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MANDATORY CORPORATE SOCIAL RESPONSIBILITY REPORTING; The way forward for more Sustainable Companies?

LAWS521: Organisational Law

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I Introduction

Corporate Social Responsibility (CSR) is a concept that proposes the idea that companies owe a duty to not just their shareholders but also to the wider public who they effect in the course of their business.[1] CSR reporting is a mechanism used to implement this concept. The idea is that, by reporting on their activities and their effects to their shareholders, stakeholders, and consumers, companies can be held accountable and are encouraged to effect change. However, in terms of the effectiveness, CSR reporting is often criticised.[2] This is because it is largely voluntary without proper regulation and therefore, may be used for marketing purposes rather than effecting true change. This misuse of CSR reporting being is referred to as 'greenwashing'.

This paper considers whether the inclusion of regulations and/or legislation mandating CSR reporting would help to more effectively change companies' behaviours to be more sustainable. It will also consider the implications of mandated CSR reporting and whether, in terms of benefit to cost analysis, it would be a viable option for New Zealand moving forward.

II Outline of the Paper

This paper will first consider, what key factors increase the effectiveness of CSR reporting. It will then consider whether, on the basis of these factors, mandating CSR reporting leads to more effective reporting as opposed to voluntary CSR reporting. One way that this paper will consider the effect of CSR reporting is through a case study of France, which is one of the pioneering countries of mandated CSR reporting. In particular, this paper will consider how the French law applies to domestic companies, and the effects that mandating CSR reporting has had on French companies.

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[1] James Brusseau *The Business Ethics Workshop* (Saylor Foundation, Pace University, 2021) at chapter 13.2; citing Robert A. Phillips, R. Edward *Stakeholder Theory and Organisational Ethics* (1st edition, Berrett-Koehler Publishes, 2003).

[2] For example; John Richard Kurpierz, Ken Smith "The greenwashing triangle: adapting tools from fraud to improve CSR reporting" (1 May 2020) 11(6) Sustainability Accounting, Management and Policy Journal 1075-1093; Bowen, F. Aragon-Correa, A. "Greenwashing in corporate environmentalism research and practice: The importance of what we say and do" (2014) 27(2) Organization & Environment 107, at 107-112; Crilly, D. Zollo, M. and Hansen, M.T. "Faking it or muddling through? Understanding decoupling in response to stakeholder pressures" (2012) 55(6) Academy of Management Journal 1429.

This paper will then look at the CSR reporting regulations in New Zealand and will consider how effective New Zealand is currently, in regard to CSR reporting, to come to a conclusion whether mandating CSR reporting is something that should be introduced. In particular, it will consider the current legislation in affect in New Zealand, and the statistics of New Zealand companies disclosing CSR information voluntarily.

This paper will also consider the future legislation of New Zealand. For example the Climate-related disclosure Bill, which will mandate certain businesses to report on their climate impacts. This Bill, which is set to come into effect in 2023 is said to make New Zealand the first country in the world to introduce mandatory climate change reporting. Lastly, my paper will consider the implications of these regulations in regard to affects that have been seen in other countries, and consider future CSR reporting regulations which may be beneficial.

III What is CSR reporting?

To consider what CSR reporting is, it is important to understand where it arose from, and consider other forms of reporting. Financial reporting is something which is well known and almost universally adopted. Financial reporting is generally comprised of financial statements, as well as accompanying notes which discloses significant accounting policies and other explanatory information.[3] This kind of reporting is usually done annually. However, in recent years it has been voiced that the information in general financial reports mainly relates to past performance.[4] There have also been concerns that financial reports are too complex and large and so lead to limited effective communication with stakeholders.[5] This past focus and complexity may be part of the reason that integrated reporting and sustainability reporting have since become more widely used.

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[3] New Zealand Equivalent to International Accounting Standard 1: Presentation of Financial Statements (2007) reg 10; pursuant to section 24(1)(a) of the Financial Reporting Act 1993.

[4] *Climate-related Financial Disclosures – understanding your business risk and opportunities related to climate change* (Ministry for the Environment, Discussion document, October 2019) at 12.

[5] *Climate-related Financial Disclosures*, above n 4, at 12.

Integrated reporting looks at explaining how an entity creates value over certain periods of time using quantitative and qualitive information.[6] Integrated reporting is more forward thinking, and is based on six different types of capital; financial, manufactured, intellectual, human, social relationship and natural.[7] While sustainability reporting, as the name suggests, is about considering the sustainability of a company's activities by considering its economic, environment and social impacts. CSR reporting can generally be used interchangeably with sustainability reporting. It commonly sets out a company's values and then sets out the 'link between its strategy and commitment to sustainable global economy'.[8] As CSR reporting has become more popular it has been used by companies similarly to financial reporting, being reported on annually alongside financial reports. This may be attributed to the Global Reporting Initiative Standards Organisation (GRI) which was initially created by the Coalition for Environmentally Responsible Economics (CERES) to elevate sustainability reporting to be on par with that of financial reporting.[9]

The main objective of CSR reporting is to help companies and their external and internal stakeholders understand the companies economic, environment, social and governance performance, and be able to manage and implement change effectively and accordingly.[10] Stakeholder range from more than just shareholders in the company. They may also be consumers or the community in which the company runs and affects.

A benefit of CSR reporting, in terms of the company, is that where it is able to create successful CSRs report these reports can in themselves act as marketing and public relations

[6] *Climate-related Financial Disclosures*, above n 4, at 12.

[7] *Climate-related Financial Disclosures*, above n 4, at 12.

[8] *Climate-related Financial Disclosures*, above n 4, at 12.

[9] Marina Nehme and Claudia Koon Ghee Wee "Tracing the Historical Development of Corporate Social Responsibility and Corporate Social Responsibility Reporting" (2008) 15 James Cook University Law Revies 129, at 164.

[10] *Climate-related Financial Disclosures,* above n 4, at 12; referencing the Global Reporting Initiative Website < GRI - How to use the GRI Standards (globalreporting.org)>.

tools.[11] Furthermore, where a company is effectively reporting, it is able to be held accountable, to fulfil its said values, and to make changes where there are gaps in its performance.

IV Global Reporting Initiative (GRI)

Before, breaking down how to measure the effectiveness of CSR reporting, the GRI and its guidelines must to outlined in greater detail. The guidelines proposed by the GRI are generally accepted among the scientific community as the most suitable basis for creating CSR reports, which is why they can be useful in considering what is the best way to structure and regulate CSR reporting.[12] The GRI is an independent international standards organisation that releases reports for businesses to understand their impact on global issues such as climate change, human rights, and corruption, and it sets out how these issues should be reported on. It is the largest organisation dedicated to CSR reporting and to finding the most effective methods of communicating companies impacts on sustainability to stakeholders.[13]

To complete a report in accordance with the standards set out in the GRI guide a company must reference the three universal standards; foundation, general disclosures, and management approach. The company must then also pick material standards from the three topic-specific standards, economic, environmental, and social, to report on. Each of the standards has certain requirements, recommendations and guidance outlined by the GRI. Only the requirements are mandatory, however, the recommendations and guidance

[11] Catherine Cote "What is a CSR Report and Why is it Important?" (20 April 2021) Harvard Business School Online <https://online.hbs.edu/blog/post/what-is-a-csr-report>.

[12] García-Sánchez, IM, Gómez-Miranda, M-E, David, F, Rodríguez-Ariza, L. "Analyst coverage and forecast accuracy when CSR reports improve stakeholder engagement: The Global Reporting Initiative-International Finance Corporation disclosure strategy" (2019) 26 *Corp Soc Resp Env Ma* 1392 referencing; Lopez, M. V. Garcia, A. and Rodriguez, L. "Sustainable development and corporate performance: A study based on the Dow Jones Sustainability Index" (2007) 75(3) Journal of Business Ethics 285; Perez-Batres, L. A. Doh, J. P. Miller, V. V. and Pisani, M. J. "stakeholder pressers as determinants of CSR strategic choice: Why do firms choose symbolic versus substantive self-regulatory codes of conduct (2012) 110 Journal of Business Ethics 110.

[13] Marina, above n 9, at 164.

information allow the company to understand what and why certain information may be included.

Companies may also choose to reference the report instead of strictly following it, however, where a company is only referencing the report, they are not able to label it as being compliant.

A Foundation

The foundation standard sets out the reporting principles which the company must comply with. The reporting principles are divided into two different grounds, principles for report content and for report quality, as shown on the next page.

Reporting Principles for defining report content	Reporting principles for defining report quality
Stakeholder inclusiveness	Accuracy
Sustainability context	Balance
Materiality	Comparability
Completeness	Clarity
	Reliability
	Timeliness

The principles for reporting content help the company decide what is material and should be included in the report. This involves considering the companies actions and their impacts, as well as the interests and the expectations of the shareholders.[14]

The principles for report quality ensure that the information included in the report is clear, balanced, accurate, and necessary in terms of what stakeholders want to know. Considering this helps stakeholders in the company understand what actions are appropriate to take to help improve sustainability in the company.[15] This standard also sets out how the other standards should be followed and referenced.

B General Disclosure

General disclosures are required to understand the context of the organisation and its reporting. This includes information about an organisation's profile, strategy, ethics and integrity, governance, stakeholder engagement practices, and reporting processes.[16]

C Management Approach

Lastly, the management approach is used to disclose information showing how an organisation manages a material topic. This is required to be done for each of the material topics relevant to the company. Using the material approach alongside each material topic

[14] "Consolidated set of GRI Sustainability Reporting Standards 2020" (19 May 2020) Global Reporting Initiative, at 7.

[15] GRI reporting Standards, above n 14, at 7.

[16] GRI reporting Standards, above n 14, at 4.

provides the target audience reading the report the ability to understand why the topic is material, where the impact occurs and how the company manages the impact.[17]

Despite the GRI guidelines being generally accepted as the most suitable basis for creating a CSR report, they are not enough on their own. This is because even where companies are publishing large amounts of quantitative information, they are not reporting on all the CSR indicators which are necessary to truly reflect the firm's position. [18] This is because there is no body enforcing compliance with the guidelines.[19] This allows companies to present a tailored narrative so that they are still able reap the benefits of communication with stakeholders while appearing to be compliant with sophisticated reporting guidelines. Considering the issue with the GRI guidelines is enforceability, having proper domestic regulation and enforcing bodies seem to be a good way to solve this issue. Which is why this paper is considering whether regulations of this sort would be a viable and effective solution for New Zealand.

IV How to measure the effectiveness of CSR reporting

There are two methods I have considered to measure the effectiveness of CSR reporting. One is to use the goal of CSR reporting, which is to create more sustainable business practices, to consider whether as a result of reporting companies are becoming more sustainable. [20] The other way is to identify the factors which increase the effectiveness of CSR reporting.

In this paper, I have mainly focused on the latter of these two methods, as ultimately, I believe they both inform one another, with factors which increase effectiveness also increasing sustainability of companies. To ascertain the key factors which increase the

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[17] GRI reporting Standards, above n 14, at 4.

[18] García-Sánchez, above n 12, at chapter 2.1.

[19] García-Sánchez, above n 12, at chapter 2.1.

[20] Youmatter "CSR or Sustainability Reporting Definition, Meaning, Benefits and Examples from Companies" (3 June 2020) youmatter.world <https://youmatter.world/en/definition/definitions-csr-report-important-examples/>.

effectiveness of CSR reporting, I first identified the issues with voluntary CSR reporting. For example, one major issue with voluntary reporting is that because it is voluntary companies are able to choose when, why and how they report, and can create their own methods for ascertaining the statistics and information to include in their reports. This leads to inconsistent reporting which makes it difficult to accurately compare and contrast business practice.[21]

Another major issue with voluntary reporting is that without proper regulation the quality of information available is lessened, as there are no third parties checking or auditing the information. Information can be misleading or incomplete which further confuses the consumers and stakeholders and prevents real changes from being made.[22]

From these issues the key factors which increase the effectiveness of reporting are able to be identified. Inconsistency is an issue because it does not allow for comparability, which is what allows for accountability. Misleading information and poor quality of information is an issue because it does not allow for proper transparency and understandability. Therefore, it can be deduced that transparency, comparability, and quality of information are all key factors which allow for more effective reporting. I have further narrowed these factors down to transparency, quality of information.[23] This is because comparability is informed by both transparency and quality of information, as the greater transparency and quality of information the easier it is to compare information. Therefore it does not require its own category.

[21] Kenneth P. Pucker "Overselling Sustainability Reporting" (May 2021) Harvard Business Review < https://hbr.org/2021/05/overselling-sustainability-reporting.

[22] Kenneth, above n 21.

[23] This is in line with the idea asserted in Robert G. Eccles, Ioannis Ioannou, and George Serafeim "The Impact of Corporate Sustainability on Organisational Processes and Performance" (23 May 2021) HSB Education <https://www.hbs.edu/ris/Publication%20Files/SSRN-id1964011_6791edac-7daa-4603-a220-4a0c6c7a3f7a.pdf>

A Transparency

Transparency is a key factor in increasing effectiveness of reporting, as shown by the correlation between transparency and increased benefits to companies and society. The European Commission highlights this in relation to the new CSR reporting regulations, saying that:[24]

> Each individual company disclosing transparent information on social and environmental matters will realise significant benefits over time, including better performance, lower funding costs, fewer and less significant business disruptions, better relations with consumers and stakeholders. Investors and lenders will benefit from a more informed and efficient investment decision process. Society at large will benefit from companies managing environmental and social challenges in a more effective and accountable way.

In terms of mandatory CSR reporting increasing transparency, multiple papers have considered whether there is an increase in reporting where it is mandated. However, there is a variance across papers to how this was measured. Some papers measured increased reporting by the number of sentences[25], other by words[26], or CSR items disclosed.[27] However, interestingly, across the board all these papers found that reporting did increase regardless of the metrics used. This shows that, even companies who did voluntarily report before the regulation may end up reporting more because the regulation covers more areas than those on which they were previously reporting.

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[24] European Commission "Disclosure of Non-financial and Diversity Information by Large Companies and Groups – Frequently asked Questions" (Brussels, 15 April 2014).

[25] Criado-Jiménez, Fernández-Chulián M, Husillos-Carqués FJ, Larrinaga-González C "Compliance with mandatory environmental reporting in financial statements: the case of Spain (2001–2003)" 79 J Business Ethics 245; Damak-Ayadi S "Social and environmental reporting in the annual reports of large companies in France" (2010) 9 Accounting and Management Information Systems 22.

[26] Frost GR " The introduction of mandatory environmental reporting guidelines: Australian evidence" (2007) 43 Abacus 190.

[27] Haji AA "Corporate social responsibility disclosures over time: evidence from Malaysia" (2013) 28 Manag Auditing J 647; Kerret D, Menahem G, Sagi R "Effects of the design of environmental disclosure regulation on information provision: the case of Israeli securities regulation" (2010) 44 Environmental Science and Technology 8022.

Furthermore, it is found that there is an increase in the number of companies reporting where it is mandated.[28] However, this is probably one of the most expected results of mandated reporting. This is because where a company was not reporting under the voluntary regime, mandating reporting will obviously force them to start reporting. Despite this being a seemingly obvious consequence of mandating reporting, one paper on the effect of the ICAC-2002 in Spain did show that this increase may be quite dramatic. In that paper, there was shown to be an increase from 27.5% to 64.7% of companies reporting on environmental expenses.[29]

The fact that there are more companies reporting, and more information disclosed as a result of mandated CSR reporting, shows that mandated CSR reporting does increase transparency. However, “an increasing frequency of CSR reporting does not necessarily imply that the quality of the reporting has followed suit”.[30] As is the main criticism of CSR reporting, just because a company is producing more information does not mean that it is not doing so superficially. Therefore, it must also be considered whether mandated CSR reporting also increases the quality of information disclosed.

B Quality of information

To consider whether mandated reporting increases the quality of information disclosed, ‘what constitutes quality information’ must firstly be ascertained. There are many different ways to measure the quality of information, and each method utilised across different reports shows different conclusions. Lock and Seele used a methodology of credibility,

[28] Dumitru M, Dyduch J, Gușe R-G, Krasodomska J “Corporate reporting practices in Poland and Romania—An ex-ante study to the new non-financial reporting European Directive” (2017) 14 Accounting in Europe 279; Haji AA, above n 27; Kerret D, above n 27.

[29] Llena F, Moneva JM, Hernandez B “Environmental disclosures and compulsory accounting standards: the case of Spanish annual reports” (2007) 16 Business strategy and Environment 50, at 55.

[30] Gulenko. M “Mandatory CSR Reporting – literature review and future developments in Germany” (2018) 26 Sustainability Management Forum 3 citing; Pedersen ERG, Neergaard P, Pedresen JT, Gwozdz “Conformance and Deviance company responses to instutional pressures for corporate social responsibility reporting” (2013) 22 Bus Stratedy Environment 357 at 369;

considering the truth, sincerity, appropriateness and understandability of the reporting.[31] Habek and Wolniak developed a measure for reliability and a measure for credibility to proxy for reporting quality.[32] The GRI guidelines have reporting principles for defining report quality under the foundation element, which include, accuracy, balance, comparability, clarity, reliability and timeliness. Other papers simply consider whether or not there is disclosure across a range of different reporting sectors.[33] For the purposes of this paper, I will be considering quality, as information which is credible and relevant. This is because where either of these two elements is lacking the value of the information is lacking, which goes to the inherent quality of the information. This is shown by the fact that these principles are consistently (in some form or other) considered as quality increasing features of information across the reports and papers looking at CSR reporting, as shown above.

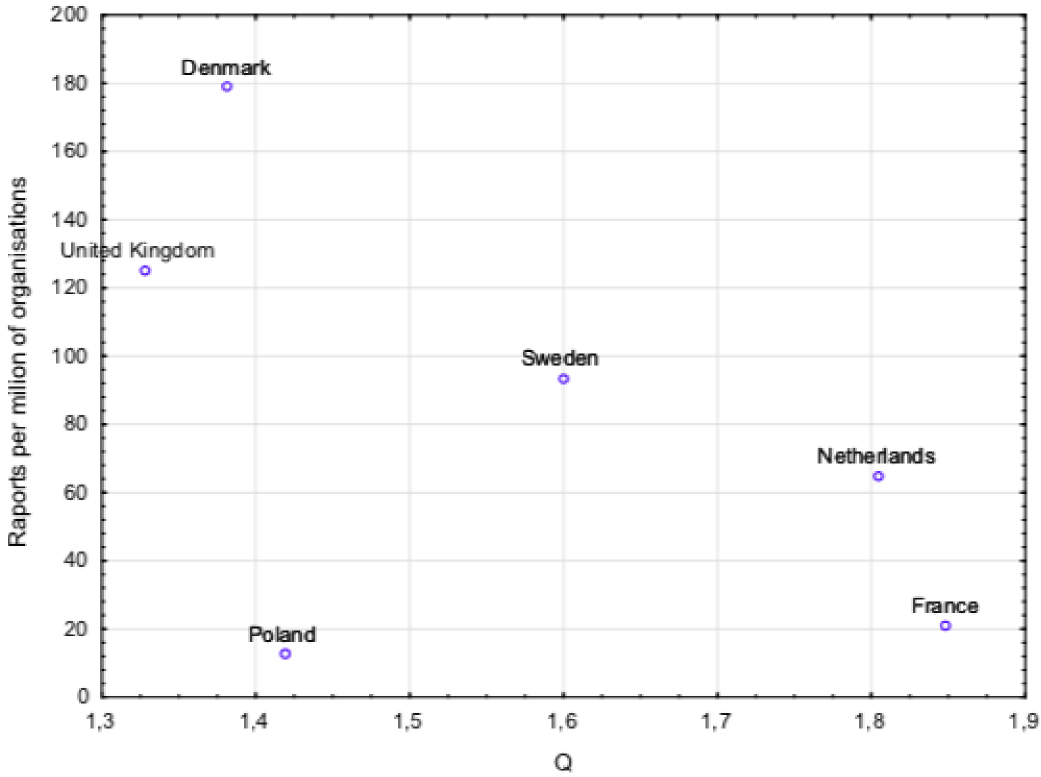
Hąbek and Wolniak, who also used these two features in determining the effectiveness of CSR reporting found that where reporting was mandated there was an increase in quality of information. The below table shows this conclusion, with 'Q' being the value of both credibility and relevance.[34]

[31] Lock I, Seele P "The credibility of CSR (corporate social responsibility) reports in Europe. Evidence from a quantitative content analysis in 11 countries" (2016) 122(3) Journal of Cleaner Production 186, at 186.

[32] Patrycja Habek and Radoslaw Wolniak "Assessing the Quality of Corporate Social Responsibility Reports: The case of Reporting Practice in Selected European Union Member States" (2015) 50(1) Quality & Quality, at 2.

[33] Frost, above n 26; Criado-Jiménez, above n 25.

[34] Patrycja, above n 32, at 15.



On this graph we see that France, a country which has mandated CSR reporting, has the highest quality of reported information.

When comparing the quality of information of CSR reports which are mandated versus those which are not, another factor to regard is in what circumstance to consider the difference between voluntary and mandatory reporting. For example, do you consider the difference in one country pre and post the introduction of mandatory reporting, or should you consider the difference of outcome between countries with and without mandated reporting? One paper examining the conclusion of previous papers considering the same question found that in all the papers where mandatory reporting was considered in the circumstance of pre vs post implementation the same conclusion was reached.[35] The conclusion reached being, that there was an increase in quality in reporting. However, papers which considered the difference in quality of reporting between countries which did

[35] Gulenko, above n 30, at 14.

and didn't have mandated reporting came to different conclusions, with a few findings that there was a decrease in quality.[36]

Pedersen found that there was a decrease in efficiency on the basis that where there was a reporting mandate, companies would do the bear minimum to comply rather than creating reports with relevant quality information.[37] This conclusion demonstrates the concept of mimetic and coercive isomorphism; "the tendency of first-time reporting companies to mimic other more experienced reporters or report very similar information".[38]

This paper stated that:[39]

> The negative effect of regulations lies in the tendency of Romanian companies to limit the disclosures to the mandatory requirements, thus avoiding the development of best NFR practices (isomorphism). However, its influence can be summarized as 'more focused information', and not necessarily as 'better quality information'.

For the purpose of this essay, I will be considering quality of information in the circumstance to pre and post mandating in a country. This is because this method avoids difficulties of considering cultural differences, business practice differences, and legal differences of countries, which may all contribute to the fact that when comparing countries reporting effectiveness, mandatory reporting leads to a decrease in quality of reporting. However, this is not to say that the other measurement is not valid. Furthermore, I consider quality in terms of the relevance and credibility of the information, as I have said above.

On this basis, I conclude that there does seem to be a trend that mandated reporting does lead to an increase in quality of information. However, this does not mean that it should be a forgone conclusion that mandating CSR reporting will automatically mean an increase in

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[36] Pedersen, above n 29; Vormedal I, Ruud A "Sustainability reporting in Norway—an assessment of performance in the context of legal demands and socio-political drivers" (2009) 18(4) Bus Strategy Environ 207.

[37] Pedersen, above n 30.

[38] Gulenko, above n 30, at 9.

[39] Dumitru, above n 28, at 298.

quality of information. Instead, it should still remain important to consider the regulations which run alongside the mandating of reporting. That is how and on what companies should report on different topics. This is because, as shown the case of Romania, where the regulation is too rigid, or becomes too much of a box ticking activity, there is the possibility that practicality will be stifled, and the quality of information will decrease. The regulations that accompany the mandate should therefore offer incentive or support for companies to create the best reports based on their own unique circumstances.

C Cost

My last point in terms of effectiveness of CSR reporting, is not something mentioned above, but is important in considering the reality of mandatory reporting. This is to consider the negative effects that mandatory reporting might have. For example, a major concern would be whether requiring CSR reporting would cost companies too much to comply with and would effectively outprice smaller companies. The health and wellness of the economy must be weighed against the importance of sustainable companies. Therefore, where smaller companies, which largely make up the New Zealand economy, are being crippled, this detriment would outweigh the benefit of sustainability.

In considering this balance, it may also be necessary to consider the theory of shareholder supremacy and whether this regulation will (or should) completely override the concept of shareholder supremacy. Or is it simply the case of considering supremacy of shareholders from a different perspective, where sustainability should inherently be an interest of shareholders?

I have broken the cost analysis down into three categories, the cost to companies, and very briefly the effect on society.

1 Companies

First of all, what will it cost businesses to implement CSR reporting? In France the government has done an evaluation on the cost of reporting in relation to its comprehensive regulations in regard to CSR reporting. See below the graph that they created.[40]

Size of company by n° of employees	Cost of creating the report		Cost of getting report verified	
	Reasonable estimate	High estimate	Reasonable estimate	High estimate
500 to 999	17 000€	33 300€	7 200 €	11 000 €
1000 to 4999	30 300€	61 600€	11 000 €	18 000 €
5000 +	197 000€	357 000€ €	30 000 €	100 000 €
Evaluation for CAC 40 (top companies in France)			60 000 €	

This graph shows that although there is a cost associated with have mandatory reporting in the scheme of business costs it is does not create too large of a cost. Daniel Legeue, the president of the French Observatory on CSR has also commented on the cost of CSR reporting saying that:[41]

> When people say that [the new regulations on reporting] will cost a lot of money to SMEs, it's not true. For SMEs, the [existing] audit budget varies from 50,000 to 500,000 euros. On average, the added expenditure [of complying with the new regulations] will vary from 500 to 15 000 euros, so let's not make a meal of it!

It should be further noted that the largest cost to companies in relation to CSR reporting is where companies have not already created some mechanism for CSR reporting. This is because they will need to invest in creating this infrastructure from the start rather than building on what they already have. However, a few companies in New Zealand already have their own mechanism for CSR reporting, and therefore, depending on how much this differs from the reporting that is mandated the cost could be truly very minimal.

It may even be argued that mandatory reporting can add value to companies.[42] The existence of the theory of green washing does, to some extent, prove this. This is because it

[40] Ministere des Affaires Etrangeres – France "The French Legislation on Extra-Financial Reporting: Built on Consensus" (2012) Diplomatie Gouvernement France <https://wwwdiplomatie.gouv.fr/IMG/pdf/Mandato-ry_reporting_built_on_consensus_in_France.pdf>

[41] Ministere des Affaires Etrangeres, above n 40, at 5.

[42] Robert Eccles, above n 22, at 44

proves the idea that, where 'you' are sustainable 'you' are more marketable and therefore more profitable.[43] Having proper regulations in place to encourage more comprehensive reporting and sustainable business practice will arguably give companies:[44]

> Benefit in terms of enhanced corporate reputation and superior brand value, recruitment and retention of employee talent, uncovering of opportunities to improve process efficiency and management of hidden risks, better access to finance, among multiple other reasons.

The current level of disclosure by companies is below the amount necessary to balance these marginal benefits to with that of the associated costs of disclosure.[45] Therefore, where CSR reporting is increased to the extent that benefit and cost offset one another, there is no real cost to companies. Although, whether it is possible to reach this level is debatable. Furthermore, this added value from mandated reported is shown to benefit firms with little to no previous CSR reporting the most, as they were not already receiving these benefits of having pre-existing CSR disclosures. This shows an interesting irony that the companies which have the greatest cost in implementing the reporting will receive the greatest benefit from the reporting.

Lastly, another positive effect of mandating reporting is that where reporting is applied uniformly this allows for better comparability between companies. This ultimately "lowers the cost of acquiring information and enhances the overall quantity and quality of information available to investment analysts about the firm".[46]

2 Society at large

One positive effect that mandating CSR reporting can be argued to have, is that it encourages more sustainable companies, which leads to positive company practices. One

[43] Moneva JM, Cuellar B " The Value Relevance of Financial and Non-Financial Environmental Reporting" (2009) 44(3) *Environmental and Resource Economics* 441 at 454.

[44] Robert Eccles, above n 22, at 115.

[45] Robert Eccles, above n 22, at 478.

[46] Gus De Franco, S.P. Kothari, and Rodrigo S. Verdi "The Benefits of Financial Statement Comparability" (2011) 49(4) Journal of Accounting Research 895 at 897.

study was able to find an actual practical benefit to society because of the effectiveness of mandated reporting. [47] This paper looked into the effect of a CSR reporting mandate on water and air pollution levels in China. It found that in regions where reporting was mandated water air pollution levels decreased once the mandate came into force.[48]

V France's Corporate Social Responsibility Regime

I have chosen to do a case study on a country to show how CSR reporting can be practically regulated and mandated. France is a good case study because it is one of the countries which pioneered mandatory reporting in Europe and currently has some of the most comprehensive regulations for mandatory reporting in the world.[49]

A Nouvelles Régulations Economiques

The introduction of "Nouvelles Régulations Economiques" (NRE) in 2001 was considered as revolutionary for the time, being the first legislation of this type in Europe.[50] This law required all publicly listed companies to disclose information in their annual reports on environmental and social impacts of their activities.[51] This was enacted for the purpose of ensuring security, though transparency, for shareholders. This is interesting as it could be argued the concept of CSR, and especially mandating reporting of this nature, goes against the shareholder supremacy theory**.** It was considered to be for the shareholders benefit, as it gave them power to order company management to comply with reporting obligations.[52]

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[47] Chen Y-C, Hung M, Wang Y "The effect if mandatory CSR disclosure on form profitability and social externalities: evidence from China" (2018) 65 J Account Economics 169.

[48] Chen Y-C, above n 47.

[49] Elise Perrault Crawford and Cynthia Clark Williams "Should corporate social reporting be voluntary or mandatory? Evidence from the banking sector in France and the United States" (2010) 10(4) Corporate Governance International Journal of Business Society 512 at 515.

[50] Olivier Delbard "CSR legislation in France and the European regulatory paradox: A analysis of the EU CSR policy and sustainability reporting practice" (2008) 8(4) Corporate Governance International Journal of Business Society 397 at 403.

[51] Ministere des Affaires Etrangeres, above n 40.

[52] Ministere des Affaires Etrangeres, above n 40.

However, in terms of enforcing this regulation there was no ability to sanction a company for non-compliance.

In 2002 a decree, decree no. 2002-221, 2002, was issued which specified the information which was required in this disclosure. This disclosure was to include 40 quantitative and qualitive indicators which each fell into three different categories, being social information to employees, information on companies' regional impacts on suppliers and stakeholders, and information of the businesses impact on the environment.[53]

The Ministry of Ecology and Development led an analysis of the effect of this law in 2007, where it concluded that 81% of companies had made the effort to report on their activities.[54] Furthermore, sustainability and CSR was becoming a part of company's core strategies with many companies dedicating a sustainable development or CSR department to ensuring this.[55] However this study also outlines the issues with the law. Being that, because it gave companies a lot of flexibility in what they reported on, certain topics were consistently under-reported on. The French rating agency also did an independent study into the reporting of different sectors. You can see below a table of the discrepancies between sectors.[56]

Sector	Average disclosure
Telecommunications	76%
Banks	74%
Petrol and gas	74%
Distribution	71%
Chemicals	70%
Food & drinks	64%
Health	58%

[53] Ministere des Affaires Etrangeres, above n 40.

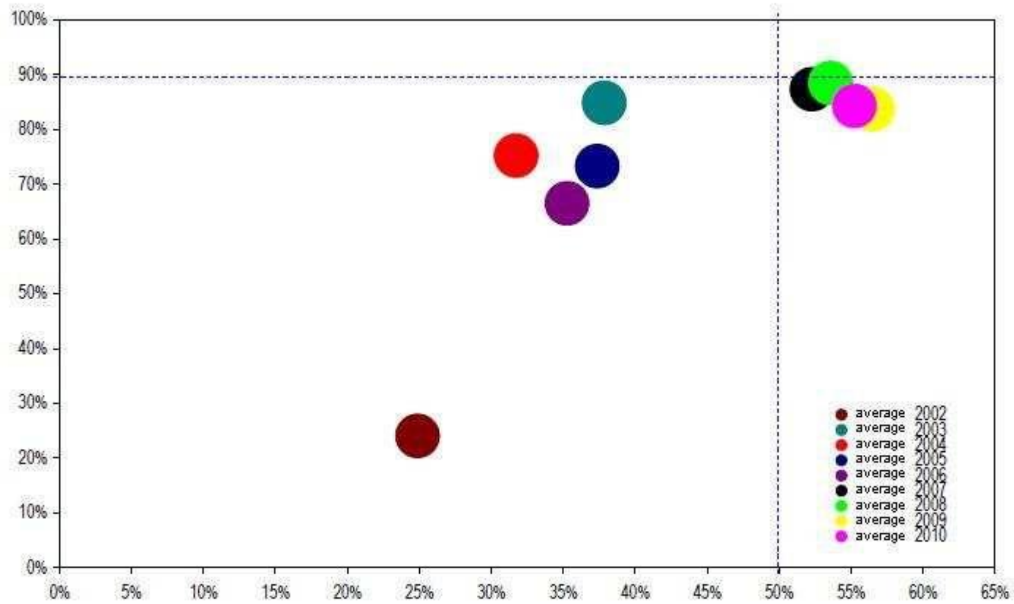
[54] Ministere des Affaires Etrangeres, above n 40.

[55] Ministere des Affaires Etrangeres, above n 40.

[56] Ministere des Affaires Etrangeres, above n 40.

Financial	53%

The Alpha group also did an analysis of the 9 years of implementation of the NRE Act. It found that 10 years following its introduction there was still little uniform reporting, with as little as 25% of the largest French companies complying with their obligations in the first year of the new regulation coming into practice.[57] However, although reporting was not uniform it did show the trend of better compliance and quality of reporting, and the growing importance of CSR in businesses minds.[58] The below table shows the trending of compliance and quality, with quality being shown on the X axis and compliance on the Y axis.[59]



[57] Anna-Lena Kuhn, Markus Stiglbauer and Janina Heel “Does Mandatory CSR Reporting Lead to Higher CSR Transparency? The case of France” (2014) 11(2) Corporate Ownership and Control 29 at 30; and Groupe Alpha “Bilan de neuf années d’application de la loi NRE en matière de reporting social, Comment le reporting modele la RSE?” (3 April 2012) Groupe Alpha <https://www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files-/2012-reporting-social-etude-cep11.pdf>.

[58] Ministere des Affaires Etrangeres, above n 40.

[59] Ministere des Affaires Etrangeres, above n 40.

B Article 225 of the Grenelle II Act

This is law born out of extensive nationwide dialogue with stakeholders, including business organisations, trade unions, environmental and consumer NGO's. The Grenelle II Act came into force in 2012, with the aim of instilling better shareholder security, as well as security for consumers and society. This law is intended to amend the flaws found in the previous law. These changes are noted below.

One new requirement from this law is for companies to have to provide details in their annual reports "on how they take into account the social and environmental consequences of [their] activity and [their] social commitments in favour of sustainable development."[60]

Further notable changes include, extending to who the law applies to. It now no longer applies to just listed companies, it also applied to companies who exceed a threshold in regard to the number of employees (an average of 500 permanent employees during the fiscal year) and turnover (total assets and liabilities worth at least €100 million).[61] It also applies to subsidiaries. However, this is only where their parent company does not present group data which includes the details of its subsidiaries. Furthermore, the subsidiary company must also flag to its stakeholders where to find this information to be compliant.[62] However, the companies caught in this extension have lesser reporting requirements, as they only need to report on their social and environmental impacts.

This Act also expands the number of topics which are required to be reported on to over 40 topics. The list of subjects reflects the content of the main international guidelines on sustainability reporting (ISO 26000, Global Compact, Guiding Principles of Human Rights and Business, the OECD Guidelines for multinational corporations, Global Reporting Initiative).[63] However, although all topics are mandatory there is no proposed indictors which the

[60] Article 225 of the Grenelle II Act.

[61] Ministere des Affaires Etrangeres, above n 40.

[62] Kaya, Idil. "The Mandatory Social and Environmental Reporting: Evidence from France" (2016) 229 Procedia - Social and Behavioural Sciences 206 at 21

[63] Kaya, Idil, above n 62, at 207.

company must reference when reporting on them. Therefore, it is up to the company's discretion to choose indicators which are most relevant to them. This can be viewed a good thing as it cuts down on irrelevant information being reported. However, it also means that there remain inconsistences between the reporting of different companies.

In regard to the mandatory topics which the companies must report on, where a topic is not relevant and a company decides not to include it in its report, the approach of 'comply or explain' is adopted.[64] Whereby the company must give reason for why it is not reporting on this topic.

Lastly, and possibly the most important requirement which this legislation added, is that all reporting must be verified by an independent third party. This third party must be appointed by the executive director or chief executor and must be accredited by Cofrac, which is the French committee of accreditation.[65] The third party then provides a report on the information and explanations given by the company in its report, certifying the quality of the information and giving a reasoned opinion on the accuracy of the information. However, interestingly, again there is no legal sanction for non-compliance with this legislation. Although, it could be argued that where you are found non-compliant the push back from consumers may be enough. However, this is just speculation.

C The impact

Since this new regulation, the International Survey of Corporate Responsibility Reporting 2013 by KPMG found that France is the top country for non-financial reporting by large companies, with almost 100% reporting rates.[66] Whilst in the 2015 Reporting Survey by KPMG, France was in 6th place for sustainability reporting but first overall for percentage of

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[64] Ministere des Affaires Etrangeres, above n 40.

[65] Ministere des Affaires Etrangeres, above n 40.

[66] KPMG "KPMG International survey of Corporate Responsibility Reporting 2013" (December 2013) KPMG International https://assets.kpmg/content/dam/kpmg/pdf/2013/12/corporate-responsibility-reporting-survey-2013.pdf.

corporate reports with assurance at 96%.[67] This legislation has also put France as one of only two countries in the world, along with South Africa, to have third party assurance of reporting mandated.

France is continuing to add to its reporting regulation, with regulation only becoming more comprehensive. For example, with a new decree of 19 August 2016, extending reporting to include direct and indirect GHG emissions linked to the supply chain, both upstream and downstream.[68] This modified the law in Article R225-105-1 of the French code of commerce.

Furthermore, on 27 March 2017, France introduced a duty of vigilance for parent and outsourcing companies established in France with over 5,000 employees in France or 10,000 employees worldwide.[69] This duty created an obligation for parent companies to identify human rights abuses and damages to the environment. However, again rather than applying to results as a direct action of the company, it extends to activities of company's which these companies have direct or indirect control over. Furthermore, it extends to actions of their French or foreign subcontractors and suppliers. This is again actively trying to bring the actions of chain-lines under scrutiny so that companies cannot pawn off their responsibility on those up or down the chain-line. It also allows multi-national companies to be held accountable.

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[67] KPMG "KPMG International survey of Corporate Responsibility Reporting 2015" (December 2015) KPMG International https://assets.kpmg/content/dam/kpmg/pdf/2016/05/KPMGSurvey_of_CR%20Rep-orting_2015.pdf.

[68] Pia Dewitz "New French Law to require for companies to report GHG emissions in their supply chains" (2016) Ecovadis <https://resources.ecovadis.com/blog/french-law-require-companies-report-ghg-emissions-supply-chains>

[69] Stéphane de Navacelle, Clémentine Duverne and Alice Béral "Environmental Compliance: A growing concern in France" (2020) International Bar Association <https://www.ibanet.org/article/6518EB3A-EE9D-4EEF-B640-AF1D2446FD0E>

This law requires “the company to implement a risk-mapping, to take appropriate action to mitigate risks, prevent violations, and implement regular procedures to assess the situation of its subsidiaries, subcontractors and suppliers”.[70] However, one year following this law its goal has only been partially met, with many companies not fulfilling their obligations. Furthermore, the ability to sanction companies has been invalidated by the Constitutional Court “for being too vague and for disregarding the principle of necessity and proportionality of the sentences”.[71] However, regardless this marks a step in the right direction, and a change of ideals and business culture.

VI CSR Reporting in New Zealand

New Zealand, in comparison to France, remains largely deregulated and voluntary in terms of CSR and CSR reporting. With CSR not being a dominate management mechanism in New Zealand yet. [72] The graph below shows that New Zealand has traditionally ‘started behind’ in terms of CSR reporting. [73]

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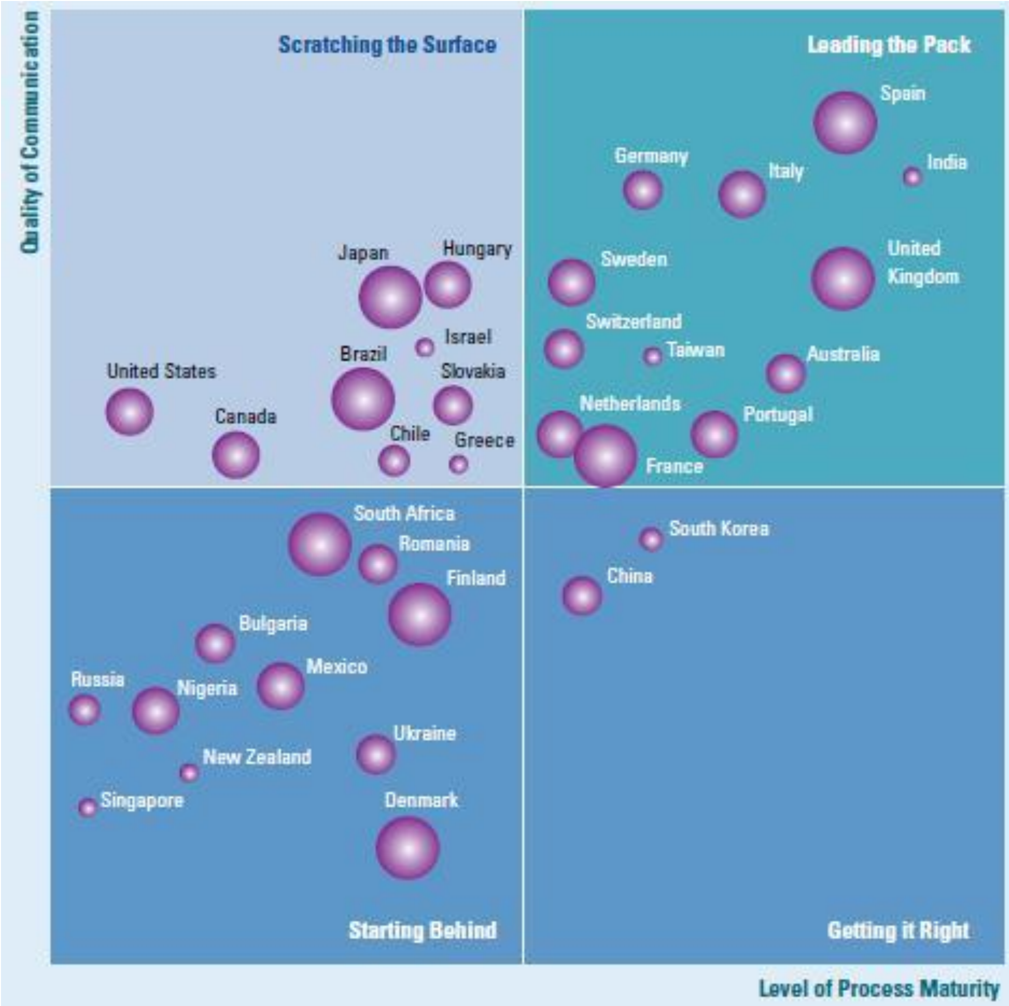
[70] Ropes & Gray LPP (14 January 2021) An overview of French Corportate Social Responsibility Legislation for U.S.-Based Multinationals” Ropes&Gray < https://www.lexology.com/library/detail.aspx?g=e36c987d-227b-416e-b3c3-44949b1cdb57>; Stéphane de Navacelle, Clémentine Duverne and Alice Béral “Environmental Compliance: A growing concern in France” (2020) International Bar Association <https://www.ibanet.org/artic-le/6518EB3A-EE9D-4EEF-B640-AF1D2446FD0E>

[71] Stéphane de Navacelle, above n 69.

[72] Khan M., Lockhart J. *Clean, Green and Responsible?* (online ed, 2019); Eweje, G., & Bentley, T. *“*CSR and staff retention in New Zealand companies: A literature review*”* (Massey University Department of Management and International Business Research, Working Paper Series no. 6, 2006); Frame, B. and Taylor, R. “Partnerships for sustainability: Effective practice?” (2005) 10(3) The International Journal of Justice and Sustainability 275, at 276 ; Keeper, T. *Corporate Governance after the Financial Crisis* (online ed, 2012).

[73] Helen Anne Wright “Social and Environmental Reporting in New Zealand: Analysing the (Non)- Institution of Practice” (MCom Thesis, University of Canterbury, 2014) at 4.



One paper has argued that despite a lack of regulation a strong pressure from external stakeholders has seen New Zealand embed these principals without requiring regulation.[74] However, despite this assertion New Zealand is ranked fourth from the bottom in terms of CSR reporting among 45 countries surveyed by Grant Thornton New Zealand survey.[75] This is with only 16% of businesses reporting their CSR activities.[76] Only Estonia, Poland and Sweden have a lower ranking.[77]

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[74] Bob Frame, Richard Gordon, and Ian Whitehouse "Corporate Responsibility in New Zealand – A case study" (January 2003) < https://www.landcareresearch.co.nz/uploads/public/researchpubs/RR_Paper.pdf.>

[75] Grant Thornton "Corporate Social Reasonability- beyond financials" (Grant Thornton, International Business Report, 2014)

[76] Grant Thornton "Corporate Social Reasonability- beyond financials", above n 75.

[77] Grant Thornton "Corporate Social Reasonability- beyond financials", above n 75.

However, although this may seem bad on paper, digging deeper into the reality of business reporting this must be considered against the context of the company landscape in New Zealand. For example, only 10.5% of businesses in New Zealand employ more than 6 people and approximately 27% of businesses produce more than $1 million in revenue. New Zealand is a country of small companies, who feel the cost of reporting the greatest.

A more recent survey by KPMG shows more promising numbers with the number of New Zealand companies reporting on ESG matter up to 74%.[78] However, in terms of reporting on sustainability performance, there are only 47% of companies including sustainability in their annual reports, with an increase of 7%.[79] But more notably we are lagging behind other countries in terms of independent assurance of information being provided, 22% below other states, at 28%.[80] Considering the criticism of CSR reporting, being baseless and greenwashing, this is a particularly important area for New Zealand to improve. KPMG Partner, Simon Wilkins has said that:[81]

> While progress is being made, much remains to be done. We need to enhance the quality of ESG reporting if we intend meeting increasing international and domestic stakeholder expectations.

However, one important feature of New Zealand company culture is, as said by Mark Hucklesby, that despite the small number of companies committing to traditional CSR reporting, companies are using other avenues to partake in CSR activities.[82] For example, with many companies collecting funds to support charities and charitable events such as

[78] KPMG "KPMG's Survey of Sustainability reporting 2020 – New Zealand has room for improvement" (18 December 2020) < https://home.kpmg/nz/en/home/media/press-releases/2020/12/survey-of-sustainability-reporting-2020.html>

[79] KPMG "KPMG's Survey of Sustainability reporting 2020", above n 78.

[80] KPMG "KPMG's Survey of Sustainability reporting 2020", above n 78.

[81] KPMG "KPMG's Survey of Sustainability reporting 2020", above n 78.

[82] Mark is a Partner and national Technical Direct of the Audit at Grant Thornton New Zealand.

Campbell Live, KidsCan and Lunchbox day.[83] The survey by Grant Thornton also shows that 77% of New Zealand businesses donate money to social causes or charities, 75% donate products, and 65% participate in community and charity events.[84] When considering these numbers New Zealand can be seen as above average in these categories, sitting in the top third of countries surveyed.[85]

Another interesting point to consider is that, although companies are engaging in these activities which would reflect positively on their CSR reports, they are choosing not to include this information alongside their annual financial reports. They are instead opting to use social media as a medium to communicate this.[86] This raises the point of whether it should be necessary for companies to have to communicate all CSR information in annual reports, or whether just getting it out there is enough?

Although it is positive that companies are communicating this information with their consumers via social media, the forum of social media is not ideal for ensuring that information is communicated consistently and is following proper guidelines. Therefore, there should still be a primary report that is made to ensure that the key factors of reporting are reached. Those being, transparency, comparability, and quality of information.

Despite the lack of reporting there does seem to be a general acknowledgement by most companies that CSR reporting is good, with 56% of companies when asked, stating that they do believe the sustainability reporting should be integrated.[87] Furthermore, since the last survey by Grant Thornton there has been an uptick in the number of companies reporting, with a 2% (from 13% to 16%) increase in New Zealand, and a 6% increase globally (from 25% to 31%).[88] Yet despite this general awareness that CSR reporting is good there is still a

[83] Grant Thornton "Global survey finds 14% of New Zealand Businesses issues CSR and Sustainability reports" (Press release, 26 November 2013)

[84] Grant Thornton Press release 26 November 2013, above n 83.

[85] Grant Thornton Press release 26 November 2013, above n 83.

[86] Grant Thornton Press release 26 November 2013, above n 83.

[87] Grant Thornton Press release 26 November 2013, above n 83.

[88] Grant Thornton "Sustainability reporting on the rise" (press release, 16 October 2013)

strong 81% of companies that have said that they do not see themselves beginning to externally report on sustainability matter in the next five years.[89] This shows the importance of government intervention, as companies are not disagreeing with CSR reporting, rather they don't believe they have the means to do it.

VII New Zealand Mandatory climate-related disclosures

One major historical event for CSR reporting in New Zealand will be the enacting of the Climate-related Disclosures Bill, which is currently in its second reading before parliament. As this will effectively be the first regulating and mandating of CSR reporting in New Zealand. It will amend the Financial Markets Conduct Act 2013, the Financial Reporting Act 2013 and the Public Audit Act 2001.

It has been submitted in support of this Bill that climate change disclosure should be mandated because having a voluntary system is not enough.[90] The Task Force on Climate-related Financial Disclosure (TFCD) outlines reasons that voluntary reporting is not enough. Firstly, as found by a study by the McGuinness Institute, of 384 significant New Zealand organisations, under the current voluntary regime very few companies make disclosures, and where there is anything disclosed it is very little.[91] Furthermore, even where there is disclosure it is not consistent, which means it is not comparable or complete.[92] Furthermore, the issues with voluntary reporting submitted in relation to the Productivity Commission's draft Low-emissions Economy report showed that the current regulations do not 'drive change with sufficient urgency'.[93]

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[89] Grant Thornton Press release 26 November 2013, above n 83.

[90] *Climate-related Financial Disclosures,* above n 4, at 23.

[91] *Climate-related Financial Disclosures,* above n 4, at 23; referencing McGuinness W. et al. *Analysis of Climate Change Reporting in the Public and Private Sectors (McGuiness Institute, working paper 2018/03, March 2018)* at 52-53.

[92] *Climate-related Financial Disclosures,* above n 4, at 23; referencing McGuiness Institute, above n 91, at 52-53.

[93] *Climate-related Financial Disclosures,* above n 4, at 23.

Multiple major energy organisations and companies have also voiced support of new mandatory disclosure requirements, due to problems that are present with the status quo.[94] The issue with the status quo, being voluntary, is that it can lead to under-reporting. This is because companies don't want to competitively disadvantage themselves by reporting.[95] They are worried about opening themselves up to the risks which come with reporting, because other companies may not also be disclosing. The other issue with the status quo is that, as I have said above, even where there may be incentives to report, because there is no standard for reporting it will not be done consistently.[96] Therefore, any value of information reported is undermined by the fact it is not comparable.

Lastly, more specifically to climate change, the Insurance Council of New Zealand submitted that although there is a fiduciary duty for boards to report on material climate change impacts "it is evident that few companies do report these risks or take a sufficiently long view, and certainly there is no consistent, clear and comparable reporting".[97]

The issues outlined above, are issues which can be seen in relation to all voluntary CSR reporting. Therefore, it stands to reason that reporting should be mandated more broadly than just climate related disclosure to resolve these issues. It is just a case of whether the government feels the benefit of mandating these other areas is as great as the benefit of mandating climate change related reporting, with climate change issues being a front and centre issue currently.

A Purpose of the Bill

In 2017 the Productivity Commission was requested by the incoming ministers to identify ways for New Zealand to lower its greenhouse gas emissions while at the same time

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[94] *Climate-related Financial Disclosures,* above n 4, at 23.

[95] *Climate-related Financial Disclosures,* above n 4, at 23.

[96] *Climate-related Financial Disclosures,* above n 4, at 23.

[97] *Climate-related Financial Disclosures,* above n 4, at 23; referencing New Zealand Productivity Commission *Low-emissions economy* (New Zealand Productivity Commission, Final report, August 2018) at 196-197.

continuing to grow incomes and wellbeing.[98] Later the question was shifted to include the goal of achieving net-zero emissions by 2050.[99] Therefore, the goal of the legislation is, to change the practice of large New Zealand entities who currently provide little to no information on what climate change might mean to them. This goal is based on the idea that there can be a shift away from emission-intensive actives by engaging the financial markets through climate related risk and opportunity disclosure.[100] The Productivity Commission has said that the legislation allows for the completion of this goal on the basis that:[101]

> Introducing mandatory climate-related financial disclosures would encourage investment that supports the transition to a low-emissions economy. These disclosures can help overcome information and inertia barriers that prevent entities from adequately addressing climate risk and capitalising on low-emissions opportunities. They can also help to stop investors valuing assets or investment opportunities incorrectly, resulting in misdirected finance or stranded assets.

The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill report by the Economic Development, Science and Innovation Committee (EDSI Committee) further breaks the purpose of the bill down into three categories:[102]

1. Ensure that the effects of climate change are routinely considered in business, investment, lending and insurance underwriting decisions;

2. Help climate reporting entities better demonstrate responsibility and foresight in their consideration of climate issues; and

3. Lead to more efficient allocation of capital, and help smooth the transition to a more sustainable, low emissions economy.

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[98] *Climate-related Financial Disclosures,* above n 4, at 10.

[99] *Climate-related Financial Disclosures,* above n 4, at 7.

[100] Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill 2021 30-1, General policy statement, Explanatory note, at 1.

[101] *Climate-related Financial Disclosures,* above n 4, at 11, referencing Productivity commission, 2018, at 7.

[102] Financial Sector Explanatory note, above n 100, at 2.

Furthermore, because climate change is a national and international issue, having legislation in place which mandates climate change reporting can also help New Zealand meet its international obligations and its goal to be zero carbon by 2050.

B Who it would apply to

It is estimated that around 200 entities in New Zealand would be affected by this regulation. This includes the following entities:[103]

1. All registered banks, credit unions, and building societies with total assets of more than $1 billion.

2. All managers of registered investment schemes with greater than $1 billion in total assets.

3. All licensed insurers with greater than $1 billion in total assets under management or annual premium income greater than $250 million.

4. All equity and debt issuers listed on the NZX.

Furthermore, on a fund-to-fund basis, managers of registered investment schemes would also be required to make disclosures.[104] While organisations which have been incorporated overseas would also have to make disclosures, where captured by the above thresholds.[105] There would also be scope for these thresholds to be widened to meet the movements in the consumers price index. [106]

One area which the Bill will not apply to is public sector agencies. Instead, Ministers have said that they will direct government entities through letters of expectation.[107] However, a

[103] Ministry for the Environment “Mandatory Climate-related Disclosures” (April 2021) Ministry for the Environment < Mandatory climate-related disclosures | Ministry for the Environment>

[104] Ministry for the Environment “Mandatory Climate-related Disclosures”, above n 103.

[105] Ministry for the Environment “Mandatory Climate-related Disclosures”, above n 103.

[106] Ministry for the Environment “Mandatory Climate-related Disclosures”, above n 103.

[107] Financial Sector Explanatory note, above n 100, at 7.

report released by the EDSI Committee has recommended that this should not be a privilege afforded to the public sector, and rather disclosure requirements should apply equally to all entities.[108] This does seem counterintuitive, considering that the same disclosure will be required by letters of expectation. It would also appear to be unfair that private companies fit the bill for climate disclosure where public agencies do not. The National Party members, as a part of the EDSI Committee, have in their minority report voiced their recommendation to extend the regime to public sector entities.[109]

1 Exemptions for smaller entities

The Bill does not currently have any exemption for smaller entitles. The reason given for this is that "all companies should be managing their climate risks and therefore requiring small companies to make such disclosures would be in line with normal business sense".[110]

However, it has been recommended by both the EDSI Committee and the members of the National Party that an exemption be brought in. In particular, the EDSI Committee notes that it has had many submissions that smaller companies may struggle to meet the costs incurred by reporting and that they pose a lesser effect on the climate.[111] Therefore, it would be unjust and uneconomical for them to have to spend money on reporting.

In France there is a similar reporting criterion which requires that all listed companies should make CSR reporting. However, it should be noted that France is a much larger country. While New Zealand, as also said above, has a much larger percentage of small companies. Therefore, it may be acceptable that the law recognise this through an exemption. The EDSI Committee recommends in their report that there be an exemption in the case of listed issuers with market capitalisation under $60 million.[112] At the time of that recommendation the companies which fall into this category make up 0.68 percent of NZX's

[108] Financial Sector Explanatory note, above n 100, at 7.

[109] Financial Sector Explanatory note, above n 100, at 7.

[110] *Climate-related Financial Disclosures*, above n 4, at 39.

[111] Financial Sector Explanatory note, above n 100, at 3.

[112] Financial Sector Explanatory note, above n 100, at 3.

total market capitalisation, which allows over 99 percent of the markets capitalisation to still be captured. This recommendation has yet to be acknowledged by any amendments to the Bill, however, there is still a possibility that this may happen later.

C Where the disclosures would be made

The disclosures under this Bill, are to be made within a separate section of the entities annual report. This section being the TCFD section. It is set out in this way because, disclosures on climate reporting have important links to 'financial statements and to the general commentary in annual reports about governance, strategy and risk management'.[113] Another important requirement outlined in the report is that, where entitles make these disclosures across other mediums, for example on their website, this information should be properly cross referenced or mapped.[114] This is important to keep consistancy across a company's different communication streams and to ensure transparency and accountability. This allows interested parties the ability to check references easily where they are not complete disclosures. The TFCD noted this in their 2018 report as an issue, saying that "information related to around half the recommended disclosures was found in sustainability reports and around one third in financial filings".[115]

These reporting requirements are in line with the TCFD recommendations. In the TCFD's recommendation, it is stated that climate-related information should be included in entities' annual financial reporting because it should foster shareholder engagement, and ensure appropriate controls govern the disclosure.[116] It is also common for G20 jurisdictions to include material climate related information in their financial reports.[117] In terms of fostering shareholder relationships, this is important because it encourages more informed understanding and decisions by investors of climate related risks. In terms of appropriate

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[113] *Climate-related Financial Disclosures,* above n 4, at 40.

[114] *Climate-related Financial Disclosures,* above n 4, at 40.

[115] *Climate-related Financial Disclosures,* above n 4, at 40.

[116] Michael R. Bloomberg *Recommendation of the Task Force on Climate-related Financial Disclosures* (The Task Force on Climate-related Financial Disclosures, Final Report, June 2017) at iv.

[117]Michael Bloomberg, above n 116, at iv.

controls, these include chief financial officers and audit committees who would usually provide third party assurance for these reports.[118]

D Independent assurance

As seen in the case of France, independent assurance can be a powerful tool to further help information become more transparent and comparable, as the third-party assurance ensures that it is accurate and in line with the relevant standards. It also increases users' confidence in the credibility of disclosed information. It is for these reasons that the Bill provides that all disclosures made in relation to GHG emissions be assured.[119] This is not something that the TCFD has recommended. Instead the TCFD has said that disclosures should be made in a way so that the information contained in them can be verified and that, rather than this verification being done by a third-party assurance it should be subject to internal governance processes. These processes being the same or substantially similar to those used for financial reporting.[120] This is a possible consideration for the future. However, for right now third-party assurance seems like the better option as it is less likely to lead to biased results.

However, although there is a requirement for disclosures to be assured this will not be happening immediately. This is because TCFD is a new concept and therefore it is not yet clear what the users demand for assurance will be. Furthermore, because TCFD is new, assurance practitioners may not have all the necessary tools to assure all information disclosed. Therefore, where the Bill is passed, companies must report on climate-related impacts for the first accounting period following the commencement of the External Reporting Board (XRB) reporting standards. However, they will not need to have this information assured until three years following the royal assent of the bill.[121] At which time, although assurance practitioners will not be required to be specially licenced, as originally considered, they will need to comply with all applicable assurance standards. The relevant

[118] Michael Bloomberg, above n 116, at iv.

[119] Section 461ZD Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill.

[120] Michael Bloomberg, above n 116, at 53.

[121] Financial Sector Explanatory note, above n 100, at 4.

process for assurance practitioners to follow, is that they will need to provide all qualified reports to the Financial Markets Authority (FMA), the XRB and the climate reporting entities supervisor.[122]

This is a similar stance to which other countries and organisations have taken. For example, in both the Combined Independent Auditor's and Limited Assurance Report in Sanford's Integrated Annual Report, and the assurance report in the International Integrated Reporting Council's integrated report for 2018 there was limited assurance engagements. Furthermore, work by the International Auditing and Assurance Board (IAASB) has indicated that it is too early to consider mandatory assurance. They found that:[123]

> Consideration should not be given to mandatory assurance until (a) it becomes clearer what users want, and (b) assurance standards setters have responded to user demand with new or amended standards and guidance material. The issue of mandatory assurance could be reconsidered within three years of a mandatory disclosure regime coming into force, at which time there would be two years of data to draw upon.

Looking at this recommendation, we can see that New Zealand will be, more or less, following the course that other organisations and jurisdictions have expressed. Once this comes into force, the penalty against an assurance agency or practitioner for failing to meet the relevant requirements may amount to $50,000.00 in fines.[124]

E The role of the Government

The main role of the government in regard to this reporting will be for guidance. That is, supporting entities by guiding, educating, monitoring entities and reporting on their disclosures.

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[122] Financial Sector Explanatory note, above n 100, at 4.

[123] *Climate-related Financial Disclosures,* above n 4, at 41-42.

[124] Section 461ZDB(3) Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill

In terms of guidance, although there is a growing international material on the TCFD recommendations the government will need to provide extra guidance by:[125]

1. Publishing guidance and education material, which will be particularly important in relation to scenario analysis. Guidance will be required about the potential medium- and long-term impacts of climate change on New Zealand, both nationally and regionally, and a wide range of expertise will be needed.

2. Monitoring and reporting on disclosures, including highlighting examples of high quality reporting practices and identifying areas for improvement.

Furthermore, the discussion document on the Bill, written by the Ministry for the Environment notes that this role will be especially important because the Bill will not create exemptions for smaller entities or allow for a comply or explain approach.[126]

F Consequences of Non-compliance

The Bill had originally taken a comply or explain model, such as the model in France. Whereby companies could be exempted from disclosure where they are not materially impacted by climate change, and provided that they explain why this was the case. However, under the new version of the Bill there is no longer such an exemption. This is on the basis that an exemption would undermine the goal of climate disclosure, which is to provide consistent and comparable climate reporting.[127] This is an interesting approach, which has had subsequent scrutiny, with recommendations from the National Party, that the comply or explain model be continued.

The Government acknowledges that companies will be affected to varying degrees by climate change. However, it is noted in the report that any need for differential reporting can be achieved by application of the climate standard set by XRB.[128] These standards are

[125] *Climate-related Financial Disclosures,* above n 4, at 45.

[126] *Climate-related Financial Disclosures,* above n 4, at 45.

[127] Financial Sector Explanatory note, above n 100, at 6.

[128] Financial Sector Explanatory note, above n 100, at 6.

discussed in greater detail below. However, it should be noted that the XRB has yet to create these standards, therefore, it is not yet clear whether this would be the case.

As a penalty for failing to carry out proper disclosure companies can attract fines of up to $50,000.00 for infringements offences, $500,000.00 for individuals, or $2.5 million for reporting entities, for more serious breaches.[129] The inclusion of penalties, shows a serious attitude towards compliance. Although, time will show whether this is enforced with such a serious attitude. This may also help New Zealand overcome issues that France has felt, as there is tangible consequences of non-compliance.

G Reporting standards

Along with companies needing to report on climate related activities, companies will also need to comply with certain reporting standards. These reporting standards are to be created by the XRB. While the Financial Markets Authority (FMA) will be responsible for independent monitoring and enforcement of these standards. The standards created by the XRB are to be created in line with the TCFD recommendations. The TCFD was created by the Financial Stability Board, who was tasked by the G20 with convening public and private sector participants to look into how the financial sector could take account of climate issues. The TCFD was tasked, in particular, with developing disclosures for companies to make, to provide information to their stakeholders.

The recommendations of the TCFD centre around four areas which represent the core elements of how organisations operate, and that there be 11 sets of disclosures within those four areas. The four areas are governance, strategy, risk management, and metrics and targets. The table below sets this out in greater detail.[130]

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[129] Sections 461ZC(2)(a) and (b) Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill

[130] *Climate-related Financial Disclosures,* above n 4, at 15.

Governance	Strategy	Risk Management	Metrics and Targets
Disclose the organization's governance around climate-related risks and opportunities.	Disclose the actual and potential impacts of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning where such information is material.	Disclose how the organization identifies, assesses, and manages climate-related risks.	Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material.
Recommended Disclosures	**Recommended Disclosures**	**Recommended Disclosures**	**Recommended Disclosures**
a) Describe the board's oversight of climate-related risks and opportunities.	a) Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term.	a) Describe the organization's processes for identifying and assessing climate-related risks.	a) Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process.
b) Describe management's role in assessing and managing climate-related risks and opportunities.	b) Describe the impact of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning.	b) Describe the organization's processes for managing climate-related risks.	b) Disclose Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas (GHG) emissions, and the related risks.
	c) Describe the resilience of the organization's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario.	c) Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization's overall risk management.	c) Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.

In relation to these recommendations the Chairman of the TCFD has said that they are helpful because:[131]

> [The report] establishes recommendations for disclosing clear, comparable and consistent information about the risks and opportunities presented by climate change. Their widespread adoption will ensure that the effects of climate change become routinely considered in business and investment decisions. Adoption of these recommendations will also help companies better demonstrate responsibility and foresight in their consideration of climate issues.

Below, this paper looks at how the TCFD's recommendations have been considered under the Better Alignment Project, to consider whether they really live up to this statement.

The Bill does not include a provision which deals with materiality of disclosure, rather the EDSI Committee decided this was best left up to the XRB.[132] Therefore, this is something else which will be included in its standards. The reason that it was decided that this should

[131] *Climate-related Financial Disclosures,* above n 4, at 14.

[132] Financial Sector Explanatory note, above n 100, at 6.

be something worked out in the standards rather than the legislation, is because it would otherwise lead to lengthy and complex reporting which would undermine the understandability of the report as a whole.

The XRB has not yet released its standards and is instead due to release an 'exposure draft' for two of the four areas, being governance and risk management on 22nd of November 2022.[133] The formal exposure draft is not due to be completed until July 2022, and it will be followed by a three month consultation period.[134] These standards will be a very important piece of the puzzle in determining whether the reporting will be truly efficient.

H The Better Alignment Project

Another area which was considered in the drafting of this Bill was the Better Alignment Project (Project). The Project was set up by the Corporate Reporting Dialogue, an initiative set up by the International Integrated Reporting Council (IIRC) with the aim to:

1. Communicate about the direction, content and ongoing development of reporting frameworks, standards and related requirements;

2. Identify practical ways and means by which respective frameworks, standards and related requirements can be aligned and rationalized; and

3. Share information and express a common voice on areas of mutual interest, where possible, to engage key regulators.

The Project aimed to (as the name suggests) better align the recommendations of the TCFD with the corporate reporting landscape.[135] In this way its aim was twofold; to make reporting for companies more efficient and to make it more palatable for stakeholders and consumers. The participants in this were the Climate Disclosure Standards Board (CDSB)

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[133] Extended Reporting Board "Climate-related Disclosures" External Reporting Board (2020) < Climate-related Disclosures » XRB>

[134] Extended Reporting Board, above n 133.

[135] *Climate-related Financial Disclosures,* above n 4, at 18.

Financial Accounting Standards Board (FASB)**,** GRI, IIRC, International Organization for Standardization (ISO) and the Sustainability Accounting Standards Board (SASB). These are all large international organisations which create reporting standards and frameworks for companies to follow. These participants worked together to refine overlapping metrics, to achieve and maintain the highest possible alignment with the TCFD recommendations. Such alignment of metrics was subject to the due process considerations of each organisation's governance procedures. To do this the participants mapped their own frameworks against the TCFD recommendations to identify where metrics needed to be aligned, taking into consideration the different focuses and audiences within mainstream reports.

There was an overall positive finding from the Project, with the report for the Project being announced in September 2019. The technical mapping of the participants found a strong alignment between the participants frameworks and the TCFD recommendations.[136] For example, the seven principles of effective disclosures recommended by the TCFD were all found to be harmonious and complementary with the frameworks and standards of the participants, with no sources of conflict found.[137] Furthermore, in terms of the metrics outlined by the TCFD, 80% of these were found to be fully or reasonably covered by CDP, GRI and SASB indicators.[138]

Additionally, the consultation process, which was carried out before the report was released, shows that, not only is this something that aligns well with reporting guides, but it is also something which is important to help address the confusion felt by stakeholders and businesses in regard to TCFD recommendations. The consultation process was set up with multiple round tables held in 11 different countries with 250 stakeholders, businesses and investors.[139] The results of the consultation showed that, although there was a clear appreciation of the importance of TCFD, stakeholders found the proliferation of indices,

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[136] Ian Mackintosh "How to simplify corporate reporting" (14 September 2019) World Economic Forum < https://www.weforum.org/agenda/2019/09/how-to-simplify-corporate-reporting/>.

[137] Ian, above n 136.

[138] Ian, above n 136.

[139] Ian, above n 136.

questionnaires and other documents to be confusing and overwhelming.[140] It also showed that there is still a large issue in regard to inconsistencies between companies metrics for climate change reporting which needs to be urgently addressed.[141] Lastly, there was a finding that there was a struggle to report against the recommendations of TCFD.[142]

A conclusion which can be drawn from these reports is that, domestic legislation, either supporting international guidelines or requiring compliance with separate regulations, may be necessary to ensure effective reporting. This is because, although the international guidelines are comprehensive and work well, companies need more education of how to report in line with the TCFD recommendations. This is best administrated by their own governments, as they can enforce reporting. Whereas it is more difficult, if not altogether unavailable, for international organisations to enforce compliance. Furthermore, 'home' governments are able to ensure that reporting is in line with commercial landscape of the relevant state. This will help ensure that the reporting required is a good fit for the relevant companies so there is not overwhelming amounts of reporting requirements that are unnecessary and confusing.

VIII The outcomes of different Jurisdictions mandated CSR reporting

States other than just New Zealand have also been considering the TCFD recommendations and requiring companies to make reports on the basis of them.

A Canada

For example, Canada has also created the Expert Panel on Sustainable Finance 2019 to look at how the TCFD recommendations could be changed to better align with the current commercial landscape of Canada. This panel released its report recently, where it outlined that the comply or explain model would work well. This follows the trend of reporting in

[140] *Climate-related Financial Disclosures,* above n 4, at 18.

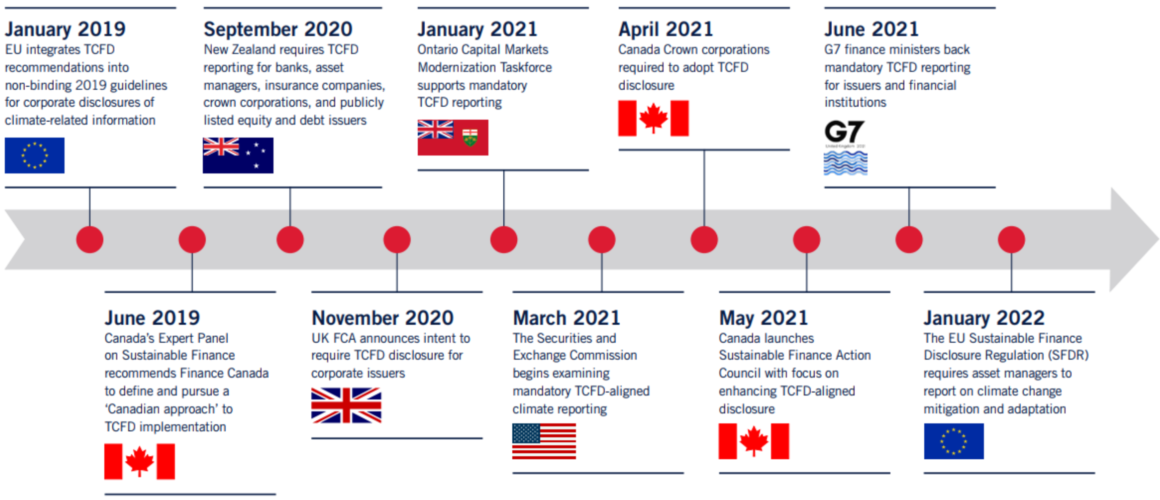
[141] *Climate-related Financial Disclosures,* above n 4, at 18.

[142] *Climate-related Financial Disclosures,* above n 4, at 18.

France and the recommendation made in relation to the New Zealand Climate disclosure Bill.

More recently Millani has evaluated the quality of reporting currently in Canada in relation to the TCFD recommendations, this was based on market knowledge of investor expectations around TCFD reporting.[143] Interestingly, and somewhat similarly to the Romanian results, it was found that where companies report according to the TCFD recommendation they do not always provide information that is useful to investors.[144] This shows that there is a risk of box ticking in relation to mandated reporting, where rather than considering the practical side of reporting companies will merely complete the bare minimum. Despite the finding that there are still issues regarding mandated reporting there does seem to be a trend world-wide requiring reporting in terms of TCFD disclosure. The time-line below outlines this 'rise of mandatory TCFD reporting'.[145]

Figure 4
The rise of mandatory TCFD reporting



As shown by this timeline it is more than just New Zealand who is looking at making climate change related reporting mandatory.

143 Millani "Millani's TCFD Disclosure Study: A Canadian Perspective" (14 June 2021) Millani < Millani's TCFD Disclosure Study: A Canadian Perspective - TCFD Knowledge Hub (tcfdhub.org)>

144 Millani, above n 143, at 4.

145 Millani, above n 143, at 3.

B France

The French system, as I have outlined above, has made mandatory reporting on carbon emissions with Article 173-VI of the French Energy Transition and Green Growth Law. Although, these are not aligned with the TCFD recommendations, the French Accounting Standard board has proposed that these such regulations be built on existing standards (which includes the TCFD standards) across the national, European and global levels.[146]

C United Kingdom

The UK already has reporting requirements that all quoted and unquoted companies and limited liability partnerships report on energy use, GHG emissions and emissions intensity.[147] However, as of September 2017 the UK has also endorsed the TCFD. Furthermore, it has set out in its Green Finance Strategy for all listed companies and large asset owners to disclose information as recommended by the TCFD by 2022. To implement this, it has established a joint taskforce with UK regulators, to examine the most effective way to approach disclosure. This includes looking at the appropriateness of mandatory reporting and the process of implementation of the TCFD's recommendations.[148]

D European Union

The European Union already has non-binding guidelines in relation to reporting, which include strong ties to the TCFD recommendation.[149] However, they are considering making

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[146] De Cambourg P et al "Ensuring the relevance and reliability of non-financial corporate information: an ambition and a competitive advantage for a sustainable Europe" (2019) Paris: Autorité des Normes Comptables.

[147] HM Government. "*Green Finance Strategy: Transforming Finance for a Greener Future" (July 2019) HM Government* < Green Finance Strategy: Transforming finance for a greener future | Green Finance Platform>

[148] HM Government. "Environmental Reporting Guidelines: Including streamlined energy and carbon reporting guidance" (2019) HM Government < https://assets.publishing.service.gov.uk/government /uploads/system/uploads/attachment_data/file/850130/Env-reporting-guidance_inc_SECR_31March.pdf>

[149] These are outlined in the European Commission "Communication from the commission - Guidelines on non-financial reporting: Supplement on reporting climate-related information" (2019) Official Journal of the European Union 209.

these mandatory by reopening Directive 2014/95/EU, which is the EU Non-Financial Reporting Directive (NFRD).[150]

E Australia

Australia has taken a different approach to France, Canada and the EU. Whereby, rather than basing its disclosure on government regulation, it has institutions such as the Australian Securities Exchange (ASX) and the Australian Accounting Standards Board (AASB) which has released guidelines that make it an expectation that TCFD recommendations should be considered and followed.[151] Furthermore, the Reserve Bank of Australia and the Australian Prudential Regulation Authority have both given strong endorsements of TCFD implementation.[152]

A result of these guidelines has been a slew of litigation. For example, there have been claims made against the Commonwealth Bank of Australia 'for not disclosing climate change related financial risk'.[153] This was the first time that shareholders of a financial services firm had sued for inadequate disclosure.[154] There is also a claim currently against the Australian Retail Employees Superannuation Trust 'for failure to sufficiently disclose their investment strategy relating to climate change risk'.[155] The issue with this is that directors may be

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[150] *Climate-related Financial Disclosures,* above n 4, at 20.

[151] *Climate-related Financial Disclosures,* above n 4, at 20; referencing ASX Corporate Governance Council "Corporate Governance Principles and recommendations" (4th ed, February 2019); Australian Accounting Standards Board & Auditing and Assurance Standards Board "Climate-related and other emerging risk disclosures: assessing financial statement materiality using AASB" (Press statement, 2018)

[152] *Climate-related Financial Disclosures,* above n 4, at 20.

[153] Kaye B. "Commonwealth Bank in new lawsuit over climate risks" (8 August 2017) Reuters <Commonwealth Bank in new lawsuit over climate risks | Reuters>

[154] Kaye, above n 153.

[155] McVeigh v Retail Employees Superannuation Pty Ltd [2019] FCA 14.

exposed to fiduciary duty litigation for failing to take into account CSR factors.[156] A legal opinion issued by Chapman Tripp supports this possibility, with them saying that: [157]

> "although it would 'likely be difficult to show a breach [of fiduciary duty] in a climate change context', there is a growing body of evidence to suggest courts may view climate-related risk as falling within the remit of a fiduciary duty in certain circumstances".

Furthermore, there is the likelihood that decisions under this umbrella will be assessed retroactively, as this is something that directors should already be considering as part of their fiduciary duty.[158] This is because a wider interpretation of fiduciary duties would require fiduciaries to consider and actively manage environmental and social risks, opportunities, and 'real-world' impacts". [159]

However, it is unclear if this is a unnecessary issue which comes with the legislation, or rather is just initial growing pain which comes with opening a new area of liability against companies. In fact, this may be viewed as a success for Australia, that the regulations that they have put in place have real consequences, which will encourage compliance more quickly. For the time being, it seems as this is just something that New Zealand will have to observe and use as an example for what they might do with their own regulations.

IX The Future of CSR reporting in New Zealand

A Will New Zealand Broaden the Climate-related disclosure bill in the future?

As a whole, it looks like the TFCD recommendations are being embraced across the board to some extent, which supports the movement of New Zealand requiring climate related reporting. However, climate related reporting is just one facet of CSR reporting. Therefore, the question becomes whether we will continue to see growth in New Zealand's CSR

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[156] Daniel Meech and Tom Bayliss "International Developments in Sustainability Reporting" (June 2021) Ministry of Business, Innovation and Employment < https://www.mbie.govt.nz /dmsdocument/15110-international-developments-in-sustainability-reporting-pdf>, at 23.

[157] Daniel Meech, above n 156, at 23.

[158] Daniel Meech, above n 156, at 23.

[159] Daniel Meech, above n 156, at 23.

reporting regulations, and a possible requirement that mandate companies reporting on other areas of CSR?

Considering other jurisdictions, it seems as though the states which mandate CSR reporting generally see benefits, with the reporting done more effectively. For example, in the case of France, CSR reporting has become more ingrained into businesses as an effect of requiring businesses to report on certain sustainability issues.[160] This is despite the fact that France does not have legislation in place that allows companies to be penalised for failing to comply. Furthermore, since mandating reporting France now ranks very highly on KPMG CSR reports, especially in regard to third party assurance.[161] Habek has found (as shown by the graph above cited as by Habek) that in regard to France (and the Netherlands) reporting was to a higher quality as compared to other countries in the EU which did not have mandated reporting.[162] Interestingly, Habek also found that despite the reporting being at a higher quality, there was also a lesser volume of reporting overall, compared to other countries considered.[163] It was not fully explained as to why there was less reporting. However, it may just be that other circumstances affect the amount of reporting in France as opposed to the United Kingdom. In comparison to both France and the Netherlands, Habek found that Poland, the state with no kind of mandated reporting, had by far the least reporting, and the a poor quality of reporting.[164]

However, aside from France, mandating CSR reporting is not a new or rare requirement by states globally. Sweden, South Africa, India and the Netherlands are just a few of the states which also mandate CSR reporting. Sweden, does not mandate reporting for all companies, with only state owned enterprises being required to report.[165] However, for the areas

[160] Ministere des Affaires Etrangeres, above n 19.

[161] KPMG "KPMG International survey of Corporate Responsibility Reporting 2013", above n 63; KPMG "KPMG International survey of Corporate Responsibility Reporting 2015, above n 64.

[162] Patrycja Habek, above n 32, at 19.

[163] Patrycja Habek, above n 32, at 19.

[164] Patrycja Habek, above n 32, at 19.

[165] Patrycja Habek, above n 32, at 19.

where reporting is required, Habek found that this reporting did have standout quality as compared with other European states.[166] This being that 91% of reports by state-owned enterprises being done in accordance with GRI guidelines.[167]

Another interesting country to consider, which regulates CSR reporting a bit differently, is India. India's requires that all companies over a certain value (the top 100 performing companies) must put 2% of their profits towards a CSR activity.[168] Although, there are legislated penalties for failing to comply, this has yet to be enforced, and it is doubtful whether it would be able to be effectively enforced at all.[169] However, despite this, reports from KPMG shows that it is still largely complied with.[170] KPMG has reported that of the 100 companies required to comply 99 of them are meeting their disclosure requirements.[171] Furthermore, this legislation is found to have increased the corporate social performance in India, with there being an increase in governance and social actors as well as a smaller improvement in environmental score.[172]

Lastly, briefly considering South Africa, Ioannou and Serafeim found that there was significant increase in ESG disclosure after their respective regulations relative to control firms.[173] Although, as a developing country part of this response may be attributed to South Africa requiring more integrated reporting.

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[166] Patrycja Habek, above n 32, at 19.

[167] Patrycja Habek, above n 32, at 19.

[168] KPMG "India's CSR Reporting Survey 2019" (2019) KPMG < https://assets.kpmg/content/dam/kpmg/in/pdf/2020/03/india-s-csr-reporting-survey-2019-summarised.pdf> at 1.

[169] Bishnuprasad Mohapatra "Corporate social responsibility in India: rethinking Gandhi's doctrine of trusteeship in the twenty-first century" (2021) 10(1) Asian Journal of Business Ethics 61-84, at chapter 1.

[170] KPMG "India's CSR Reporting Survey 2018" (December 2018) KPMG < https://assets.kpmg/content/dam/kpmg/in/pdf/2019/01/India_CSR_Reporting_Survey_2018.pdf> at 5.

[171] KPMG "India's CSR Reporting Survey 2018", above n 168, at 5.

[172] Jha, M. K. Rangarajan, K. "Analysis of corporate sustainability performance and corporate financial performance in the Indian context" (2020) 5 AJSSR 10.

[173] Ioannis Ioannou and George Serafeim "The Consequence of Mandatory Sustainability Reporting" (Harvard Business School Research Working Paper, 1 May 2017), at 28.

Furthermore, as I have already outlined above, reports have found that mandated reporting does create more effective CSR reporting, by making it more transparent[174] and of better quality.[175] This allows companies to be better compared and therefore, held accountable. This is because stakeholders are able to see how they are performing in comparison to their peers, which helps them to make more informed choices about supporting companies, both ethically and financially. Furthermore, where companies are more transparent about their activities, analysts are less likely to create assessments which are inaccurate. This is important to companies, as inaccurate results from analysts may see companies being undervalued. [176] Lastly, in terms of the major criticism of CSR reporting, being merely greenwashing or a marketing ploy, mandating reporting can help eliminate this issue. One paper made the comment that CSR reporting is more heavily criticised than financial reporting because financial reporting is mandatory, as well as better harmonised, which makes is harder to lie by omission.[177] Therefore, is can be deduced that where CSR reporting is made mandatory and more harmonised it shall also be less criticised.

However, the point is not that 'New Zealand should make reporting mandatory because *all* countries which have, have seen more effective reporting'. And this is not what meant by brief overview of other countries successes. Rather it should be fully acknowledged that many of them may have had problems arise from mandating reporting. For example, as seen in the case study of France. The French legislation for reporting has had to be changed over the years to better fit the country and to maximise effectiveness. Furthermore, it needs to be acknowledged that the question of 'what makes reporting effective' is complex, and as is noted above, there is no one formula in deciding what makes reporting effective. Especially, in regards to what constitutes quality information. However, overall I these jurisdictions paint a positive picture for New Zealand to also follow their lead and begin

[174] Criado-Jiménez, above n 25; Haji, above n 27; Kerret, above n 27; Frost GR, above n 26; Dumitru M, above n 28.

[175] Patrycja Habek, above n 32.

[176] Isabel María García-Sánchez, María-Elena Gómez-Miranda, Fátima David, Lazaro Rodríguez-Ariza, "Analyst coverage and forecast accuracy when CSR reports improve stakeholder engagement: The Global Reporting Initiative-International Finance Corporation disclosure strategy" (21 April 2019) 26(6) Corporate Social Responsibility and Environmental Management 1392, at 1402

[177] John Richard Kurpierz, above n 2, at 1079.

expanding their regulation to other facets of CSR. Furthermore, it is the mistakes of other states which New Zealand can draw and learn from in drafting their own legislations. It is not yet clear whether New Zealand will broaden the Climate-related disclosure bill in the future to include reporting across all CSR areas. A factor of whether this happens may come down to the success of the Bill. Climate Change and the zero carbon by 2050, has been a large goal of government, therefore, it makes sense that it is on this hook that the government rests its first attempt at mandating reporting. Hopefully that it is not the last, and the importance of all aspects of CSR reporting are equally recognised.

B What might broader CSR regulation look like?

This questions must consider, the CSR regulations in other countries, the unique commercial landscape of New Zealand as well as the Climate-related disclosure Bill.

In terms of the commercial landscape of New Zealand, it is important to note that New Zealand is predominately made up of small companies. Therefore, when it comes to who CSR reporting regulations should apply to, and what penalties (if any) should be in place for noncompliance, legislation must take this into account.

Regarding, which entities CSR reporting should be mandatory for, I note that the Climate-related Disclosure Bill is drafted to apply to 200 entities. Additionally, at this stage, there has been no insertion to the Bill allowing exceptions for smaller entities. In the context of New Zealand, this means that the Climate-related Disclosure Bill has a relatively wide reach in terms of who it applies to. However, this may be because climate change is such a large issue in New Zealand politics, and going forward, broader CSR reporting may apply to fewer entities. For example, only those listed on NZX (184 entities) as in France, or only the top 100 companies, as in India, or only state owned enterprises, as in Sweden. Recommendations which have been given, to include an exception for smaller entities under the Bill, show that for future CSR reporting areas which are less politically charged, may apply to fewer companies. This is because it shows that the wide reach of the Bill is not something that is altogether accepted as the best approach.

In terms of penalties for non-compliance, the Climate-related Disclosure Bill has in place fines up to $2.5 million. However, as is already noted, other countries, such as France, have no penalties, or like India, there are legal penalties in place however, these are not enforced. In these scenarios, countries instead rely on pressure from other sources to ensure that companies comply with legislation, such as consumer pressure. Putting in place penalties or incentives can be a more effective way of ensuring compliance. However, it may be in broadening its legislation, New Zealand does not take such a strong stance as it has for climate-related disclosures. Time will be a major factor to see what stance New Zealand will take in the future. For example, it will be interesting to see whether the penalties in place for climate-related disclosure are actually utilised, or whether they are more ceremonial.

Lastly, third party assurances are an important feature of reporting to consider. This requirement is not something that is commonly adopted in states which require CSR reporting. This is because it can cause greater cost to companies who have to pay for it. It may also cause reports to take longer to be finished. However, as shown by the case of France, it can be a good way to increase quality of information. This is because it ensures that information is accurate and compliant with requirements, which will ensure that it is also relevant and not misleading. Considering it has been included in the Climate-related Disclosures bill, it would be nice to see this carry through to other regulations, although I note it is only applying to GHG emissions. Again, a lot will hinge on the effectiveness of the third party assurance mechanism once they are set up, as to whether this is likely to carry through to other regulations.

X Conclusion

This paper demonstrates that, generally, mandated CSR reporting does appear to be more effective than voluntary reporting. It forces more companies to report, ensures more information is reported on, and it also allows for information to be reported on more consistently across companies, which allows for better comparability and transparency. Furthermore, there is evidence that it also leads to higher quality information being disclosed in reports. Although, it should be noted there needs to be proper regulations in place which require disclosure of relevant information in light of companies' unique circumstances to ensure that the information is quality. Otherwise reporting can become more of a check-boxing exercise, whereby companies do the bear minimum to comply which reduces the quality of information disclosed.

The case study of France, is a good example of what the process of mandating reporting may look like. This being that it shows how legislation can slowly be adjusted to best meet the requirements of those to who it applies, to encourage the most effective reporting. France is also an example of how New Zealand may want to regulate it reporting. For example, who it should apply to, for what areas, and to what extent.

Considering the regulations currently in force in New Zealand, there is a large gap that could be filled in terms of regulating and mandating CSR reporting. New Zealand is lagging behind its western counter-parts and although New Zealand has made progress, there is still improvements to be made. Looking to the future, at the Climate-Related Disclosures Bill, it is shown that New Zealand is looking to begin to close this gap. Considering this Bill against other states and the TCFD recommendations, it seems to be in line with international recommendations and at the movement of other states, as well as the European Union. However, more time is necessary to see whether it is successful in practice. In terms of whether there will be further regulation for other areas of CSR reporting, this is unclear and will likely come down to the success of the Bill. However, considering the successes of France as well as other states which mandate CSR reporting, the continuation of regulation to other facets of CSR reporting in New Zealand would be beneficial for the effectiveness of CSR reports.

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