

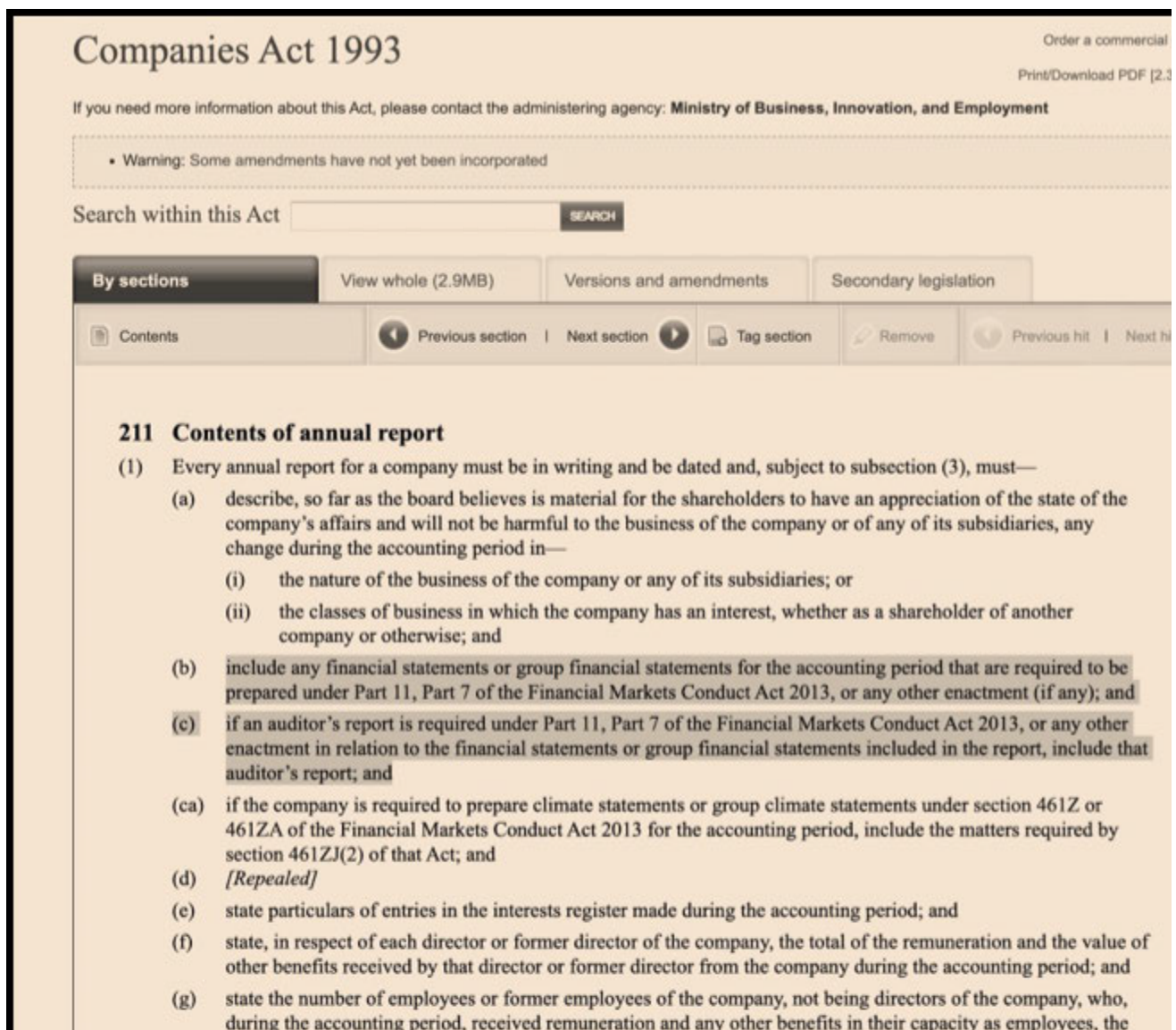
Subject: OIA 2023/13: Financial statements sitting outside of an issuer's annual report
Date: Wednesday, 16 August 2023 at 6:36:01 PM New Zealand Standard Time
From: Patrick Shonakan <ps@mcguinnessinstitute.org>
To: [REDACTED]
CC: Wendy McGuinness <wmcg@mcguinnessinstitute.org>
Attachments: image001.png, image004.jpg

Kia ora,

Our OIA 2023/13: Financial statements sitting outside of an issuer's annual report

The McGuinness Institute is currently in the process of updating our existing work regarding the analysis of NZX-listed companies (see our work programme [here](#)).

For this work, we require a tight dataset of 'annual reports' for selected financial years. We have noticed that in some cases, issuers have published annual reports that do not contain complete financial statements, only financial summaries. See for example, the [Auckland Airport 2022 Annual Report](#), p. 72. This appears to be contrary to the intent of Section 211 of the Companies Act 1993 (see below), which states that an annual report must: 'include any financial statements or group financial statements for the accounting period that are required to be prepared under Part 11, Part 7 of the Financial Markets Conduct Act 2013, or any other enactment (if any)'



The screenshot shows the official website for the Companies Act 1993. At the top, it says "Companies Act 1993" and provides contact information for the Ministry of Business, Innovation, and Employment. A warning message states: "Warning: Some amendments have not yet been incorporated". Below this is a search bar and navigation options like "By sections", "View whole (2.9MB)", "Versions and amendments", and "Secondary legislation". The main content area displays section 211, titled "211 Contents of annual report". The text of the section is as follows:

211 Contents of annual report

(1) Every annual report for a company must be in writing and be dated and, subject to subsection (3), must—

- (a) describe, so far as the board believes is material for the shareholders to have an appreciation of the state of the company's affairs and will not be harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in—
 - (i) the nature of the business of the company or any of its subsidiaries; or
 - (ii) the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise; and
- (b) include any financial statements or group financial statements for the accounting period that are required to be prepared under Part 11, Part 7 of the Financial Markets Conduct Act 2013, or any other enactment (if any); and
- (c) if an auditor's report is required under Part 11, Part 7 of the Financial Markets Conduct Act 2013, or any other enactment in relation to the financial statements or group financial statements included in the report, include that auditor's report; and
- (ca) if the company is required to prepare climate statements or group climate statements under section 461Z or 461ZA of the Financial Markets Conduct Act 2013 for the accounting period, include the matters required by section 461ZJ(2) of that Act; and
- (d) *[Repealed]*
- (e) state particulars of entries in the interests register made during the accounting period; and
- (f) state, in respect of each director or former director of the company, the total of the remuneration and the value of other benefits received by that director or former director from the company during the accounting period; and
- (g) state the number of employees or former employees of the company, not being directors of the company, who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the

value of which was or exceeded \$100,000 per annum, and must state the number of such employees or former employees in brackets of \$10,000; and

- (h) state the total amount of donations made by the company during the accounting period; and
- (i) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
- (j) state the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and, as a separate item, fees payable by the company for other services provided by that person or firm; and
- (k) be signed on behalf of the board by 2 directors of the company or, if the company has only 1 director, by that director.

This leads to three questions:

Question 1: Can you clarify if the requirement to include financial statements has changed? Please explain.

Question 2: Is the treatment by [Auckland Airport 2022 Annual Report](#) acceptable to the FMA?

Question 3: If you consider it is unacceptable, what actions will you be taking?

We also note that the [NZX Listing Rules](#) also contains similar text (see copy below).

3.7 Contents of Annual Report

3.7.1 The annual report of an Issuer of Quoted Equity Securities or Quoted Debt Securities must contain:

- (a) the information required to be published by subpart 5 of Part 5 of the FMC Act and, in the case of a company registered under the Companies Act 1993, the information required by section 211 of that Act,
- (b)
 - (i) audited financial statements and the associated audit report in accordance with the requirements of Part 7 of the FMC Act (unless the Issuer is exempt from Part 7 of that Act) or other applicable law,
 - (ii) climate statements in accordance with the requirements of Part 7A of the FMC Act (unless the Issuer is exempt from Part 7A of that Act), or other applicable law,

We believe at a time when trust is so critical, companies should annually report all critical information in one place.

Please do not hesitate if you have any questions or points of clarification.

Many thanks,

Paddy

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Senior Research Analyst

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