



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

Climate-related Disclosures Consultation Paper

Exposure Draft of the Financial Markets Conduct
(Climate-Related Disclosures) Amendment Regulations 2023

JUNE 2023

CONSULTATION DOCUMENT





**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

MORE INFORMATION

More information can be found on our website: www.mbie.govt.nz.

DISCLAIMER

This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Ministry of Business, Innovation and Employment is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

ONLINE: ISBN 978-1-99-106971-9

JUNE 2023

©Crown Copyright

The material contained in this report is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or media without requiring specific permission. This is subject to the material being reproduced accurately and not being used in a derogatory manner or in a misleading context. Where the material is being published or issued to others, the source and copyright status should be acknowledged. The permission to reproduce Crown copyright protected material does not extend to any material in this report that is identified as being the copyright of a third party. Authorisation to reproduce such material should be obtained from the copyright holders.

Purpose of this document

This discussion document outlines proposals for regulations to be implemented under the Financial Markets Conduct Act 2013 (**FMC Act**), as amended by the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (**CRD Act**). The proposed regulations will introduce record-related requirements and set infringement fees for minor offences in the Climate-related Disclosures regime.

SUBMISSIONS PROCESS

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the proposed regulations raised in this document by 5pm on 12 July 2023.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: <https://www.mbie.govt.nz/have-your-say/consultation-climate-related-disclosures-regulations>. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- sending your submission as a Microsoft Word document to ClimateRegulations@mbie.govt.nz
- mailing your submission to:

Corporate Governance and Intellectual Property Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you have in relation to the submissions process to ClimateRegulations@mbie.govt.nz

Use of information

The information provided in submissions will be used to inform MBIE's policy development process and will inform advice to Ministers. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Privacy information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

1. Introduction

Background

- 1.1. The Financial Markets Conduct Act 2013 (**FMC Act**), as amended by the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (**CRD Act**), legislated for a new climate reporting regime. The CRD Act requires climate reporting entities (**CREs**) to disclose their climate-related risks and opportunities by filing annual climate statements. CREs include large financial market institutions such as issuers, banks, insurers, credit unions, building societies and investment scheme managers who meet the specified thresholds. The FMA have identified approximately 170 entities which qualify as CREs; however, this number may fluctuate over time as entities fall below or meet thresholds.

Reporting process

- 1.2. The climate statements must be prepared in compliance with standards issued by the External Reporting Board (**XRB**), and the regulatory responsibilities will be carried out by the Financial Markets Authority (**FMA**) who independently monitor and enforce compliance with the regime. Climate statements must then be lodged with the Registrar of Financial Service Providers at the Companies Office within four months after the balance date of the entity.

What do these regulations cover?

- 1.3. Among other provisions in the CRD Act are high level obligations relating to record-keeping and the ability to set infringement fees, with the detail for these matters to be prescribed in the regulations. In November 2022, Cabinet agreed to the drafting of regulations prescribing record-keeping requirements, record-inspection requirements, and setting infringement fees for minor offences.
- 1.4. These regulations will amend the Financial Markets Conduct Regulations 2014 by:
 - 1.4.1. inserting a new part 7A setting out record keeping and inspection obligations;
 - 1.4.2. inserting a new part 9 into Schedule 1 covering transitional provisions; and
 - 1.4.3. amending Schedule 22 to set out the new infringement fees.
- 1.5. Section 2 of this document will further discuss the content of the regulations and questions for each issue will be attached to provide a framework for submissions. However, we welcome any additional comments you may have.

Timing

- 1.6. Once the consultation period has closed, we will analyse submissions, provide advice to the Minister of Commerce and Consumer Affairs on any changes we recommend and amend the regulations as necessary.
- 1.7. It is our intention that these regulations will be finalised before the House rises for the election, meaning that the new regulations would commence by the end of September 2023. However, we recognise that the timeframes to achieve this are tight.

FMA guidance

- 1.8. We have consulted with the FMA in the preparation of these regulations. The FMA are working on guidance material to support CREs to comply with their record-keeping obligations in the FMC Act and these regulations and intend to consult on this at the same time as this consultation.
- 1.9. The FMA is also preparing three information sheets to support CREs with various aspects of the compliance with the CRD regime, and these will be released shortly.

2. Content of the regulations

252A – CRD records must be readily identifiable and comprehensible

- 2.1. Under the new section 461V of the FMC Act, CREs must keep climate records that enable CREs to ensure that their climate statements comply with the CRD framework.
- 2.2. Regulation 252A prescribes further detail of how these records must be kept. It requires every CRE to ensure that its CRD records are readily identifiable and comprehensible. The intent of this regulation is to ensure that, when a request is made to see the records:
 - 2.2.1. the records are readily accessible so that they can be provided in a reasonable timeframe; and
 - 2.2.2. they are in a form such that the person requesting them can reasonably determine that section 461V of the FMC Act is being complied with.

1

Do you consider that regulation 252A is sufficient to meet the intent? If not, why not?

252B – CRD records must be kept in English or te reo Māori

- 2.3. This is a fairly standard regulation associated with record-keeping in legislation, although the addition of te reo Māori in these kinds of regulations is a relatively recent development. As with regulation 252A the intent is to enable the provision of records on request in a reasonable timeframe. Regulation 252B(b) permits the records to be kept in another form other than English or te reo Māori so long as they are readily convertible into English or te reo Māori.

2

Do you have any comments on regulation 252B?

252C – CRD records must be made available in accordance with request

- 2.4. Under the new section 461Y of the FMC Act – inserted by section 8 of the CRD Act – CREs must make their CRD records available for inspection at all reasonable times and without charge to certain listed parties: the CREs directors, supervisors appointed in relation to a debt security or managed investment scheme, the FMA, or any persons authorised by an enactment to inspect CRD records (such as an assurance practitioner from October 2024).
- 2.5. Regulation 252C prescribes the manner in which CRD records should be made available for inspection in response to a request.
- 2.6. The regulation prescribes that the records must be made available in accordance with a written request and that the request may specify the time frame and/or manner in which they are to be made available. If it is unreasonable to meet this request as specified, the CRE must make the records available “as soon as is practicable and in a reasonable manner”.

3

Do you have any comments on regulation 252C?

252D – CRD records kept by another person

- 2.7. Regulation 252D prescribes that, if a CRE’s records are kept by a third party, the CRE must ensure that the third party keeps the records in such a way that the CRE can comply with its obligations under the FMC Act and regulations in relation to record-keeping.

4 Do you have any comments on regulation 252D?

Transitional provisions

- 2.8. New Part 9 sets out the transitional provisions in relation to the application of regulation 252D. It provides that regulation 252D does not apply to an arrangement with a third party that was entered into before the commencement of these regulations.
- 2.9. CREs will have up to two years to amend these arrangements to be compliant with 252D. If the arrangements are amended or renewed within those two years, they must be compliant from that time.
- 2.10. At this stage we are not proposing any other transitional provisions in relation to the other record-keeping regulations. This means that these regulations will apply to a CRE’s records from the commencement of these regulations.

5 Do you have any comments on the transitional provisions in relation to records kept by a third party? Do you think that transitional provisions are required in relation to the other record-keeping regulations? If so, why and what form should these take?

Infringement fees for minor offences

- 2.11. Infringement offences provide an administratively efficient method of encouraging compliance by imposing a set of financial penalties and avoiding the formality and costs of court proceedings for relatively minor breaches of the law. The proposed regulations set the infringement fee levels for the new offences at the same level as those prescribed for similar financial reporting offences under Schedule 22 of the Financial Markets Conduct Regulations 2014. The infringement offences and fees are as follows:

| FMC ACT | DESCRIPTION OF OFFENCE PROVISION | FEE (\$) |
|---------|---|----------|
| s 461W | Failure to keep CRD records in the prescribed manner | 7,500 |
| s 461Y | Failure to make CRD records available in the prescribed manner for inspection | 12,500 |
| s 461ZI | Failure to lodge a climate statement within the deadline | 7,500 |
| s 461ZJ | Failure by an entity that is a CRE to disclose that it is a CRE in its annual report and to include climate statements (or a link to those statements) in its annual report | 5,000 |

6 Do you have any comments on these infringement fees?

Place where CRD records are to be kept

- 2.12. At this stage we have not included a regulation prescribing where CRD records are to be kept. We seek your views on whether such a regulation is required and, if so, what form it should take.
- 2.13. The principal role of such a regulation would be to facilitate the FMA's inspection of records in the event that a CRE was not complying with its obligations to provide records on request.
- 2.14. The equivalent provision relating to accounting standards in the FMC Act (section 456) permits accounting records to be kept outside New Zealand as long as those documents required for preparation of financial statements are kept in New Zealand.
- 2.15. However, it is not clear that a similar approach will work here, as climate records are implicitly defined (in section 461V) as records that enable the CRE to ensure its climate statements are compliant. The FMA would likely require ready access to all these records (not just a subset) to assess compliance.
- 2.16. We therefore suggest two, location-based approaches to this regulation:
- 2.16.1. **Option 1:** Prescribe that CRD records must be kept in New Zealand. In the case of records stored in the cloud, this means that the physical server must be in New Zealand.
- 2.16.2. **Option 2:** Prescribe that CRD records must be kept in a country listed in the regulations. In the case of records stored in the cloud, this means that the physical server must be in a listed country. For this option, we propose New Zealand, Australia and the United Kingdom as these countries have similar data-protection laws and a close working relationship between regulators.

7

Do you have any comments on these options? Which do you prefer and why? Are there other options not considered here? If so, what are they?

Any other comments

8

Do you have any other comments you wish to make about these regulations that are not covered so far?



Te Kāwanatanga o Aotearoa
New Zealand Government