

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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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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Joint Report: Final outstanding policy issues for the Reserve Bank of New Zealand Bill

Date:	22 June 2020	Report No:	T2020/1739 (TSY) #5664 (RBNZ)
		File Number:	MC-1-7-3-1-13

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	Agree to the recommendations	17 June 2020

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Evealyn Whittington	Senior Analyst, Reserve Bank Act Review	[39]	[35] ✓
James Haughton	Programme Manager, Reserve Bank Act Review		

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any
feedback on
the quality of
the report

Enclosure: Yes: draft LEG paper

Joint Report: Final outstanding policy issues for the Reserve Bank of New Zealand Bill

Executive Summary

This report seeks your agreement to a final set of relatively minor policy changes necessary to complete the drafting of the Reserve Bank of New Zealand Bill. It also includes a draft Cabinet Legislation Committee paper (LEG paper) for your review.

The Reserve Bank of New Zealand Bill, otherwise known as the Institutional Act, is the first of two new Acts that will replace the Reserve Bank Act of New Zealand 1989. It is scheduled for introduction in late July.

Final outstanding policy issues

You have been delegated the authority by Cabinet to further clarify and develop policy matters relating to the detail of the Bill. This report contains recommendations and updates on the following topics:

- **Financial Policy Remit.** We propose to give effect to your earlier policy decision on the scope and application of the Financial Policy Remit by providing the Reserve Bank Board with a collective duty to have regard to the Remit when:
 - setting its strategic objectives in relation to financial stability and the purposes and functions in the prudential legislation
 - making significant policy decisions about how to achieve these objectives
 - monitoring and reporting on the Bank's performance in relation to these objectives, and
 - issuing and reviewing prudential standards.
- **Changes to the funding agreement model.** We recommend excluding some types of capital expenditure from the funding agreement, limiting the publication requirements on the funding agreement to the final agreed version and supporting budget, and requiring that the dividend principles be published in the Statement of Financial Risk Management (instead of the funding agreement).
- **Deviations from the Crown Entities Act model.** We recommend further minor departures from the Crown Entities Act model, in particular reducing procedural requirements when acquiring shares or interest in companies, trusts and partnerships, and in relation to the setting of subsidiary chief executives' terms and conditions of employment.
- **Removal of information sharing penalty.** We no longer consider it necessary to include an offence or penalty for breaches of conditions relating to information that the Reserve Bank shares with other specified law enforcement and regulatory agencies.
- **Confidentiality orders.** Since they mainly relate to prudential regulatory powers, we recommend that the introduction of a confidentiality order power be considered through the Deposit Takers Act, instead of through this Bill.
- **Foreign exchange direction confidentiality.** We recommend that the procedural requirements relating to foreign exchange powers operate to allow for a foreign exchange direction to be kept confidential.

- **The location of cash offences.** We recommend that these be kept in the Institutional Act on an ongoing basis, rather than being considered for future incorporation into the Crimes Act. This means that it will no longer be necessary for you to write to the Minister of Justice regarding this matter.
- **Document retention requirements.** We recommend that these requirements are not shifted to the Bills of Exchange Act 1908, but are instead left in the Banking (Prudential Supervision) Act (the Act that will provide for the existing prudential requirements for banks until the passage of the Deposit Takers Act).
- **Transitional provisions.** We recommend a commencement date of 1 July 2022 for the Institutional Act, subject to a number of minor transitional provisions to allow for the introduction of new accountability mechanisms and strategic documents.
- **Removal processes for members of the Monetary Policy Committee (MPC) and the Governor.** We recommend aligning the processes for removal of members of the MPC and the Governor, with the removal process for members of the Board.

Once you are comfortable with this last set of changes, we will work with the Parliamentary Counsel Office to complete the Bill and provide you with a version for Ministerial consultation in advance of the Cabinet process.

Process for the Cabinet paper and the Bill

Included with this briefing is a draft of the Cabinet Legislation Committee paper (LEG paper), for Ministerial consultation alongside the Bill. Below is the suggested timeline:

Milestone	Dates
Ministerial consultation	25 June
Comments/changes back to Treasury	9 July
Paper lodged with the LEG Committee	16 July
LEG Committee consideration	22 July
Cabinet consideration	27 July
Introduction	Late July/early August
First reading	Late 2020

Recommended Action

We recommend that you:

Financial Policy Remit

- a **note** that you previously agreed [T2020/88] that the Reserve Bank be required to take the Financial Policy Remit into account when:
 - i. formulating and implementing its strategic approach to advancing the financial stability objective and the purposes of the Deposit Takers Act and the Insurance (Prudential Supervision) Act 2010, and
 - ii. developing standards;

- b **agree** to give effect to this decision via a collective duty on the Reserve Bank Board to have regard to the Remit when:
- i. setting its strategic objectives in relation to financial stability,
 - ii. making significant policy decisions about how to achieve these objectives,
 - iii. monitoring and reporting on the Bank's performance in relation to financial stability, and
 - iv. issuing and reviewing prudential standards;

Agree/disagree

Changes to the funding agreement model

- c **agree** that the Reserve Bank's funding agreement exclude capital expenditure on:
- v. the cost of inventories (primarily the purchase cost of bank notes and coins)
 - vi. the cost of financial assets, and
 - vii. the cost of purchasing an ownership interest in an entity;

Agree/disagree

- d **agree** that the draft versions of the funding agreement and budget proposed by the Reserve Bank as part of the funding agreement process not be required to be published;

Agree/disagree

- e **agree** to the dividend principles being published in the Reserve Bank's Statement of Financial Risk Management, rather than in the funding agreement;

Agree/disagree

Deviations from the Crown Entities Act model

- f **note** that Cabinet agreed [DEV-19-MIN-0345] that Part 2 of the Crown Entities Act would form the basis for the institutional design of the Reserve Bank, but that these provisions should be adapted to reflect wider policy decisions and as otherwise appropriate;
- g **agree** that, consistent with this decision, the requirements in the Bill relating to subsidiaries will differ from the Crown Entities Act, by not applying the same procedural requirements to the acquisition of shares or interests in another entity and by not requiring the State Services Commissioner's consent to subsidiary chief executives' terms and conditions of employment;

Agree/disagree

Removal of information sharing penalty

- h **agree** not to introduce an offence for breach of conditions where information has been shared with another agency under the Bank's information sharing power;

Agree/disagree

Confidentiality orders

- i **agree** that a confidentiality order power be introduced through the Deposit Takers Act, rather than this Bill;

Agree/disagree

Foreign exchange direction confidentiality

- j **agree** that the Bill provide for a foreign exchange direction to be kept confidential if the Minister of Finance considers this is necessary in order for the Reserve Bank to implement the direction or otherwise perform its functions powers or duties;

Agree/disagree

The location of cash offences

- k **note** that after undertaking further analysis, the Treasury and the Reserve Bank have concluded that the offences relating to banknotes and coins should remain in the Institutional Act;
- l **note** that it is not necessary to write to the Minister of Justice seeking consideration of a change to the location of the cash offence provisions;

Document retention requirements

- m **agree** not to move the document retention requirements in the Reserve Bank of New Zealand Act 1989 to the Bills of Exchange Act 1908;

Agree/disagree

Transitional provisions

- n **agree** that that the Bill have a commencement date of 1 July 2022, subject to a number of minor transitional provisions to allow for the introduction of new accountability mechanisms and strategic documents;

Agree/disagree

Removal processes for members of the MPC and the Governor

- o **note** that Cabinet previously agreed [DEV-19-MIN-0345] to retain the current process for removing MPC members and that the Governor could be removed from office by the Governor-General on the advice of the Minister on specified grounds;
- p **agree** to align the removal process for MPC members and the Governor with the removal process for Board members, that is, removal is by the Governor-General on the advice of the Minister, after consultation with the Attorney-General;

Agree/disagree

Process for the Cabinet paper and the Bill

- q **note** the inclusion to this briefing of the draft Cabinet Legislation Committee paper, reflecting the policy recommendations in this report;
- r **note** that we will provide your office with a up-to-date draft of the Bill (reflecting your final policy decisions) for Ministerial consultation;
- s **agree** to circulate the draft Bill and Cabinet Legislation Committee paper for Ministerial consultation on or around 25 June 2020;

Agree/disagree

- t **note** that we will provide you with final papers for lodgement with the Cabinet office on 16 July 2020.

James Haughton
Programme Manager, Reserve Bank Act Review

Hon Grant Robertson
Minister of Finance

Joint Report: Final outstanding policy issues for the Reserve Bank of New Zealand Bill 2020

Purpose of Report

1. The purpose of this report is to seek your agreement on a final set of relatively minor policy issues that have been identified in the drafting process for the Reserve Bank of New Zealand Bill (the Bill). This Bill, otherwise known as the Institutional Act, is the first of two new Acts that will replace the Reserve Bank Act of New Zealand 1989. It is scheduled for introduction in July.
2. Cabinet agreed that you would have the delegated authority to further clarify and develop policy matters relating to the detail of the Bill [DEV-20-MIN-0041/CAB-20-MIN-0120 refers]. The recommendations in this briefing fall within scope of this delegated authority.
3. Subject to your agreement to these matters, we will provide you with a draft of the Bill and accompanying Cabinet paper for Ministerial consultation prior to the Cabinet process.

Analysis

4. A number of relatively minor further policy matters have been identified through the drafting process, decisions on which are required to finalise the drafting of the Bill. The recommended approaches to these issues are consistent with the overall policy decisions made by Cabinet and fall within the scope of your delegated decision-making authority.

Financial Policy Remit

5. You previously agreed [T2020/88] that the Reserve Bank would be required to have regard to the Financial Policy Remit (the Remit) when (a) formulating and implementing its strategic approach to advancing the financial stability objective and the purposes of the Deposit Takers Act (DTA) and the Insurance (Prudential Supervision) Act 2010 (IPSA), and (b) developing standards.
6. We recommend that this obligation be implemented by way of a collective duty on the Reserve Bank Board to have regard to the Remit when:
 - a setting its strategic objectives in relation to financial stability and the purposes and functions in the prudential legislation
 - b making significant policy decisions about how to achieve these objectives
 - c monitoring and reporting on the Bank's performance in relation to these objectives, and
 - d issuing and reviewing prudential standards.

7. This duty would ensure that the Remit has an appropriate degree of influence in relation to the Reserve Bank's strategic planning processes (i.e. its Statement of Intent), while providing an ongoing duty on the Board to have regard to the Remit when making significant decisions about how to achieve its strategic objectives in relation to financial stability. The duty would be accompanied by transparency/reporting requirements in the Statement of Intent, Annual Report and Regulatory Impact Assessments.
8. Applying the Remit by way of a collective duty on the Board would have a clear and established accountability pathway, as the duties are owed to the Minister and non-compliance is grounds for removal. ^[36]
9. Further consideration is required by the Reserve Bank, the Treasury, the Ministry of Business, Innovation and Employment and the Financial Markets Authority (FMA) on the role of the Remit and Ministerial direction powers under the new legislative regime for Financial Market Infrastructures (which requires the Reserve Bank and the FMA to exercise powers jointly in most circumstances). A decision on this matter is not needed for the introduction of the Bill, given that the Financial Markets Infrastructures Bill (FMI Bill) has yet to be enacted. Any changes to the Remit provisions in the Bill to deal with its application to the regulation of Financial Market Infrastructures will need to be made via a Supplementary Order Paper after the enactment of the FMI Bill.

Changes to the funding agreement model

10. In December Cabinet agreed [DEV-19-MIN-0345 refers] to retain a funding agreement between the Minister of Finance and the Reserve Bank, which sets out an agreed level of expenditure for the Reserve Bank. Cabinet agreed to the broad parameters of a model presented in the Cabinet paper. While the main elements of the model stay the same, we recommend that some refinements be made to that model.
11. In particular, Cabinet agreed that funding agreements between the Reserve Bank and the Minister of Finance will cover both operating and capital expenditure, with appropriate exemptions. In addition to the types of operating expenditure already excluded under the current Act, we recommend that the following types of capital expenditure be excluded from the funding agreement:
 - The cost of inventories (primarily the purchase cost of bank notes and coins);
 - The cost of financial assets, and
 - The cost of purchasing an ownership interest in an entity.
12. These types of capital expenditure are either outside of the Reserve Bank's direct control (in the case of bank notes and coins) or could impinge on the Reserve Bank's operational independence in delivering on its monetary policy and financial stability objectives (in the case of financial assets and ownership interests). As under the current Act, the Minister of Finance and the Reserve Bank will also be able to agree to exclude additional types of expenditure from the agreement.

13. As part of the funding agreement model, Cabinet agreed that the versions of the funding agreement and budget proposed by the Reserve Bank would be required to be published. We now recommend that this requirement be removed and that only finalised versions of new funding agreements and the supporting budget for the Reserve Bank for the period covered in the funding agreement be required to be published. Requiring the publication of proposed versions would add significant complexity to the Bill and we do not consider that mandating their publication is necessary to promote transparency in the funding agreement process. The Reserve Bank is subject to the Official Information Act, therefore transparency of proposed versions of the documents can be achieved through information releases.
14. Cabinet also agreed that the dividend principles would be included in the funding agreement. The Reserve Bank will be required to recommend a dividend in accordance with the principles, and the Minister will be required to have regard to the principles when determining the dividend. We now recommend that the principles be published in the Reserve Bank's Statement of Financial Risk Management (SFRM). Both the dividend and the SFRM are annual requirements, therefore publication in the SFRM better aligns the timing of the dividend and publication of the principles.

Deviations from the Crown Entities Act model

15. In December Cabinet agreed [DEV-19-MIN-0345 refers] that Part 2 (and Schedule 5) of the Crown Entities Act would be used as the basis for the institutional design of the Reserve Bank. Cabinet also agreed that these provisions would be adapted to reflect wider policy decisions and as otherwise appropriate, noting that some of the provisions relating to subsidiaries would be inappropriate for a central bank.
16. Consistent with Cabinet's decision, not all of the provisions relating to subsidiaries in the Crown Entities Act have been applied to the Reserve Bank. In particular, we recommend that the Reserve Bank not be required to follow the procedural requirements in the Crown Entities Act when acquiring shares or interests in companies, trusts and partnerships. This includes acting in accordance with the procedures and conditions in the entity's statement of intent, or as otherwise specified by the responsible Ministers. These requirements are not appropriate for the Reserve Bank, given that a swift acquisition may need to occur in an unanticipated crisis situation.
17. We also recommend that the State Services Commissioner not be required to consent to subsidiary chief executives' terms and conditions of employment, given that this requirement will also not apply to the Governor.¹ Under the Crown Entities Act, the terms and conditions of employment for the chief executives of subsidiaries are set by the subsidiaries' boards with the consent of the State Services Commissioner. Like a Crown entity, the chief executives of Reserve Bank subsidiaries will have their terms and conditions of employment set by the subsidiaries' boards. The only difference is that the consent of the State Services Commissioner would not be required. In practice, the chief executive of the Reserve Bank's current subsidiary (NZClear) is a Reserve Bank employee who does not receive any additional remuneration for this role.

No offence for a failure to comply with the conditions on shared information

18. In March, Cabinet agreed [DEV-20-MIN-0041 refers] to provide the Reserve Bank with a power to share any information, including confidential information, with specified law enforcement and regulatory agencies. This would also allow the Reserve Bank to impose conditions on the use of information shared. Cabinet also agreed it should be an offence to breach these conditions, with a penalty.

¹ While the Governor's remuneration will be set by the Remuneration Authority, it would not be appropriate to apply this requirement to subsidiary chief executives, given that these are not independent public office holders and that these roles are currently held by Reserve Bank employees.

19. We no longer think there should be an offence for breach of conditions. The equivalent FMA power to share information does not have such an offence attached. This will only be used in the context of other public agencies and financial regulators, and a penalty is not appropriate in this context. Making breach of information sharing conditions an offence may cut across good working relations between New Zealand financial regulators.

Confidentiality orders

20. In March Cabinet also agreed [DEV-20-MIN-0041 refers] to include a power for the Reserve Bank to make confidentiality orders requiring the non-disclosure of information (the FMA has a similar power). The FMA power is used to ensure sensitive information held by the FMA or a third party is not released in a manner which could harm an ongoing investigation, enquiry or other proceeding. This is an important tool, but has restrictions on its use because it infringes on the right to freedom of speech as well as the normal rights to access information.
21. Although a confidentiality order power would be a valuable tool for the Reserve Bank, it would mostly be used in the context of its prudential regulatory powers. Accordingly, we recommend that the introduction of confidentiality orders be progressed through the development of Deposit Takers Act which will reform the prudential regulation of banks and other deposit takers, rather than through this Bill.

Foreign exchange direction confidentiality

22. In March Cabinet agreed [DEV-20-MIN-0041 refers] that the Minister of Finance would be able to issue directions to the Bank to deal with foreign exchange. The Reserve Bank would be subject to process requirements regarding review and publication similar to those that apply to directions under section 115 and 115A of the Crown Entities Act.
23. We recommend that the procedural requirements in the Bill depart from this approach. This means a foreign exchange direction could be kept confidential if the Minister of Finance considered it necessary for the Reserve Bank to implement the direction or otherwise perform its functions powers or duties. Details of a foreign exchange market direction may need to be kept confidential in order for the direction to be successfully implemented by the Reserve Bank, and reduce the risk that actions taken by other foreign exchange market participants offset the desired impact of the direction. The Minister would be required to consider if confidentiality needs to be maintained on an annual basis. This provides a balance between transparency and effectiveness.

Location of cash offences

24. You previously agreed to write to the Minister of Justice recommending that consideration be given to incorporating offences relating to banknotes and coins in the RBNZ Act into the Crimes Act at an appropriate time [T2020/251].
25. After undertaking further analysis, we have concluded that the offences relating to banknotes and coins should be retained in the Institutional Act. The current offences relate to the Reserve Bank's role in overseeing the cash system, in particularly its role as the sole issuer of bank notes and coins in New Zealand. We therefore no longer consider that you need to write to the Minister of Justice on this matter, although we will recommend to the Ministry of Justice that the existing provisions in the Crimes Act relating to forged banknotes and counterfeit coins be reviewed for clarity and consistency.

Location of document retention requirements

26. In December, Cabinet agreed [DEV-19-MIN-0345 refers] that requirements that commercial banks must meet in relation to the retention of documents (such as cheques) be shifted to the Bills of Exchange Act 1908 on the basis that they were considered more relevant to that Act. Following further analysis, we no longer consider shifting these requirements to the Bills of Exchange Act to be appropriate. The Bills of Exchange Act provides a legislative framework for dealings between parties in relation to bills of exchange, cheques, and promissory notes, rather than a regulatory framework that would be appropriate for setting and enforcing document retention requirements.
27. We recommend that these document retention requirements are left in the Banking (Prudential Supervision) Act (the Act that will provide for the existing prudential requirements for banks until the passage of the Deposit Takers Act). We will further consider the document retention requirements as part of the Deposit Takers Act work, including whether they are still required and in what form.

Commencement timing and transitional provisions

28. In December Cabinet agreed [DEV-19-MIN-0345 refers] that the Institutional Act would commence around twelve months following Royal Assent. Based on current timelines, we anticipate that the Bill will be enacted in the third quarter of 2021. On that basis, we recommend a commencement date of 1 July 2022, which will best accommodate the introduction of new accountability and reporting mechanisms by aligning commencement with the start of a new financial year. This commencement timing could be revisited during the legislative process if the Bill is unexpectedly delayed for any reason.
29. This approach would allow for the incoming governance board to begin to be appointed from late 2021, providing time for them to develop the policies and documents necessary for them to take on their governance responsibilities on commencement. The Remit would also be developed in this period, in consultation with the incoming Board, to be issued on commencement.
30. In order to facilitate this approach, a number of minor transitional provisions will be required. In particular, the Reserve Bank will need relief from the requirement to prepare a Statement of Intent under the current Act in the first half of 2022. The new Board would instead prepare a Statement of Intent and Statement of Performance Expectations under the new Act as soon as practicable after commencement. Other minor transitional measures will be needed to allow for other key strategic documents to be developed and agreed.

Removal processes for members of the Monetary Policy Committee (MPC) and the Governor

31. Cabinet previously agreed to retain the current process for removing MPC members and that the Governor could be removed from office by the Governor-General on the advice of the Minister on specified grounds [DEV-19-MIN-0345]. During the drafting process, it was identified that the processes would be inconsistent with the removal process for Board members. Board members will be able to be removed by the Governor-General on the advice of the Minister, following consultation with the Attorney-General. This is modelled on the process for the removal of members of Independent Crown Entities under the Crown Entities Act. It is also consistent with the removal processes for other types of statutory appointment. This will ensure alignment of similar processes across the legislation and will remove the need to seek an Order in Council, which is more onerous.

Next Steps

32. Subject to your agreement to these changes, we will work with the Parliamentary Counsel Office to prepare the final draft of the Bill for Ministerial consultation. The following table sets out the dates for the consultation process and Cabinet process:

Milestone	Indicative Dates
Ministerial consultation	25 June
Comments/changes back to Treasury	9 July
Paper lodged with the LEG Committee	16 July
LEG Committee consideration	22 July
Cabinet consideration	27 July
Introduction	Late July/early August
First reading	Late 2020