



Submission

XRB: Proposed 2024 Amendments to Climate and Assurance Standards

30 October 2024

About the Institute

The McGuinness Institute was founded in 2004 as a non-partisan think tank working towards a sustainable future for Aotearoa New Zealand. Project 2058 is the Institute's flagship project focusing on Aotearoa New Zealand's long-term future. Because of our observation that foresight drives strategy, strategy requires reporting, and reporting shapes foresight, the Institute developed three interlinking policy projects: *ForesightNZ*, *StrategyNZ* and *ReportingNZ*. Each of these tools must align if we want Aotearoa New Zealand to develop durable, robust and forward-looking public policies. The policy projects frame and feed into our research projects, which address a range of significant issues facing Aotearoa New Zealand. The 11 research projects are: *CivicsNZ*, *ClimateChangeNZ*, *EcologicalCorridorsNZ*, *GlobalConflictNZ*, *OneOceanNZ*, *PandemicNZ*, *PublicScienceNZ*, *ScenariosNZ*, *TacklingPovertyNZ*, *TalentNZ* and *WaterFuturesNZ*.

About the cover

Coopers Lagoon, a wetland reserve in Canterbury, is just inland from the coast. It combines lagoon wetlands with a wild coastal beach. The photo was taken to the northeast of a thunderstorm cell.

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1.0 Executive Summary

The Institute welcomes the opportunity to offer feedback on the *Proposed 2024 Amendments to Climate and Assurance Standards*. We would like to thank the External Reporting Board (XRB) for inviting feedback on this proposal.

This document

The Institute, regrettably, has been unable to provide a full response to this consultation due to a substantial workload over recent months. However, given this is an important topic, and an area that we have discussed and researched in some detail, it seemed important to provide some high-level observations and thoughts. As a reference point for the Institute's work in this area, Appendix 1 provides a full list of our publications relating to climate reporting.

The opportunity

The Institute notes that:

- The Companies Act 1993 reforms the law relating to companies, and, in particular, acknowledges the importance of reporting risk. For example, the Act states that part of its purpose is 'to reaffirm the value of the company as a means of achieving economic and social benefits through the aggregation of capital for productive purposes, the spreading of **economic risk**, and the **taking of business risks**' [bold added].
- The relevant reporting standards on climate risks are the *Aotearoa New Zealand Climate Standards (NZ CS)*.
- Mandatory climate assurance reporting is intended to begin on 31 October 2024.
- Approximately 200 climate reporting entities (CREs) are expected to seek independent assurance about the part of the climate statement that relates to disclosure of GHG emissions. These CREs include New Zealand's largest listed issuers and financial entities.
- A company is a legal entity that is separate from its owners and directors.
- Directors (under s 131 of the Companies Act 1993) have a duty to act in good faith and in best interests of company.
- Section 138B: Safe harbour for directors relating to effects of COVID-19 was passed on 15 May 2020, during the early stages of the pandemic. It was revoked two years later 'on the close of 31 May 2022, by section 138B(2)'. See COVID-19 Response (Further Management Measures) Legislation Act 2020 in Appendix 2.
- Using an analogy, climate reporting and assurance are in their teenage years. The groundbreaking report, *Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD)*, was published in 2017 (seven years ago).¹ The task force has already been replaced by national and international climate reporting and assurance standards. This observation raises two issues:
 - New Zealand's climate standards closely follow the TCFD recommendations. The TCFD framework is designed to be a highly integrated package of consecutive events and processes to improve fiscal stability for businesses and financial markets. The package should not be modified without a very good reason.
 - Although New Zealand was a leader in introducing mandatory reporting, the actions of others to embed climate standards have led to many fast followers.

The Institute considers that:

- The consultation document looks specifically at three topics: Scope 3 GHG emissions, anticipated financial impacts and transition planning. The consultation document is suggesting that all three topics are provided a further accounting period before disclosure requirements become mandatory (proposals 1, 3 and 4). On top of this, a further suggestion for discussion is to extend the accounting period for the assurance of Scope 3 emissions by an additional year, so that it becomes two years in total (proposal 2).

- Directors are key to ensuring climate risks are identified, discussed around the board table, and reported to investors and other stakeholders.
- Directors have legitimate concerns that they may accidentally produce and report poor-quality information. Poor-quality information may be due to various challenges. Preparers and independent assurers will need to navigate and interpret new reporting standards and seek out and understand information on possible climate impacts.
- Directors that fail to actively seek out ways to have key information assured may lose a valuable opportunity to discuss, test and ideally improve the quality of the discussion around the board table and the quality of reporting to owners (and other stakeholders).
- Assurers will benefit from the opportunity to review information across a range of entities, ensuring that a range of methods and approaches are explored, tested and improved over time. Assurers are an important part of the ecosystem, given their role in applying both independent and fresh eyes to the reporting challenge.
- Trading partners, nationally and internationally, are likely to seek out information that they can trust, and that means seeking independent assurance. Entities that can report accurately, and prove that the data ‘faithfully represents’ the current situation are likely to increase trust and therefore improve the quality of the working relationship over the long term.
- Trade agreements with other countries, are likely to benefit. Building a trusted relationship may deliver significant economic benefits over the long term.
 - See the 2023 EU trade agreement that discusses the Paris Agreement in the Institute’s June 2024 *Discussion Paper 2024/01: Risks hiding in plain sight: Does a commitment under the Paris Agreement to purchase offshore carbon credits create a requirement to report that commitment in the financial statements of the New Zealand Government?* (see more detail on pp. 55–56).²
 - See three 2024 MoUs with Thailand, Singapore and the Philippines that discuss the Paris Agreement in the Institute’s *Addendum to Discussion Paper 2024/01: Risks hiding in plain sight: Does a commitment under the Paris Agreement to purchase offshore carbon credits create a requirement to report that commitment in the financial statements of the New Zealand Government?* (see Appendix 6: Other key events that have occurred since the June 2024 discussion paper, on p. 27).³
- A slow, protracted process may cause staffing and resourcing issues for preparers and assurers alike.

The Institute considers that assurance creates a major opportunity

- There exists a major opportunity for New Zealand to use the assurance of climate statements to provide confidence in the country’s reduction in domestically generated emissions – nationally and internationally. This could be evidenced internationally in New Zealand’s first biennial transparency report (BTR1), prepared by MfE, in accordance with the modalities, procedures and guidelines (MPGs). By doing so, it would reduce the need to purchase offshore carbon credits to meet our commitments under the Paris Agreement regarding our nationally determined contributions (NDCs). The BTR1 is due 31 December 2024.⁴
- The Institute recently published *Working Paper 2024/07 – Collating climate statements contained in 2023 annual reports of NZSX-listed companies*.⁵ It reviewed annual reports of NZX-listed companies and found that six had voluntarily reported against the *Aotearoa New Zealand Climate Standards (NZ CS)*. See Appendix 3 for the names of the companies (p. 22). The table also lists the change in carbon emissions per year for Scope 1, 2 and 3 emissions. This unequivocally proves that this data can be collected, and that changes over time can tell a useful story to shareholders and other stakeholders. However, it also illustrates the extent Scope 3 emissions have varied, and in many cases significantly increased, over time. Importantly, it showcases to MfE and others that this information could be a useful tool to reduce the need to purchase offshore carbon credits.
- Furthermore, upcoming NDC2+ submission dates are due for the next round of NDCs. NDC2 is due on or before 2025 and every five years thereafter (i.e. 2030, 2035, 2040; see p. 92 of our 2024 discussion paper).⁶ This may mean that an opportunity now exists to reduce the need to purchase offshore carbon credits because New Zealand can evidence the work domestic entities have already undertaken to reduce domestic emissions. The reporting of this information may help New Zealand save a significant amount of money, purely due to independent assurance of emissions.

- New Zealand should continue to work hard to lead in this space. It is difficult for small countries to be seen and heard, but our actions to create mandatory climate reporting were acknowledged globally as world leading. Delaying assurance at this stage of the process is a step back from our current leadership role.
- Allowing CREs to ‘kick the can down the road’ will delay the growth in skills and confidence that is needed for disclosing, and assuring Scope 3 GHG emissions. Flexibility, in the short term, should be offered around the accuracy and reliability of Scope 3 emissions data as opposed to the timeframe, as the latter provides no incentive for CREs to start developing the skills, processes and structures required to disclose. Delaying assurance requirements for Scope 3 emissions for an additional reporting period will delay progress, not enable it.

The Institute recommends:

1. **XRB continues with 31 October 2024 as the start date for the mandatory assurance reporting regime for all three topics: S3 GHG emissions, anticipated financial impacts and transition planning.**
2. **Parliament passes legislation that provides safe harbour provisions for directors until 31 October 2026 on Scope 3 GHG emissions only.** Note: This aligns with the COVID-19 safe harbour provisions (see Appendix 2) which lasted for approximately two years.
3. **The Institute remains concerned for both preparers and assurers, who are equally vulnerable. If directors are provided a form of safe harbour provisions, we consider a similar length of protection should be put in place for unintentionally reporting poor quality information or assuring information on Scope 3 GHG emissions when the information is found to be incorrect.**
4. **The Institute remains concerned that directors and other parties may wish to extend assurance requirements on anticipated financial impacts and transition planning. Unlike Scope 3 GHG emissions, there can be no significant uncertainty on these two topics as the they are determined by the Board based on the information available to the Board at that point in time. In contrast, Scope 3 emissions are reliant on information from third parties. In other words, there is no reason that directors and preparers cannot disclose this information. In our view, they would not be liable and therefore do not require any leeway in regard this type of information.**

Importantly, these recommendations are intended to provide New Zealand with all the benefits of assurance but with reduced legal risks to the key parties – directors, preparers and assurers.

2.0 Specific Questions

Question 1: Do you agree with Proposal 1 to extend Adoption Provisions 4, 5 and 7 for Scope 3 GHG emissions *disclosures* from one accounting period to two accounting periods?

No, the Institute does not agree. Our preference is safe harbour provisions for Scope 3 emissions only. From our experience, systems will mature in response to both push and pull strategies. To delay *disclosure* requirements now (what is in practice a push strategy), will only slow progress, not enable it.

Question 2: Do you agree with Proposal 2 to add a new Adoption Provision 8 that gives relief of one accounting period before Scope 3 GHG emissions *assurance* is mandatory?

No, the Institute does not agree. Our preference is safe harbour provisions for Scope 3 emissions only. From our experience, systems will mature in response to both push and pull strategies. To delay *assurance* requirements now (what is in practice a push strategy), will only slow progress, not enable it.

Question 3: Do you agree that a one-year delay for Scope 3 GHG emissions *assurance* is sufficient to enable systems to mature to support the availability of sufficient reliable data and to enable increased consistency across the assurance market?

No, the Institute does not agree. Our preference is for Parliament to pass safe harbour provisions for Scope 3 emissions only. From our experience, systems will mature in response to both push and pull strategies. To delay *assurance* requirements now (what is in practice a push strategy), will only slow progress, not enable it.

Question 4: Do you agree with Proposal 3 to extend Adoption Provision 2 for anticipated financial impacts from one accounting period to two accounting periods?

No, the Institute does not agree. There is no reason that entities cannot provide information on *anticipated financial impacts* at this point of time. Climate risks are one of many risks that must be discussed and considered by the Board (see the purpose of the Companies Act 1993). Given the current climate emergency, entities should not be excused from disclosing impacts to shareholders and other stakeholders. To delay *disclosure* requirements now (what is in practice a push strategy), will only slow progress, not enable it.

Question 5: Do you agree with Proposal 4 to extend Adoption Provision 3 for transition planning from one accounting period to two accounting periods?

No, the Institute does not agree. There is no reason that entities cannot provide *transition planning* information at this point of time. Climate risks are one of many risks that must be discussed and considered by the Board (see the purpose of the Companies Act 1993). Given the current climate emergency, entities should not be excused from disclosing their transition plans to shareholders and other stakeholders. To delay *disclosure* requirements now (what is in practice a push strategy), will only slow progress, not enable it.

Appendix 1: List of McGuinness Institute publications that discuss climate reporting

Table A1.1: McGuinness Institute publications that discuss climate reporting

Year	Month	Type of Publication	Publication Title	Link
2024	October	Addendum	Addendum to Discussion Paper 2024/01	https://www.mcguinnessinstitute.org/publications/discussion-papers/
2024	September	Working paper	Working Paper 2024/07 – Collating climate statements contained in 2023 annual reports of NZSX-listed companies	https://www.mcguinnessinstitute.org/wp-content/uploads/2024/09/20240909-110pm-final-draft-WP-2024-07-Climate-statements-compressed.pdf
2024	June	Discussion paper	Discussion Paper 2024/01 – Risks hiding in plain sight: Does a commitment under the Paris Agreement to purchase offshore carbon credits create a requirement to report that commitment in the financial statements of the New Zealand Government?	https://www.mcguinnessinstitute.org/wp-content/uploads/2024/10/20241023-McGuinness-DP-2024-01.pdf
2022	Oct	Working paper	Working Paper 2022/15 – Reviewing Voluntary Reporting Frameworks Mentioned in 2018–2021 Annual Reports from NZSX-listed companies	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/11/20221103-0336pm-WP-2022-15.pdf
2022	Sep	Working paper	Working Paper 2022/14 – Reviewing TCFD information in 2017–2021 reports of NZSX-listed companies	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/11/20221117-230pm-WP-2022-14.pdf
2022	Jun	Working paper	Working Paper 2022/06 – Strategy Maps: Copies of All Strategy Maps Found in Government Department Strategies in Operation as at 31 December 2021	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/05
2022	Jul	Working paper	Working Paper 2022/05 – Best Practice: Guidance for policy analysts preparing government department strategy documents	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/07/20220711-0444pm-Best-Practice-black.pdf
2022	Jul	Working paper	Working Paper 2022/03 – Scoring Tables Collating and Ranking Government	https://www.mcguinnessinstitute.org/wp-content/uploads/2022

Year	Month	Type of Publication	Publication Title	Link
			<i>Department Strategies in Operation as at 31 December 2021</i>	/07/20220708-1113am-WP-2022-03-Scoring-Tables-converted.pdf
2022	Jul	<i>Working paper</i>	<i>Working Paper 2022/02 – Complete Lists of Government Department Strategies Between 1 July 1994 and 31 December 2021</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/08/20220819-3pm-WP-2022-02-Lists.pdf
2022	Aug	<i>Submission</i>	<i>Reclassifying stewardship land on the West Coast</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/08/20220823-McGuinness-Institute-Submission-Reclassifying-stewardship-land-on-the-West-Coast.pdf
2022	Jul	<i>Submission</i>	<i>Water Services Entities Bill – Three Waters Reform Programme</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/09/20220906-McGuinness-Submission-Water-Services-Entities-Bill.pdf
2022	Jun	<i>Submission</i>	<i>Te mahere urutaunga ā motu (tuhinga hukihuki): Draft National Adaptation Plan and the Adapt and Thrive – Managed Retreat document</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/06/20220616-McGuinness-NAP-submission-FINAL.pdf
2022	May	<i>Submission</i>	<i>Submission in Response to People and place: Ensuring the wellbeing of every generation: Consultation on the topic for the Ministry for the Environment’s Long-term Insights Briefing 2022</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/05/20220523-0507pm-Submission-People-and-place.pdf
2022	May	<i>Submission</i>	<i>Submission in Response to Strategy and Metrics and Targets Consultation Aotearoa New Zealand Climate Standard 1: Climate-related Disclosures (NZ CS 1)</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/05/20220531-2pm-XRB-submission-by-McGuinness-DRAFT.pdf
2022	May	<i>Working paper</i>	<i>Discussion Paper 2022/02 – New Zealand King Salmon Case Study: A financial reporting perspective</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/05/20220525-330pm-NZKS-.pdf

Year	Month	Type of Publication	Publication Title	Link
2022	May	<i>Working paper</i>	<i>Working Paper 2022/10 – New Zealand King Salmon key documents 2012–2022</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/05/20220513-0353pm-WP-2022-10-NZKS.pdf
2022	May	<i>Discussion paper</i>	<i>Discussion Paper 2022/01 – Future for Local Government Workshop</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/06/20220601-5pm-Future-for-Local-Government-Workshop-paper.pdf
2022	Apr	<i>Submission</i>	<i>Proposed changes to regulations for the New Zealand Emissions Trading Scheme 2022</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/05/202205503-Submission-Proposed-changes-to-regulations-for-the-New-Zealand-Emissions-Trading-Scheme-202210.pdf
2022	Mar	<i>Submission</i>	<i>Improving Aotearoa New Zealand's environmental reporting system</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/03/20220230-McGuinness-MfE-Submission-Improving-Aotearoa-New-Zealand-FINAL-FOR-WEBSITE.pdf
2022	Mar	<i>Submission</i>	<i>Te Ara Paerangi – Future Pathways Green Paper</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/03/20220225-4pm-McGuinness-Future-Pathways-Green-Paper-Submission-Final-For-website.pdf
2021	Dec	<i>Working paper</i>	<i>Working Paper 2021/04 – Reviewing Voluntary Reporting Frameworks mentioned in 2018 – 2020 Annual Reports</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/12/20211210-430pm-WP-2021-04.pdf
2021	Dec	<i>Working paper</i>	<i>Working Paper 2021/09 – Analysis of Climate Reporting in the Public and Private Sectors</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/12/20211210-445pm-WP-2021-09.pdf
2021	Nov	<i>Working paper</i>	<i>Working Paper 2021/15 – Looking for a taxonomy for Aotearoa New Zealand's oceans</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/02/20220201-

Year	Month	Type of Publication	Publication Title	Link
				0301pm-WP-2021-15-Interactive.pdf
2021	Nov	<i>Working paper</i>	<i>Working Paper 2021/14 – The Role of Water Temperature in Climate Change Policy – A New Zealand King Salmon Case Study</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/02/20220201-0253pm-WP-2021-14-Interactive.pdf
2021	Oct	<i>Discussion paper</i>	<i>Discussion Paper 2021/04 – An Accounting Dilemma: Does a commitment to purchase offshore carbon credits create a requirement to disclose that obligation in the financial statements of the New Zealand Government?</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/02/20220202-0947am-DP-2021-04-Interactive.pdf
2021	Oct	<i>Working paper</i>	<i>Working Paper 2021/13 – Analysis of Priorities mentioned in Minister of Finance Budget speeches since 2006</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/02/20220201-0248pm-WP-2021-13-Interactive.pdf
2021	Sep	<i>Working paper</i>	<i>Working Paper 2021/11 – Analysis of Donations and Political Donations in 2020 Annual Reports by NZSX-listed companies</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2022/02/20220201-0245pm-WP-2021-11-Interactive-1.pdf
2021	Jul	<i>Submission</i>	<i>Submission in response to the International Financial Reporting Standards Foundation (IFRS)</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/12/20210808-McGuinness-Institute-NZ-Submission-in-response-to-IFRS-FINAL.pdf
2021	Jun	<i>Working paper</i>	<i>Working Paper 2021/06 – Reviewing TCFD information in 2017–2020 Annual Reports of NZSX-listed companies</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/12/20211214-1207pm-WP-2021-06-Interactive.pdf
2021	May	<i>Submission</i>	<i>Submission on the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/10/20210528-FINAL-25-June-Financial-Sector-Amendment-Bill-Submission-McGuinness-Institute-5-Oct-1.pdf
2021	Mar	<i>Submission</i>	<i>Submission on the He Pou a Rangi Climate Change</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021

Year	Month	Type of Publication	Publication Title	Link
			<i>Commission 2021 Draft Advice for Consultation</i>	/06/20210328-McGuinness-CCC-Submission-updated-cover.pdf
2020	Jun	<i>Working paper</i>	<i>Working Paper 2020/05 – Reviewing Voluntary Reporting Frameworks mentioned in 2019 Annual Reports</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/08/20210722-10.22am-WP-2020-05-Interactive-2.pdf
2020	Jun	<i>Working paper</i>	<i>Working Paper 2020/04 – Analysis of Climate Reporting in the Public and Private Sectors</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/08/20210729-9.01am-WP-2020-04-Interactive-2.pdf
2020	Jun	<i>Working paper</i>	<i>Working Paper 2020/03 – Reporting Requirements of Five Types of Entities</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/09/20210914-2.55pm-WP-2020-03-Interactive.pdf
2020	May	<i>Working paper</i>	<i>Working Paper 2020/02 – The Role of a Directors’ Report: An analysis of the legislative requirements of selected Commonwealth countries</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/08/20200611-WP-2020-02-Interactive-3-.pdf
2019	Dec	<i>Submission</i>	<i>Submission on Climate-related financial disclosures: Understanding your business risks and opportunities related to climate change</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2020/02/20200226-FINAL-McGuinness-Institute-Climate-related-financial-disclosures-Submission.pdf
2019	Dec	<i>Survey</i>	<i>Survey Insights: An analysis of the 2019 Task Force on Climate-related Financial Disclosures (TCFD) survey</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2019/12/20191218-Survey-Insights-An-analysis-of-the-2019-TCFD-survey.pdf
2019	Oct	<i>Discussion paper</i>	<i>Discussion Paper 2019/01 – The Climate Reporting Emergency: A New Zealand case study</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2019/11/20191114-Discussion-Paper-FINAL.pdf
2019	Oct	<i>Blog post</i>	<i>TCFD Workshops: Practical steps for implementation (Auckland and Wellington)</i>	https://www.mcguinnessinstitute.org/reportingnz/tcf-workshops-practical-steps-for-implementation/

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2019	Sep	Think piece	Think Piece 32 – Exploring Ways to Embed Climate Reporting in the Existing Framework	https://www.mcguinnessinstitute.org/wp-content/uploads/2019/10/20191014-Think-Piece-32-.pdf
2019	Sep	Working paper	Working Paper 2019/06 – Analysis of Climate Change Reporting in the Public and Private Sectors	https://www.mcguinnessinstitute.org/wp-content/uploads/2019/10/20191003-Working-Paper-201906-FINAL.pdf
2019	Oct	Working paper	Working paper 2019/05 – Reviewing Voluntary Reporting Frameworks Mentioned in 2017 and 2018 Annual Reports	https://www.mcguinnessinstitute.org/wp-content/uploads/2020/06/20191003-Working-paper-2019.05-FINAL.pdf
2019	Aug	Submission	Oral Submission to Select Committee on Climate Change Response (Zero Carbon) Amendment Bill	https://www.mcguinnessinstitute.org/wp-content/uploads/2019/09/20190905-McGuinness-Institute-Oral-Submission-FINAL.pdf
2019	Jul	Submission	Submission to Ministry for the Environment on the Climate Change Response (Zero Carbon) Amendment Bill	https://www.mcguinnessinstitute.org/wp-content/uploads/2019/09/20190912-Climate-Change-Response-Zero-Carbon-Amendment-Bill-Submission-FINAL.pdf
2018	Oct	Think piece	Think Piece 30 – Package of Climate Change Reporting Recommendations	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/11/20181108-Think-Piece-30-%E2%80%93-Package-of-Climate-Change-Reporting-Recommendations.pdf
2018	Sep	Working paper	Working Paper 2018/04 – Legislation Shaping the Reporting Framework: A compilation	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/10/20181010-Working-Paper-2018%E2%80%A204-%E2%80%93-5.30-pm.pdf
2018	Jul	Submission	Submission to Ministry for the Environment on the Zero Carbon Bill	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/07/20180723-McGuinness-Institute-

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				submission-on-the-Zero-Carbon-Bill.pdf
2018	Jul	<i>Submission</i>	<i>Submission to Productivity Commission on a Low-emissions Economy</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/07/20180724-Submission-to-the-Productivity-Commission-on-Low-emissions-Economy.pdf
2018	Jul	<i>Working paper</i>	<i>Working Paper 2018/03 – Analysis of Climate Change Reporting in the Public and Private Sectors</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/10/20181029-Working-Paper-2018%E2%80%A203-cover-4.30-pm.pdf
2018	May	<i>Submission</i>	<i>Submission to the Tax Working Group on the Future of Tax</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/05/20180510-Tax-Working-Group-Submission-McGuinness-Institute-FINAL.pdf
2018	Mar	<i>Working paper</i>	<i>Supporting Paper 2018/01 - Methodology for Working Paper 2018/01</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2021/07/20210719-Supporting-Paper-2018-01-Methodology-FINAL.pdf
2018	Mar	<i>Working paper</i>	<i>Working Paper 2018/01 – NZSX-listed Company Tables</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/10/20181008-Working-Paper-201801-%E2%80%93-Final-WEB.pdf
2018	Mar	<i>Survey</i>	<i>Users’ Survey: Attitudes of interested parties towards Extended External Reporting</i> (published in collaboration with the XRB), 29 May–21 August 2017	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/03/20180312-Users-Survey-Results-Booklet-FINAL.pdf
2018	Mar	<i>Survey</i>	<i>Preparers’ Survey: Attitudes of the CFOs of significant companies towards Extended External Reporting</i> (published in collaboration with the XRB), 10 April–3 July 2017	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/03/20180312-Preparers-Survey-Results-Booklet-FINAL.pdf

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2018	Mar	Survey	<i>Survey Highlights: A summary of the 2017 Extended External Reporting Surveys</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/03/20180313-ReportingNZ-Project-Survey-Highlights-Final-3.50-pm.pdf
2018	Mar	Survey	<i>Survey Insights: An analysis of the 2017 Extended External Reporting Surveys</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/10/20181008-Survey-Insights-FINAL-WEB.pdf
2017	Dec	Submission	<i>Submission on NZX Listing Rule Review</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2017/12/20171220-NZX-Listing-Review-Submission-Final.pdf
2017	Apr	Submission	<i>Submission on disclosing non-GAAP financial information</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2016/08/20170424-Submission-on-Disclosure-of-non-GAAP-financial-information-final-1.pdf
2016	Oct	Submission	<i>Submission on the NZX Corporate Governance Best Practice Code</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2016/08/20161125-NZX-McGuinness-Institute-Submission-FINAL.pdf
2014	Apr	Submission	<i>Submission on the Environmental Reporting Bill</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2020/01/20140424-McGuinness-Institute-Submission-on-the-Environmental-Reporting-Bill.pdf
2013	Jul	Submission	<i>Submission to the International Integrated Reporting Councils' (IIRC) Consultation Draft of the International Framework</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2016/08/20130716-McGuinness-Institute-Submission-on-Consultation-Draft.pdf
2013	Feb	Submission	<i>Submission on the Public Finance (Fiscal Responsibility) Amendment Bill 2012</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2016/08/20130218-Public-Finance-fiscal-responsibility-

Year	Month	Type of Publication	Publication Title	Link
				Ammdement-Bill-2012-McGuinness-Institute.pdf
2011	Dec	<i>Submission</i>	<i>Submission on the International Integrated Reporting Committee Discussion Paper</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2016/08/SustainableFutureInstitute_IIRC_Submission.pdf
2011	Jan	<i>Survey</i>	<i>Integrated Annual Report Survey of New Zealand's Top 200 Companies: Exploring Responses from Chief Financial Officers on Emerging Reporting Issues</i>	https://www.mcguinnessinstitute.org/wp-content/uploads/2018/11/20180410-One-integrated-report.pdf

Appendix 2: Safe harbour provisions relating to outbreak of COVID-19 in Companies Act 1993

Source: COVID-19 Response (Further Management Measures) Legislation Act 2020, Schedule 3.7

Schedule 3 COVID-19 Response (Further Management Measures) Legislation Act 2020 2020 No 13

Schedule 3 Commerce and Consumer Affairs: new Schedule 12 inserted into Companies Act 1993

s 3

Schedule 12 Safe harbour provisions relating to outbreak of COVID-19

s 138B

1 Purpose of schedule

- (1) The purpose of this schedule is to give to directors of companies that are facing significant liquidity problems because of the effects of the outbreak of COVID-19 more certainty about their duties when—
 - (a) agreeing to the business of the company being carried on or causing or allowing the business of the company to be carried on; and
 - (b) agreeing to the company incurring obligations.
- (2) However, it is not a purpose of this schedule to facilitate the ability of a company that has no realistic prospect of continuing to trade or operate in the medium or long term to defer a decision to enter into liquidation to the detriment of its creditors.

2 Overview of schedule

- (1) This schedule applies in relation to actions of directors of certain companies during safe harbour periods.
- (2) Subclause (1) is only a guide to the overall scheme and effect of this schedule.

3 Interpretation

In this schedule, unless the context otherwise requires,—

action includes omission

commencement date means the commencement date of section 138B

company in BDH means a company to which the protections in Part 5 of Schedule 13 apply

Ministers means the Minister of Finance and the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act, acting jointly

reaching a compromise or other arrangement includes a proposed arrangement being approved by the company's creditors under Schedule 13

safe harbour period has the meaning set out in clause 5.

*Safe harbour provisions***6 Safe harbour relating to reckless trading**

- (1) This clause applies to the following actions of a director of a company taken during a safe harbour period:
 - (a) agreeing to the business of the company being carried on in any manner;
 - (b) causing or allowing the business of the company to be carried on in any manner.
- (2) The actions of the director do not breach section 135 if, at the time of taking them, the director, in good faith, is of the opinion that—
 - (a) the company has, or in the next 6 months is likely to have, significant liquidity problems; and
 - (b) the liquidity problems are, or will be, a result of the effects of COVID-19 on the company, its debtors, or its creditors; and
 - (c) it is more likely than not that the company will be able to pay its due debts on and after the date in subclause (3).
- (3) For the purposes of subclause (2)(c), the date is—
 - (a) 30 September 2021; or
 - (b) any later date prescribed by the regulations.
- (4) For the purposes of the opinion required by subclause (2)(c), the director may have regard to—
 - (a) the likelihood of trading conditions improving;
 - (b) the likelihood of the company reaching a compromise or other arrangement with its creditors;
 - (c) any other matters the director considers to be relevant.
- (5) In this clause, **regulations** means regulations made under clause 10.
- (6) *See* clause 4, for companies to which this clause applies.

7 Safe harbour relating to section 136 duty

- (1) Subclause (2) applies to a director of a company—
 - (a) who, during a safe harbour period, agrees to the company incurring an obligation; and
 - (b) who, at the time of agreeing to the company incurring the obligation, is, in good faith, of the opinion that the company has, or in the next 6 months is likely to have, significant liquidity problems.
- (2) For the purposes of section 136, the director has reasonable grounds to believe that the company will be able to perform the obligation when it is required to do so if the director, in good faith, is of the opinion that—

Application of safe harbour provisions

4 Companies to which safe harbour provisions apply

- (1) Clauses 6 and 7 apply to a company (including a company in BDH) if,—
 - (a) as at 31 December 2019 (or any later benchmark date prescribed in regulations for a new safe harbour period), the company was able to pay its debts as they became due in the normal course of business; or
 - (b) the company was incorporated on or after 1 January 2020 but before 3 April 2020.
- (2) However, clauses 6 and 7 do not apply to a company that is—
 - (a) a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989:
 - (b) a licensed insurer:
 - (c) an NBDT within the meaning of section 5 of the Non-bank Deposit Takers Act 2013:
 - (d) a qualifying counterparty within the meaning of section 122A of the Reserve Bank of New Zealand Act 1989:
 - (e) a company incorporated on or after 3 April 2020:
 - (f) a company of a class prescribed in any regulations made under clause 9.
- (3) In addition, clauses 6 and 7—
 - (a) do not apply in the circumstances, or to the transactions, prescribed in any regulations made under clause 9; and
 - (b) cease to apply if conditions prescribed in any regulations made under clause 9 are not satisfied.

5 Meaning of safe harbour period

- (1) In this schedule, **safe harbour period** means—
 - (a) the initial safe harbour period; and
 - (b) if regulations are made under clause 10(1)(b), the new safe harbour period.
- (2) The **initial safe harbour period** means the period that starts on 3 April 2020 and ends—
 - (a) on the close of 30 September 2020; or
 - (b) if regulations are made under clause 10(1)(a), on the close of the date to which the period is extended.
- (3) The **new safe harbour period** means the period prescribed in the regulations made under clause 10(1)(b).

- (a) the liquidity problems are, or will be, a result of the effects of COVID-19 on the company, its debtors, or its creditors; and
 - (b) it is more likely than not that the company will be able to pay its due debts on and after the date in subclause (4).
- (3) However, subclause (2) only applies if the company incurs the obligation in the safe harbour period.
- (4) For the purposes of subclause (2)(b), the date is—
- (a) 30 September 2021; or
 - (b) any later date prescribed by the regulations.
- (5) For the purposes of the opinion required by subclause (2)(b), the director may have regard to—
- (a) the likelihood of trading conditions improving;
 - (b) the likelihood of the company reaching a compromise or other arrangement with its creditors;
 - (c) any other matters the director considers to be relevant.
- (6) In this clause, **regulations** means regulations made under clause 10.
- (7) See clause 4, for companies to which this clause applies.

Miscellaneous

8 Burden of proof

A person who wishes to rely on a provision of this schedule in a proceeding for, or relating to, a breach of section 135 or 136 has the burden of proving that the provision applies.

9 Regulations relating to companies, etc, to which safe harbour provisions apply

- (1) The Governor-General may, by Order in Council made on the recommendation of the Ministers, make regulations that prescribe classes of companies, or classes of transactions or other circumstances, for the purposes of clause 4, including providing for either or both of the following:
- (a) for clause 6 or 7, or both, to apply only if conditions prescribed in the regulations are satisfied;
 - (b) for clause 6 or 7, or both, to cease to apply if conditions prescribed in the regulations are not satisfied.
- (2) Before recommending the making of regulations under subclause (1), the Ministers must have regard to—
- (a) the provisions of clause 1 (which relates to the purpose of this schedule); and
 - (b) the effect of the regulations on—

- (i) the creditors of companies that have significant liquidity problems; and
 - (ii) the integrity of corporate insolvency law.
- (3) Different matters may be prescribed in respect of different classes of companies, transactions, or other circumstances.
- (4) *See also* clause 10 (for regulations prescribing a benchmark date).

10 Regulations relating to safe harbour periods

- (1) The Governor-General may, by Order in Council made on the recommendation of the Ministers, make regulations that—
 - (a) extend the initial safe harbour period until no later than 31 March 2021;
 - (b) provide for clause 6 or 7, or both, to apply for a new safe harbour period—
 - (i) of no more than 6 months; and
 - (ii) that ends no later than the close of 30 September 2021.
- (2) The powers in subclause (1)(a) and (b) may each be exercised once only.
- (3) However, the Governor-General may, by Order in Council made on the recommendation of the Ministers,—
 - (a) revoke regulations made under subclause (1) (wholly or in part);
 - (b) amend regulations made under subclause (1) to reduce the period of an extension or a new safe harbour period.
- (4) The Ministers must not recommend the making of regulations under subclause (1) unless the Ministers—
 - (a) have had regard to the provisions of clause 1 (which relates to the purpose of this schedule); and
 - (b) are satisfied that the extension or new safe harbour period is—
 - (i) necessary or desirable to address the effects of COVID-19; and
 - (ii) no longer than is reasonably necessary to address the matters that gave rise to it.
- (5) Regulations made under subclause (1)(a) may prescribe a date for the purposes of clauses 6(3) and 7(4), but that date must be no later than 31 March 2022.
- (6) Regulations made under subclause (1)(b) may do either or both of the following:
 - (a) prescribe a benchmark date under clause 4(1)(a), being a date that is—
 - (i) no earlier than 30 June 2020; and
 - (ii) no later than the date that is 3 months before the start of the new safe harbour period:

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- (b) prescribe a date, for the purposes of clauses 6(3) and 7(4), but that date must be not later than 18 months after the start of the new safe harbour period.
- (7) Subclauses (5) and (6) do not limit subclause (1).

Appendix 3: Scope 1, 2 and 3 emissions data collected from 2023 climate statements of NZX-listed companies

Source: *Working Paper 2024/07 – Collating climate statements contained in 2023 annual reports of NZSX-listed companies*. McGuinness Institute (September 2024) (p. 17)⁸

Note: Table A3.1 illustrates the extent Scope 3 emissions have varied, and in many cases significantly increased, over time.

Table A3.1: Six early adopters' GHG emissions (disclosed in FY23 annual reports)

		Auckland International Airport	Investore Property	Meridian Energy	Sanford	Seeka	THL Holdings	Total
FY19	Scope 1	2,472	-	-	-	4,051	-	6,523
	Scope 2	3,423	-	-	-	3,973	-	7,396
	Scope 3	6,228	-	-	-	4,069	-	10,297
	Total	12,123	-	-	-	12,093	-	24,216
FY20	Scope 1	2,397	79	-	65,069	3,803	-	71,348
	Scope 2	3,224	11	-	2,423	3,696	-	9,354
	Scope 3	5,185	-	-	194,774	4,452	-	204,411
	Total	10,806	90	-	262,266	11,951	-	285,113
FY21	Scope 1	1,674	-	1,020	62,130	3,900	-	68,724
	Scope 2	2,615	-	14	2,349	4,487	-	9,465
	Scope 3	16,497	-	29,841	212,447	3,987	-	262,772
	Total	20,786	-	30,875	276,926	12,374	-	340,961
FY22	Scope 1	2,004	-	643	57,076	4,465	-	64,188
	Scope 2	3,007	-	2	1,466	5,708	-	10,183
	Scope 3	77,523	-	40,467	212,065	4,618	-	334,673
	Total	82,534	-	41,112	270,607	14,791	-	409,044
FY23	Scope 1	2,060	32	1,191	60,103	5,685	59,393	128,464
	Scope 2	2,231	19	2	1,493	2,892	1,953	8,590
	Scope 3	2,579,061	10,861	46,565	184,386	4,487	4,126	2,829,486
	Total	2,583,352	10,912	47,758	245,982	13,064	65,472	2,966,540

Endnotes

- ¹ See Task Force on Climate-related Financial *Disclosures* (TCFD) (June 2017). *Recommendations of the Task Force on Climate-related Financial Disclosures*. Retrieved 30 October 2024 from assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf
- ² See McGuinness Institute. (18 June 2024). *Discussion Paper 2024/01 – Risks hiding in plain sight: Does a commitment under the Paris Agreement to purchase offshore carbon credits create a requirement to report that commitment in the financial statements of the New Zealand Government?*, pp. 55-56. Retrieved 30 October 2024 from www.mcguinnessinstitute.org/publications/discussion-papers
- ³ See McGuinness Institute. (23 October 2024). *Addendum to Discussion Paper 2024/01: Risks hiding in plain sight: Does a commitment under the Paris Agreement to purchase offshore carbon credits create a requirement to report that commitment in the financial statements of the New Zealand Government? (June 2024)*, p. 27. Retrieved 31 October 2024 from www.mcguinnessinstitute.org/publications/discussion-papers
- ⁴ See Ministry for the Environment (MfE) (22 December 2022). New Zealand's Fifth Biennial Report. Retrieved 30 October 2024 from environment.govt.nz/publications/new-zealands-fifth-biennial-report
- ⁵ See McGuinness Institute (September 2024). *Working Paper 2024/07 – Collating climate statements contained in 2023 annual reports of NZSX-listed companies*, p. 16. Retrieved 30 October 2024 from www.mcguinnessinstitute.org/publications/working-papers
- ⁶ See McGuinness Institute. (18 June 2024). *Discussion Paper 2024/01 – Risks hiding in plain sight: Does a commitment under the Paris Agreement to purchase offshore carbon credits create a requirement to report that commitment in the financial statements of the New Zealand Government?*, p. 92. Retrieved 30 October 2024 from www.mcguinnessinstitute.org/publications/discussion-papers
- ⁷ See COVID-19 Response (Further Management Measures) Legislation Act 2020, Schedule 3.
- ⁸ See McGuinness Institute (September 2024). *Working Paper 2024/07 – Collating climate statements contained in 2023 annual reports of NZSX-listed companies*, p. 17. Retrieved 30 October 2024 from www.mcguinnessinstitute.org/publications/working-papers