



# **Review of the Insurance (Prudential Supervision) Act 2010: Issues Paper Consultation Feedback Statement**

**October 2017**

## Background

1. The Reserve Bank is undertaking a review of the Insurance (Prudential Supervision) Act 2010 (the Review). The first phase of the Review has targeted the identification of potential issues for the Reserve Bank to consider in more detail during Phase 2 of the Review. In March 2017 the Reserve Bank published the *Issues Paper: Review of the Insurance (Prudential Supervision) Act 2010* (the *Issues Paper*) for consultation. The *Issues Paper* set out, at a high level, areas identified by the Reserve Bank that may warrant further consideration within the Review. The consultation sought stakeholder's views on these issues and whether there were any additional areas that should be considered.

## Submissions received

2. Consultation on the *Issues Paper* closed on the 30 June 2017. The Reserve Bank received 42 submissions from a range of stakeholders, including insurers, industry associations and law firms. The Reserve Bank welcomes the feedback provided. Individual redacted submissions are available on the Reserve Bank's website unless confidentiality was requested.<sup>1</sup>
3. Overall, the Reserve Bank views the submissions as supporting the idea that the framework introduced by the Insurance (Prudential Supervision) Act 2010 (IPSA) and the Reserve Bank's prudential supervision, is considered to have improved the soundness of the insurance sector, without unduly restricting competition or innovation and in general does not introduce inappropriate compliance costs.
4. Stakeholders agree that there are a number of areas where the effectiveness of the framework could be improved or compliance costs reduced. As a result, the Review is broadly supported, although there is seen to be little need for fundamental change to the legislation as a whole.
5. Stakeholders provided comments and suggestions for consideration in all areas identified in the *Issues Paper*. The areas that seemed to have the most support for review include:
  - the scope of the legislation: which business lines and entities are subject to the requirements of IPSA and Reserve Bank prudential supervision, including ensuring the legislation caters appropriately for innovation arising from the increased use of technology within existing insurance business models and the potential for disruptive new entrants;
  - overseas insurers: the treatment of overseas branch operations, which should balance the value of overseas insurer participation in the New Zealand market, including reinsurance firms, against potential risks to New Zealand policyholders' and broader economic interests;

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<sup>1</sup> <https://www.rbnz.govt.nz/regulation-and-supervision/insurers/consultations-and-policy-development-for-insurers/active-policy-development/review-of-the-insurance-prudential-supervision-act-2010>

The redactions are of personal contact details. Requests for submissions to be kept confidential were made by 2 submitters.

- disclosure: to ensure that disclosure requirements and data collections are reasonable, and able to be efficiently complied with, including facilitating the use of technology to aid compliance; and
  - enforcement tools: balancing the enforcement tools available to the Reserve Bank with the Reserve Bank's enforcement and supervisory approach.
6. The Reserve Bank will consider and respond to the points raised by stakeholders during Phase 2 of the Review. Relevant recommendations from the 2017 International Monetary Fund Financial Sector Assessment Programme's Detailed Assessment Report <sup>2</sup> (IMF FSAP) will also be addressed within Phase 2 of the Review. This report was released followed a detailed assessment of New Zealand's regime against the International Association of Insurance Supervisors Insurance Core Principles.<sup>3</sup>
7. Several issues that were not considered explicitly within the *Issues Paper* were raised by some stakeholders. These include that:
- reviews such as this should be conducted by an independent agency to the Reserve Bank;
  - some Reserve Bank decisions under IPSA should be subject to a merits review framework<sup>4</sup> as distinct to the existing rights for a judicial review, and that IPSA should include wider independent appeal options;
  - the Reserve Bank should take a more proactive approach to supervision and engagement with regulated entities; and
  - the Reserve Bank should establish a range of assessment criteria to support its own assessment of the effectiveness of the legislation and support independent parties to monitor the success of IPSA.
8. The Reserve Bank does not see a strong case for independent review of this legislation. The current Review is being under taken by the Reserve Bank under terms of reference agreed by Cabinet. The Review will be completed transparently and with wide consultation. Any legislative changes recommended from the Review will happen only

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<sup>2</sup> <https://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/FSAP/Detailed-assessment-of-observance-Insurance-core-principles.pdf?la=en>

<sup>3</sup> <http://www.iaisweb.org/page/supervisory-material/insurance-core-principles> accessed 9 Oct 2017. The ICP's as updated in November 2015 were used by the IMF for assessment purposes.

<sup>4</sup> Merits review is an administrative reconsideration of a case under which the review body re-makes the decision under review. A merits review body makes decisions within the same legislative framework as the primary decision maker, and may exercise all the powers and discretions conferred on the primary decision maker.

with due Parliamentary process i.e. any legislative change would ultimately require the support of and be the responsibility of the relevant Minister (currently the Minister of Finance is responsible for IPSA)<sup>5</sup> and Parliament.

9. The possibility of a merits review framework for some Reserve Bank decisions in the context of IPSA was not discussed in the *Issues Paper*. However, we agree that the matter warrants consideration and the Review will include discussion on whether, and in which circumstances, a merits review framework may be appropriate within the IPSA context. The Review will also consider the range of offences, defences and appeal options available under the legislation.
10. A number of submitters made comments on the Reserve Bank's approach to supervision. These comments often call for a higher level of engagement with licensed insurers and for increased clarity and guidance in a number of areas. It is noted that the IMF FSAP assessment made similar recommendations in a number of areas. The Reserve Bank is reflecting on this issue, as a part of our response to the IMF FSAP recommendations, rather than in the IPSA review. The IPSA framework requires the Reserve Bank to undertake certain functions and empowers and constrains the options available to the Reserve Bank when undertaking those functions.<sup>6</sup> The focus for the IPSA Review is that the legislation continues to allow for a risk-based approach to regulation and supervision, and permits a range of supervisory approaches to be taken by the Reserve Bank within the limits of its resources.
11. A number of stakeholders suggested changes to the Reserve Bank solvency standards, some of which are the result of external developments, for example, the introduction of new accounting standards such as NZ IFRS 17.<sup>7</sup> The content of the solvency standards themselves are outside of the scope of the Review, but these points are noted, and will be separately addressed as required.
12. The Reserve Bank will draw on established criteria for assessing the need for change to the legislation, such as the government good practice guidelines on regulatory review.<sup>8</sup>

## Phase 2: Preliminary Plan

13. The Reserve Bank views the responses as supporting a comprehensive review. The Review will give initial priority to the following areas identified in the *Issues Paper*:
  - Scope of the Act – entities required to be licensed;
  - Overseas insurers;
  - Disclosure and financial strength rating requirements; and

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<sup>5</sup> <https://www.dpmc.govt.nz/cabinet/portfolios/finance>, accessed 9 Oct 2017.

<sup>6</sup> For example section 12 of IPSA sets out the functions of the Reserve Bank to issue licences; undertake prudential supervision; take appropriate action in respect of licensed insurers or other persons that have failed, are failing or are likely to fail to comply with the Act, regulations or are otherwise in financial difficulty; and carry out other functions and duties and exercise powers conferred on it by the Act and regulations.

<sup>7</sup> <https://www.xrb.govt.nz/accounting-standards/for-profit-entities/nz-ifs-17/> accessed 9 Oct 2017.

<sup>8</sup> <http://www.treasury.govt.nz/regulation/informationreleases/pdfs/good-reg-practice.pdf> accessed 9 Oct 2017.

- Regulatory mechanisms.
14. The suitability of a merits review framework for some Reserve Bank decisions will begin to be considered within the work on regulatory mechanisms, and may also have some bearing on the enforcement framework.
  15. An indicative timeframe and work stream priority for Phase 2 of the Review is shown in the table on the next page. The order and timing of work streams may change and will depend on a number of factors including, resource availability and competing priorities.
  16. Consultation will occur in stages, but it is expected that any recommendations for legislative change will be taken to Cabinet as a complete package.
  17. The preliminary plan places work streams that are likely to be more complex, or have direct impact on later work streams earlier in the work programme to enable the issues to be appropriately explored and options developed with suitable consultation.

### **Have your say**

18. Comment on this feedback paper is not necessary. Stakeholders are welcome throughout the Review to provide comment and information to the Reserve Bank outside of formal consultation periods. Please use the email [ipsareview@rbnz.govt.nz](mailto:ipsareview@rbnz.govt.nz) to provide any comments.
19. Further information about the Review is available on the Reserve Bank's website:

<https://www.rbnz.govt.nz/regulation-and-supervision/insurers/consultations-and-policy-development-for-insurers/active-policy-development/review-of-the-insurance-prudential-supervision-act-2010>

## IPSA Review: Phase 2 indicative timetable

Timetable	Issue	Summary Content
<b>Next 6 months to Mar/Apr 2018.</b>  <b>Indicative consult Q4 17/ Q1 18.</b>	Entities required to be licensed	Entities and activities within scope of the Act with links to use of the term "insurer".
	Overseas Insurers	Consideration of the treatment of branch operations to balance overseas participation in the New Zealand market with New Zealand policyholders' and wider economic interests.
	Regulatory Mechanisms	Use and empowerment of regulatory instruments within the legislation, including suitability of merit reviews of regulatory framework developments. Will inform how any recommendations for change may be best implemented.
	General Disclosure & Financial Strength Ratings	Financial Strength Ratings, disclosure, and data collection framework.
<b>6 - 12 months to Aug/Sept 2018.</b>  <b>Indicative consult Q2/3 2018.</b>	Enforcement Regimes	Proportionate enforcement tools, review of current offences and penalties, including appeal rights and merits reviews of specific penalty decisions.
	Distress Management	Review of existing framework.
	Role of Key Officers	Review of scope and expectations of the relevant officer framework.
	Statutory Funds	Review of existing framework.
<b>12 - 18 months to Mar/April 2019.</b>  <b>Indicative consult Q 3/4 2018.</b>	Solvency Framework	Consider framework in terms of application by conditions of licence and suitability of a more formalised response to deteriorations in reported solvency levels. The technical content of the standards is not within scope of the Review, but may be considered in parallel.
	Supervisory Processes	Approvals for change of control/ transfers/ Fit and Proper and Risk Management Policies.
	Other	Likely to be technical or otherwise minor or consequential issues.
<b>Mid 2019</b>	Final options paper	Bring together all recommendations from Review.



**Website** <http://www.rbnz.govt.nz/regulation-and-supervision/insurers>

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