

The Treasury

Reserve Bank Act Review Phase 2 Submission Information Release

October 2019

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[1] 9(2)(a) - to protect the privacy of natural persons, including deceased people

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To: rbnzactreview@treasury.govt.nz

15 August 2019

Reserve Bank Act Review: Second Round Consultation

We write in relation to phase 2 of the review of the Reserve Bank of New Zealand Act 1989.

We do so in light of the recent publication of the exposure draft of the Financial Market Infrastructures Bill by the Reserve Bank (published on 1 August 2019 with submissions due by 26 September 2019). The Reserve Bank anticipates that the FMI Bill will be introduced into Parliament later in the year. The new law will significantly affect Payments NZ Limited as the operator of the systemically important SBI (Settlement before Interchange) arrangements and, potentially, the High Value Clearing System.

The covering note from the Reserve Bank on the FMI Bill includes a section on linkages to the phase 2 review. This has caused Payments NZ to consider that review to date and its impact on the FMI Bill.

While the terms of reference for phase 2 exclude clearing, payment, and settlement systems, and the regulation of Financial Market Infrastructures, we believe that there would be benefit in aligning the timing of these two matters, given the linkages between phase 2 and the FMI Bill.

Three specific areas have been identified by the Reserve Bank that may require revisiting once phase 2 is settled. These are as follows:

- a) Ministerial consent being required before the joint regulators may issue a direction to the operator of an FMI,
- b) The statutory management model in the FMI Bill,
- c) The statutory manager's power to act contrary to the interests of creditors on financial stability grounds.



We note phase 2 is a broad ranging review of the RBNZ Act. We consider it may well have wider ramifications affecting the whole of prudential regulation, including that of FMIs which are critical to financial stability in New Zealand. In this regard, we raise the following matters:

- a) The core objectives of the Reserve Bank are being changed from soundness and efficiency to financial stability. The FMI Bill uses the existing formulation of soundness and efficiency,
- b) The use of standards is being consulted on, in particular, whether they are an appropriate tool for prudential regulation. Standards are a core part of the new regime under the FMI Bill,
- c) The liability regime for directors is being consulted on, in particular, whether liability for breaches of regulatory requirements should in effect be limited to the entity and not extend to individuals. The FMI Bill imposes liability on directors which seems to go further than is being suggested for deposit takers and it is not clear why the regimes should differ,
- d) Governance changes are afoot which would see the board of the Reserve Bank having a new oversight role for prudential matters. Careful thought needs to be given to the operation of some of the proposed powers when the Reserve Bank itself is running systemically important payment systems (ESAS and NZClear). Conceivably the board of the Reserve Bank could be placed in the position of making a recommendation to remove one of its own directors or placing the Reserve Bank itself into statutory management. The Bank of England model might be something to consider when it comes to overcoming this. Structural changes like this would impact the regulation of FMIs.

In light of this, we believe it makes sense to have better coordination of the two initiatives, especially given the close proximity between them. This would enable pertinent matters coming out of phase 2 to be incorporated into the FMI Bill before it is introduced into the House. In this context we note the Reserve Bank has been consulting on FMI regulation since 2013 and has indicated it could take it up to 12 months to decide which systems to designate. As such, a wait of a further 6 -12 months, to align the regimes, would seem to have considerably more benefit than introducing the FMI Bill now, knowing it will need to be amended.

For your consideration please.

Yours sincerely

[1]

Steve Wiggins
Chief Executive