

The Treasury

Additional Documents Related to Phase 2 of the Reserve Bank Act Review - December 2019 to April 2021 - Proactive Release

June 2021

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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:

- [7] 6(e)(ii) - to prevent serious damage to the economy of New Zealand by disclosing prematurely decisions to change or continue government economic or financial policies relating to the regulation of banking or credit
- [27] 9(2)(ba)(ii) - 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 otherwise to damage the public interest
- [29] 9(2)(d) - to avoid prejudice to the substantial economic interests of New Zealand
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [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
- [36] 9(2)(h) - to maintain legal professional privilege
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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Report: Draft Consultation Paper on the Deposit Takers Act

Date:	16 January 2020	Report No:	T2020/83
		File Number:	MC-1-7-3-1-13

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Provide feedback on the draft consultation paper	<i>By 3 February to enable lodging to Dev (Feb 27) after cross party consultation.</i>

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Ashley Dunstan	Advisor, Reserve Bank Act Review-Phase 2		
David Hargreaves	Principal Advisor, Reserve Bank Act Review- Phase 2	[35]	✓
Tamiko Bayliss	Director, Reserve Bank Act Review-Phase 2	[39]	

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

Note any feedback on the quality of the report

Enclosure: Yes: Draft consultation paper

Report: Draft Consultation Paper on the Deposit Takers Act

Recommended Action

We recommend that you:

- a) **provide** feedback on the draft consultation document
- b) **note** the timetable for Ministerial consultation, submission to Cabinet, and public consultation
- c) **note** the ambitious timeframes for agreeing recommendations following public consultation
- d) **note** that the Review and lead agencies will consider the viability of the timetable after the consultation paper is published

Tamiko Bayliss
Director, Reserve Bank Act Review – Phase 2

Hon Grant Robertson
Minister of Finance

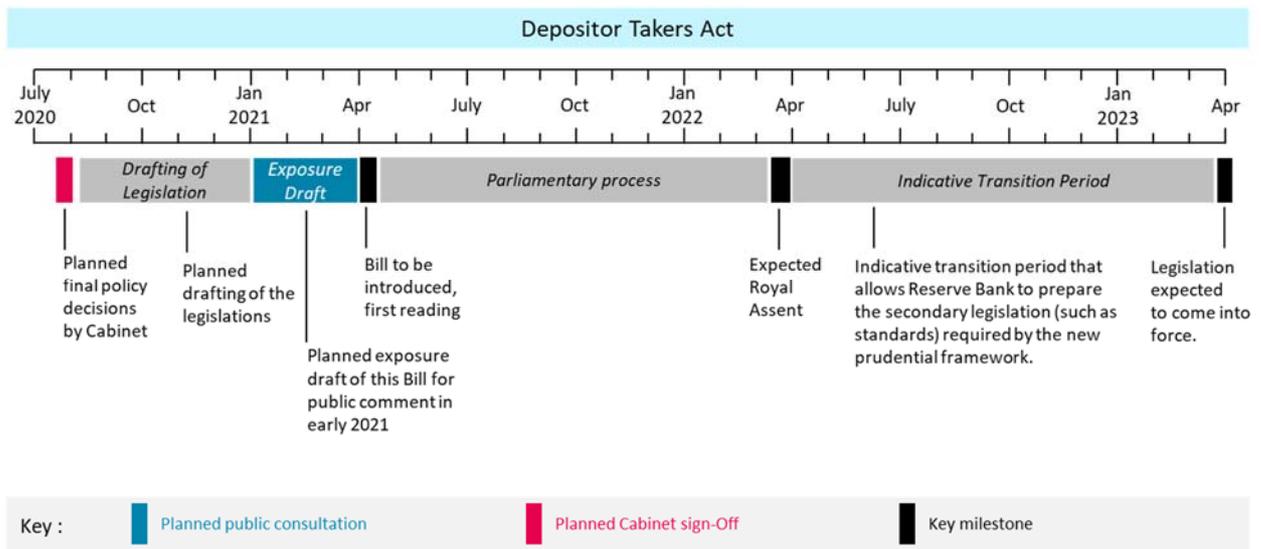
Report: Draft Consultation Paper on the Deposit Takers Act

Purpose of Report

1. This report provides you with the draft consultation paper on the Deposit Takers Act (C3). This is the next stage in the Reserve Bank Act review signalled to Cabinet in December 2019. We are seeking your feedback on the content of C3. There are no further in-principle decisions sought at this point in the process. The timetable for advancing the Deposit Takers Act (DTA) is also set out.

Background

2. The Government is reviewing the Reserve Bank of New Zealand Act to ensure the legislative framework remains robust, modern and fit for purpose. The changes to the legislative framework will be progressed through two separate acts. The Institutional Act setting out the overall governance and accountability framework is currently being drafted, and remaining final recommendations will be presented to you in February. This report focuses on the DTA, which will update the Reserve Bank's prudential regulation, supervision powers and introduce deposit insurance.
3. The Review Team is working to a timeline (see figure one below) where final Cabinet decisions on the DTA are taken around July so that drafting of the legislation can start this year. This will potentially enable the DTA to be introduced in the first half of 2021 and enacted in the first half of 2022. The regime will be implemented in 2023 at the earliest, after a substantial transition period.
4. After Cabinet decisions are taken in July, there will be operational features that will need to be worked through before the framework can be fully implemented. These features include the development of new prudential standards for deposit takers and the subsequent licensing of deposit takers. There will be further opportunities for input from stakeholders through the exposure draft and select committee processes, and as regulations and standards supporting the regime are developed.



Risks to the C3 timeframes

5. The timetable for progressing the DTA is ambitious. It requires the Review Team to provide final recommendations needed for progressing the DTA to you shortly after the consultation closes, and to lodge the subsequent Cabinet paper in July. This will be difficult to achieve if stakeholders are given more time to provide submissions, as they tend to request, or if the Reserve Bank, the Treasury and the Independent Expert Advisory Panel feel they have not had sufficient time to properly consider the policy proposals relating to key aspects of the DTA.
6. The Treasury and the Reserve Bank have sought to maximise the chances of delivery by working collaboratively together through the joint Review. Nevertheless, the constrained timetable increases the risk that some policy issues will remain unresolved in the July Cabinet paper. These issues can be dealt with through an additional Cabinet paper during the drafting process, provided there is sufficient clarity for Parliamentary Counsel Office to proceed with drafting. If major issues remain unresolved, drafting of the legislation (or some components of it) may need to be deferred.
7. The lead agencies and the Review will undertake a stocktake of progress on the DTA, and provide advice on the viability of the current timetable in late March. At this point, C3 will have been published and there will have been early engagement with stakeholders.
8. The stocktake will consider whether there is sufficient time for further engagement with agencies and affected industry, and to produce a robust analysis of the costs and benefits of the recommendations. Ultimately, the advice will assess if there is sufficient confidence that the timetable allows the Review to deliver on the success criteria proposed below:

- a. **An independent and accountable regulator.** The scope of the Reserve Bank's powers are clearly drawn and protect its operational independence. There is a flexible role for the Minister to increase the scope of powers and guide the interpretation of objectives, and strong accountability and transparency requirements that help deliver public confidence and legitimacy.
- b. **The scope of protection promotes financial stability and sustainable growth.** The regime is designed in a way that achieves an appropriate level of financial stability, but also encourages the financial system to continue to support economic activity. This includes objectives for the Reserve Bank that makes it clear that financial stability should not be pursued without due consideration of the impact of regulation on economic activity.
- c. **An empowered regulator.** The Reserve Bank has the powers to comply with Basel Core Principles for prudential regulation. The framework provides flexibility to tailor regulation to the New Zealand context, and to accommodate changes in the financial system. The framework is legally robust and enforceable, so that the Reserve Bank is able to use its formal powers confidently.
- d. **An enduring framework that does not need redrawing in a crisis.** The reforms lead to a regulatory and protective framework that stands the test of time. Formal deposit insurance and a broader range of crisis management powers increase the probability that the safety net can manage a financial crisis without requiring taxpayers to absorb losses.

Content of C3 document

- 9. **Annex 1** summarises the key topics covered in C3, in the context of in principle decisions taken to date. We note that some of the more technical elements of the DTA will primarily be progressed in parallel to the public consultation process. There are several crisis management issues in particular which will be progressed alongside C3 with targeted direct stakeholder engagement.
- 10. While C3 covers the broad range of matters that are necessary to draft a new prudential regulation for banks and non-bank deposit takers, we consider that the following key issues are likely to generate the most stakeholder interest:
 - a. The perimeter for the prudential regulation regime, in particular the treatment of finance companies and small deposit takers.
 - b. The specification of enhanced duties on the directors of deposit takers (noting that you have agreed that an accountability regime for senior managers will be progressed separately to the Review).
 - c. The products covered by deposit insurance and how insurance will be funded.

11. C3 is still under development and requires further cross-agency consultation before finalisation. To date, the Review has consulted with the Reserve Bank, the Treasury, the Ministry of Business, Innovation and Employment and the Financial Markets Authority (FMA). We have also discussed the proposals in C3 with the Independent Expert Advisory Panel and received initial feedback from Panel members.
12. Initial feedback from agencies and the Panel has been incorporated where possible, but there are a number of placeholders in C3 where further work is required. Some of the proposals may, therefore, change as we work through them with agencies. In particular:
 - a. the approach to ministerial and interagency consultation on prudential Standards is being refined. As drafted, C3 suggests that Ministerial input on prudential policy will be via the Remit, rather than through consultation on individual Standards (which is currently required for macro-prudential requirements under the Memorandum of Understanding). C3 proposes that the Remit will also set expectations on interagency consultation during Standards development and on how the Minister of Finance is kept informed of Standards development. This approach provides flexibility allowing the Minister of Finance to give guidance on expectations in important areas (e.g. where Bank decisions involve value judgments and have distributional impacts), signal areas of priority, and establish expectations about interagency consultation. However, it will not provide a formal requirement to consult with the Minister, as this could be seen as limiting the Reserve Bank's operational independence.
 - b. the scope and role of the Remit more generally is also being further developed. We intend to advance this by providing a paper containing a draft Remit and guidance on what content will appropriately balance independence and accountability. This includes how the Remit aligns with the principles that the Reserve Bank will need to take account of in the context of the Deposit Takers Act.
 - c. whether deposit takers, once brought within a reformed Reserve Bank crisis management regime, should continue to also be subject to statutory management under the Corporations (Investigation and Management) Act 1989 (CIMA), which is overseen by the FMA. The FMA and MBIE are concerned that removing deposit takers from the scope of CIMA statutory management will leave a gap. The Review considers that two statutory management regimes creates uncertainty for investors, and also that if statutory management continues to be available under Reserve Bank legislation with equivalent triggers as within CIMA, no gap will arise. It would therefore be helpful to include a question in C3 seeking the views of stakeholders.

13. We note that issues raised in this paper may lead to recommendations for consequential change to other Acts. One example is the proposed development of on-site powers for the Reserve Bank. C3 reflects the FMA's view that it may be appropriate for a similar power to be added to the FMA Act.
14. One change related to the ongoing drafting of the Institutional Act concerns the decision-making principles for financial regulation. Cabinet [DEV-19-MIN-0345] agreed the Reserve Bank would be required to take account of a number of decision-making principles, e.g. to take account of the impact of long-term risks to financial stability such as climate change. Cabinet agreed that these principles should be in the Institutional Act, then be applied across the Sectoral Acts.
15. Following advice from the Legislative Design and Advisory Committee, the Review Team considers the principles should instead be in each of the Sectoral Acts. This ensures that principles are in the same Act as the relevant decision-making powers minimising the risk of inconsistencies in the decision-making requirements. C3 consults on the basis that the DTA includes decision-making principles along the lines that Cabinet previously agreed. A later Cabinet paper will seek formal approval for this change.

Next steps

16. The key dates are as follows

Current timetable	Key action
3 February	Your feedback on C3 material
7 – 20 February	Ministerial and cross-party consultation
24 February	Review provides you with a final version of the Cabinet paper and C3
27 February	Lodgement of Cabinet paper and C3
4 March	DEV meeting to approve release of C3
9 March	Cabinet sign off
10 March	Planned release date for C3
21 April	Consultation closes on C3
Late May	Joint report seeking Ministerial decisions
Late July	Key Cabinet policy decisions on Deposit Takers Act

Prudential framework for deposit takers and depositor protection

The Deposit Takers Act will provide for a new prudential regulatory regime for deposit takers, such as banks, credit unions and building societies.

Here are the key decisions taken by Cabinet and a summary of the key remaining issues relating to the Depositor Takers Act and depositor protection covered in the consultation Paper on the Depositor Takers Act

