

The Treasury

Phase 1 RBNZ Act Review Information Release

December 2018

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- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people;
- [2] 9(2)(d) - to avoid prejudice to the substantial economic interests of New Zealand;
- [3] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials;
- [4] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions;
- [5] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice;
- [6] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice;
- [7] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage.
- [8] Not Relevant

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Reference: T2018/1792

MC-1-7-6-7-6



Date: 29 June 2018

To: Minister of Finance (Hon Grant Robertson)

Deadline: Before the 5 July meeting of the LEG Cabinet Committee
(if any)

Aide Memoire: Monetary Policy Committee: Appointment of External Members

Following your consultation on the Reserve Bank of New Zealand (Monetary Policy) Amendment Bill (2018) (the Bill) you requested further information on two issues. The issues relate to the appointment of external members to the Monetary Policy Committee (MPC):

1. Criteria to ensure that external MPC members are appropriately qualified; and
2. Options for consulting the opposition in the appointment process.

Criteria for External MPC Members

The Bill that will be considered by the Cabinet Legislation Committee (LEG) on 5 July sets criteria for external members in two ways (see Annex 1 for full details):

- The Bill creates **criteria for appointment of MPC members** (but not the Governor and Deputy Governor). The Minister may only appoint members who have the appropriate knowledge, skills and experience. The Act also requires that members must not be appointed on the basis that they represent a particular industry sector.
- Consistent with the approach taken in the current Act for the Governor and the Deputy Governor, the Bill includes **disqualifying criteria for MPC members**. An MPC member is disqualified if they, among other things, are a Member of Parliament; a director or employee of a bank; an undischarged bankrupt; or have been convicted of offences punishable by imprisonment.

These criteria, and the requirement that potential members be nominated by the Reserve Bank Board (the Board), aim to ensure merit-based selection and avoid political appointments. The criteria for external members are more stringent than those applying to the Governor and Deputy Governor, and also most other public appointments. Additional criteria could be added but are not necessary to ensure members are appropriately qualified. For example, the criteria could be expanded to disqualify a person if they are on the MPC to represent the interests of a political party or a particular sector of society (as opposed to only a particular industry sector).

Opposition Consultation

Including opposition consultation in the appointment process could help to ensure that the MPC maintains broad support in Parliament, because in some cases the tenure of

external members will span more than one Government. The Treasury and the Reserve Bank support this intention. However, the Bill already limits the Minister's power to appoint to candidates nominated by the Board, meaning additional constraints are not necessary to avoid political appointments. However, three options exist if you want to involve the opposition in the appointment process:

- **Consultation by convention** – By consulting with the opposition before the first external members are appointed, you could create a convention for cross-party consultation. This would give you flexibility in terms of how consultation is done. However, it would rely on future Ministers maintaining that convention.
- **Consultation by legislative requirement** – The Act could require the Minister of Finance to consult with the other political parties in Parliament before making an appointment. This is a requirement for members of the Board of the Guardians of New Zealand Superannuation (the Guardians Board). For the Guardians Board the Minister is also restricted to nominations made by a nominating committee, which is similar to the nomination process for the MPC.
- **Parliamentary oversight** – An alternative to consultation would be for MPC members to appear before Parliament's Finance and Expenditure committee (FEC) during the appointment process. This approach is used in the US (where Senate approval is required for any appointment) and the UK (where the Treasury select committee initiated hearings, but where the committee's approval is not required for an appointment to stand).

In our view the first two options above are viable. However, FEC scrutiny raises constitutional issues far beyond the MPC as no other appointments are scrutinised in this way in New Zealand. It also may not achieve the policy aim if FEC members use the public hearing for political purposes. Therefore, this option should only be considered after a thorough analysis and debate about the broader implications, and in a process separate to this Bill.

Finally, adopting any of these processes would make the appointment process longer in duration and more complex. A longer process may create challenges for the first round of appointments in particular, given the need to appoint three external members in the three month window between Royal assent and commencement.

Next Steps

LEG will consider the Bill on 5 July. As the Cabinet paper has been lodged, the Bill cannot be revised before then. However, if LEG agrees to minor amendments, and both Cabinet consideration and introduction are delayed until 23 July, the Bill could be amended before being introduced. This timeline would still allow a first reading on 26 July as planned.

Alternatively, amendments could be made during the FEC process. This would be more suitable if the amendments are substantive. However, amendments at FEC could create some uncertainty for the Board, who are likely to put an appointment process in place before the legislation is passed.

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Annex One – Criteria for External Members

Appointment criteria for external MPC members are dealt with in clauses 11 and 15 of the new schedule 2 of the Act, as follows:

11 Qualifications of internal and external members

- 1) A natural person who is not disqualified by this clause may be appointed or reappointed, and may continue to hold office, as an internal or external member.
- 2) A person is disqualified if the person is—
 - (a) a member of Parliament; or
 - (b) a director or an employee of—
 - (i) a registered bank; or
 - (ii) a licensed NBDT as defined in the Non-bank Deposit Takers Act 2013; or
 - (iii) a licensed insurer; or
 - (c) a chief executive of a Government department or an employee of a Government department, appointed under the State Sector Act 1988; or
 - (d) a member of the Board; or
 - (e) subject to a property order under the Protection of Personal and Property Rights Act 1988; or
 - (f) an undischarged bankrupt; or
 - (g) a person who is convicted of any offence punishable by imprisonment for a term of 2 years or more; or
 - (h) a person who is convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence; or
 - (i) prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Financial Markets Conduct Act 2013, or the Takeovers Act 1993.
- 3) A member must be treated as having resigned office if that person is prohibited from continuing to hold office under this clause.

15 Criteria for appointment of internal or external members

- 1) The Minister may only appoint as an internal or external member a person who, in the Minister's opinion, has the appropriate knowledge, skills, and experience to assist the MPC to perform its functions (for example, in economics, banking, or public policy).
- 2) A person must not be appointed on the basis that the person represents a particular industry sector.