

# 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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### 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:

- [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

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).

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**Report:** Draft Cabinet Paper on the Reserve Bank Institutional Act

<b>Date:</b>	21 February 2020	<b>Report No:</b>	T2020/347
		<b>File Number:</b>	MC-1-7-3-1-3

**Action Sought**

	<b>Action Sought</b>	<b>Deadline</b>
Minister of Finance (Hon Grant Robertson)	<p><b>Refer</b> the draft Cabinet paper to your Ministerial colleagues</p> <p><b>Provide</b> final ministerial feedback on the draft Cabinet paper and the Regulatory Impact Assessment</p>	<i>By 5 March to enable lodgement of the Cabinet paper for the Cabinet Economic Development Committee on March 18</i>

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

<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st Contact</b>	
Felicity Barker	Principal Advisor	[35]	N/A	✓
Tamiko Bayliss	Director, Reserve Bank Act Review	[39]	N/A	

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

**Refer** the draft paper to your Ministerial colleagues.

Note any feedback on the quality of the report

**Enclosure:** Yes, Draft Cabinet paper on policy decisions relating to the Reserve Bank Institutional Act and a Regulatory Impact Assessment.

## **Report: Draft Cabinet Paper on the Reserve Bank Institutional Act**

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1. This report provides a draft Cabinet paper and Regulatory Impact Assessment (RIA) in relation to additional decisions on the Reserve Bank Institutional Act. This paper and the RIA are provided to you to consult with your Ministerial colleagues prior to lodgement of the paper for consideration by the Cabinet Economic Development Committee.
2. The attached RIA updates the RIA provided to Cabinet in December 2019. Section 3A of the updated RIA provides new content in relation to the decisions in this paper. These are the matters relating to the Reserve Bank's information gathering and sharing powers, the new Foreign Exchange Reserves Management and Coordination Framework, and the Reserve Bank's (the Bank) protection from liability and Crown indemnity. It also contains new paragraphs on the Reserve Bank's new function in relation to the cash system, and the remuneration of the Governor. Content in the RIA which was used to support the December 2019 Cabinet decisions remains unchanged.
3. The attached updated RIA has not yet been formally assessed by the Regulatory Quality Team. An assessment is currently underway. An assessed version will be lodged alongside the final version of the Cabinet paper.
4. It is intended that the Cabinet paper will be considered at the Cabinet Economic Development Committee meeting of 18 March 2020. Officials require feedback on the paper by 5 March 2020 to meet this timeframe.
5. The Cabinet paper contains one additional matter that was not included in the report provided to you last week. The Bill will carry over the Bank's power to collect information to support its central banking functions. This will normally be exercised through surveys of financial institutions to gather statistical data. We have recommended [T2020/251] that information gathered by the Bank using this power will be protected by a confidentiality provision, proscribing release unless specified grounds (such as that the information is in a statistical or summary form, or the person who provided it has consented) are met.
6. The matter not dealt with in the earlier Report was how the confidentiality provisions interact with the Official Information Act (OIA). That is, in what circumstances information would be required to be released under the OIA. At the time the Report was provided the Treasury and the Bank were still considering the best approach to this issue. Consultation on this matter with the Office of the Ombudsman is ongoing.
7. The Treasury and the Bank consider it appropriate that the confidentiality provisions would prevent the Bank from disclosing information it would otherwise be required to release under the OIA. However, if any of the grounds for release under the Act are met, and the withholding grounds in the OIA are not met, then the Bank would be required to release the information under the OIA. This provides limited application of the OIA.

8. Guidance from the Legislative Design and Advisory Committee is that the OIA should not be limited unless there are good and sufficient reasons to do so. The OIA is an important part of New Zealand's public law framework. We consider that in this instance there are good reasons to limit its application. This information gathering power will be mostly used to collect statistical information from financial institutions through surveys. Much of this information will be sensitive. The proposed approach provides better assurance to respondents that their data is confidential, which will in turn encourage cooperation from respondents. It also ensures that the quality of the statistical results based on the data are high, and not influenced by premature release of preliminary results. Although some of the standard withholding grounds in the OIA may apply, the Bank believes that these are not sufficiently tailored to the issues which arise when dealing with statistical data. This is a similar approach taken for Statistics NZ.
9. The draft Cabinet paper attached includes content on the availability of information under the OIA. These are paragraphs 30 and 31, and recommendation 8 of the Cabinet paper. We will update the Cabinet paper if warranted due to the outcome of consultation with the Office of the Ombudsman.
10. The draft Cabinet paper recommends that the Governor's remuneration be set by the Remuneration Authority, consistent with feedback from your office.

## Recommended Action

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We recommend that you:

- a **refer** the draft Cabinet paper to your ministerial colleagues  
*Refer/not referred*
- b **provide** feedback on the draft Cabinet paper and the RIA in accordance with the dates on the cover page
- c **note** that agreement will be sought from Cabinet to publicly release Cabinet's decisions and the Cabinet paper

*Noted*

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

Hon Grant Robertson  
**Minister of Finance**

Please refer to the final version of documents relating to the Review of the Reserve Bank of New Zealand Act, which can be found at:

<https://www.treasury.govt.nz/news-and-events/reviews-consultation/reviewing-reserve-bank-act/proactive-releases>