

# 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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- [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
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- [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
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**Report:** Phase 2 of the Reserve Bank Act Review – Draft consultation paper for ministerial consultation

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<b>Date:</b>	13 February 2020	<b>Report No:</b>	T2020/253
		<b>File Number:</b>	MC-1-7-3-13

**Action sought**

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	<b>Action sought</b>	<b>Deadline</b>
Minister of Finance (Hon Grant Robertson)	<b>Consult</b> Cabinet colleagues and identify any issues that should be addressed prior to lodging the attached papers to DEV on 27 Feb	21 February 2020

**Contact for Telephone Discussion (if required)**

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st Contact</b>
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)**

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Note any feedback on the quality of the report

**Enclosure:** Yes – Draft consultation paper and draft Cabinet paper.

**Report:** Phase 2 of the Reserve Bank Act Review – Draft consultation paper for ministerial consultation

## Purpose of Report

1. This report provides you with a revised draft of the consultation paper on the Deposit Takers Act (C3) for Ministerial consultation.

## Background

2. We provided you with a draft of C3 on 16 January (T2020/83 refers). Since then we have continued to consult with Reserve Bank and Treasury colleagues, and other agencies. We have developed the draft further based on this consultation, as well as your feedback, and feedback from the Independent Panel. Key changes to C3 include:
  - refining the proposed regulatory perimeter, in particular clarifying the approach to wholesale-funded lenders
  - introducing a general requirement on the Reserve Bank to consult with relevant departments and agencies (as assessed by the Reserve Bank) in the development of standards, rather than specifying consultation expectations through the Remit
  - reframing of the section on penalties to more clearly articulate the purpose of both civil and criminal penalties in the regime and seek broad feedback on the types and levels of penalties that would be appropriate
  - a box covering the implications for depositors, industry and the Crown from the target fund size for the deposit insurance scheme
  - a draft of the Ministerial foreword
  - editorial changes throughout the document to address proof-reader feedback.

## Outstanding issues

3. While we have resolved the majority of issues raised in inter-agency consultation on C3, there are several issues that the Review team is continuing to work on.

### *Financial Policy Remit*

4. Chapter 2 of the C3 currently has a placeholder on the role and scope of the Financial Policy Remit, and the Remit is referred to elsewhere in the document. The Review team has developed a sample Remit for discussion with the Reserve Bank and Treasury, with the aim of reaching a shared understanding of the Remit's role. Based on these discussions, the Review team will deliver advice to you on 20 February.

### *On-site power for the FMA*

5. The Review is proposing a broad power for the Reserve Bank to conduct routine on-site inspections of regulated entities so as to pre-emptively test and scrutinise an entity's adherence to prudential requirements, and their risk management and control systems. The current draft of C3 proposes that the Financial Markets Authority (FMA) be given a comparable power. We are working with the FMA and the Ministry of Business, Innovation and Employment (MBIE) to agree and finalise the text for this section of the consultation document. We will update the final version of the Cabinet paper accordingly.

### *Regulatory Perimeter and insurance scope*

6. The draft paper proposes two possible options for the treatment of finance companies in the new regulatory regime, and also proposes that 'debenture'-like products (their core source of funding) would not be insured. As requested, Review team members are also working with Reserve Bank and Treasury staff to provide you with more information on the current state and role of the sector in the next few weeks.

### *Deposit insurance funding arrangements*

7. The draft box on the implications of the deposit insurance target fund size is at an early stage and has not been tested in depth with lead agencies. In addition, the proposed approach for the high level funding arrangements for a deposit insurance fund is still being developed. The Review is not seeking decisions on the target fund size at this early stage - this will be the subject of further consultation prior to the implementation of the scheme. Nevertheless, the box will (1) be used to engage with stakeholders regarding how the funding arrangements will affect them (2) draw out the implications of depositor preference for the funding obligations of insurer and (3) inform the regulatory impact assessment that will accompany the introduction of the legislation for deposit insurance. Officials are continuing to work through arrangements for operationalising the Crown backstop, and how this would affect final decisions on the target fund size.

### *Crisis management*

8. The Review team is continuing to discuss aspects of the crisis management chapter with the Reserve Bank. The Reserve Bank particularly wishes to discuss the material on statutory bail-in (section 7.2). This section discusses matters (such as liabilities subject to bail-in) which may be in secondary legislation and are thus less urgent, and which the Reserve Bank will wish to provide further advice on given their role as Resolution Authority. The Review team considers these matters are nevertheless worth seeking public feedback on at this point, but is happy to discuss the bank's concerns further.
9. C3 includes a proposal that, in the context of developing a single, modernised statutory management regime for all deposit takers that aligns with international best practice, deposit takers no longer need to come within the scope of statutory management under the Corporations (Investigation and Management) Act 1989 (CIMA). The Minister of Commerce and Consumer Affairs may be interested to understand the nature of the consultation that the Review has had with MBIE and the FMA on this proposal.

10. The Review has had several rounds of consultation with MBIE and the FMA on various iterations of the proposal. We believe that MBIE's and the FMA's main concern – that removing deposit takers from the scope of CIMA statutory management would leave a regulatory gap – should be addressed by the current proposal to import the grounds for CIMA statutory management into the Deposit Takers Act and to provide for the FMA to advise on whether those grounds have been met. We consider that the merits of this proposal is a valid question on which to seek stakeholders' views through this consultation.

### Proposed process

11. We aim to release this document on or around 10 March after Cabinet approval on 9 March. The relevant dates in order to achieve that (and the planned process afterwards) are shown in the table below.

Current timetable	Key action
13 – 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
20 April	Consultation closes on C3
Late May	Joint report seeking Ministerial decisions
Late July	Key Cabinet policy decisions on the Deposit Takers Act

12. Once C3 is released, as discussed in T2020/83, we also aim to report back with a more detailed analysis of what we can expect to achieve in the July Cabinet paper, informed by further discussions with our Steering Group and early engagement with stakeholders. The aim will be to take the necessary decisions for PCO to commence drafting. As with the Institutional Act, we expect some policy elements may need to be addressed in a later Cabinet paper.

Tamiko Bayliss  
**Director,**  
**Reserve Bank Act Review- Phase 2**

Hon Grant Robertson  
**Minister of Finance**