

The Treasury

Reserve Bank of New Zealand Bill Information Release

November 2021

This document has been proactively released by the Treasury on the Treasury website at

<https://treasury.govt.nz/publications/information-release/reserve-bank-new-zealand-bill-information-release>

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:

- [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;
- [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 [33] appearing where information has been withheld in a release document refers to section 9(2)(f)(iv).

Copyright and Licensing

Cabinet material and advice to Ministers from the Treasury and other public service departments are © **Crown copyright** but are licensed for re-use under **Creative Commons Attribution 4.0 International (CC BY 4.0)** [<https://creativecommons.org/licenses/by/4.0/>].

For material created by other parties, copyright is held by them and they must be consulted on the licensing terms that they apply to their material.

Accessibility

The Treasury can provide an alternate HTML version of this material if requested. Please cite this document's title or PDF file name when you email a request to information@treasury.govt.nz.

Joint Report: Final decisions on amendments to the Reserve Bank of New Zealand Bill

Date:	25 March 2021	Report No:	T2021/683
		File Number:	MC-1-7-3-1-13

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Agree to the recommendations in this report. Refer the report to Hon Parker.	30 March 2021

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
James Campbell	Principal Advisor, Reserve Bank Act Review	[39]	[35] ✓
Tamiko Bayliss	Director, Reserve Bank Act Review		N/A (mob)

Minister's Office actions (if required)

Return the signed report to Treasury.
Refer the report to the Associate Minister of Finance, Hon David Parker.

Note any feedback on the quality of the report

Enclosure: Yes (draft departmental report attached)

Joint Report: Final decisions on amendments to the Reserve Bank of New Zealand Bill

Executive Summary

You have agreed to a number of amendments to the Reserve Bank of New Zealand Bill (the Bill) to be progressed via the Treasury's departmental report to the Finance and Expenditure Committee (FEC), including:

- that the Governor be made a member of the Reserve Bank board
- to provide that the Reserve Bank's obligation to implement monetary policy formulated by the MPC is limited by the board's duty to ensure that the Reserve Bank operates in a financially responsible manner
- to provide a duty on the board in relation to the management of the Reserve Bank's capital or equity, and to empower the Minister of Finance to specify elements of this duty
- to amend the process for replacing the MPC remit, allowing the Minister of Finance to replace or amend monetary policy remits without an Order-in-Council
- to make minor amendments to the currency offences in the Bill as necessary to ensure that they have an appropriate *mens rea* element and to update penalty levels.

Cabinet approval for these changes is being sought by the paper 'Reserve Bank of New Zealand Bill: Matters for Inclusion in the Departmental Report', which was considered by DEV on 24 March and will be considered by Cabinet on 29 March [DEV-21-SUB-0042 refers].

The Cabinet paper also seeks authorisation for you to further clarify and develop policy matters relating to the proposals in this Cabinet paper in a manner not inconsistent with the policy recommendations contained in the paper and to approve other more minor or technical amendments to the Bill. This paper seeks approval for the following outstanding policy matters:

- changes to the appointment provisions for the Governor and the board in light of the decision to make the Governor a board member
- further detail on the scope of the Minister's power to specify elements of the board's duty in relation to the management of its capital or equity
- further detail on the proposed process for amending or replacing an MPC Remit
- changes to the currency offences, including updates to the penalty levels
- minor changes to the Reserve Bank's currency monitoring function, levy making process, the power for the Minister to add functions and to the drafting of the confidentiality provision in the Bill and in the Insurance (Prudential Supervision) Act 2010 (IPSA).

The proposals in this paper are reflected in the draft departmental report to the FEC, which is attached for your comment. Subject to final Cabinet approval and your agreement to the matters dealt with in this paper, we expect to provide a final version of the departmental report to the FEC on 1 April.

Recommended Action

We recommend that you:

- a **note** that you are taking a paper to Cabinet on Monday 29 March [DEV-21-SUB-0042 refers] seeking agreement to a number of amendments to the Bill and delegated authority for you to finalise policy positions on the outstanding matters outlined in this report.

Appointment of the Governor to the board

- b **agree** that the board should continue to have a role in the Governor's appointment by giving advice to the Minister as to the appointment.

Agree/disagree

- c **agree** that the Governor will have the rights and responsibilities of a board member (with the exception of those matters listed in recommendation g) and this includes adhering to the collective and individual board duties and being subject to removal from office for breaches of these duties.

Agree/disagree

- d **agree** that the Governor should be appointed by the Governor General, on the recommendation of the Minister of Finance.

Agree/disagree

- e **agree** that the Minister of Finance should be required to consult with other political parties in Parliament before recommending appointment of the Governor.

Agree/disagree

- f **agree** that the Governor's term of appointment should not count towards the maximum term of office for a board member, thereby allowing a former Governor to be appointed as a non-executive member of the board subject to a three year stand-down period.

Agree/disagree

- g **agree** that the Bill should require that the Governor may not participate in some board decisions where there will be an inherent conflict of interest, including those relating to:

- a. recommending appointment or removal of the Governor
- b. setting the terms and conditions of the Governor
- c. monitoring the performance of the MPC
- d. monitoring/performance review of the Governor.

Agree/disagree

Reserve Bank financial arrangements

- h **agree** that the Bill will allow (but not require) the Minister to direct the Reserve Bank to manage its financial risk within certain guidelines, subject to the standard procedural requirements for directions.

Agree/disagree

- i **agree** that the content of the direction be limited to:
 - a. a minimum level of capital
 - b. the definition of that capital and other matters relating to the calculation of such a minimum level of capital
 - c. expectations for the Reserve Bank's overall risk tolerance to which the Reserve Bank must have regard.

Agree/disagree

- j **agree** that the Bill give sufficient flexibility to acknowledge that, from time to time, the Reserve Bank may fail to comply with the direction due to unforeseen events outside its control.

Agree/disagree

- k **agree** that the Reserve Bank will be required to report on its compliance with its financial responsibility duties, including any directions regarding financial risk management.

Agree/disagree

MPC remit process changes

- l **agree** that the Bill provide that:

- a. the Reserve Bank must, at intervals of five years, give the Minister advice about the MPC remit ('remit advice')
- b. the Minister must consider replacing/amending the MPC remit following receipt of remit advice and publish their decision
- c. an MPC remit issued by the Minister is in force indefinitely, unless replaced
- d. the Minister must consult the Reserve Bank before issuing, replacing or amending the MPC remit, but is not required to seek remit advice.

Agree/disagree

- m **agree** that the safeguards that currently apply when the Minister issues a new MPC remit should also apply when a remit is amended or replaced.

Agree/disagree

Currency offences

- n **agree** to make any necessary amendments to the offences relating to issuing a bank note and making imitation currency to ensure the mental element, such as intent, is clear.

Agree/disagree

- o **agree** to increase the maximum fine for the offence associated with defacing a bank note from \$1,000 to \$2,000.

Agree/disagree

- p **agree** to increase the maximum fine for the offence associated with issuing a bank note from \$100,000 to \$200,000 in the case of an individual, and from \$300,000 to \$600,000 in the case of a body corporate.

Agree/disagree

- q **agree** to increase the maximum fine for the offence associated with making imitation currency from \$10,000 to \$20,000 in the case of an individual, and from \$25,000 to \$50,000 in the case of a body corporate.

Agree/disagree

Other amendments

- r **agree** to extend the Reserve Bank's currency function to include reference to monitoring innovation in technologies.

Agree/disagree

- s **agree** to amend the levy-making process in the Bill to simplify and clarify consultation procedures.

Agree/disagree

- t **agree** to restrict the power for the Minister to add functions to the Reserve Bank to situations where the Reserve Bank has requested the Minister exercise the power.

Agree/disagree

- u **note** that the Office of the Ombudsman has engaged with the Review team to indicate its view that the confidentiality provision in the Bill and the equivalent provision in the Insurance (Prudential Supervision) Act 2010 (IPSA) should be amended to reflect the agreed policy intent, which is to restrict the availability of regulatory information under the Official Information Act 1982.

- v **agree** to amend the confidentiality provisions in the Bill and IPSA to ensure that they give effect to the policy intent outlined in recommendation u.

Agree/disagree

- w **refer** to the Associate Minister of Finance, Hon David Parker.

Refer/not referred.

Tamiko Bayliss
Director, RBNZ Act Review

Hon Grant Robertson
Minister of Finance

Joint Report: Final decisions on amendments to the Reserve Bank of New Zealand Bill

Purpose of Report

1. This report seeks your agreement to consequential and second order amendments to the Reserve Bank of New Zealand Bill (the Bill), following the amendments currently being considered by Cabinet [DEV-21-SUB-0042 refers]. The departmental report for the Finance and Expenditure Committee reflecting the proposed amendments is attached for your feedback.

Context

2. You have agreed to a number of amendments to the Bill to be progressed via the Treasury's departmental report to the FEC, including:
 - a. that the Governor be made a member of the Reserve Bank board
 - b. to provide that the Reserve Bank's obligation to implement monetary policy formulated by the MPC is limited by the board's duty to ensure that the Reserve Bank operates in a financially responsible manner
 - c. to provide a duty on the board in relation to the management of the Reserve Bank's capital or equity, and to empower the Minister to specify elements of this duty
 - d. to amend the process for replacing the MPC remit, allowing the Minister of Finance to replace or amend monetary policy remits without an Order-in-Council
 - e. to make minor amendments to the currency offences as necessary to ensure that they have an appropriate *mens rea* element and to update penalty levels.
3. Cabinet approval for these changes is being sought by the paper 'Reserve Bank of New Zealand Bill: Matters for Inclusion in the Departmental Report', which was considered by DEV on 24 March and will be considered by Cabinet on 29 March.
4. The Cabinet paper also seeks authorisation for you to further clarify and develop policy matters relating to the proposals in this Cabinet paper in a manner not inconsistent with the policy recommendations contained in the paper and to approve other more minor or technical amendments to the RBNZ Bill.
5. The attached draft departmental report reflecting these changes is still being reviewed by the Parliamentary Counsel Office (PCO) and that changes to the wording of the more detailed recommendations in Part B are likely.

Outstanding issues

Governor as a board member

6. The decision to make the Governor a board member raises questions about the extent to which provisions relating to the Governor and the board should be aligned or otherwise amended. For example, the extent to which the process for the appointment of the Governor should be aligned with that of other board members.

7. We have approached these issues from the perspective that the Governor is first and foremost the chief executive of the Reserve Bank, with *ex officio* membership of the board. This means that while there are areas where alignment is desirable, the provisions relating to the Governor would continue to differ in some respects from those of other board members. This approach should require comparatively few amendments to the current provisions in the Bill. The key issues to be resolved are set out below.

Should the process for appointing the Governor be aligned with that of board members?

8. We recommend partially aligning the appointment provisions by providing that the Governor is appointed by the Governor General on the recommendation of the Minister (rather than by the Minister directly as at present) and mandating political party consultation prior to appointing the Governor (as is required for other board members). These changes would ensure an equivalent standard of appointment process for all board members and support the political legitimacy of the Governor and the board. We do not recommend extending these requirements to the appointment of a temporary Governor, as this would create additional complexity that would not be justified for a temporary role.
9. We recommend retaining a role for the board (excluding the Governor) in advising on Governor appointments, reflecting the fact that the Governor will be both a board member and the Reserve Bank's chief executive. In practice this would mean that the Reserve Bank (rather than the Treasury) would continue to take the lead in the search process for a new Governor, although the Treasury would provide the Minister with its own advice on the candidate put forward by the board. Retaining this requirement alongside political consultation will make the appointment process relatively complex, but in our view this is justified given the important status of the Governor.
10. The board would continue to set the terms and conditions of the Governor's appointment, other than remuneration which would continue to be set by the Remuneration Authority.

Should the provisions for removing the Governor be aligned with that of board members?

11. The process for removing the Governor is generally aligned with that for board members (requiring just cause and consultation with the Attorney General, and with removal being undertaken by the Governor General). However, the definition of 'just cause' differs from that in relation to board members (reflecting the role of Governor as chief executive and chair of the MPC) and the board has a role in recommending the removal of the Governor (for example, the Governor can only be removed from office for failure to adequately perform delegated functions on the recommendation of the board). We recommend that the current removal grounds be retained, along with the current removal role of the board to the extent that it relates to the Governor's role as chief executive.
12. Board members are subject to a number of individual and collective duties and are able to be removed from office for breaches of these duties. For example, the board must ensure that the Reserve Bank operates in a financially responsible manner. We recommend that these duties apply to the Governor. If the Governor were to breach these duties, this would therefore provide just cause for the Governor's removal from office.

Should time in office as the Governor count towards the term limit for the board?

13. At present the Governor and board members have a maximum ten-year term of office, but time in one position does not count towards the term limit for the other. This means that a former Governor who has served their maximum term of ten years could

subsequently be appointed to the board as a non-executive member (and in turn that a former board member could subsequently serve as the Governor).

14. While the proposed amendments to the Bill will make the Governor an *ex officio* member of the board, on balance we recommend continuing to have separate term limits for the Governor and for non-executive board members. This would provide flexibility around future appointments, particularly in situations where the Minister wishes to appoint someone with a deep understanding of the Reserve Bank. Non-executive board members would continue to be eligible to serve as the Governor at a later date.
15. However, appointing a Governor as a non-executive member in the period immediately after the expiry of their term of office would not be appropriate, as they would be too close to existing management practices and projects, and it would risk undermining the position of the incoming Governor. We therefore recommend that the Bill provide for a minimum period of three years between the date at which a Governor leaves office and the date at which they are eligible to be appointed as a non-executive board member.

How should conflicts of interest be managed?

16. The board will be responsible for making several decisions in relation to which the Governor will have a conflict of interest, for example, advising the Minister on Governor appointments. Our report of 18 February noted that the Governor would not be permitted to take part in these decisions [T2021/255 refers].
17. While it would be possible to rely on the standard conflict of interest provisions in the Bill, these are not designed with inherent conflicts such as those of the Governor in mind. For example, they require disclosure of the conflict to the Chair (which would be unnecessary in this context) and allow for the Chair to grant permission for a member to take part in a decision in relation to which they have a conflict. We therefore recommend that the Bill explicitly require that the Governor not participate in board decisions where they have an inherent conflict, such as:
 - a. advising on the appointment or removal of the Governor
 - b. setting the terms and conditions of the Governor
 - c. monitoring and reporting on the performance of the MPC
 - d. monitoring/performance review of the Governor.

Reserve Bank financial arrangements

18. As previously advised, the Reserve Bank's financial boundaries are unclear under the Bill as currently drafted because the board (which will be responsible for managing the Reserve Bank) lacks guidance on its risk appetite or a minimum level of equity or capital that should be maintained [T2021/456 refers]. The Cabinet paper seeks agreement to resolve this issue by providing a duty on the board in relation to the management of the Reserve Bank's capital or equity, and to empower the Minister of Finance to specify elements of this duty. We are seeking your agreement to a number of further details relating to this approach.

Mechanism for Minister to specify financial risk matters

19. We recommend that the Bill empower the Minister to direct the Reserve Bank to manage financial risk within guidelines. The two key advantages of formulating the provision as a direction power are that:
 - a. Direction powers are already defined in the Bill and have appropriate associated processes and protections (clauses 170-173 of the Bill)

- b. The final decision about the direction sits with the Minister, which ensures that the Minister retains high-level control over the Reserve Bank's financial boundaries. In contrast, final decisions made through other mechanisms in the Bill, such as the dividend principles and Statement of Financial Risk management, are either agreed between the Reserve Bank and the Minister or are determined solely by the Reserve Bank, so would not fulfil the intended purpose.
20. We recommend that all of the standard procedures and protections for a direction in the Bill apply, such as a requirement to consult with the Reserve Bank prior to issuing a direction.
21. We recommend that it be optional for a direction to be in place at any given point in time, rather than mandatory. This would minimise administrative burden, and the risk of unintended consequences arising from a rigid requirement. It would allow the board to determine their preferred minimum level of equity and risk appetite by default. The Ministerial direction could be a reserve power should the Minister become uncomfortable with the board's decisions.

Scope of Ministerial direction

22. We recommend that the scope of the guidelines the Minister be able to set be limited to:
- a. a minimum level of capital
 - b. the definition of that capital, and other matters relating to the calculation of such a minimum level of capital
 - c. expectations for the Reserve Bank's overall risk tolerance to which the Reserve Bank must have regard.
23. This guidance should relate to the overall level of risk of all the Reserve Bank's combined activities, not specific tools, so as to preserve the Reserve Bank's operational independence. It should also recognise that the inherent uncertainty in assessing risk will mean that the direction regarding risk appetite can in practice only reach a certain level of specificity.
24. We do not recommend that the direction power be constrained to being used for a specific purpose (such as 'for the purpose of managing the Crown's financial exposures'). Given the scope of the direction is limited to the Reserve Bank's capital and risk appetite, any direction would (almost by definition) serve the purpose of managing the Crown's financial exposures.

Board obligations in relation to the duty and direction

25. We recommend that the board's obligation to execute the duty have flexibility to acknowledge that, from time to time, it may fail to comply with the direction due to unforeseen events outside its control. For example, we consider it would be appropriate to treat the board as not being in breach of its duty if the Reserve Bank suffered large unexpected losses due to extreme movements in the exchange rate affecting their existing exposures. Nevertheless, we would expect the board to always manage the Bank's balance sheet in a manner that is consistent with the Minister's direction. Should the Reserve Bank need to take on risk to respond to a crisis, this should be done by using the Reserve Bank's existing capital or, if it has insufficient capital, either:
- a. requesting that the Minister adjust the direction, or
 - b. seeking a capital injection or indemnity.

26. The Minister's ability to include expectations about the Reserve Bank's risk tolerance that the Reserve Bank must have regard to in the direction also provides a channel for the Minister to provide some flexibility (e.g. in a crisis the Minister could amend the direction to state they are comfortable with the Reserve Bank having a higher tolerance for risk).
27. To assist monitoring and transparency of the board's compliance with its financial responsibility duties, we recommend that the Reserve Bank be required to report on its financial responsibility obligations, including how it has fulfilled its obligations regarding any direction in place. This would either be in the Statement of Financial Risk Management or in another document.

MPC remit process changes

28. As previously advised, recent experience with changing the remit for the MPC has identified some problems with the process, including inconsistency in the legal form and process when the remit is changed outside of the five-year cycle, an Order-in-Council being incommensurate with the MPC remit's purpose, and the possibility of bypassing the Reserve Bank's remit advice process [T2021/456 refers].
29. To address these problems, you have previously agreed that:
 - a. the Minister of Finance is empowered to amend or replace MPC remits without an Order-in-Council
 - b. MPC remits (including a replacement or amended remit) should not be secondary legislation for the purposes of the Legislation Act 2019
 - c. there should be appropriate procedural safeguards for replacing or amending the remit, including that the Reserve Bank is required to provide remit advice at five-year intervals.
30. This change would include remit amendments that are necessary due to a temporary change to the economic objectives of the Reserve Bank (noting that the objectives themselves would continue to be amended via an Order-in-Council).
31. Subject to Cabinet agreeing to this, a number of more detailed design decisions are required. The main choice revolves around how to ensure the Reserve Bank's remit advice is delivered in five-yearly intervals, and the implications of this choice for the MPC remit term. Currently the remit advice is triggered by the expiration of the MPC remit, which usually occurs every five years.
32. The recommended option is to make remits indefinite unless replaced (that is, remove the expiry), and simply require the Reserve Bank to give the Minister remit advice every five years. Upon receipt of remit advice, the Minister is required to consider amending or replacing the remit and to publish their decision. Outside of the remit advice cycle, the Minister must consult the Reserve Bank before issuing, replacing or amending the MPC remit, but is not required to seek remit advice.
33. We consider having a remit expiry is unnecessary given remit expiry would not trigger remit advice under the recommended option, and as there is no difference in legal form or process between issuing a remit before or after a remit has expired (a consequence of empowering the Minister to issue, amend or replace remits without an Order-in-Council). Requiring that the Reserve Bank provide remit advice every five years would ensure regular review, while simplifying the remit provisions. It is also in line with the approach to the financial policy remit.
34. We recommend that the safeguards that currently apply when the Minister issues a new MPC remit should also apply when a remit is amended or replaced, including:

- a. the Reserve Bank must publish remit advice after the Minister has considered it (regardless of whether the Minister changed the remit as a result)
 - b. the Minister must notify the issue/replacement/amendment of the remit in the Gazette and present a copy of the remit to the House of Representatives
 - c. the Reserve Bank must publish a copy of the remit on its website.
35. An alternative approach would involve retaining the status quo of the expiration of the MPC remit triggering the Reserve Bank's remit advice, with replacement or amended remits needing to adopt the term of the existing remit. This package of options would also achieve the objective of ensuring regular remit advice, but would increase the risk that the Minister will be in breach of their duty to ensure that an MPC remit is in force at all times. It could also lead to more frequent remit changes than under the recommended option of remits with indefinite terms. Frequent changes in the MPC remit risk reducing the credibility of the remit and, by extension, monetary policy.

Currency offences

36. The Cabinet paper seeks agreement to amend the currency offences in the Bill to ensure that they have an appropriate *mens rea* (mental element such as intent) and to update the penalty levels. It seeks delegated authority to finalise the detail of this proposal, consistent with this approach, in consultation with the Ministry of Justice to ensure that amendments and penalties are proportionate and appropriate.
37. The currency offences relate to:
- a. wilfully defacing, disfiguring or mutilating a bank note (cl 151)
 - b. making or issuing any bank note or coin, other than a bank note or coin issued by the Reserve Bank (cl 152)
 - c. making or using reproduction or imitation currency without the consent of the Reserve Bank (cl 153).
38. The Bill currently carries over all three offences unchanged from the 1989 Act.
39. We propose to work with PCO to ensure that cl 152 and 153 have an appropriate *mens rea* element. We note that, practically speaking, a specific state of mind would seem to be required in relation to both offences. We are not proposing to make significant changes to the offences. Cl 151 already has an explicit *mens rea* element.
40. We recommend that the maximum financial penalty associated with these offences be doubled, in line with inflation since 1989. This would also align the penalty for cl 151 with that for wilful damage in the Summary Offences Act 1981 (section 11) and provide for a financial penalty that is more proportionate to the maximum term of imprisonment for cl 152 and 153. We do not propose to amend the maximum term of imprisonment associated with cl 152 and 153. The amended penalties would be:

Offence	Current penalty	Proposed penalty
Cl 151 (defacing a bank note)	A fine not exceeding \$1,000.	A fine not exceeding \$2,000 .
Cl 152 (issuing a bank note)	Individual: imprisonment up to 3 years or a fine not exceeding \$100,000 or both. Body corporate: a fine not exceeding \$300,000.	Individual: imprisonment up to 3 years or a fine not exceeding \$200,000 or both. Body corporate: a fine not exceeding \$600,000 .

CI 153 (making imitation currency)	Individual: imprisonment up to 12 months or a fine not exceeding \$10,000 or both Body corporate: a fine not exceeding \$25,000.	Individual: imprisonment up to 12 months or a fine not exceeding \$20,000 or both Body corporate: a fine not exceeding \$50,000 .
------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------

41. We have consulted the Ministry of Justice on these changes and they are comfortable with the proposed approach.

Other amendments

42. The departmental report proposes other, more minor amendments to the Bill. These largely seek to better align the Bill with existing policy decisions, however, a number of minor policy changes are proposed.

Cryptocurrency

43. In response to a submission from NZTech, the FEC asked us to provide advice on whether cryptocurrency should be included in the Bill to future-proof the legislation. Our departmental report sets out the functions and powers the Reserve Bank currently has; the additional functions and powers the Bill gives the Reserve Bank; and how further developments in cryptocurrency will be dealt with in future.
44. The Bill gives the Reserve Bank a function to monitor the financial system, which also includes monitoring the cash system. This function will be supported by broadened powers in the Bill to gather information from any provider of cash distribution, payment processing, or financial services (and any person acting on a provider's behalf). We recommend making a minor amendment to this function to directly reference the Reserve Bank's role in monitoring and assessing the impacts on the system of digital innovation in money and payment technologies, including in cryptocurrencies.

Levy-making process

45. Submissions to FEC from the Insurance Council and the Financial Services Council raised concerns about the provisions in the Bill allowing for a levy to be established to fund a portion of the Reserve Bank's prudential functions. These submissions raised concerns about the additional burden on regulated firms and the adequacy of procedural requirements on the levy-making power.
46. While we are comfortable that it is appropriate to provide for this levy, we recommend clarifying elements of the levy-setting process. The process in the Bill currently requires the Minister to direct the Reserve Bank to consult on the design of the levy and subsequently take into account a report on the outcome of consultation. This process is relatively complex and introduces a Ministerial direction power into the Bill that is arguably not needed. We recommend that this process be amended to instead require the Minister to be satisfied that adequate consultation with regulated entities has occurred, including on the portion of the Reserve Bank's prudential costs to be met by the levies and the method for determining the size of the levy to be paid by each firm. The Minister would continue to be required to consult with the Reserve Bank before recommending a levy.

Power to add functions

47. The Bill currently allows the Minister to direct the Reserve Bank to perform a new function. The policy intent behind this power is to provide a flexible mechanism for expanding the boundaries of the Reserve Bank's permitted activities (which are limited by its functions).

48. The IMF has raised concerns that this provision could be used to undermine the Reserve Bank's operational independence, particularly as it is unclear whether the Reserve Bank would be *required* to perform the new function. While the function would need to be consistent with the Reserve Bank's objectives, some of its objectives are relatively broad (e.g. acting as New Zealand's central bank in a way that furthers the purposes of the Act).
49. We propose to work with PCO to amend this provision to ensure that it aligns with the original intent and does not raise operational independence concerns (for example, by providing that a direction can only be issued at the request of the Reserve Bank).

Confidentiality provisions

50. The Bill currently provides that information provided to the Reserve Bank under the information gathering provisions must be kept confidential. The Reserve Bank may only publish information if one of the specified grounds (such as that it is to someone with a proper interest) is met. The policy intent agreed to by Cabinet [DEV-20-MIN-0041 refers] was that this information would only be available under the Official Information Act 1982 (OIA) if it could otherwise be released under this confidentiality provision. If, however, a ground for release is met, and none of the grounds to withhold in the OIA apply, then the information would be required to be released.
51. The provisions in the Bill are based off those in the IPSA, which we understand had the same policy intent (i.e. limiting the application of the OIA). Following introduction, the Ombudsman has issued an opinion on the IPSA provision (which has been shared to us by the Reserve Bank under common interest legal privilege, which has not been waived), suggesting that the IPSA provision (and therefore the provision in the Bill) does not give effect to this intent. Accordingly, we recommend amending the relevant provision in the Bill to more clearly provide for our objectives.
52. We are also proposing to amend the existing provisions in IPSA to align with this approach via the Bill. The Office of the Clerk is comfortable this falls within the scope of the Bill and the Office of the Ombudsman is comfortable with our proposed approach. The Treasury will continue to engage with the Office of the Ombudsman on this matter.

Next steps

53. The Treasury's draft departmental report to the FEC, incorporating the amendments proposed above, is attached at **Annex A**. Part A of the departmental report responds to issues that FEC asked for further advice on in response to stakeholder submissions, while Part B provides a detailed clause by clause response to submissions and proposed amendments. We note that the departmental report has yet to incorporate final feedback from PCO and that the wording of some recommendations in Part B is likely to shift accordingly.
54. Subject to your agreement to the proposals in this report, any feedback you have on the departmental report, and Cabinet approving the main amendments to the Bill on 29 March, the departmental report will be submitted for FEC consideration on 1 April. The Treasury expects to present the departmental report to the FEC on 7 April. The Treasury will then work with PCO on the revision tracked Bill and provide support to the FEC on its commentary, which are due to be reported back to the House by 8 June.