways (RCPs). It is the RCPs which are most likely to be referenced in the setting of climate-related reporting standards and therefore analysis which becomes the basis of climate-relate disclosure.

Financial Reporting Framework

While we concur that climate-related disclosures should be part of a financial reporting framework, the approach taken in this Bill hardly acknowledges the fundamental differences between reporting against long-established financial reporting standards and novel, climate-related disclosure standards which have no precedents elsewhere in the world and which will not be developed till after this Bill is enacted. Further, the assurance framework for standard financial reporting is reliant upon a large body of accounting professionals and auditors with expert knowledge. Climate-related disclosure has no such depth and breadth of experience and this is particularly so with respect to insurance disclosures.

The TCFD framework is the key reference material for reporting and its expectations clearly set a high bar for disclosing climate-related matters. Disclosures, it says, should be written with the objective of communicating financial information that serves the needs of a range of financial sector users (e.g.,

[2] Insuring the Climate Transition, Enhancing the Insurance Industry's Assessment of Climate Change Futures, UNEP Finance Initiative and PSI Principles for Sustainable Insurance, January 2021.

investors, lenders, insurers, analysts). This requires reporting at a level beyond compliance with minimum requirements. The disclosures should be sufficiently granular to inform sophisticated users but should also provide concise information for those who are less specialised. Disclosures should show an appropriate balance between qualitative and quantitative information and use text, numbers, and graphical presentations as appropriate. It is clear therefore that new data collection systems and processes will have to be introduced to meet these requirements[3].

It is also important to note that Boards may be reluctant to sign off climate statements where there is insufficient information available to give them confidence that they are compliant. This reinforces the need for a pragmatic transition to new standards and the application of a penalty regime that reflects this.

Reporting Standard – a graduated approach needed.

One of the fundamental difficulties with this Bill is that it applies a reporting and compliance regime that will be enacted well before the applicable reporting standards to be set by the XRB are known. We are extremely concerned that if fully comprehensive reporting standards were required from the outset that many entities will struggle to be compliant. These concerns would be largely allayed if the initial XRB standard focused on reporting entities establishing systems and settings for future reporting compliance. However, this is not guaranteed. Therefore, we are obliged to express our misgivings based on full, comprehensive reporting being required from the outset. On this assumption, we believe that there would be insufficient, independent resources available to provide validation and assurances of such reporting. We also do not believe the data will be available to reflect comprehensive reporting. Further, we believe that the XRB itself will struggle to meet its own timeframes for establishing standards of this type for all sectors. Even with insurance, there will be a need to have different standards between Life and General Insurers to reflect the different risks they underwrite and the different investment and time horizons.

Although, this is not addressed in the Bill, we strongly support a transitional period for the implementation of standards. Initially, in the first year of compliance, standards should be set at a high-level that require reporting entities to have systems, procedures, and appropriate governance in place for making climate-related disclosures. The following year, for instance, could include reporting Greenhouse Gas (GHG) emissions under Scope 1 and 2 with the first requirement to undertake scenario testing analysis. Year three would build on this moving to Scope 3 GHG reporting and more complete scenario analysis with a more robust set of metrics. It should be noted though that some aspects of scope 3 disclosures will require data from suppliers or other external parties (e.g., investment manager/ underlying companies). If the full introduction of scope 3 is mandated, then it must reflect the ability of organisations to receive, validate and report on these as well as being able to source auditors who can provide the necessary assurances.

Our outline of a graduated approach to standard setting is illustrative only. ICNZ, and no doubt other reporting entities, will seek to work with the XRB to inform its decision-making. The key point though is that this type of reporting is very much in its infancy globally and that must be recognised through some form of transitional standard setting.

[3] *Implementing the Recommendations of the Taskforce on Climate-related Disclosures* p68

Harsh penalties and transition period

Despite the formative steps being taken by New Zealand to mandate climate-related disclosure and the significant limitations to doing that, the Bill sets out harsh penalties for non-compliance from the outset. This reflects a sanctions regime that is more applicable to mature financial reporting with its associated comprehensive accounting standards, guidance, and practises. This is very different to future-focused climate-related reporting. Financial reporting is primarily based on immediate past financial performance or near-term material information where much greater certainty exists about the data available. Climate reporting deals with future uncertainties across short, medium, and long-term horizons and requires subjective judgements to be made.

As noted, the XRB will not have issued reporting standards before this Bill is enacted[4]. This means that the Bill is setting penalties for non-compliance with standards that will not be known till late in 2022. Only at that stage will entities be able to know with absolute certainty what data they need to collect and what changes to systems and process they will need to introduce to be compliant. For general insurers, this coincides with a time of significant legislative and regulatory change for the sector which already places acute pressure on resources available to make changes[5].

We strongly urge consideration be given to enable reporting entities to transition to the new regime without facing harsh penalties noting that arrangements will still be developing at that point and no detailed guidance or established best practice will be available to draw upon. as learnings and greater guidance is available. A fairer and more reasonable approach would be to grant entities a transitional, probation reporting period of up to two years during which penalties would not be applied. This would enable best practise reporting to develop. It would also ensure sufficient expertise is built up to support independent, audited, verification of disclosures for reporting entities and for aligned expertise to develop within the regulatory bodies, the XRB and the Financial Markets Authority. This would enable them to build appropriate capacity to fulfil their roles. This would also provide a learning period in which shortcomings could be safely identified and remediated. It would support a collaborative, iterative learning approach between regulators and reporting entities which is essential as New Zealand embarks as global pioneer in this area. Such an approach would not delay implementation.

It is also noteworthy that in the Departmental Disclosure Statement (DDS) on this Bill, the Ministry of Justice stated that the proposed infringement offences depart from best practice for how infringement regimes are constructed and that the proposed infringement fees are significantly higher than guidance recommends ($3,000). It goes on to say that these are penalties handed out by enforcement officers rather than the Court. The Ministry considers matters that attract a significant penalty are best dealt with by way of the Court. It also considers there is an issue of certainty as there

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[4] XRB's website has a timeline showing it intends to publish standards from September 2022 with the expected enactment being January/February 2022.

[5] Insurers are in the throes of changing systems to meet IFRS17 financial reporting requirements that become effective from 1 January 2023. Legislation changing all insurance contract law is due for introduction later this year as is a new EQC Act and changes to EQC liabilities which will materially impact general insurers. The full impact of these changes will likely come into effect in 2023. Currently, the Reserve Bank of New Zealand is reviewing the Insurance Prudential Supervision Act and also changes to its solvency standards. These will also bring significant changes from 2023/24 onwards. The Conduct of Financial Institutions Bill is before Parliament and its expected enactment later this year will bring about further system and process changes in 2022/23. There are also discussions underway now about how to fund Fire and Emergency New Zealand which will bring about further changes which will require systems changes to be programmed in during 2023/24.

is nothing in the legislation to demarcate when to apply an infringement offence or go by way of the full criminal offence.

If the proposed penalty regime is brought in without change, then it is critical that climate reporting standards focus initially on the requirement for entities to follow systems and processes with less emphasis on definitive data and quantitative measures. The latter must be allowed to develop over time. However, as legislators do not know what the reporting standards will be and how easy it will be to comply, this Bill must be amended to create a penalty-free initial reporting period.

Broader public sector reporting requirements

The TCFD recommends that all financial and non-financial organisations with public debt or equity report. The Bill does not go that far. Consideration should be given to requiring a wider group of public sector entities to report. We note in the context of insurance that the EQC and the ACC should specifically be required to report their climate-related disclosures.

Clause-by-clause comments on the Bill

Clause	ICNZ comments	Recommendation
461N provides an overview referring to requirement under this part for climate reporting entities to keep proper records related to their climate-related disclosures, prepare climate statements, and to the extent those statements are required to disclose greenhouse gas emissions, obtain an assurance engagement, and lodge these statements.	ICNZ supports the need to keep proper records and prepare climate statements to ensure compliance and assurance and verification of climate-related disclosures. The Financial Reporting Act 2013 refers to proper records as being "correctly recording the transactions of the company" and enabling the financial statements to comply with generally accepted accounting practices which must be audited. It is assumed therefore that in relation to climate-related disclosures this would refer to correctly recording information and being compliant with the XRB standard. The use of the term "correct" with respect to future climate-related disclosures is problematic. This is because certain assumptions and scenarios about the future must be applied which may not eventuate. In short, the proper records cannot be known to be correct ex-ante, but only ex-post. For longer term	The Bill should be amended to clarify that reporting entities must correctly apply the climate-related disclosure standard set by the XRB as opposed to correctly reporting possible future outcomes. This would support reporting entities to work collaboratively with the XRB to inform the development of appropriate reporting standards.

Clause	ICNZ comments	Recommendation
	and more complex reporting requirements the term "correct" becomes even less appropriate given the uncertainties and subjective judgements that must be made. These concerns though would be mitigated if the XRB's standards were to focus initially on ensuring reporting entities' systems and settings were aligned to TCFD reporting. The Bill should also clarify what is meant by 'Greenhouse Gas emissions. Does this refer solely to energy consumed (Scope 1 & 2) or is it also to factor upstream and downstream emissions (Scope 3)[6] which has no agreed global measurement method nor any agreed auditable approach. We note that ISO 14064 reporting standard provides guidance on how to calculate Scope 3. However, ISO audit standard 14064-3:2019 does not specify which sources to include as it focuses on principles. Additionally, it is not yet clear what level of assurance with respect to disclosure will be required. Depending on whether it is limited or full assurance, it may mean that data required may not be available in time for reporting compliance purposes. It would not be desirable for entities to be required to do 11+1 forecasted data for this purpose. The Bill provides no clarity here, yet it needs to given the sanctions regime that is proposed.	The Bill should specify that Greenhouse Gas emissions should be reported consistent with the standard set by the XRB to acknowledge reporting on Scopes 1, 2 and 3 may not be required from the outset and/or may reflect the need for entities' systems and settings to align with the TCFD framework. If not, the Bill should specify which GHG's are in scope. Full introduction of scope 3 must reflect the ability of organisations to receive, validate and report on these as well as being able to source auditors who can provide the necessary assurances. The Bill should clarify that limited assurance with respect to disclosures is permissible provided those limitations are transparently reported. Our other comments with respect to a graduated approach to

[6] In "*Implementing the Recommendations of the Task-force on Climate-related Disclosures"*, the TCFD states on p78/79 that **Scope 1** refers to all direct GHG emissions, **Scope 2** refers to indirect GHG emissions arising from the consumption of electricity, heat and steam and **Scope 3** refers to other indirect emissions not covered in **Scope 2** that occur in the value chain of the reporting company, including both upstream and downstream emissions. **Scope 3** emissions could include: the extraction and production of purchased materials and fuels, transport-related activities in vehicles not owned or controlled by the reporting entity, electricity-related activities (e.g., transmission and distribution losses), outsourced activities, and waste disposal.

Clause	ICNZ comments	Recommendation
		reporting and penalty-free period are relevant to this.
Who must report. **461O and 461P** defines a climate reporting entity. It covers issuers of equities and debt securities, banks, credit unions and building societies and **461Q** to managers of schemes. With respect to insurers, they must comply if (under 461P (2)): (a) As at the balance date of each of the 2 preceding accounting periods, the total assets of the licensed insurer and its subsidiaries exceed $1 billion, or (b) In each of the 2 preceding accounting periods, the annual gross premium revenue of the licensed insurer and its subsidiaries exceeds $250 million. However, if the licensed insurer is an overseas company the above do not apply to the company as a whole, but only to annual gross premium revenue of the New Zealand business (under 461P (4)). A large overseas reporting entity means a body corporate that is "incorporated outside New Zealand" (461P (5)). The entities must report climate statements (subpart 2) and comply with climate standards as set out in Part 2 (Financial Reporting Act Amendments) of the Bill.	ICNZ supports the $250 million gross premium revenue threshold for the inclusion of insurers in the disclosure regime. However, clarity is required about the level of disclosure. In the case of a multinational insurer operating in New Zealand as a branch structure, it is not clear whether the liable entity is the group parent Group or the legal entity operating in New Zealand or the branch operating in New Zealand, if that is not a legal entity. In this context, it should be borne in mind that a local branch may underwrite risks, but so too will the group where it is judged more appropriate for risks to be transferred to specialist areas within the Group (e.g., aviation insurance). ICNZ supports the inclusion of insurers who for the preceding two reporting periods recorded $250 million gross premium revenue as this will recognise the potential for volatility of business conducted around the threshold. However, the Bill should clarify for the avoidance of doubt what is meant by gross premium revenue. It should, however, exclude Government levies and taxes, for example, at present these include the EQC levy, the FENZ levy and GST. It should though include the premium component charged to customers to cover reinsurance and claims retained by the insurer as well as expenses and margins. This approach would reflect how general insurers record their Gross Written Premium for classes of business.	The Bill should be amended to clarify that gross premium revenue includes all New Zealand risks underwritten either by the Group, New Zealand branch or legal entity operating in New Zealand. The Bill should be amended to state that gross premium

Clause	ICNZ comments	Recommendation
	It is assumed that the reporting dates referred to in the Bill will coincide with the timing of financial statements submissions. Confirmation of that in the Bill would be helpful. It is also not clear whether there will be any climate-related disclosure reporting required during the financial year, though presumably for some NZX and ASX listed entities this will be the case for financial reporting e.g., quarterly reporting.	revenue is exclusive of all taxes and levies. The Bill should state that climate-related disclosures should be reported as part of the normal reporting of financial statements. The Bill should clarify whether climate-related disclosure should accompany interim financial reporting requirements.
When reporting ceases and starts **461R** requires climate reporting to continue during an accounting reporting period even if the climate reporting entity ceases to be a climate reporting entity (e.g., they begin to fall below the threshold test). However, there is no requirement to report in accounting periods that ended before the accounting period when the entity became a climate reporting entity.	It does not seem logical or consistent with the intent of the Bill that a reporting requirement continues during an accounting reporting period even after an entity ceases to be a reporting entity. There is a case for saying that the reporting requirement should cease when the reporting entity ceases to be one or at least to only be required to report up to that time it ceases to be one. Potentially if the entity in question is not meeting the threshold for the current period and the prior year comparison period, then they should not be required to continue make the climate change disclosure until it reaches the threshold again. This does not contemplate what may occur if an offshore entity	The Bill should be amended to state that if a reporting entity ceases to be a climate reporting entity its reporting obligations cease at that time.

Clause	ICNZ comments	Recommendation
	withdraws from conducting business in New Zealand.	
Records must be kept. **461S** requires that records be kept at all times that enable climate statements to be compliant or to support an exemption to reporting. The same applies to assurance engagements with respect to greenhouse gas emissions if these are to be reported.	Although this may appear appropriate, it leaves open what keeping records "at all times" means. It could mean maintaining virtually daily, up-to-date records which would be costly and complex, and we would argue would achieve nothing. It should mean maintaining records in such a way that they can be gathered for annual reporting purposes. Some clarification is needed in the Bill. Also, reflecting on the sanctions regime and reference to keeping records at all times, this may suggest that entities may be subject to spot checks/audits of this requirement. This would add a significant cost to compliance, and we would see no good reason at this formative stage of reporting to be implementing such an approach.	The Bill should be amended to state that reporting entities be required to maintain records, so they are relevant and suitable for annual reporting purposes. This would support a compliance regime that appropriately focuses on ensuring annual, public reports are compliant with reporting standards.
Manner and period for keeping records. **461T, 461U and 461V** require records to be kept in the prescribed manner (if any), CRD records must be kept for 7 years and be made available for inspection by the reporting entity at all reasonable times to directors of the climate reporting entity, the FMA and "any other persons authorised or permitted by an enactment" amongst others. $50,000 fines apply for failure to comply.	This seems appropriate as seven years aligns with retention requirements for other financial records. However, if an entity ceases to be a reporting entity, then it should be clear that it is not necessary to keep records for seven years. We note the level of fine and the views of the Ministry of Justice as reported in the Departmental Disclosure Statements that such significant fines should be Court ordered. We support this view. As noted, the proposed penalties for non-compliance are very severe (including imprisonment). This is an exceptional for a Reporting Disclosure requirement.	The Bill should be amended to provide for a penalty-free two-year period for reporting entities. Thereafter, the Bill should state that the penalty regime should be Court ordered.
When climate statements must be prepared	We note that large global entities operating in New Zealand are likely	The Bill should be amended to enable the XRB to have

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461W (where the reporting entity has no subsidiaries), 461X (where there are subsidiaries) and 461Y (overseas reporting entities) requires climate statements to be completed and signed by 2 directors within 4 months of balance date. In so far as overseas reporting entities are involved (461Y), the climate statement only needs to be prepared for its New Zealand business as if that business were conducted by a company formed and registered in New Zealand	already reporting in accordance with standards other than that which will be developed by the XRB. This Bill may add to their reporting costs and consideration should be given to an equivalency test whereby the XRB and FMA may be satisfied that an appropriate level of disclosure has been made even though its reporting may not exactly align with the New Zealand standard. If the XRB applies a graduated approach to standard setting as outlined earlier with an initial focus on requiring systems and settings of reporting entities to reflect the TCFD framework, then compliance should not be problematic. Global accounting firms already have the relevant experience, expertise, and scale to meet the need on the basis that assurance entails: - Verifying emissions based on data provided. - Verifying assertions about TCFD-aligned systems and settings. However, if full, comprehensive reporting with detailed metrics is required from the outset, then we are concerned whether New Zealand has sufficient expertise and knowledge to sign off climate statements. If not, bottlenecks could lead to delays in obtaining necessary sign-offs. This would then attract the application of the harsh penalties in the Bill.	discretion to accept reporting by offshore entities are of an equivalent standard. This would be a pragmatic way of minimising compliance costs while achieving the intent of the Bill.
Exceptions to reporting. 461ZA provides exceptions to reporting as long as the entity can “reasonably determine that its activities in New Zealand are not materially affected by climate change”. To be exempted, 461ZB says an entity must obtain an assurance from	There is no definition of “materially affected” in the Bill, so reference is presumably to the TCFD framework and materiality tests. This needs to be clarified. Section 231 of the Financial Markets Conduct Act (related to dealing in financial products on	The Bill should be amended to clarify that materially affected is to be determined by guidance set by the XRB. The Bill should be amended to clarify that the role of CRD assurance practitioners is to verify the procedure that entities have followed to

Clause	ICNZ comments	Recommendation
a qualified CRD assurance practitioner and deliver to the FMA and the Registrar for lodgement its determination and the assurance within 4 months of balance date. This must include an explanation as to how the entity has determined it is not materially affected.	markets) refers to "material information" as what a "reasonable person would expect, if it were generally available to the market, to have a material effect on the price of financial products of a listed issuer, but under the Bill this is in reference to financial reporting. We are unsure whether to assume that this is not relevant for climate-related disclosures. As outlined later, as XRB can issue guidance on materiality, it should be sought. Guidance on approved procedure for assessing materiality may be necessary. Climate-related risks are complex for example: – *First-order* physical climate risks include sea level rise and more intense/frequent extreme weather including flooding and drought. While they may be less acute than a major EQ event, over time they will be chronic. – *Second-order* physical risks include the expansion of fire risk, pests, disease vectors and virulence. Transition risks include an increase in the legal exposure of directors; threats to entities' social license to operate; and disruptive innovation in the insurance sector. Liability risks as noted earlier are extremely challenging and complex to estimate and may not materialise for many years. Few assurance practitioners in New Zealand (or elsewhere) have the experience or expertise to assess the validity of an entity's conclusions about materiality. Guidance on approved procedures	"reasonably determine that its activities in New Zealand are not materially affected by climate change".

Clause	ICNZ comments	Recommendation
	for assessing materiality may be necessary.	
Penalties for non-compliance with a standard **461ZC** covers penalties for reporting entities and every director for *knowingly* failing to comply with applicable requirements for climate statements (461W to 461Z), or regarding exemptions, including assurance engagement to determine the exemption is appropriate (461ZA and 461ZB). For individuals they face imprisonment for up to 5 years and/or a fine of up to $500,000. For the entity, a fine of up to $2.5 million. FYI reporting entities, directors and in some cases employees, face fines of up to $50,000 for not keeping records, reporting in an appropriate manner and/or providing access to information or explanations under 461ZN (3), 461ZO (3), 461T (2), 461V (2), 461ZJ (2) and 461ZK (2). Further details about these matters are set out below.	These penalties are significant and harsh. They are disproportionate to the infancy of the reporting regime and should be significantly reduced and/or not be applicable until a probationary reporting period of two years has lapsed. If an entity had 8 directors, does this mean that all 8 could be imprisoned and fined $500,000 each ($4 million in the aggregate) and the entity fined $2.5 million, so effectively $6.5 million? It is not at all clear how these penalties, including imprisonment, could apply to directors offshore. In relation to the offence sections 461ZN(3), 461ZO(3), 461T(2), 461V(2), 461ZJ(2) and 461ZK(2)) which makes **every** director liable for up to 5 years imprisonment or a fine up to $500,000, the Bill is not clear whether in the circumstances where **group climate statements** are filed whether personal liability is confined to the directors of the group parent (i.e. does not extend to directors of its subsidiaries), and if not, whether it should. Additionally, we are concerned about the proposed timelines in the Bill. The timeframe between finalising the standards and the requirement to report is very tight. We note that the timing of a standard from the XRB will be December 2022. Currently, TCFD metrics focus on emissions and there are multiple standards for determining (and assuring) emissions available. Clarity and consistency of approach is needed.	The Bill should be amended to provide for a penalty-free, two-year period for reporting entities. Thereafter, the Bill should state that the penalty regime should be Court ordered.

Clause	ICNZ comments	Recommendation
If greenhouse gas emissions are reported **461ZD** requires any climate statements that disclose greenhouse gas emissions to be subject to an assurance by a qualified CRD assurance practitioner. **461ZE** requires these practitioners to be approved by the FMA (via 461ZP), subject to a Code of Conduct and disciplinary process and have the appropriate technical expertise. Reporting entities cannot appoint as a CRD assurance practitioner a director, officer or employee, or a liquidator of the reporting entity.	We support independent assurance by qualified assurance practitioners to validate GHG emissions. We also support independent assurers being regulated, being required to have the appropriate technical expertise and having to abide by an ethical Code. Guidance exists on how to calculate GHG emissions for Scope 1, 2 and 3 emissions. We note though the complexity and risks of double-counting Scope 3 emissions (upstream and downstream impacts). However, should full, comprehensive reporting with detailed metrics be required in the reporting standards from the outset, then we have deep concerns about the availability of appropriately skilled assurance practitioners in New Zealand to do this work and the capacity of the regulator to be able to assess their appropriateness. These concerns would be largely addressed if the assurance sought under the standard entails: − Verifying emissions based on data provided/agreed upon. − Verifying claims about climate-related policies, processes, and practices Few assurance practitioners in New Zealand (or elsewhere) have the expertise to assess the validity of an entity's climate risk analysis. But they might not need to. Instead, assurance could be structured around Agreed Upon Procedures (AUP) – i.e., a type of assurance engagement that focusses on factual findings. The	We recommend that structured agreed upon procedures should be considered to give guidance on the assurances required.

Clause	ICNZ comments	Recommendation
	International Federation of Accountants (IFAC) notes that: *the objective of an AUP engagement is to carry out procedures of an audit nature to which the practitioner, the entity, and any appropriate third parties have agreed and to report on factual findings…* *While directed toward engagements regarding financial information, ISRS 4400 [the international AUP standard] may provide useful guidance for engagements regarding non-financial information, provided the auditor has adequate knowledge of the subject matter in question and reasonable criteria exist on which to base their findings.* In practice, AUP engagements already review internal controls and environmental management systems on a regular basis – for much less cost and effort than an Audit or Review Engagement. If a solution to potential bottlenecks is to outsource offshore, then the Bill does not contemplate what the implications of this would be on how independent assurers would be regulated. We also have concerns that the Bill does not address the controls/penalties over assurers, for example, if they breach privacy or confidentiality, or did not adequately and safely store and secure data.	

Clause	ICNZ comments	Recommendation
Application of audit standards **461ZG** states assurance engagements must comply with all applicable auditing and assurance standards.	Subject to our earlier comments on the Bill, we support the principle expressed here.	
Reporting of non-compliance to FMA and XRB **461ZH** states that if an assurance practitioner's report identifies non-compliance, then it must within 7 days of signing its report send it and the climate statement to the FMA and XRB.	The Bill does not mention how an entity might be given time to rectify non-compliance if that were identified by a practitioner. Considering the infancy of the regime and the sanctions currently contemplated, we believe the Bill should state a time period that allows for rectification before any penalties would apply.	The Bill should be amended to state that when an assurance practitioner identifies non-compliance it must allow the reporting entity up to 20 business days to rectify and if that is not done, then it must report that non-compliance within 7 days following the of the end of the rectification period.
Access rights of assurance practitioners **461ZI** allows the assurance engagement to cover all or other parts of the climate statement (i.e., parts of the statement that are not subject to the assurance engagement). **461ZJ** says that assurance practitioners must have access at all times to CRD records and "any other documents" relevant to the assurance engagement. Under **461ZK**, the assurance practitioner may also require a director or employee to give information and explanations, so they can do their job and failure to do so attracts a fine of up to $50,000.	This gives practitioners sweeping access rights without referencing reasonable notice, timeframes for granting access or responding to questions or protection and control measures to preserve privacy or commercial sensitivity. Is a $50,000 fine appropriate? Again, the Bill makes no reference to the requirement for control measures to be applied to assurance practitioners to protect privacy and commercially sensitive data. This is a significant risk that the Bill must address.	The Bill must be amended to apply a sanctions regime to assurance practitioners for breaches of privacy or commercially sensitive information.
Penalties for assurance practitioners **461ZL** sets out penalties for acting as an assurance practitioner without being qualified or to purport to be one with fines up to $50,000 for individuals and $150,000 in any other case.	As noted previously, we believe the penalties and sanctions in this Bill are generally disproportionate given the relative infancy of reporting and here they seem out of line with those that apply to climate-related reporting entities.	The Bill should be amended to provide for a penalty-free two-year period for reporting entities. Thereafter, the Bill should state that the penalties be Court ordered.
Lodgement time for reports **461ZN** says climate statements and assurance reports must be	Our concerns about the level of the fine echo previous comments.	The Bill should be amended to provide for a penalty-free two-year period for reporting

Clause	ICNZ comments	Recommendation
lodged with the Registrar within 4 months of balance date. A fine of up to $50,000 applies for non-compliance.		entities. Thereafter, the Bill should state that the penalty regime should be Court ordered.
Annual reports and links to statements etc **461ZO** requires annual reports under the Companies Act 1993 to state that an entity is a climate reporting entity and must include an address or a link to an internet site where copies of the climate statements and assurance practitioner's statements can be read. A fine of up to $50,000 applies for non-compliance.	We agree with this requirement but again we have concerns about the level of the fine which echo previous comments.	
FMA approval of assurance bodies **461ZP** sets out how the FMA approves CRD assurance bodies based on technical expertise, subject to a Code and disciplinary procedures. The FMA can vary or revoke powers at any time for failing to meet its requirements. **546A** also enables regulations to be made to apply to CRD bodies.	We support these provisions though there is no detail on what the appropriate technical expertise may be, the matters a Code needs to cover, and the disciplinary process involved.	
Civil liability for non-compliance **461ZS** specifies that civil liability arises if the provisions listed in subsection (3) of are breached, including a potential pecuniary penalty of up to $1 million for an individual and up to $5 million in any other case. Subsection (3) refers to a failure to keep proper CRD records (461S), to prepare climate statements (461W to 461Z), to ensure required parts of statements are subject to an assurance engagement (461ZD) and to lodge climate statements (461ZN). Failure to keep CRD records for 7 years gives rise to	Again, we echo our earlier comments on penalties noting these apply to contravening (i.e., strict liability/potentially not knowingly conduct) as opposed to knowingly being non-compliant as noted in **461ZC** above. We also reference once more the Ministry of Justice's concerns. Its officials argued for strict liability on the basis it would be extremely difficult and cost prohibitive for the FMA to obtain evidence of intention or recklessness. The DDS also states that the Ministry of Justice considers "that the proposed infringement offences and the existing infringement	The Bill should be amended to provide for a penalty-free two-year period for reporting entities. Thereafter, the Bill should state that penalties be Court ordered.

Clause	ICNZ comments	Recommendation
civil liability including pecuniary penalties not exceeding $200,000 for individuals or $600,000 in any other case.	offences in the FMC Act depart from best practice for how infringement regimes are constructed" and that "the proposed infringement fees are significantly higher than guidance recommends ($3,000)", as these are penalties handed out but enforcement officers rather than the Court. The Ministry considers matters that attract a significant penalty are best dealt with by way of the Court. It also considers there is an issue of certainty as there is nothing in the legislation to demarcate when to apply an infringement offence or go by way of the full criminal offence.	
Stop Orders, direction orders etc. **462, 468** consequential amendments extending FMA's powers to make stop orders or direction orders if the new climate-related disclosure requirements are being breached. FYI several other consequential amendments are proposed to refer to the new climate-related disclosure requirements.	Again, we echo our points about the infancy of this reporting regime and the material impact a stop order or direction order may have on a business.	The Bill should be amended to provide for a penalty-free two-year period for reporting entities. Thereafter, the Bill should state that penalties be Court ordered.
Reporting in relation to accounting standards **554** amends compliance with general accepted accounting practise to include climate standards.	We support this.	
Detail on when reporting applies. **Schedule 1, 92** clarifies that reporting requirements are triggered when the XRB issues the climate standard. If an entity's financial reporting period began before the standard is issued, then climate	We support this while noting again our concerns about the potential availability of resources, the tight time constraints, and other dependencies for reporting entities.	

Clause	ICNZ comments	Recommendation
change reporting is not required for that period.		
When assurance engagement obligations apply **Schedule 1, 94** says these apply on and from the earlier of a date set by Order in Council or the second anniversary of the Act getting Royal assent. 95 says these obligations apply to accounting periods that commenced before, but end on or after the effective date, and for periods that commence on or after the effective date.	It appears that Schedule 1 92/94 are contradictory. This needs clarification.	
Standards may apply to accounting periods before clause commences, Schedule 2 6 the DDS says this validates the XRB issuing standards and otherwise consulting on them before the Act comes into force. The schedule says standards may apply to accounting periods before, but end on or after, the standard is set.	We support this.	
Amends the **Financial Reporting Act Section 5** to effectively require applicable auditing and assurance standards to include the applicable climate standard that is issued by the XRB and the issuing of climate statements as at balance date.	We support this.	
XRB guidance **19A** enables the XRB to issue non-binding guidance related to non-financial reporting on climate standards to facilitate best practise reporting.	This is where the XRB may provide guidance on ESG reporting and best practise as well as to improve reporting on climate-change specific disclosures. While we welcome this, we would also urge that there be options/guidance for smaller entities that are more generalised in scope as the cost for smaller players will be a relatively greater burden.	
Purpose of climate standards	The TCFD framework references these three time horizons.	

Clause	ICNZ comments	Recommendation
19B is to provide for or promote climate-related disclosures to (a) encourage routine consideration of short-, medium- and long-term risks and opportunities climate change presents (b) show how those risks and opportunities are being considered and (c) enable investors and other stakeholders to assess the merits of how entities are considering those risks and opportunities.	However, companies have different views on these horizons. In Australia, TCFD time horizons have been based on climate scientists' recommendations. It is important to recognise that we are dealing with uncertainty and while insurers are used to this, there is a need for the industry to factor in another component of uncertainty. It is also possible that for climate change risks, uncertainty in some metrics may be greater for short time horizons. Consultation with New Zealand climate experts will be valuable to construct reasonable future scenarios. Scientific input to this process is another factor to be considered in setting reporting timeframes under the Bill and the appropriateness of sanctions. Ideally, sectors like general insurers could develop climate scenarios, building on the Intergovernmental Panel on Climate Change's Representation Concentration Pathways (RCPs), Shared Socioeconomic Pathways (SSPs)[7], and scenarios developed by the New Zealand Climate Change. Commission. In the absences of any government commitment to a particular pathway, sectors must collaborate on this. It should be noted that scenarios for general insurers extend beyond physical risks to transition and liability risks.	

[7] SSPs were developed jointly by climatologists, economists and energy systems modelling teams. They describe five possible future socio-economic development scenarios – regional rivalry, sustainable development, fossil-fuelled development, increased inequality and a "middle of the road scenario'. These will feed into the IPCC's fork for the 6th assessment due for release at the end of 2021.

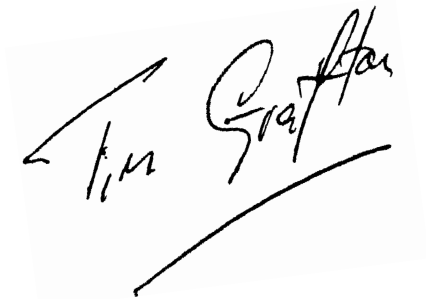
Clause	ICNZ comments	Recommendation
Climate standards application 19C these may have general or specific application and may differ according to differences in time or circumstance. It may be expressed to apply to all reporting entities or groups or to specified entities or groups.	We strongly support that the XRB has flexibility to set specific standards for general insurers that are different to life or health insurers reflecting the entirely different types of risks we accept and time horizons that apply. We acknowledge that the TCFD framework focuses on policies, processes, and practices rather than specific risk types. These standards must be developed in close consultation with insurers. The TCFD framework states for insurers that in addition to a 2°C scenario, insurance companies with substantial exposure to weather-related perils should consider using a greater than 2°C scenario to account for physical effects of climate change. Consistency on this will be needed. We note that unlike other regions, New Zealand is not currently well modelled for weather-based perils nor does it have integrated peril-reflective pricing. This first step needs to be addressed before climate change scenarios can be reported. This data needs to be accessible so that all financial institutions (not just those above this Bill's threshold) can have access to useable data. Having said that, it is true that downscaled data is available and will become increasingly sophisticated over time, but over a period that extends beyond when the reporting requirements of this Bill become mandated. The limitations this brings to scenario analysis needs to be acknowledged and expectations set at a high-level. The lack of address level data means that many of these	

Clause	ICNZ comments	Recommendation
	standards will have to be high level. Standards will need to evolve with the available data and as best practices become clear. We acknowledge though that there has been a process of continuous improvement in climate change reporting frameworks over the past decade. The emphasises the need for flexibility in standard setting.	
Matters may be excluded from climate standards. **19D** where an entity reasonably determines climate-related disclosure is immaterial, it must describe the kind of information that has been excluded and an explanation why that has been done.	We support this though note our earlier observations about materiality.	
Monetary amounts may be adjusted for inflation. **Subpart 6** amends Section 49 to include the thresholds for reporting entities (i.e., $250 million GWP or $1m assets) and the setting of levies for reporting entities and assurance bodies to fund the XRB and the FMA.	We support this.	
Amends the Public Audit Act Changes here apply to public sector organisations who must also make climate-related disclosures if they meet the thresholds set out in the legislation. It established the Auditor-general as the CRD assurance practitioner for the sector. These matters are not relevant to insurers.	We believe the Bill should apply to public sector entities and specifically the EQC and the ACC.	The Bill should be amended to require State-owned insurance entities to report climate-related disclosures.

Conclusion

Thank you for the opportunity to submit. ICNZ would like to appear before the Select Committee to support this submission. If you have any questions, please contact me by emailing tim@icnz.org.nz.

Yours sincerely,



Tim Grafton
Chief Executive