

The Treasury

Reserve Bank Act Review Phase 2 Consultation 3 Submission Information Release

February 2021

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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:

- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [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
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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Financial Services Council.

Growing and protecting the wealth of New Zealanders

Friday 23 October 2020

Phase 2 of the Reserve Bank Act Review
The Treasury
PO Box 3724
Wellington 6140

By email: rbnzactreview@treasury.govt.nz

Submission: Safeguarding the future of our financial system: Further consultation on the prudential framework for deposit takers and depositor protection: Phase 2 of the Reserve Bank Act Review, March 2020

This submission on the Reserve Bank of New Zealand Safeguarding the future of our financial system: Further consultation on the prudential framework for deposit takers and depositor protection: Phase 2 of the Reserve Bank Act Review, March 2020 (the Review) is from the Financial Services Council of New Zealand Incorporated (FSC).

The FSC is a non-profit member organisation and the voice of the financial services sector in New Zealand. Our 80 members comprise 95% of the life insurance market in New Zealand and manage funds of more than \$83bn. Members include the major insurers in life, disability and income insurance, fund managers, KiwiSaver and workplace savings schemes (including restricted schemes), professional service providers, and technology providers to the financial services sector.

Our submission has been developed through consultation with FSC members and represents the views of our members and our industry. We acknowledge the time and input of our members in contributing to this submission.

The FSC's guiding vision is to be the voice of New Zealand's financial services industry and we strongly support initiatives that are designed to deliver:

- strong and sustainable customer outcomes
- sustainability of the financial services sector
- increasing professionalism and trust of the industry.

We welcome the opportunity to provide feedback on the Review and would like to primarily focus our response on Chapter 6 of the Review. Whilst the Review is in respect of deposit takers, our understanding is that certain proposals in Chapter 6 are intended to apply to the various industry sectors the Reserve Bank of New Zealand (RB) regulates including licensed insurers. Our comments in this submission are largely in relation to licensed insurers, with possible broader application.

We welcome continued discussions.

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I can be contacted on [35]
submission.

or [35]

to discuss any element of our

Yours sincerely

Richard Klipin
Chief Executive Officer

Financial Services Council.

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Chapter 5: Liability and accountability

Director accountability

5.B. Do you agree with the specification of the new positive duties for directors of deposit takers? If not, why not?

We consider that it is particularly important that directors' duties are correctly calibrated in light of the Law Commission's work on class actions and the current environment in Australia where class actions are more common. We suggest that careful consideration is given as to whether it is appropriate to impose additional statutory duties on directors in that context, and whether an expectation that deposit takers are run in a prudent manner could be imposed as a conduct expectation rather than a statutory directors' duty. If the duties are to be implemented on the basis proposed, we suggest there will need to be more guidance to support the introduction of these requirements.

If new directors' duties are implemented, we strongly support alignment with the Financial Markets Conduct Act 2013 particularly in relation to availability of 'due diligence' and other defences.

Chapter 6: Supervision and enforcement powers

On-site powers

6.A. Do you agree that the on-site power for the AML/CFT regime is an appropriate comparator for a similar power for the Reserve Bank's prudential functions?

We consider the AML/CFT regime is not the most appropriate comparator for on-site powers of the RB as it is a discrete regime designed to detect the crimes of money laundering and terrorism financing with an entirely different focus than prudential supervision.

We support the RB's objective to protect and promote financial stability and consider that our members have demonstrated this through their open engagement with the RB. For example, throughout the Covid-19 pandemic and the Appointed Actuary Thematic Review our members have shown that they are willing to collaborate and cooperate with the RB in achieving these objectives. We consider it unlikely that engagement or a visit or inspection on reasonable grounds and with reasonable notice would be declined. We are also not aware that the RB has had any issues of access with our members. Whilst we understand that, in extremely limited circumstances, there may be a desire to conduct onsite inspections without notice, we do not agree that the RB should have an unfettered right to conduct such inspections. The use of this right should be subject to adequate controls to ensure it is applied consistently and only in exceptional circumstances.

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Sufficient notice of onsite inspections would help ensure meaning and efficient engagement, allowing an insurer to ensure both relevant information and personnel are available. It would also give an insurer the opportunity to provide the RB with any wider contextual information in advance of an inspection to help ensure the focus is on the most relevant areas.

Whilst the Review refers to such powers as being consistent with overseas jurisdictions, we note that the Australian Prudential Regulation Authority does not have any onsite inspection powers in legislation. We also understand that no specific inspection powers have been introduced under the FMI Bill. We encourage the existing relationship of trust and mutual respect to continue between the RB and our members.

6.B. Should this power be a generic power in the new Institutional Act, or specified in the Deposit Takers Act?

We recommend that its inclusion is most appropriate in the Deposit Takers Act rather than in the Reserve Bank of New Zealand Bill as the Bill focuses on the institutional arrangements of the RB rather than its prudential supervision powers. In addition, each sector regulated by the RB is different and therefore a 'one size fits all' approach should not be taken particularly in relation to such extensive powers. Issues and factors specific to each sector need to be considered and reflected in the relevant sectoral legislation.

6.C. Do you think any additional safeguards are necessary for the on-site power?

We recommend that a number of safeguards should be in place to limit the circumstances in which the right to conduct onsite investigations without notice can be used. Legislation should contain constraints that limit the use of this right to circumstances where it is reasonable to believe that the collection of information would likely be prejudiced by giving the licensee notice and the use of this power must be approved by the Governor of the RB in each instance. We consider it is important that this is reflected in the legislation as inspections with no notice should only be used in extraordinary circumstances, noting the comments in Question 6.A. of this submission.

For transparency, we consider it necessary to give industry and public visibility, such as publishing statistics annually, setting out how often the RB has used this power and for what reasons (whilst retaining individual entity confidentiality). We also encourage external periodic reviews by an independent party.

6.D. Do you think the FMA's on-site inspection power should be expanded in the same way that is proposed for the Reserve Bank?

Please see our comments in response to Question 6.A. which we consider also apply to the FMA and the positive relationships insurers already have with the FMA. We do not consider that a consultation on the Reserve Bank Act Review is the appropriate vehicle to consult on the FMA's powers as it is unlikely to reach all entities regulated by the FMA. If this is an option the FMA wishes to obtain feedback on, we encourage the FMA to conduct a separate consultation.

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Notwithstanding these comments, we are also not aware of any issue or need for the FMA's inspection powers to be expanded.

6.E. Should an expanded FMA on-site inspection power apply in all circumstances and to all FMA-regulated entities or only some (e.g. in high-risk circumstances or for dual prudential-conduct regulated entities)?

If the FMA's on-site inspection powers are to be expanded, we consider a risk based approach, as has been taken by the FMA on other supervisory matters, would be appropriate. We query whether dual prudential conduct regulated entities should be the focus given they would typically have more robust compliance practices than entities without this prudential oversight.

Other supervisory powers

6.F. Do you have any comment on the appropriate legislative location of supervisory powers such as information gathering and sharing, on-site inspections, and other related powers? Do you see merit in consolidating similar powers from sectoral Acts into the Institutional Act?

We recommend supervisory powers be contained in sectoral Acts so they can be tailored as appropriate to different industries.

Breach reporting

6.G. Should a breach-reporting requirement be directly provided for in legislation? Should this be provided for in the Deposit Takers Act, or located in the Institutional Act as a requirement for all entities regulated by the Reserve Bank?

We recommend breach-reporting requirements be contained in sectoral Acts so they can be tailored as appropriately to different industries.

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Details of submitter

For organisations

Name of organisation:	Financial Services Council of New Zealand Incorporated
Contact person:	Richard Klipin
Contact person's position in organisation:	Chief Executive Officer
Contact number:	[35]
Contact email:	[35]
Region/country:	New Zealand