

# Companies (Directors Duties) Amendment Bill

Member's Bill

## Explanatory note

### General policy statement

Companies are a useful legal entity for the conduct of many activities. Traditionally they have been considered as a vehicle for enterprises who have commercial profit as a sole or primary objective. This need not be the case. A company may seek to promote any number of other objectives. It is for the company and its shareholders to determine the purposes of the company. The pursuit of those purposes are the standard against which the interests of the company, and the conduct of its directors, are to be measured.

This Bill makes clear that a director, in acting as the mind and will of the company, can take actions which take into account wider matters other than the financial bottom-line. This accords with modern corporate governance theory that recognises that corporations are connected with communities, wider society, and the environment and need to measure their performance not only in financial terms, but also against wider measures including social, and environmental matters.

This Bill recognises that the matters to be taken into account in determining the best interests of a company are open-ended but may include matters such as the principles of te Tiriti, environmental impacts, good corporate ethics, being a good employer, and the interests of the wider community.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides for this Bill to come into force on the day after it receives the Royal assent.

*Clause 3* identifies the Companies Act 1993 (the **principal Act**) as the Act being amended by the Bill.

*Clause 4* amends section 131 of the principal Act to clarify that a director may take into account recognised environmental, social and governance factors in determining the best interests of the company.

*Dr Duncan Webb*

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### **Contents**

	Page
1 Title	1
2 Commencement	1
3 Principal Act	1
4 Section 131 amended (Duty of directors to act in good faith and in best interests of company)	1

### **The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Companies (Directors Duties) Amendment Act **2021**.

**2 Commencement**

This Act comes into force on the day after the date on which it received the Royal assent. 5

**3 Principal Act**

This Act amends the Companies Act 1993 (the **principal Act**).

**4 Section 131 amended (Duty of directors to act in good faith and in best interests of company)**

10

After section 131(4), insert:

- (5) To avoid doubt, a director of a company may, when determining the best interests of the company, take into account recognised environmental, social and governance factors, such as:

- (a) recognising the principles of the Treaty of Waitangi (Te Tiriti o Waitangi):
- (b) reducing adverse environmental impacts:
- (c) upholding high standards of ethical behaviour:
- (d) following fair and equitable employment practices:
- (e) recognising the interests of the wider community.

5