

# The Treasury

## Reserve Bank Act Review – Proposed Institutional Act Policy Decisions Information Release

**December 2019**

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# Cabinet Economic Development Committee

## Minute of Decision

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### Reserve Bank Act Review: Proposed Institutional Act Policy Decisions

Portfolio                      Finance

On 11 December 2019, the Cabinet Economic Development Committee (DEV):

#### Background

- 1        **noted** that on 19 June 2019, DEV made a number of in-principle decisions relating to Phase 2 of the review of the Reserve Bank of New Zealand Act 1989 (the Reserve Bank Act), including to:
  - 1.1      retain the prudential regulation and supervision functions within the Reserve Bank of New Zealand (the Bank);
  - 1.2      replace the Bank's existing 'soundness' and 'efficiency' financial policy objectives with a single overarching 'financial stability' objective;
  - 1.3      establish a new governance board, with statutory authority over all Bank decisions (except those reserved for the Monetary Policy Committee (MPC)), including prudential policy decisions;
  - 1.4      (in light of the above) not establish a new Financial Policy Committee;
  - 1.5      appoint the Treasury as the external monitor of the Bank;

[DEV-19-MIN-0161]
- 2        **agreed** that the Reserve Bank Act be replaced by two new pieces of legislation: a new Reserve Bank Institutional Act (the Institutional Act) and a Deposit Takers Act;
- 3        **confirmed** the in-principle decision that the Bank retain its prudential regulation and supervision functions (paragraph 1.1 above);
- 4        **agreed** that the Institutional Act include policy decisions relating to the Bank's objectives, governance, accountability and transparency, funding, information gathering powers, other generic regulatory powers, and coordination;
- 5        **agreed** that the Institutional Act also include provisions relating to the Bank's central banking functions, amended to reflect the decisions relating to the paper under DEV-19-SUB-0345;

- 6 **noted** that officials are aiming for introduction of a Bill for the Institutional Act around July 2020;
- 7 **noted** that the Bank’s monetary policy functions, including provisions relating to the MPC, will be enacted in the Institutional Act substantially unchanged, except to the extent necessary or desirable to fit into the new legislative scheme and subject to paragraph 31 below;
- 8 **noted** that duties performed by the current Board, in respect of the Bank’s monetary policy functions, will be performed by the new Board (including approval of the MPC’s Code of Conduct, and recommending members of the MPC);
- 9 **noted** that the Bank is currently reviewing the policy relating to the provision and management of bank notes and coins, and that advice resulting from this review may be provided at a later stage;

### **Purpose, objectives, decision-making principles and functions of the Bank**

- 10 **agreed** that the purpose of the Institutional Act, in providing for the continuation of the Reserve Bank, remains ‘to promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy’;
- 11 **agreed** to the Bank’s economic and financial stability objectives being included in the Institutional Act;
- 12 **agreed** to a new financial stability objective along the following lines: protecting and promoting the stability of New Zealand’s financial system;
- 13 **noted** that the Bank has other objectives and purposes in legislation that the Bank will need to be able to act in accordance with when fulfilling its functions;
- 14 **agreed** that the Institutional Act contain decision-making principles that the Bank must have regard to in exercising its regulatory powers under the sectoral Acts, and that the principles will apply to those Acts from the point those Acts are updated to align with the new financial stability objective in the Institutional Act;
- 15 **noted** that the Bank’s decision-making principles will require the Bank to consider longer term risks such as those associated with climate change;
- 16 **agreed** that the functions of the Bank be listed in the Institutional Act (with the preliminary list of functions as outlined in Appendix I to the paper under DEV-19-SUB-0345);
- 17 **agreed** that the Minister may direct the Bank to perform additional functions consistent with the Bank’s objectives, as provided for in section 112 of the Crown Entities Act 2004;

### **Financial Policy Remit**

- 18 **agreed** that the responsible Minister be required to issue a Remit which sets out matters the Board should have regard to when pursuing the financial stability objective;
- 19 **agreed** that the current powers of the responsible Minister to direct the Bank to have regard to government policy in the Reserve Bank Act, Insurance (Prudential Supervision) Act 2010 and the Non-Bank Deposit Takers Act 2013 be repealed;

- 20 **agreed** that the following requirements apply to the Remit:
- 20.1 the responsible Minister be required to consult with the Bank before issuing the Remit;
  - 20.2 the Remit be published in the Gazette and tabled in the House;
  - 20.3 the Remit be reviewed at least every five years, with amendments allowed prior to this;
  - 20.4 the Bank be required to have regard to the Remit;
  - 20.5 the Bank be required to report back in its Statement of Intent on how it has taken the Remit into account;

## Governance

- 21 **agreed** that the Bank not be designated a Crown entity, but that Part 2 and Schedule 5 of the Crown Entities Act be used as the basis for the institutional design of the Bank and the Board's responsibilities and procedures, adapted to reflect the policy decisions in the paper under DEV-19-SUB-0345 and as otherwise appropriate;
- 22 **agreed** that there be a responsible Minister for the Bank with the duties of a responsible Minister as provided in the Crown Entities Act;
- 23 **confirmed** the in-principle decision to establish a Board with statutory responsibility for all Bank decisions, except those reserved for the MPC (paragraph 1.3 above);
- 24 **agreed** that the Board have the following features:
- 24.1 the Board will be fully non-executive;
  - 24.2 the Board will be comprised of between five and nine members;
  - 24.3 Board members can be appointed for a term of up to five years, but will be limited to serving for no more than 10 years or three terms in total;
  - 24.4 individuals will be disqualified from serving on the Board if they are employed by, or are a director of, a regulated entity;
  - 24.5 individuals will be disqualified from serving on the Board if they are a member of the MPC;
  - 24.6 the disqualification provisions for Board members in the Crown Entities Act will also apply;
- 25 **agreed** that the current Board will be disestablished at the close of the day before the new Board takes office;
- 26 **agreed** that the current processes for the appointment of Board members continue to apply, and that these processes be reviewed after three years;
- 27 **agreed** that the Minister be required to consult with other political parties in Parliament prior to recommending the appointment of a Board member;
- 28 **agreed** that Board members will only be able to be removed by the Governor-General for 'just cause' on the advice of the Minister, following consultation with the Attorney-General;

- 29 **noted** that ‘just cause’ has the same meaning as section 40 of the Crown Entities Act, and includes misconduct, inability to perform the functions of office, neglect of duty, and breach of duty;
- 30 **agreed** that the remuneration of the members of the Board be at a rate and of a kind determined by the Remuneration Authority;
- 31 **agreed** to retain the current process for appointing and removing MPC members, but that the number of terms that internal members can serve will be increased to three terms (from a previous limit of two terms), of up to five years per term;
- 32 **noted** that the Minister of Finance has decided that the Treasury will administer the Institutional Act;
- 33 **confirmed** the in-principle decision that the Treasury will be the Bank’s monitoring agency (paragraph 1.5 above);
- 34 **agreed** to introduce a legislative requirement for the Minister to issue a Letter of Expectations to the monitoring agency setting out the role of the monitor and the Minister’s expectations;
- 35 **agreed** that the appointment of the Governor continue to be a ministerial appointment on the recommendation of the Board;
- 36 **agreed** that the Board be required to nominate persons who in its opinion have the appropriate knowledge, skills and experience;
- 37 **agreed** that the Governor’s current term length of five years be retained, with a maximum of two terms;
- 38 **agreed** that the Governor can be removed from office by the Governor-General on the advice of the Minister on specified grounds;
- 39 **agreed** that the provisions of the Reserve Bank Act providing for a person to act as Governor if the Governor is temporarily absent be repealed;
- 40 **agreed** to remove the legislative requirement for a Deputy Governor, and that:
- 40.1 if the office of Governor is vacant, and the Minister has not appointed an interim Governor, then the Board must nominate an employee of the Bank to act as Governor for a period of up to 28 days;
- 40.2 the Board must nominate an internal member of the MPC to be the alternate Chair of the MPC where the Governor is temporarily absent, and that person must be present for a quorum if the Governor is not present;
- 40.3 the *ex officio* Deputy Governor position on the MPC be replaced with an internal position, to ensure the same number of internal MPC members;
- 41 **agreed** that a director of the Bank will not be able to be appointed to act as an interim Governor in order to maintain the status of the Board as non-executive;
- 42 **agreed** that the Board has the duty to monitor the MPC, members of the MPC, and the Governor, and that this includes advising the Minister if the Board considers an individual member or the Governor meets any grounds for removal and reporting on the performance of the MPC and individual members in the Annual Report;

## Accountability and transparency

- 43 **agreed** to amendments to the Public Audit Act 2001 to enable the Auditor-General to conduct performance audits of, and inquiries into, the Bank;
- 44 **agreed** that the current power of the Minister to initiate an audit be replaced with a section equivalent to section 132 of the Crown Entities Act (and associated powers to request information), which enables the Minister to review the operations and performance of an entity;
- 45 **agreed** to add the Reserve Bank to the list of organisations in Schedule 1 of the Ombudsmen Act 1975;
- 46 **agreed** that the Bank be subject to requirements equivalent to Part 4 of the Crown Entities Act, including the requirements that relate to Statements of Intent, Annual Reports (supplemented with the information in paragraph 91), Statements of Performance Expectations and accounting records, except as provided in paragraphs 47 and 62 below;
- 47 **agreed** that the Minister not be able to direct the Bank to make amendments to the Statement of Intent or Statement of Performance Expectations;
- 48 **agreed** that the Bank be required to publish and keep up to date Statements of Approach that set out its approach to its regulatory functions;
- 49 **agreed** that the requirements relating to the Financial Stability Report be included in the Institutional Act and updated to reflect consequential amendments;
- 50 **agreed** that the requirement for the Bank to undertake regulatory impact assessments in implementing financial policy be included in the Institutional Act, and be updated to align with State sector practice;
- 51 **agreed** that the Bank be required to publish and keep up to date its framework for balance sheet management;

## Foreign exchange

- 52 **agreed** to repeal the following sections of the Reserve Bank Act on foreign exchange market intervention that could no longer be practically used to meet the original policy intent or are redundant:
- 52.1 section 18 – that the Minister can direct that all foreign exchange dealings by the Bank shall be at fixed rates of exchange;
- 52.2 section 22 – that the Governor can direct New Zealand-registered banks to stop dealing in the foreign exchange market;
- 52.3 section 23 – that the Bank advises the Minister on foreign exchange matters;

## Funding

- 53 **agreed** that the Bank's expenditure be subject to a funding agreement with the features broadly set out in paragraph 100 of the paper under DEV-19-SUB-0345;
- 54 **agreed** that the funding agreement be tabled in Parliament, but no longer ratified by Parliament;

- 55 **agreed** that some of the costs of undertaking the Bank's financial regulatory functions be able to be recovered through levies set by regulation;
- 56 **agreed** to a general fee-setting regulation power, to replace the current fee making provision;

### **Regulatory powers and duties**

- 57 **agreed** that the Institutional Act broaden the Bank's existing information gathering powers in Part 2, subject to Bill of Rights Act vetting;
- 58 **agreed** that the Institutional Act may consolidate, modernise and make consistent the Bank's standard regulatory powers and duties;

### **Coordination**

- 59 **agreed** to establish a legislative mandate for the Council of Financial Regulators (CoFR) that enhances coordination while retaining flexibility and regulators' statutory independence;

### **Minor issues**

- 60 **agreed** to move requirements relating to commercial banks' retention of documents to the Bills of Exchange Act 1908;
- 61 **agreed** that the Bank be subject to the provisions of the Crown Entities Act, Part 3, except as provided in paragraph 62 below;
- 62 **agreed** that the provisions in the Crown Entities Act discussed in paragraph 127 of the paper under DEV-19-SUB-0345 not apply to the Bank;
- 63 **agreed** to repeal sections 168 and 169 of the Reserve Bank Act (good employer and social responsibility), as these will be replaced by broadly equivalent provisions from the Crown Entities Act;

### **Commencement**

- 64 **agreed** that the legislative provisions enabling the establishment of the Board commence on Royal Assent;
- 65 **agreed** that the other parts of the Institutional Act commence around twelve months following Royal Assent;
- 66 **agreed** that the initial terms of Board members will be staggered to allow for succession planning;

### **Publicity**

- 67 **agreed** to the public release of the Review Update, attached to the paper under DEV-19-SUB-0345, subject to any minor or editorial amendments that may be required;

### **Legislative implications**

- 68 **noted** that an appropriate place for the proposed Institutional Act is being sought on the 2020 Legislation Programme;

- 69 **agreed** that the Institutional Act include a provision stating that the Act will bind the Crown;
- 70 **invited** the Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals;
- 71 **authorised** the Minister of Finance to further clarify and develop policy matters relating to the above paragraphs in a manner not inconsistent with the policy intent of the paper under DEV-19-SUB-0345.

Janine Harvey  
Committee Secretary

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**Present:**

Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Grant Robertson (Chair)  
Hon Phil Twyford  
Hon Dr Megan Woods  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Jenny Salesa  
Hon Kris Faafoi  
Hon Shane Jones  
Hon Julie Anne Genter  
Hon Eugenie Sage

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

**Hard-copy distribution:**

Minister of Finance