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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TE TAI ŌHANGA
THE TREASURY

Date: 3 September 2020

To: Minister of Finance (Hon Grant Robertson)

Deadline: None
(if any)

Aide Memoire: Phase 2 Review – Updated timeline for the Deposit Takers Act

This Aide Memoire updates you on the revised timeline for progressing work on the Deposit Takers Act (DTA) in light of the extended consultation period. The timeline assumes that work on the permanent deposit insurance scheme is progressed as part of the DTA. This revised timeline suggests introduction of a Deposit Takers Bill into the House in early 2022. The pre-COVID set of milestones, by contrast, envisaged a Cabinet process in July this year, and introduction of the Bill in April 2021.

Restarting the DTA work programme

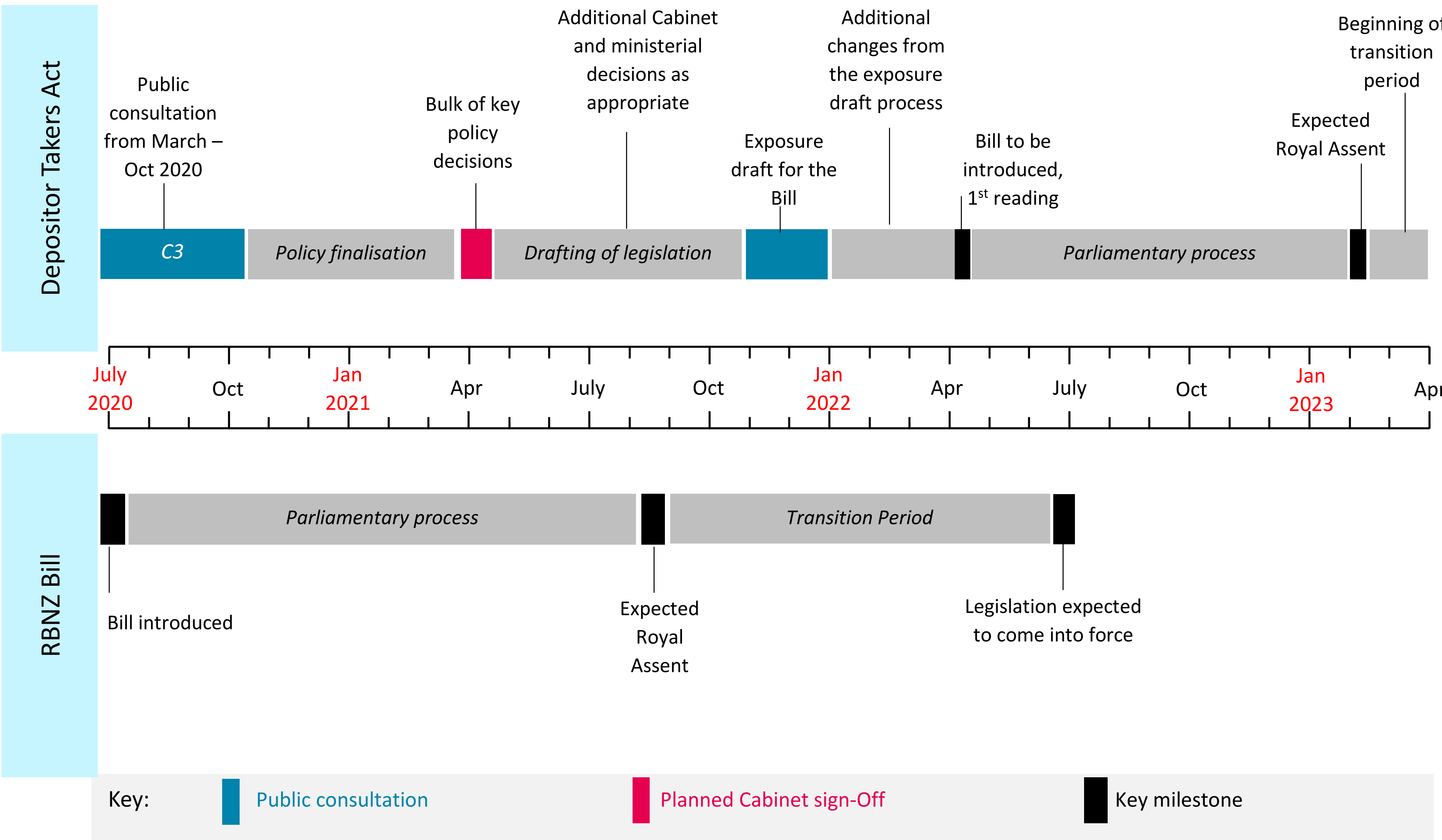
The third public consultation document (C3) of the Phase 2 Review of the Reserve Bank of New Zealand Act 1989 was released on 13 March 2020. C3 focusses on the design of the new prudential framework for deposit takers, and the framework for deposit insurance, which together would form a new Deposit Takers Act.

In light of the rapidly developing circumstances attached to COVID-19, in late March you agreed to extend the deadline for submissions on C3 by six months to 23 October.

Stakeholder engagement was subsequently placed on hold, recognising the challenges posed by COVID-19 for financial institutions and other stakeholders. Policy work on the DTA has also been largely on hold since the lockdown with Review team resource focussed on COVID-19 related priority work, and on continuing to progress the 'Institutional Act' (i.e. the Reserve Bank Bill that has recently been introduced to the House).

As elements of COVID-19-related work have been completed, resource has been redeployed back to the Phase 2 Review. The Review's Steering Committee has endorsed the restart of the DTA work programme in order to deliver advice to you over February/March next year, with Cabinet decisions anticipated April/May (see Figure 1 below).

Figure 1: Revised timeline for the Deposit Takers Act (and deposit insurance)



The Review team expects to deliver advice to you on the foundational aspects of the new prudential regime for deposit takers, including deposit insurance, with the key Cabinet decisions required for the Parliamentary Counsel Office (PCO) to begin drafting the new Bill by April/May 2021.[1] Some parts of the DTA work programme – i.e. less material aspects – could be amenable to subsequent Cabinet decisions (or managed through ministerial delegations). The sequencing of decisions is not unusual in a legislative drafting process of this nature, although it does add complexity to the process.

The subsequent milestones following initial Cabinet decisions in April/May include an exposure draft process for stakeholders to comment on the detail of the legislation, and for any additional engagement through workshops with industry and interested parties. Following that exposure draft process, time will need to be set aside for an analysis of submissions, possible amended policy decisions, instructions to PCO on any changes, final peer review, final consultation with interested departments and BORA vetting – all before the Bill is introduced to the House.

The milestones shown in Figure 1 are indicative with choices around the length of the exposure draft process and time required to digest feedback from stakeholders before introduction to the House. The Select Committee process is typically six months but may be longer. Introduction to the House in late 2021 is possible but would likely reflect a somewhat compressed legislative process – therefore the Bill's first reading in February 2022 is more reasonable.

Related to the DTA work programme is the outstanding question of which agency should administer the Reserve Bank's sectoral legislation, and therefore provide instructions to PCO on drafting. The Treasury and Reserve Bank will provide advice to the you on this question in due course.

The Reserve Bank and Treasury are considering the 'lessons' from managing COVID-19's impact on New Zealand's financial system. This exercise is broad ranging; with respect to the prudential framework it is considering what aspects of the current regime worked well, as well as what gaps the crisis may have continued to highlight. Overseas experiences may also be relevant. These insights will help shape the advice the Review team will provide to you on the foundational aspects of the new regime for deposit takers in February/March next year. Briefly the early lessons include the benefits of having the following on a permanent footing before a crisis strikes:

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1 The foundational elements of the DTA include a well-articulated set of objectives for the Reserve Bank as the prudential regulator of deposit takers; a well-defined perimeter and criteria for licensing entities; an agreed scope for prudential standards; the key architecture supporting an enhanced focus on director liability and accountability; the key supervisory and enforcement tools available to the regulator to monitor and ensure compliance; and the main planks of a coherent crisis management framework. Key design elements of a permanent deposit insurance scheme will also be part of the initial set of Cabinet decisions, with some important dependencies with crisis management in particular.

- An empowered Reserve Bank as prudential regulator, able to move quickly in a crisis, with flexibility to tailor prudential requirements as appropriate
- A framework and enduring commitment between the Reserve Bank and the Treasury to embed a relationship enabling the sharing of information and effective cooperation, given the need to coordinate across fiscal, monetary and prudential policy (noting the benefits of having monetary and prudential policy housed under 'one roof')
- A crisis management framework with a broad range of powers to address stress across both large and small entities, backed up by well-developed operational capacity and capability of the Reserve Bank as the Resolution Authority
- A permanent deposit insurance scheme that enables prompt payout in order to avoid depositor hardship

[7]

Risks to the DTA timeline

The Review team recognises that despite the extended consultation period for C3, the timeline for delivering advice to you and receiving decisions from Cabinet remains ambitious.

For example, there remains significant work to do before the delivery of this advice: engaging with stakeholders over the remainder of the consultation period, undertaking the policy work on a number of significant topics, engaging third party experts as necessary, and agreeing recommendations between the Treasury and the Reserve Bank.

While the Review team and the principal agencies can mitigate some of the risks associated with delays to the timetable (e.g. by ensuring the team is well-resourced and agreeing to a clear process for resolving inter-agency differences), there are other risks beyond the control of the Review team. These include:

- low engagement from industry and industry bodies and advisers, given competing initiatives (whether in response to COVID, or due to implementation of the new financial advisers regime, conduct licensing, etc) and given that consultation on C3 closes the week after the election, which could lead to industry lobbying at later stages in the process when issues do gain traction;

- the emergence of serious stress in the financial sector which could prompt a refocus back to emergency contingency measures to support the financial system or individual institutions.

Should any or all of these risks crystallise and hinder the policy development process, the Review team will have to weigh up the benefit of pursuing the timeline outlined above and consider whether the end result, in terms of the quality of the legislation, would be compromised. The Review team would provide refreshed advice on the timetable at that time.

That said, and assuming these risks do not crystallise, aiming for Cabinet decisions in April/May next year remains feasible and represents a credible commitment from the Review team to produce high-quality advice for ministers to consider – bearing in mind this will be the culmination of a two-and-a-half-year process involving three public consultations and significant engagement with the Treasury, the Reserve Bank, and other agencies.

The Review team also recognises the impost on regulated entities over the course of 2021, as a number of regulatory initiatives that hitherto have been deferred by relevant agencies will be restarted. This, in part, is the reason why the Review team is suggesting introduction of the Bill in early 2022, rather than late 2021.

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