TE TAI ŌHANGA
THE TREASURY

Reference: 20210528

8 December 2021

[redacted]

Dear [redacted]

Thank you for your Official Information Act (OIA) request, received on 8 November 2021. You requested the following:

> *a copy of the document entitled: Treasury Report T2021/2212: Purchasing Pfizer vaccines for September 2021: indemnity requests*

Information being released

Please find enclosed the following document:

Item	Date	Document Description	Decision
1.	4 September 2021	Treasury Report T2021/2212: Purchasing Pfizer vaccines for September 2021: indemnity requests	Released in part

I have decided to release parts of the document listed above, subject to information being withheld under one or more of the following sections of the OIA, as applicable:

- certain commercial information, under section 9(2)(ba)(i) and (ii) – to protect information that is subject to an obligation of confidence,
- certain legal advice, under section 9(2)(h) – to maintain legal privilege, and
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Please note that parts of this report have been redacted because they are covered under New Zealand's Non-Disclosure Agreement with Pfizer, including Appendix 1 which was a draft version of the agreement.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.

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Wellington 6140
New Zealand
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https://treasury.govt.nz

Information publicly available

The following information is also covered by your request and is publicly available on the Parliament website:

Item	Date	Document Description	Website Address
2.	17 September 2021	Appendix 2: Statement of Indemnity for presenting in the House	Microsoft Word - 2. Indemnities - Appendix 2 _ Statement of Indemnity given under the PFA .. .docx (www.parliament.nz)

Accordingly, I have refused your request for the document listed in the above table under section 18(d) of OIA: *the information requested is or will soon be publicly available.*

In making my decision, I have considered the public interest considerations in section 9(1) of the OIA.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Jess Hewat
Manager, Health and ACC

Table of Contents

TE TAI ŌHANGA
THE TREASURY

Treasury Report: Purchasing Pfizer vaccines for September 2021: indemnity requests for bilateral purchases

Date:	4 September 2021	**Report No:**	T2021/2212
		File Number:	SH-1-6-1-3-3-13-1

Action sought

	Action sought	Deadline
Hon Grant Robertson **Minister of Finance**	**Agree** to provide indemnities to each of Spain and Denmark under bilateral agreements **Agree** to provide further indemnities to Pfizer, BioNTech and associated parties under related documents in respect of those bilateral agreements **Sign** and (if applicable) have witnessed each bilateral agreement and related document, when available	4 September 2021

Contact for telephone discussion (if required)

Name	Position		Telephone	1st Contact
Hannah Lobb	Analyst, Health	s9(2)(k)	N/A (mob)	✓
Jess Hewat	Manager, Health		N/A (mob)	

Minister's Office actions (if required)

Return the signed report and (when available) signed and (if applicable) witnessed bilateral agreements and related documents to Treasury.

Present a statement of indemnity to the House of Representatives.

Note any feedback on the quality of the report

Enclosure: 1. Template bilateral agreement between New Zealand and each EU state (copy attached, final documents for signing to follow in next few days)

2. Statement of Indemnity for presenting

Treasury Report: Purchasing Pfizer vaccines for September 2021: indemnity requests for bilateral purchases

Purpose of Report

1. This report seeks your approval to provide:

   a new indemnities to each of Spain and Denmark, under bilateral agreements with each state; and

   b a further indemnity to Pfizer Inc. (Pfizer), BioNTech and associated persons, under related documents in respect of those bilateral agreements,

   to purchase an additional 774,000 doses of Pfizer's vaccine candidate (BNT162b2) for arrival in September 2021. The doses have already been purchased by Spain and Denmark and are being on-sold to New Zealand.

2. Final versions of the bilateral agreements and related documents will be provided to your Office once outstanding Medicines Act 1981 regulatory matters have been resolved.

3. This report should be read in conjunction with Ministry of Health report *Securing additional doses of Pfizer's COVID-19 vaccine in September* (HR20211964 refers) (Health Report), which seeks joint Vaccine Ministers' agreement to enter into these agreements and the draw-down of the required funding from the Vaccine Tagged Contingency for the associated costs.

4. The funding request in the Health Report for 9(2)(ba)(i) and (ii) includes the dose costs of the vaccines and a buffer for foreign exchange risk. This draw down does not include transport costs, which we understand will be met from the existing vaccine programme funding. We are comfortable with this approach but note that it could result in a future cost pressure.

5. This report has been prepared in consultation with the Ministry of Health and the Ministry of Foreign Affairs and Trade. It also includes advice from Bell Gully, who have been contracted by the Ministry of Health to advise on vaccine purchases.

Background

6. The Government has already agreed to purchase 10 million doses of the Pfizer vaccine candidate through a bilateral advanced purchase agreement (APA) directly with Pfizer and an additional 100,600 doses through an agreement with COVAX. You have already approved and signed these agreements, including indemnity provisions in favour of Pfizer, BioNTech and associated persons (T2020/3097 and T2021/136 refers).

7. The EU (through two member states) is now offering New Zealand a further 774,000 doses of the Pfizer vaccine. The doses have already been purchased by Spain and Denmark and are being on-sold to New Zealand. The EU state has paid, or will pay, Pfizer for its doses and New Zealand will then separately pay the relevant EU state that amount under a separate invoice.

8. As noted in the accompanying briefing, Ministry of Health officials recommend we purchase these doses to expedite the vaccine programme over the coming month. We understand that if we continue vaccinating at the current rates, supply limitations could

cause disruptions to New Zealand's immunisation programme by mid-September 2021. Purchasing these additional doses could contribute to vaccinating the eligible population more quickly.

9. 9(2)(ba)(i) and (ii) . The doses will be delivered as soon as they are available, likely after 8 September 2021.

10. The indemnity provisions included in the bilateral agreements and related documents require your approval.

Advice on the scope of the indemnities

11. Entering into this transaction will require the grant of the following new indemnities:

    a Two indemnities in favour of each of Spain and Denmark pursuant to the bilateral agreements with each state, on substantively new terms.

    b Indemnities in favour of Pfizer, BioNTech and associated persons under related documents in respect of each bilateral agreement, expected to be on the same terms as the original Pfizer APA indemnity.

Indemnities in favour of Pfizer, BioNTech and associated persons

12. In each bilateral agreement, New Zealand agrees to indemnify Pfizer, BioNTech and associated persons with respect 9(2)(ba)(i) and (ii) 9(2)(ba)(i) and (ii) , and agrees to execute a document provided by Pfizer/BioNTech to that effect.

13. Our understanding is that the indemnity to be set out in that related document is on the same terms as our original Pfizer APA indemnity; that is, 9(2)(ba)(i) and (ii) Given that the indemnity is expected to be on the same terms as our existing Pfizer indemnities, our original advice on the scope of the indemnity as set out in T2020/3097 applies.

14. We now have more information on ACC claims to date. As of 7 August, ACC had received 201 treatment injury claims related to COVID-19 vaccinations. Of these, 67 have been accepted, 39 declined and 95 are still being decided. The majority of accepted claims are for allergic reactions (predominantly low severity reactions resulting in treatment costs only, with a very small number of more serious claims). Based on the same data set (7 August), ACC has paid just under $20,000 in total for these claims with the vast majority of claims having no costs paid (note that this amount does not include any Public Health Acute Services costs).

Indemnities in favour of Spain and Denmark

15. In addition to the indemnities in favour of Pfizer, BioNTech and associated persons, New Zealand will need to grant new indemnities to each of Spain and Denmark. This is a new sort of indemnity that has not been granted under any previous vaccine purchase agreements.

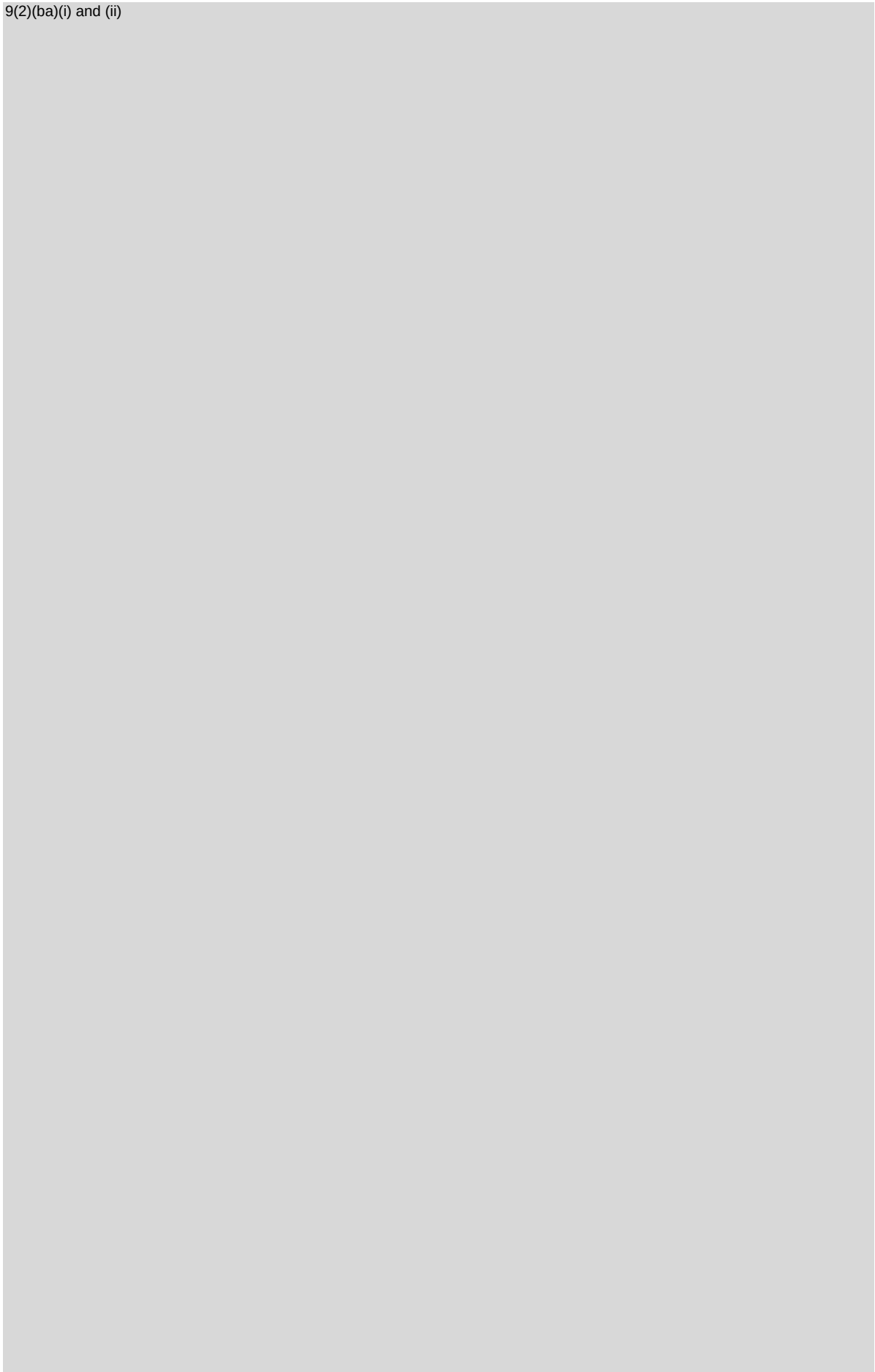
9(2)(ba)(i) and (ii)

9(2)(ba)(i) and (ii)

s9(2)(h)

9(2)(ba)(i) and (ii)

9(2)(ba)(i) and (ii)



9(2)(ba)(i) and (ii)

Officials assess that each indemnity could be 'necessary or expedient in the public interest'

31. It is a matter for you to decide whether you are satisfied that it is necessary or expedient in the public interest to give the additional indemnities to Pfizer, BioNTech and associated persons, and to each of Spain and Denmark, under each bilateral agreement and related document.

32. In brief, we consider that in the circumstances each requested indemnity on the terms set out in Appendix 1 satisfies the "necessary or expedient in the public interest" test in section 65ZD of the Public Finance Act 1989 (PFA), and therefore it is open to you to give each indemnity.

Public interest

33. Our advice on the public interest of the initial Pfizer indemnity (including our assessment of risks and mitigations) is set out in in detail in T2020/3097. The considerations for the public interest test for the additional indemnities are slightly different now considering that New Zealand already has access to sufficient vaccine doses, at an aggregate level, to ensure population coverage in 2021.

34. Officials advise that the additional indemnities are in the public interest because while we have already secured sufficient supply of the Pfizer vaccine under our existing APA, the rate of supply under this contract for the month of September does not meet current high levels of demand. Bilateral purchases from Spain and Denmark are necessary to increase supply over this period ahead of larger consignments due for delivery (under the existing APA) from October.

Necessary or expedient

35. We understand that providing the indemnities in their current form is a necessary requirement for signing onto the agreements and receiving the additional doses in September. The selling countries will only agree to the purchase if we accept the indemnities in their current form.

36. 9(2)(ba)(i) and (ii)

37. Agreeing to indemnify Denmark and Spain under two bilateral agreements, and to indemnify Pfizer, BioNTech and associated persons under related documents, is expedient because this will enable us to continue to vaccinate the population at a faster rate than if we did not have access to these additional vaccines. Without access to the additional doses, the current vaccination rate may have to be slowed down in particular

areas over a period of a few weeks. This could potentially lead to booking cancellations, a risk of undermining public trust in the immunisation programme and disincentivising participation. High overall vaccine uptake is a vital line of defence against the spread of COVID-19. It is critical that vaccination rates remain high in order to protect as many people as possible from COVID-19 while it is present in the community.

38. It is expected that high vaccine uptake will mitigate the economic and social impacts of COVID-19 by allowing New Zealand to consider moving from some elements of the current elimination strategy – for example, by relaxing border settings – and thereby contribute to economic and social recovery while ensuring the health and safety of New Zealanders. The original business case for the Pfizer indemnity under our APA provides more detail on the scope of the economic and social impacts of COVID-19, which may be alleviated to some extent by high vaccine uptake. If these additional doses enable New Zealand to achieve higher vaccination rates more quickly than with our existing doses, they could also lead to achieving the wider economic and social impacts of the vaccine earlier than expected.

39. Access to additional Pfizer vaccine supply in September will also allow us to continue to provide vaccines to Pacific island countries as intended from October this year.

Risks and mitigations – indemnities in favour of Pfizer, BioNTech and associated persons

40. The indemnities in favour of Pfizer, BioNTech and associated persons will be on the same terms as the indemnity provision in the existing New Zealand APA.

41. As noted above, our assessment of risks and mitigations under that indemnity is set out in in detail in T2020/3097. We do not consider that the risks associated with the further Pfizer doses are materially different from the risks associated with the initial Pfizer courses purchased, 9(2)(ba)(i) and (ii)

Risks and mitigations – indemnities in favour of Spain and Denmark

42. The indemnity provision in favour of the relevant EU states in the two bilateral agreements is on new terms. s9(2)(h)

43. 9(2)(ba)(i) and (ii)

44. s9(2)(h)

s9(2)(h)

45. 9(2)(ba)(i) and (ii)

Conclusion

46. The negotiations on the bilateral agreements and related documents have been undertaken in a compressed timeframe and within a dynamic environment. However, in light of the above, officials consider that there is a public interest in giving the proposed indemnities on the proposed terms; the benefits of the proposed indemnities appear to outweigh the risks when mitigations are taken into account; and there are no viable alternatives to the indemnities when it comes to entering into these agreements. On this basis, we consider that giving the indemnities satisfies the "necessary or expedient in the public interest" test in section 65ZD of the PFA, and therefore it is open to you to give the indemnities.

Financial implications and additional risk

47. If you give provisional approval to the indemnities and Vaccine Ministers agree to the purchases, you must also agree to draw down the required funding from the Vaccine Tagged Contingency to make payments to the relevant EU states and to meet shipping costs.

48. Health Report 20211964 is seeking Vaccine Ministers' agreement to draw down 9(2)(ba)(i) and (ii) from the "Minimising the health impacts of COVID-19" tagged contingency to make the required payments to the EU states for the doses 9(2)(ba)(i) and (ii) 9(2)(ba)(i) and (ii) Note that this amount includes a buffer for foreign exchange rates but does not include transport costs, which we understand will be met from the existing vaccine programme funding. We are comfortable with this approach for the transport costs but note that it could result in a future cost pressure.

49. These costs and liabilities should be factored into your decision to enter into the purchases and grant additional indemnities, but they do not impact our view that the indemnities could be in the public interest.

Next Steps

50. Given compressed timeframes, we are seeking your approval for the indemnities based on the template form of bilateral agreement and the expected form of Pfizer indemnity, ahead of receiving the final bilateral agreements and related documents to sign. The agreements are expected on 6/7 September. Health officials are currently waiting on confirmation from Pfizer that the doses to be supplied from Denmark are identical to the product that has provisional consent from Medsafe (this confirmation was received overnight for the Spanish doses). The Crown will also need to obtain approval from the Director-General of Health to import the medicines under s 32A of the Medicines Act 1981. New Zealand will not be in a position to enter the bilateral agreements until these regulatory matters have been resolved.

51. If you agree to grant the indemnities, you will need to sign the final bilateral agreements alongside the Director-General of Health. You will also need to sign the related documents setting out the indemnities to be granted to Pfizer, BioNTech and associated persons. We will provide your office with the final agreements to sign as

soon as they are ready and will provide you with additional advice on the final agreements if necessary (e.g. if there are material variations from the bilateral agreement template we reviewed, or if the Pfizer indemnities differ from the terms set out in New Zealand's existing APA). We will also provide you with additional advice if we become aware of any differences between draft and final Ministry of Health advice that may be material to your decision to grant these indemnities.

52. If you agree that it is necessary or expedient in the public interest to give the indemnities and you decide with Vaccine Ministers to enter into the purchases, there would then be four new indemnities in force – one for each of Spain and Denmark under each of the bilateral agreements, and one for Pfizer, BioNTech and associated persons under each of the two related documents.

53. We note that section 65ZD(3) of the PFA provides:

    If the contingent liability of the Crown under a guarantee or an indemnity given by the Minister under subsection (1) exceeds $10 million, the Minister must, as soon as practicable after giving the guarantee or indemnity, present a statement to the House of Representatives that the guarantee or indemnity has been given.

54. The total maximum value of the indemnities is unquantifiable but we consider it prudent to assume that the potential maximum exposure could exceed $10 million. We therefore recommend that, if you decide to grant the indemnities, you present the required statement to the House. This is to promote transparency in this process and to be prepared in case the value of the indemnities does exceed $10 million. A form of statement is attached as Appendix 2. The statement can be presented once all bilateral agreements and related documents have been fully signed.

55. Entering the bilateral purchases requires a drawdown of 9(2)(ba)(i) and (ii) from the Vaccine Tagged Contingency in Vote Health to make the necessary payments to Spain and Denmark (Health Report 20211964). This draw down does not include transport costs, which we understand will be met from the existing vaccine programme funding. We are comfortable with this approach but note that it could result in a future cost pressure.

Recommended Action

We recommend that you:

a **note** that four indemnities are required to enter into the necessary agreements to purchase the additional 774,000 doses of Pfizer vaccine for delivery in September 2021; specifically:
- new indemnities to each of Spain and Denmark, under bilateral agreements with each state; and
- a further indemnity to Pfizer Inc. (Pfizer), BioNTech and associated persons, under related documents in respect of those bilateral agreements

b **note** that these indemnities are not within the permitted categories of indemnity that the Ministry of Health can give under section 65ZE of the Public Finance Act 1989 and the Public Finance (Departmental Guarantees and Indemnities) Regulations 2007

c **note** that under section 65ZD of the Public Finance Act 1989, the Minister of Finance may, on behalf of the Crown, give an indemnity if it appears to the Minister to be necessary or expedient in the public interest to do so

d **note** that in the circumstances Treasury considers the provision of the indemnities under each bilateral agreement and related document to be necessary or expedient in the public interest

e **note** that officials are waiting on confirmation from Pfizer to ensure the regulatory position for the additional doses is compliant with the Medicines Act 1981, and following such confirmation will seek approval from the Director-General of Health to import the medicines pursuant to s 32A of the Medicines Act 1981

Indemnities in favour of Pfizer, BioNTech and associated persons

f **agree,** subject to the resolution of the regulatory position in recommendation e, to provide an indemnity to Pfizer, BioNTech and associated persons pursuant to the related document in respect of each bilateral agreement under section 65ZD of the Public Finance Act 1989

Agree / Disagree
Minister of Finance

Indemnities in favour of Spain and Denmark

g **agree,** subject to the resolution of the regulatory matters noted in recommendation e, to provide an indemnity to Spain pursuant to the applicable bilateral agreement under section 65ZD of the Public Finance Act 1989

Agree / Disagree
Minister of Finance

h **agree,** subject to the resolution of the regulatory matters noted in recommendation e, to provide an indemnity to Denmark pursuant to the applicable bilateral agreement under section 65ZD of the Public Finance Act 1989

Agree / Disagree
Minister of Finance

General

i **note** that the final versions of the bilateral agreements and related documents will be provided to your Office for signing as soon as the outstanding regulatory matters have been resolved

j **sign and (if applicable) have witnessed** each bilateral agreement and related document (when available) in order to grant each indemnity, once the outstanding regulatory matters have been resolved

k **note** that as the total contingent liability of the indemnities could exceed $10.0 million, we recommend that you present as soon as practicable a statement to the House of Representatives that the indemnity has been granted under section 65ZD(3) of the Public Finance Act 1989

l **agree** to present a statement to the House of Representatives that these indemnities have been given, as soon as practicable after giving the indemnities

Agree / Disagree

Jess Hewat
Manager, Health & ACC

Hon Grant Robertson
Minister of Finance