NOVEMBER 2024

Regulatory Impact Statement:

Exemption for climate reporting entities in liquidation, wind-up or external administration

This document is for climate reporting entities in liquidation, receivership or voluntary administration, and schemes or funds in wind-up, their advisers, primary users of climate statements, and other interested parties. It discusses exemption relief from climate reporting duties.

FINANCIAL MARKETS AUTHORITY
TE MANA TĀTAI HOKOHOKO

Contents

Executive summary

This Regulatory Impact Statement (RIS) discusses an exemption for climate reporting entities in liquidation, receivership or voluntary administration (VA), and schemes or funds in wind-up, in respect of New Zealand's new climate-related disclosures (CRD) regime.

These entities will make up a small subset of the entities that are classified as climate reporting entities (CREs) under the CRD regime.

CREs, including large managers of managed investment schemes, are required to produce annual climate statements covering their governance arrangements, risk management, strategies, and metrics and targets for mitigating and adapting to climate-related risks, opportunities and impacts. Without an exemption, CRD obligations under Part 7A continue to apply when a CRE is in liquidation, receivership or VA, or a registered scheme or fund is in wind-up. However, there are likely to be minimal benefits, if any, for primary users from CRDs continuing to be made in these circumstances. The costs of complying with Part 7A obligations ultimately will reduce the returns or distributions available to creditors or investors.

This RIS summarises the problem we are seeking to address, our objectives, the options and their associated impacts, and the consultation process we undertook before deciding to grant the exemption. Our analysis of whether to grant the exemption was based on the statutory test that applies to use of the FMA's exemption powers. We must be satisfied that the exemption would promote one or more of the purposes of the Financial Markets Conduct Act 2013 (FMC Act). We must also be satisfied that the extent of the exemption is not broader than reasonably necessary to address the matters that gave rise to the exemption.

Exemption granted

After careful consideration of both regulatory and non-regulatory impacts, we have decided to grant class exemption relief for CREs. The relief comprises a class exemption for five years for each CRE, whether incorporated in New Zealand or overseas, which is in liquidation, receivership or voluntary administration, and for schemes or funds in wind up, from the duties in Part 7A of the FMC Act, comprising:

- CREs in liquidation – full relief
- Registered schemes or funds in wind-up – full relief
- CREs in receivership or VA – relief applies for the reporting year in which the receivership or VA appointment is made and for the next 2 reporting periods.

The relief is from the whole of Part 7A (and any corresponding Regulations) including:

- record-keeping obligations
- the requirement to prepare and lodge climate statements or group climate statements
- the requirement to link to the climate statements in the annual report

- the requirement to obtain an assurance engagement in relation to the climate statements.

We expect the exemption relief will in practice be of most use to schemes in wind up.

The exemption relief will be subject to conditions outlined in the Schedule to this RIS. The main condition in respect of schemes in wind up is that the manager must accept no new investments after the wind-up decision date. This is the date that:

a) the winding-up resolution becomes effective under the scheme's governing document (for example, when the manager gives notice to the Supervisor and the scheme participants); or

b) the date of the court order directing that the scheme be wound up.

Background and issue

The CRD regime and its purposes

In October 2021 the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act (CRD Act) was enacted. The CRD Act amended the FMC Act by including a new Part 7A entitled “Climate-related disclosures for certain FMC reporting entities with higher level of public accountability”. The purpose of these disclosures is to:

- encourage entities to routinely consider the short-, medium-, and long-term risks and opportunities that climate change presents for the activities of the entity or the entity’s group; and
- enable entities to show how they are considering those risks and opportunities; and
- enable investors and other stakeholders to assess the merits of how entities are considering those risks and opportunities.

The ultimate aim of these disclosures is to support the allocation of capital towards activities that are consistent with a transition to a low-emissions, climate-resilient future.

Part 7A applies to entities called climate reporting entities (CREs), comprising:

- large listed issuers of quoted equity securities or quoted debt securities (large means over $60 million in market capitalisation or quoted debt, respectively. Issuers listed on growth markets are excluded)
- registered banks, credit unions and building societies with total assets over $1 billion
- licensed insurers with total assets over $1 billion or annual gross premium revenue over $250m
- managers of registered schemes, such as KiwiSaver schemes and investment funds (other than restricted schemes) with greater than $1 billion in total assets under management.

There are three main sets of duties under Part 7A. These duties relate to—

a) keeping proper records relating to CREs’ responsibility to make climate-related disclosures

b) preparing climate statements

c) lodging those statements with the Companies Office, so they are publicly available.

Climate statements are required to be lodged from early 2024 for accounting periods that start on or after 1 January 2023. From October 2024 there are a further set of duties in Part 7A regarding assurance of greenhouse gas emissions disclosures in climate statements.

Climate statements for CREs in liquidation, wind-up or external administration

We have identified 173 expected CREs for the first year of reporting. These entities are large and heavily regulated and therefore we do not expect there will be significant reliance on this exemption. We expect most reliance will be in relation to scheme wind-ups (or the wind-up of funds within a scheme). The number of CREs includes 23 fund managers. Collectively, they manage 119 registered schemes with a total of about 956 funds.

We are aware of 6 schemes in wind-up at the date this RIS was prepared.

No CRE has gone into liquidation, receivership or VA in the first reporting year, which commenced 1 January 2023, nor in the subsequent reporting year up to the date this RIS was prepared.

Statement of the problem

Insolvent liquidation or scheme wind-up

In an *insolvent* liquidation or scheme wind-up, the focus shifts from normal business activity to realising assets and repaying creditors or investors. Normal business, investment and other activities cease. Primary users are unlikely to find climate statements valuable when an entity or scheme is failing and has ceased normal operations because they will no longer be making decisions about investing in or lending to the entity or scheme. In this situation, forward-looking strategies and planning are no longer relevant and climate-related information ceases to inform business, investment, lending, and insurance underwriting decisions. Whether an entity or scheme is demonstrating responsibility and foresight in its consideration of climate issues no longer has relevance if capital is not being invested by or in the entity or scheme, and CRDs no longer inform allocation of capital or affect transition to a more sustainable, low-emissions economy when the business is coming to an end.

There may also be practical difficulties complying with Part 7A obligations in a liquidation. Directors of a company remain in office but cease to have normal powers, functions, and duties. They no longer control the company records or capital. As such, they may not be able to oversee or fund the preparation of the climate statements or sign them as required under the FMC Act. The liquidator is also likely to be unable or unwilling to sign the climate statements given they are not a director and will not want to assume any potential liability. Compliance with these obligations will not normally be considered by the liquidator to be a priority or part of their principal duties.

Finally, Part 7A obligations are likely to be unenforceable against a CRE that is in an insolvent liquidation. There is a moratorium on legal proceedings that applies to companies in administration or insolvency. If a CRE does not comply with Part 7A obligations, enforcement proceedings could only be taken against the CRE with the consent of the liquidator (which is unlikely to be granted) or the permission of the Court (which would be likely to be opposed by the liquidator if their consent was withheld).

Solvent liquidation or scheme wind-up

While a *solvent* liquidation or scheme wind-up will not involve a business failure, the result is the same. Normal business operations and investment cease, and assets are realised to repay creditors and distribute to investors. In this context, it is unlikely that primary users will find value in continued climate reporting. A solvent entity or scheme is better placed to pay for the costs of compliance than one that is insolvent, but compliance will still be costly and reduce returns for creditors and investors without a clear benefit for primary users.

Receivership

The compliance burden of CRD obligations when a CRE is in receivership is likely to be high. Directors will often not be able to oversee or pay for the preparation of climate statements when a CRE is in receivership and the receivers will not consider compliance with Part 7A to be a priority or part of their duties. In most cases, receivership will involve a failing company and relate to the majority or all of the company's assets. While the receiver may continue to trade, this is usually only to maximise returns to the secured creditor from realising the company's assets. Liquidation will often follow the end of receivership or run alongside the receivership. Given normal business operations and decisions about investment by and in the company will have ceased, and the CRE will usually be failing and not survive the receivership, it is unlikely that primary users will find value in CRD.

Company VA

The compliance burden of CRD when a CRE is in VA will similarly be high. The administrator takes control of the company's business, property and affairs, and may carry on the company's business or terminate and/or dispose of the company's business and property. Shares in the company can usually not be transferred. Directors remain in office but are not able to oversee or pay for the preparation of climate statements when a CRE is in administration. The administrator will not consider compliance with Part 7A to be a priority or part of their duties.

With the company insolvent or at risk of being insolvent in the future, and with its continued survival uncertain, it is unlikely that primary users will find value in CRD until it is clear whether the business is viable and will survive. The enforceability issues noted in relation to insolvent liquidations also apply to a VA.

Size of the problem

We carried out a public consultation[1] and some direct engagement to check whether relief is needed. We found there was general support for the relief proposed and all submitters agreed that the burden of complying with the CRD regime in liquidation, receivership, or VA or in the wind-up of a scheme would be likely to outweigh the minimal benefit of reporting for primary users.

Most of the responses we received to our consultation were from scheme managers and their advisers. We learnt that there were 6 schemes in wind-up. In most cases the bulk or all of the scheme funds had been

---

[1] Consultation: Proposed exemptions for CREs in liquidation, receivership, or voluntary administration | fma.govt.nz

distributed, there were either no remaining members or a few who were difficult to contact, and the scheme was going through the final processes for wind up.

Compliance burden and its consequences

From our consultation and some direct engagement we have heard about the compliance burden and its consequences, especially from scheme managers. One scheme manager noted that the Cabinet paper at the source of the CRD regime stated that “fund-by-fund disclosure would be approximately one percent of operating margin for an average fund manager, at $1 billion total assets” (see table below from the Cabinet paper). Fund managers’ margins are typically around 0.15% to 0.35% of assets under management (AUM).

Variable	Value
AUM	$1,000,000,000
Average margin (%)	0.25%
Average margin ($)	$2,500,000
Expected cost	$25,000

However, their experience has been that the compliance costs have been substantially higher.

There are reports of listed issuers spending significant sums on their climate statements. For example, one issuer (market capitalisation of approximately $400 million) has advised that the cost to the company of the production of their first climate statements was in excess of $1 million.

More information about compliance costs is in the impact analysis section of this document.

We are concerned that these types of compliance costs are disproportionate to the benefits of climate-related disclosures when an entity is in liquidation, wind-up or external administration.

Objectives

In some instances where market participants encounter difficulties complying with the standard FMC Act regime, exemption relief from a regulatory or disclosure requirement may be appropriate. Any exemptions we grant must promote one or more of the purposes of the FMC Act. Additionally, the extent of the exemption must not be broader than reasonably necessary to address the matters that gave rise to the exemption.

In considering the use of the FMA's exemption powers, we assessed the options against the following objectives, which we consider are the most relevant purposes of the FMC Act for this matter:

- to promote and facilitate the development of fair, efficient, and transparent financial markets
- to promote the confident and informed participation of businesses, investors, and consumers in the financial markets
- to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services
- to promote innovation and flexibility in the financial markets
- to avoid unnecessary compliance costs.

When assessing the possible options against these objectives, we considered the interests of all relevant stakeholders including:

- primary users of climate statements
- overseas banks and insurers.

Options and impact analysis

We considered two options in relation to the problem identified:

- Option 1 (selected): Grant exemption relief
- Option 2 (not selected): No exemption (status quo)

Option 1: Grant exemption relief

Description

Grant class exemption relief for climate reporting entities. The relief will comprise an exemption for each CRE, whether incorporated in New Zealand or overseas, which is in liquidation, receivership or voluntary administration, and for schemes or funds in wind up, from the duties in Part 7A of the FMC Act, comprising:

- CREs in liquidation – full relief
- Registered schemes or funds in wind-up – full relief
- CREs in receivership or VA – relief applies for the reporting year in which the receivership or VA appointment is made and for the next 2 reporting periods.

The exemption relief will be subject to conditions. The main condition in respect of schemes in wind up is that the manager must accept no new investments after the wind-up decision date.

Impact analysis

Avoids unnecessary compliance costs

The key benefit of granting the exemption is to avoid unnecessary compliance costs arising from CRD obligations when there are likely to be minimal (if any) benefits to primary users receiving ongoing climate-related-information, because the entity or scheme is either failing or is coming to the end of its life and has ceased its normal operations and therefore investment decisions will no longer occur. We are aware from the RIS work the Ministry of Business, Innovation and Employment (MBIE) did on the CRD Act, and from our consultation on CRD relief for NZX foreign exempt issuers, that CRD compliance costs will be substantial. For example, one submitter in our consultation said that for the first two years their costs would be $300,000 per annum for its New Zealand subsidiary. Another submitter said that their audit costs would be $240,000 per annum to audit their emissions to meet New Zealand requirements.

One submitter in the consultation for this exemption proposal told us that ongoing costs of managing compliance with Part 7A could exceed $250,000 per annum depending on the size of the operation, and that costs to establish initial compliance were likely to be substantially more.

We are also aware from the submissions to the recent XRB consultation[2] on proposed changes to the climate standards that initial compliance costs have been substantial, and audit costs will also be substantial when assurance of climate statements becomes mandatory.

Promotes flexibility in financial markets

Providing relief from Part 7A where we consider that reporting will not provide a meaningful benefit for primary users promotes flexibility by ensuring the obligations suit the relevant circumstances.

Provides for timely, accurate, and understandable information

While primary users of climate reports will not receive CRDs if an exemption is granted, this is unlikely to impact them negatively when the entity or scheme is failing or coming to the end of its life and has ceased its normal operations. In these circumstances primary users will not need this information to make decisions relating to financial products or the provision of financial service. Instead, primary users will be notified that no climate statement will be prepared.

Not broader than reasonably necessary

The exemptions are not broader than is reasonably necessary to address the matters to which they relate as:

- the exemption is limited to CREs in liquidation, receivership or VA and registered schemes or funds managed by a CRE that are in wind-up
- relief is limited to two years for a receivership or VA
- relief will cease to apply if the liquidation, receivership or VA of a CRE is terminated and the CRE is returned to the control of the directors, or if wind-up of a scheme is terminated.

Option 2: No exemptions (status quo)

Description

We would not grant the exemptions for climate reporting entities in liquidation, receivership or VA, and schemes or funds in wind-up.

If no class exemption is granted, full Part 7A duties will continue to apply to these entities.

[2] Proposed 2024 amendments to climate and assurance standards consultation feedback | xrb.govt.nz

Impact analysis

Avoids unnecessary compliance costs

There are likely to be high compliance costs for CREs and registered schemes continuing with climate reporting in liquidation, receivership, or VA or in a scheme wind-up if no class exemption is granted. This may include exemption fees if the CRE seeks individual relief. These compliance costs will be unnecessary for the reasons already discussed and reduce the returns creditors or investors receive.

Promotes flexibility in financial markets

Requiring climate reporting when a CRE or scheme is failing or coming to the end of its life and normal operations have ceased will not be useful to primary users and will not promote flexibility in financial markets.

Provides for timely, accurate, and understandable information

Primary users of climate reports will continue to receive full CRDs if no exemption is granted but this is unlikely to be useful for making investment decisions when the CRE or scheme is failing or coming to the end of its life and normal operations have ceased.

Not broader than reasonably necessary

Not applicable

Summary assessment of options against objectives

KEY: ✓✓ Meets the policy objectives ✓ Partially meets the policy objectives ✗ Does not meet the policy objectives

FMC Act objective	Option 1: Exemption relief	Option 2: No exemption (status quo)
To avoid unnecessary compliance costs	Allowing relief will avoid unnecessary compliance costs for affected entities in some form of wind-up or administration process. ✓✓	There are likely to be significant compliance costs for affected entities if they are required to produce climate statements, without any real benefit for primary users of climate reports. ✗
To provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services	Primary users will be notified that the CRE is relying on the exemption and will therefore not file a climate statement. ✓	Primary users of climate reports will continue to receive full CRD but this is unlikely to be useful when the CRE or scheme is failing or coming to the end of its life and normal operations have ceased because no investment decisions will be made. ✓
To promote innovation and flexibility in the financial markets	Promotes flexibility by ensuring that CREs and schemes do not have unnecessary reporting obligations when they are failing or coming to the end of their life and normal operations have ceased. ✓✓	Flexibility will not be promoted because CREs and schemes will have to comply with reporting requirements even when this will create unnecessary compliance costs and not benefit the primary users. ✗
Not be broader than reasonably necessary	Given the exemption will only apply to a small subset of CREs and schemes and relief is limited to 2 years for receiverships and VAs, the proposed exemption is not broader than reasonably necessary. ✓✓	Not relevant

Consultation

Initial consultation

We consulted publicly on the exemption proposal, releasing a consultation paper on our website on 20 June 2023. Submissions closed on 20 July 2023. We received 7 submissions from a variety of market participants, most of whom are scheme managers. There was general support for the relief proposed and submitters agreed that the burden of complying with the CRD regime in liquidation, receivership, or VA or in the wind-up of a scheme would be likely to outweigh the minimal benefit of reporting for primary users.

There was support for the exemption relief to apply to overseas CREs. We agree it makes sense to extend the exemption to cover overseas CREs and have incorporated this in the exemption notice. For some overseas CREs the impacts of insolvency-related processes and laws in their home jurisdictions are likely to have similar impacts as New Zealand-based procedures.

Some submitters considered that the proposal in the consultation to provide deferred relief for CREs in receivership or VA (so they must catch up with deferred obligations at the end of that period) would create difficulties. They noted that:

- the receiver or administrator (etc) is unlikely to have kept records required to complete deferred reporting and should not be required to
- requiring catch-up reporting duties may be unduly burdensome on a restructured or recovering entity
- the purpose of CRDs is forward-looking strategy, so reporting for a past period will not benefit primary users.

We agree with this feedback and have changed our proposal to provide outright relief for the two-year period.

There were mixed views on whether two years' relief was long enough, with one submitter suggesting this should be extendable. Two years is consistent with the period of financial reporting relief the FMA approved for FMC reporting entities in receivership or VA. We also think two years is a reasonable period for the receiver or voluntary administrator to progress their work. If more time is required, then an application for individual relief could be made. It was also suggested that relief should continue where a VA results in the CRE being placed under the control of the deed administrator. We agree this would be appropriate given that when a Deed of Company Arrangement (DOCA) is in force, the directors do not regain complete control of the company and their powers depend on the terms of the DOCA. The terms of the exemption notice reflect this.

There was a lot of feedback on proposed relief for scheme wind-ups. One submitter asked whether the relief would extend to wind-up of a fund within a scheme (where the scheme itself is not wound-up). We think this is sensible. Similar policy considerations will apply given there is a requirement for separate climate reporting for each fund within a scheme.

Other submitters gave feedback on the proposed condition to give notice to investors and other stakeholders that the CRE or scheme is relying on the exemption and therefore will not be publishing climate statements. They suggested the notice should be included in the annual report and that notice should not be required until after the supervisor and members of the scheme have been notified of the winding up, to avoid negative impacts for unit holders. We agree with the first suggestion and have incorporated this into the conditions. On the latter suggestion we note that a scheme wind-up usually commences with a resolution to wind-up and we expect members of the scheme and the Supervisor will generally be aware very early on that the scheme will be wound up.

Further consultation

We carried out a further targeted consultation on an exposure draft of the notice to check the drafting and practical workability of the wording. The main feedback was on various aspects of the proposed relief for schemes in wind up. This feedback led to changes to the drafting of the notice, particularly the application clause for schemes in wind up. Minor helpful feedback was also received from the Reserve Bank of New Zealand and the Companies Office.

Conclusion and selected option

Having carefully considered regulatory and non-regulatory impacts, and feedback provided through consultation, we decided that Option 1 (grant exemption relief) addresses the identified problems and will achieve the objectives of:

- avoiding unnecessary compliance costs
- promoting innovation and flexibility in the financial markets
- providing for timely, accurate, and understandable information to be provided.

Option 2 (no exemption) would not achieve these objectives.

On this basis we have decided to grant an exemption for climate reporting entities in liquidation, receivership or VA, and schemes or funds in wind-up in respect of their duties in Part 7A of the FMC Act. We think the exemption will 'right-size' the compliance obligations for these entities. The exemption will be granted subject to conditions that will ensure investors are fairly informed of an entity's reliance on the exemption.

Schedule – Exemption requirements and conditions

Exemption for climate reporting entities in liquidation

The exemption will be available if a CRE enters into liquidation.

The exemption will apply to:

(i) an accounting period that commenced before the entity entered into liquidation (including an accounting period that ended before the entity entered into liquidation) if the date of the appointment is before the due date for filing climate statements; and

(ii) subsequent accounting periods.

The main effect of the exemption is to allow the CRE to dispense with having to produce and file climate statements.

The exemption will be subject to the condition that the CRE must include a statement to the effect it is relying on the exemption and a brief summary of the effect of relying on the exemption in:

- its annual report
- its website
- an annual notice to the Registrar of Companies for inclusion on the Climate-related Disclosures Register.

The exemption will expire on 30 November 2029.

Exemption for registered schemes or funds in wind-up

The exemption will be available to a large manager of a scheme or fund in wind-up if a CRE enters into liquidation.

The exemption will apply to:

(i) an accounting period that commenced before the wind-up decision date (including an accounting period that ended before the wind-up decision date) if the wind-up decision date is before the due date for filing climate statements; and

(ii) subsequent accounting periods.

The main effect of the exemption is to allow the scheme or fund manager to dispense with having to produce and file climate statements.

The exemption will not apply if the manager continues to accept new investments after the wind-up decision date.

The exemption will be subject to the condition the CRE must include a statement to the effect it is relying on the exemption and a brief summary of the effect of relying on the exemption in:

- its annual report
- its website
- an annual notice to the Registrar of Companies for inclusion on the Climate-related Disclosures Register.

The exemption will expire on 30 November 2029.

Exemption for climate reporting entities in receivership or VA

The exemption will be available if a CRE enters into receivership or VA.

The exemption will apply to:

(i) an accounting period that commenced before the entity entered into receivership or VA (including an accounting period that ended before the entity entered into receivership or VA) if the date of the appointment is before the due date for filing climate statements; and

(ii) 2 subsequent accounting periods.

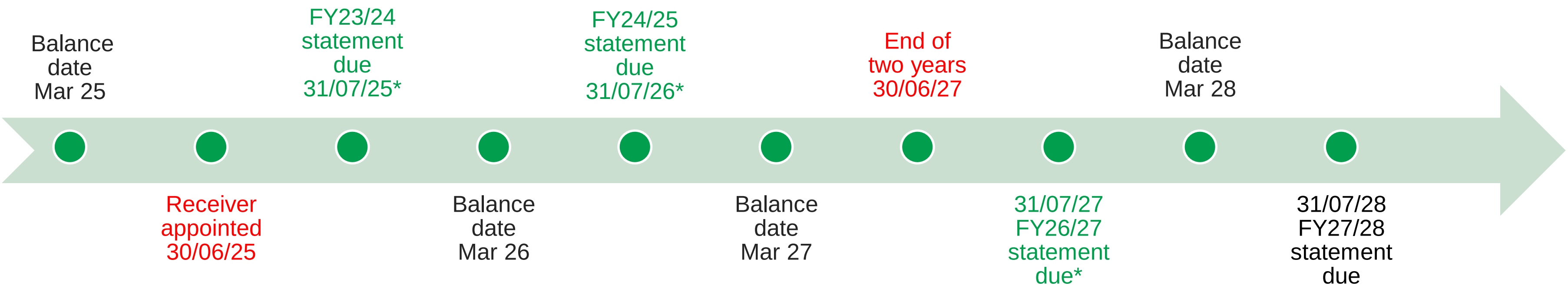
The main effect of the exemption is to allow the CRE to dispense with having to produce and file climate statements for up to 3 years. This is illustrated in the Appendix.

The exemption will be subject to the condition the CRE must include a statement to the effect it is relying on the exemption and a brief summary of the effect of relying on the exemption in:

- its annual report
- its website
- an annual notice to the Registrar of Companies for inclusion on the Climate-related Disclosures Register.

The exemption will expire on 30 November 2029.

Appendix – Timeline of possible relief for receivership or VA



* Exemption applies

AUCKLAND – Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143
WELLINGTON – Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140