

The Treasury

Reserve Bank Act Review Phase 2 Review Update Proactive Release

March 2020

This document has been proactively released by the Treasury on the Treasury website at

<https://treasury.govt.nz/publications/information-release/reserve-bank-act-review-phase-2-review-update-proactive-release>

Information Withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

- [26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [39] appearing where information has been withheld in a release document refers to section 9(2)(k).

Copyright and Licensing

Cabinet material and advice to Ministers from the Treasury and other public service departments are © **Crown copyright** but are licensed for re-use under **Creative Commons Attribution 4.0 International (CC BY 4.0)** [<https://creativecommons.org/licenses/by/4.0/>].

For material created by other parties, copyright is held by them and they must be consulted on the licensing terms that they apply to their material.

Accessibility

The Treasury can provide an alternate HTML version of this material if requested. Please cite this document's title or PDF file name when you email a request to information@treasury.govt.nz.

Report: Draft Cabinet Papers on the Reserve Bank Institutional Act and the Deposit Takers Act

Date:	31 October 2019	Report No:	T2019/3182
		File Number:	MC-1-7-3-1-13

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>Agree to the recommendations in this report.</p> <p>Refer the draft papers to the Associate Ministers of Finance, the Minister of Commerce and Consumer Affairs, and the Minister of Urban Development.</p> <p>Provide final Ministerial feedback on the draft Cabinet papers, the 'Review Update' and the Regulatory Impact Assessment.</p>	<p><i>By 6 November to enable lodgement of Cabinet papers for the Cabinet Economic Development Committee meeting on 20 November.</i></p> <p><i>[If the above timeframe is not met: By 15 November to enable lodgement for the meeting on 4 December].</i></p>

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Felicity Barker	Principal Advisor, Reserve Bank Act Review- Phase 2	[39]	
David Hargreaves	Principal Advisor, Reserve Bank Act Review- Phase 2	[39]	
Bernard Hodgetts	Director, Reserve Bank Act Review- Phase 2	[39]	✓

Actions for the Minister's Office Staff (if required)

Refer the draft papers to the Associate Ministers of Finance, the Minister of Commerce and Consumer Affairs and the Minister of Urban Development.

Note any feedback on the quality of the report

Enclosure: Yes Draft Cabinet papers on policy decisions relating to the Reserve Bank Institutional Act and the Deposit Takers Act, the 'Review Update', and a Regulatory Impact Assessment.

Report: Draft Cabinet Papers on the Reserve Bank Institutional Act and the Deposit Takers Act

Recommended Action

We recommend that you:

- a) **refer** the two Cabinet papers, the draft 'Review Update', and the draft Regulatory Impact Assessment to the Associate Ministers of Finance (Hon David Clark, Hon David Parker, Hon Shane Jones and Hon James Shaw), the Minister of Commerce and Consumer Affairs (Hon Kris Faafoi), and the Minister of Urban Development (Hon Phil Twyford)

Referred/Not referred.

- b) **provide** feedback on the draft Cabinet papers, 'Review Update' and the Regulatory Impact Assessment in accordance with the dates on the cover page
- c) **agree** to submit the 'Review Update' with the Cabinet papers to the Cabinet Economic Development Committee for consideration

Agree/Disagree.

- d) **note** that agreement will be sought from Cabinet to publically release Cabinet's decisions and both Cabinet papers, along with the 'Review Update'

Noted.

- e) **agree** to the release of a press statement following Cabinet's decisions.

Agree/Disagree.

Caralee McLiesh
**Chief Executive and
Secretary to the Treasury**

Adrian Orr
**Governor,
Reserve Bank of New Zealand**

Hon Grant Robertson
Minister of Finance

Report: Draft Cabinet Papers on the Reserve Bank Institutional Act and the Deposit Takers Act

Purpose of Report

1. This report provides you with draft Cabinet papers on the Reserve Bank Act Review (the Review) for your review and for consultation with your ministerial colleagues. The Cabinet papers provide recommendations that Cabinet agree to the policy decisions required to progress the Reserve Bank Institutional Act and the Deposit Takers Act. The recommendations reflect your decisions on the Joint Reports on the Institutional Act and the Deposit Takers Act [T2019/2764], [T2019/2966] and [T2019/3011]. The Reserve Bank has also provided comments on the timetable for the Review and the content of the Institutional Act.
2. This report also provides a draft public communications document entitled 'Review Update' and a draft Regulatory Impact Assessment for review and consultation with your colleagues. In addition, your agreement is sought to submit the 'Review Update' with the Cabinet papers to the Cabinet Economic Development Committee for consideration.

Background

3. You have previously agreed that the Reserve Bank Act will be replaced by two new pieces of legislation: a new Reserve Bank 'Institutional Act'; and a 'Deposit Takers Act' [T2019/2764]. The attached Cabinet papers seek Cabinet's agreement to the policy decisions arising out of Phase 2 of the Reserve Bank Act Review. The first Cabinet paper seeks Cabinet's decisions on policy issues relating to the Institutional Act. The second Cabinet paper seeks Cabinet's decisions on policy issues relating to the Deposit Takers Act.

The Institutional Act

4. The Cabinet paper on the Institutional Act seeks Cabinet's decisions on the following:
 - the purpose statement for the Act, and the Bank's objectives, decision-making principles for financial policy and the specification of the Bank's functions
 - a Financial Policy Remit
 - governance arrangements
 - accountability and transparency
 - the process for setting the Bank's funding
 - information gathering powers and other regulatory powers
 - coordination with other financial sector regulators, and
 - other minor issues.
5. It also seeks Cabinet's agreement to include the following in the Institutional Act: the Bank's functions, powers and duties relating to monetary policy; issuing currency; foreign exchange management; and acting as a lender of last resort.

The Deposit Takers Act

6. The Cabinet paper on the Deposit Takers Act seeks further in-principle Cabinet decisions on the following:
 - prudential instruments
 - supervision and enforcement
 - director accountability
 - deposit insurance, and
 - bank resolution and crisis management.
7. The paper also includes discussion of the future regulatory perimeter for deposit takers, and options for introducing executive accountability. There is further discussion of the timetable and options for executive accountability below.

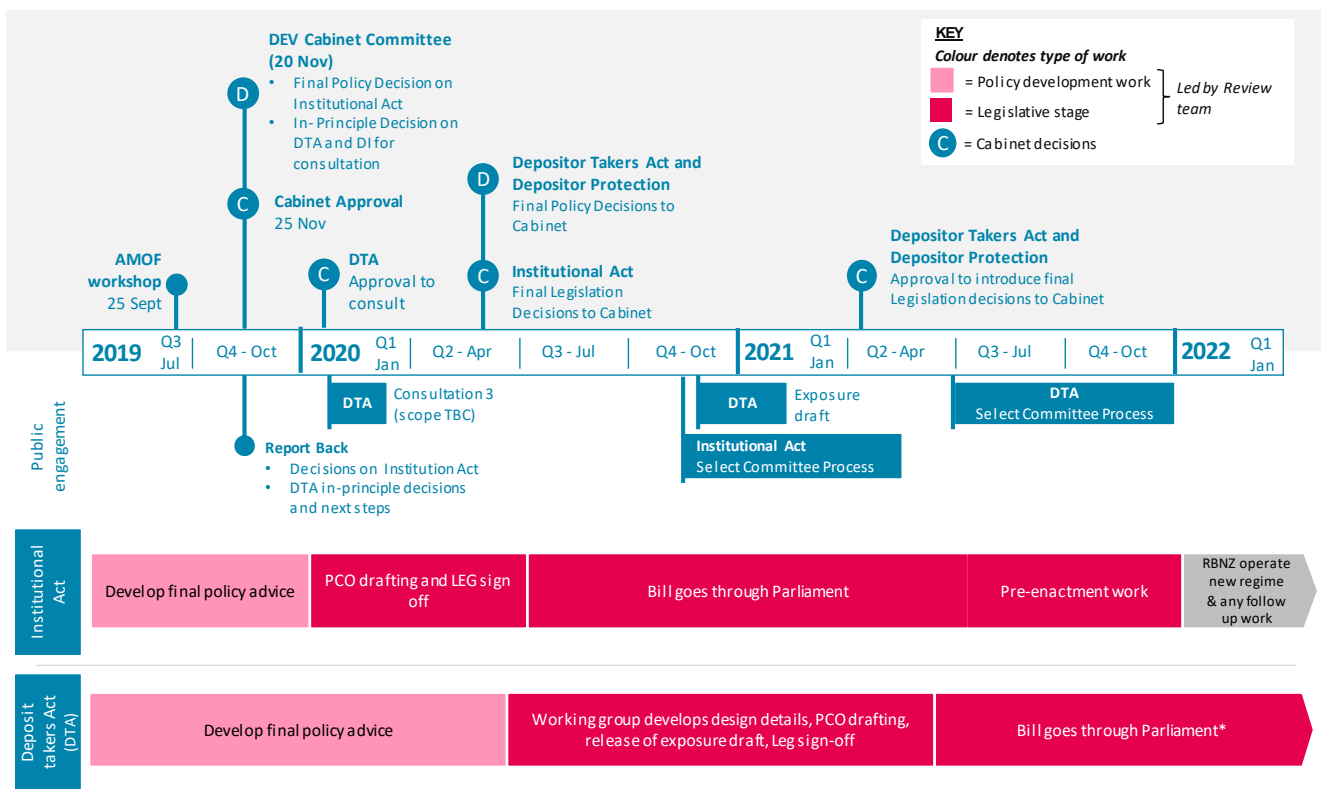
Executive accountability

8. Following your feedback on the Deposit Takers Act Joint Report [T2019/2966], the draft Cabinet paper on the Deposit Takers Act signals your interest in creating an executive accountability regime, noting that there are a number of significant questions on the scope and appropriate process for progressing this work.
9. We note that the introduction of an executive accountability regime was discussed by the Council of Financial Regulators (CoFR) at its meeting on 15 October 2019. While we understand there was support for executive accountability, agencies emphasised the importance of considering an integrated approach to both prudential and conduct matters, and highlighted significant resource constraints in progressing further policy work in addition to the current work being progressed to introduce a new regime governing financial institutions' conduct. Given this, all CoFR agencies were of the view that work on the new conduct regime should be completed before considering executive accountability.
10. Prior to finalisation of the Cabinet paper we will provide you with a briefing on options for progressing executive accountability. This includes the key design questions and timing options for development, and incorporating further feedback from CoFR agencies. We also suggest consulting with the Minister of Commerce and Consumer Affairs on the implications for his portfolio. The final Cabinet paper could be updated to reflect any decisions you make about a preferred process.

Timelines for the legislation

11. As noted in our 19 September 2019 Aide Memoire (T2019/2956 refers), the Review is working towards a mid-2020 introduction for the Institutional Act. The Deposit Takers Act is on a slower timetable (see figure below).
12. To enable the Institutional Act to be introduced next year, Cabinet decisions will need to be made this year. We are currently working towards the Cabinet Economic Development Committee (DEV) meeting on 20 November. However, this timeframe requires that any feedback be provided on the papers by 6 November. If more time is needed for ministerial consultation, the DEV meeting of 4 December remains a possibility.

13. The Review plans to consult on outstanding issues relating to the Deposit Takers Act in February 2020. We expect the consultation paper to focus on testing various elements of the design, such as the boundary for regulating deposit takers and the funding and institutional location of the deposit insurer.
14. The Review is working to a timeline where final Cabinet decisions on the Deposit Takers Act are taken around July 2020, with the aim of introducing the Deposit Takers Act in early 2021. This would potentially enable it to be enacted in the first half of 2022. However, as highlighted by the Bank below, the timeframes for this work are ambitious. The planned scope of work will be kept under review to ensure good quality outcomes. A substantial transition period will also be required before the Deposit Takers Act fully comes to force.



Additional comments from the Reserve Bank

Timetable

15. Policy advice for both the Institutional Act and the Deposit Takers Act is being developed in a short time frame. The Bank's view is that legislation for the Institutional Act could be introduced to Parliament by July 2020, provided the drafting process goes smoothly. However there are significant risks to the proposed timetable for the Deposit Takers Act given the complexity of the issues and the need to consult extensively with industry and stakeholders. The Bank prefers a longer timetable to best ensure the Review's success and the longevity of the legislative change.

Institutional Act

16. The Reserve Bank welcomes the updated governance framework for the Bank in broad terms and in particular the establishment of a corporate board to lead the Bank. However, the Bank is concerned about the extent of departure from the Crown Entities Act by the introduction of bespoke governance arrangements. In particular, ministerial appointment and dismissal of the Governor, who is otherwise fully subject to the authority of the Board, along with external processes for setting any remuneration, could complicate the ability of the Board to manage the affairs of the Bank and meet its accountability expectations. The Bank is also concerned about the potential use of the proposed remit, which is a unique mechanism with an uncertain scope to date.

Resolution Functions – resolution plans (recommendation 8.2i)

17. The Reserve Bank is concerned that there is ambiguity in this proposal which could be taken to mean that the Reserve Bank is responsible for preparing resolution plans for each and every deposit taker individually. It should be clarified to mean a responsibility to undertake resolution planning in order to enable it to resolve an institution in crisis.

Review Update

18. The Cabinet paper for the Institutional Act is also seeking Cabinet agreement to the release of the public communication document entitled 'Review Update' (see Recommendation 68), along with Cabinet's decisions and both Cabinet papers.
19. The Review Update will report back to the public on key decisions on the Bank's institutional settings, and in-principle decisions on the regulation of deposit takers, deposit insurance, and crisis management. It will also advise that another round of consultation on final design matters for the Deposit Takers Act will take place in the first quarter of 2020. We also recommend that you issue a press statement following Cabinet decisions being made.

Next steps

20. The key dates are as follows

Current timetable	Key action	Backup timetable
30 October – 6 November	Ministerial and coalition consultation	30 October – 15 November
8 November	Review provides you with a final version of the Cabinet papers, the 'Review Update' and the Regulatory Impact Assessment.	20 November
14 November	Cabinet paper, 'Review Update' and Regulatory Impact Assessment lodged with the Cabinet Office by 10 am	27 November
20 November	DEV meeting to approve documents	4 December
25 November	Cabinet sign off	9 December
26 November	Planned release date for documents	10 December