

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: RBNZ Act Review – Final Cabinet Papers: Deposit
Takers Act

Date:	7 April 2021	Report No:	T2021/860
		File Number:	MC-1-7-3-1-13

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>Note the changes made to the Cabinet papers and Regulatory Impact Assessment (RIA).</p> <p>Refer a copy of this report to the Associate Minister of Finance (Hon Parker) and the Minister of Commerce and Consumer Affairs (Hon Clark).</p> <p>Agree to lodge the Cabinet papers and RIA for the DEV Committee meeting of 14 April.</p>	8 April 2021

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Chris Hunt	Advisor, Reserve Bank Act Review – Phase 2	[39]	✓
Tamiko Bayliss	Review Director, Reserve Bank Act Review – Phase 2	[35]	

Minister's Office actions

Refer a copy of this report to the Associate Minister of Finance (Hon Parker) and the Minister of Commerce and Consumer Affairs (Hon Clark).

Return the signed report to Treasury.

Enclosure: Yes – Final Cabinet papers on policy decisions relating to the Reserve Bank Review Deposit Takers Act and accompanying Regulatory Impact Assessment.

Report: RBNZ Act Review – Draft Cabinet Papers: Deposit Takers Act

Recommended Action

We recommend that you:

- a **note** that a draft set of four Cabinet papers, and accompanying draft Regulatory Impact Assessment, on a new prudential framework for deposit takers and the introduction of deposit insurance was provided to you on the 18 March for your feedback [T2021/645].
- b **note** that following your feedback you authorised revised versions of these Cabinet papers for ministerial and agency consultation, with a deadline of 1 April.
- c **note** the changes made to the Cabinet papers and the Regulatory Impact Assessment following agency and ministerial consultation.
- d **agree** to lodge the Cabinet papers and the Regulatory Impact Assessment with the Cabinet Office by Thursday 8 April to enable them to be considered at the Cabinet Economic Development Committee (DEV) meeting of 14 April.

Agree/disagree

- e **refer** a copy of this report to the Associate Minister of Finance (Hon Parker) and the Minister of Commerce and Consumer Affairs (Hon Clark).

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

Hon Grant Robertson
Minister of Finance

Report: RBNZ Act Review – Draft Cabinet Papers: Deposit Takers Act

Purpose of Report

1. This report provides you with final versions of a set of four Cabinet papers on the foundational aspects of a new prudential regime for deposit takers and the introduction of deposit insurance, and the supporting Regulatory Impact Assessment.
2. These documents are for lodging with the Cabinet Office for consideration at the Cabinet Economic Development Committee (DEV) meeting 14 April.

Context

3. On 18 March, you were provided with a set of four draft Cabinet papers on a new Deposit Takers Act (DTA), and a draft Regulatory Impact Assessment [TR2021/645 refers]. The four papers were:
 - i. Cabinet Paper 1: Overview
 - ii. Cabinet Paper 2: The framework for the regulation and supervision of deposit takers
 - iii. Cabinet Paper 3: Depositor protection and deposit insurance
 - iv. Cabinet Paper 4: Crisis management and resolution.
4. The format of this Cabinet advice reflects the magnitude and complexity of the Phase 2 of the Reserve Bank Act Review (the Review) process, and the large number of recommendations that underpin the new prudential framework for deposit takers and the introduction of deposit insurance.
5. You authorised papers 2-4 for ministerial and agency consultation as drafted, and requested that Paper 1: Overview provide more detail on the rationale for the change in the deposit insurance coverage limit from \$50,000 to \$100,000. A revised Paper 1 with this change was provided to your Office on 22 March.
6. A revised version of Paper 2 was also sent to your Office on 22 March to reflect your decision on the scope of ‘macro-prudential’ lending standards [T2021/518 refers].
7. You also asked the Review to provide further detail on the following:
 - a the implementation timetable for the DTA, and in particular, the deposit insurance scheme
 - b the implications for the scope of bail-in arrangements in light of your decision on depositor preference.

8. The Review provided you with an Aide Memoire on both these issues 31 March [T2021/783 refers].

Changes to the Cabinet papers

9. The Cabinet papers have been amended following agency consultation and further refinements by the Review.
10. You did not receive any feedback on the suite of Cabinet advice arising from the ministerial consultation process. However, the Review will be engaging with some of your Cabinet colleagues at a workshop on 7 April, in preparation for the subsequent DEV and Cabinet meetings.
11. We received feedback from the Financial Markets Authority (FMA) and the Ministry of Business, Innovation and Employment (MBIE) through agency consultation.
12. Material amendments are described below. Minor amendments have also been made as a result of the quality assurance process.

Cabinet Paper 1: Overview

13. MBIE substantive feedback focussed on the nature and scope of the delegation to you to make policy decisions required to finalise drafting of the DTA. MBIE wants to ensure that their minister – the Minister of Commerce and Consumer Affairs – is included as a decision-maker (not just a consulted party) where decisions are relevant to his portfolio.
14. MBIE also considers that there is a possibility that some additional policy decisions taken post-April may need to go back to Cabinet and that the paper as previously drafted did not highlight this point, including any threshold for Cabinet (rather than delegated) decision-making.
15. The Review largely agrees with MBIE's feedback. For example, a number of outstanding policy issues are of direct interest to MBIE and their Minister, and some relate to legislation that is not the responsibility of the Minister of Finance (e.g. amendments to the Financial Markets Conduct Act, or to the Companies Act).
16. We have therefore included a specific recommendation that provides for joint authorisation between you, the Associate Minister of Finance (Hon Parker) and the Minister of Commerce and Consumer Affairs (to the extent that matters are relevant to his portfolio), to take decisions on consequential and outstanding policy matters in the suite of Cabinet advice.
17. We have also clarified that some additional policy decisions may need to be taken back to Cabinet, although these will be determined only when such work is undertaken. The paper, as amended, now suggests that the threshold for further Cabinet deliberation be tied to policy matters where Ministers with joint authorisation do not agree, or where matters raise significant policy issues or issues of wider public interest.

18. Other changes in the paper reflecting MBIE feedback include:
 - a an amendment to paragraph 26 to make clear that MBIE has already sought and obtained Ministerial approval to undertake a targeted consultation on an on-site inspection power for the FMA.
 - b amendments to paragraph 31 relating to the higher coverage limit for the deposit insurance scheme, with more detail on the rationale for increasing the coverage limit
 - c a minor amendment to paragraph 37 clarifying wording around the delegation for bail-in. The previous wording may have implied that Cabinet would have the power to decide or amend which liabilities are bail-inable. The paper has been amended to be consistent with Paper 4, which recommends that the scope of bail-inable liabilities be set out in primary legislation with a regulation-making power to prescribe products as ineligible for bail-in.
19. Following advice provided to you from the Review on the implementation timetable for the DTA [T2021/783 refers], we have highlighted in the paper that officials will be undertaking further work on the detailed implementation pathway for the DTA and that this work will include further engagement with FMA and MBIE.

Cabinet Paper 2: The framework for the regulation and supervision of deposit takers

20. We received feedback from MBIE on some specific matters, and made the following edits:
 - a an amendment to paragraph 39 to clarify that Cabinet's previous decision to progress a wider (executive) accountability regime was made in-principle and was subject to further advice from officials
 - b an amendment to paragraph 47 to clarify that MBIE has already sought and obtained Ministerial approval to undertake consultation on an on-site inspection power
 - c an amendment to paragraph 63 regarding the delegation of further policy decisions, to ensure consistency with Paper 1.

Cabinet Paper 3: Deposit insurance

21. We received feedback from MBIE clarifying that they would prefer that Cabinet 'agrees' to (rather than 'notes') consequential amendments to financial markets legislation (recommendation 37), and have made this change accordingly.
22. Following advice provided to you from the Review on the implementation timetable for the DTA [T2021/783 refers], we have highlighted that officials have advised you that the risks associated with implementing the DIS to an extent can be managed through existing prudential requirements, possible transitional requirements and planning for the DIS' operational infrastructure.
23. We have expanded the 'financial implications' section to highlight that there will be (currently unquantified) operating and capital costs for the Reserve Bank in

carrying out its deposit insurance function and that these costs would be covered by industry levies.

Cabinet Paper 4: Crisis management and resolution

24. We added a recommendation that Cabinet agree to consequential amendments to disclosure requirements related to the introduction of statutory bail-in.

Changes to the Regulatory Impact Assessment

25. Since we shared the latest working draft of the Regulatory Impact Assessment (RIA) with your Office, we have updated the RIA to reflect feedback from the independent quality assurance panel and the Independent Expert Advisory Panel. The key changes relate to how the RIA presents the strong degree of alignment between the Reserve Bank and the Treasury, and the impacts of the proposals on well-being.
26. The RIA also now includes the quality assurance panel's assessment, with the panel considering that the RIA **meets** the Quality Assurance criteria.

Communications strategy

27. The Cabinet Paper 1: Overview, signals that you will be announcing some of the key decisions on the DTA at some point after the Cabinet meeting on 19 April, and that there will be a subsequent update to the Phase 2 Review content on the Treasury and Reserve Bank websites, including release of the Cabinet papers and the RIA.
28. The Review team is working with your Office and both agencies on a communications plan for the announcement of Cabinet decisions. This will likely involve a joint press release from the Treasury and the Reserve Bank, together with a statement from yourself (which may or may not accompany a press conference following Cabinet, depending on your preferred approach).
29. We will be providing talking points for you ahead of the DEV meeting on 14 April.

Public release of the Regulatory Impact Assessment

30. Both the Reserve Bank and the Treasury strongly support the proposed reforms. The RIA notes where agencies have made different judgements on key policy issues. These issues comprise macro-prudential policy, the role of the Minister of Finance in changing the scope of lending standards, appeal rights, deposit insurance and the insurance limit, and depositor preference. The release of the RIA may invite media or stakeholder interest in agency differences on policy issues.
31. In addition, the RIA includes examples of what levies could look like under the proposed DIS and indicative costs of deposit insurance. Similar estimates, provided in the third consultation, were reported by media at the time.

Next Steps

32. For the Cabinet papers and the RIA to be considered by DEV on 14 April, the papers will need to be finalised and lodged with the Cabinet Office by 8 April.
33. The key dates are as follows:

Date	Description
7 April	Final version of Cabinet papers to you
8 April	Lodgement of Cabinet papers and RIA
14 April	DEV meeting to approve documents
19 April	Cabinet sign-off

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>