



Reserve Bank of New Zealand and Treasury Joint Report: Cabinet Legislation Committee approval to introduce the Deposit Takers Bill

To	Hon Grant Robertson Minister of Finance	Date	14 July 2022
Authorised by	Christian Hawkesby Deputy Governor / GM Financial Stability, Reserve Bank	James Beard Acting Deputy Secretary Macroeconomics and Growth Group The Treasury	Report No RBNZ #5953 T2022/1576
Prepared by	David Hargreaves Manager, Policy Projects	Security	In-Confidence

Action Sought

Action sought	Deadline
Agree to lodge the paper and the Departmental Disclosure Statement with the Cabinet Legislation Committee	Lodge by 21 July for the Committee meeting on 28 July 2022

Reserve Bank Contact for Telephone Discussion (if required)

Name	Position	Telephone
David Hargreaves	Manager, Policy Projects, RBNZ	s9(2)(a)

Actions for the Minister's Office Staff

Return the signed report to the Reserve Bank

Note any feedback on the quality of the report.

Attachments

- Cabinet paper, Departmental Disclosure Statement, and near-final version of the Deposit Takers Bill (version 7.4)

Reserve Bank of New Zealand and Treasury Joint Report: Cabinet Legislation Committee approval to introduce the Deposit Takers Bill

Purpose of Report

1. This report seeks your agreement to lodge the following documents by 21 July for consideration by the Cabinet Legislation Committee (LEG) at their meeting on 28 July 2022:
 - A Cabinet paper seeking approval for the introduction of the Deposit Takers Bill (the Bill)
 - Departmental Disclosure Statement for the Bill
2. We have also attached a copy of the latest draft of the Deposit Takers Bill for your information, although we note that the Parliamentary Counsel Office has the responsibility for providing the Cabinet Office with the finalised copy.
3. This report also updates you on the outcome of agency consultation on Bill, and the agreed approach between the Treasury and the Reserve Bank on the resolution manager issue. We have also provided clarification on the relationship between the on-site inspection notice and scope of legal privilege – two issues where split advice was provided by the Reserve Bank and Treasury.


We are seeking your agreement to lodge the LEG paper and the Bill

4. Subject to your agreement to the matters dealt with in this paper, the LEG paper and associated documents will need to be lodged by 21 July, ahead of the Committee's meeting on 28 July. This timetable will allow for introduction of the Bill to the House in August 2022 at the earliest.
5. We are liaising with your Office on communications material to support introduction of the Bill, including any press releases, talking points for the LEG committee meeting, and on further supporting material on the Reserve Bank website.
6. We are also liaising with your Office to determine a suitable date for the introduction of the Bill to the House, given your absence over early August. We recommend that, given your desired timeline for introduction of the depositor compensation scheme (DCS) in early 2024 after enactment of the Bill, the 1st Reading occur sometime in August if possible. This will provide the maximum amount of time to pass the Bill by July 2023. In addition, following enactment we will need to pass Regulations prior to the DCS coming into force. There will be limited time to do this in the current Parliament given the potential timing for introduction and the expected time required for the Bill to make its way through the Parliamentary process. We expect to commence consultation on these Regulations shortly after the Select Committee process.

Update from agency consultation and other drafting matters

7. The Bill has been out for final agency consultation. No major issues or recommended changes to policy have arisen as part of this process.

Update on the role of the resolution manager and relationship to the Reserve Bank Board

8. The Reserve Bank and the Treasury asked you for views (RBNZ #5938 refers) on the appropriate relationship between the resolution manager (RM) and the Reserve Bank Board. You indicated that you had a preference for a model where powers were vested in the Reserve Bank and delegated to the RM, if “the protections against liability for the Board were sufficient to provide them with confidence” in managing a resolution, given the formal responsibility of the Board for detailed aspects of the resolution in that case.
9. We have discussed this further with a member of the Reserve Bank Board and external experts. The Reserve Bank Board member was inclined towards the view that the current draft of the Bill would put an impractical load on the Board and in-house capacity of the Reserve Bank (in terms of supervising the details of a resolution), even if indemnities and other protections were robust.
10. s9(2)(h)

11. Reflecting on these matters and after further discussion with the Parliamentary Counsel Office, agencies are now comfortable with general management powers being allocated to the RM if the duties on the Board to oversee the resolution manager are well specified, with clear reporting requirements up to the responsible Minister. This proposal (which is included in the attached version of the Bill, with some aspects still under review) includes:
 - Formally denoting the Reserve Bank as ‘Resolution Authority’, with that term tied to oversight duties related to the RM.
 - The oversight duties include supervising the RM to make sure they are conducting the resolution in a manner consistent with the purposes of the Deposit Takers Act, and following the Reserve Bank’s directions.
 - As with other functions of the Reserve Bank, a duty is imposed on the Board to ensure the Resolution Authority role is performed “efficiently and effectively”. This will require judgement on how much time and resourcing it is efficient for the Board to devote to the duty to monitor the RM.
 - Formal obligations on the RM to regularly report to the Reserve Bank on resolution conduct, and for the Reserve Bank to regularly report to the Minister.
 - Significant powers that go beyond general management (e.g. creating a bridge institution or rearranging claims on the firm in resolution) remain with the Reserve Bank.

12. If you accept this recommendation, we think it is appropriate for this approach to be agreed by Cabinet (in the LEG paper recommending introduction) prior to the introduction of the Bill and have placed an appropriate recommendation in the LEG paper. The draft Bill attached incorporates the recommended approach, although agencies are still discussing details and this is one area of the Bill that may change slightly further between now and lodgement.
13. The Treasury notes that the protections provided to the Reserve Bank in the Reserve Bank of New Zealand Act 2021 are substantial and go beyond what is provided to the Financial Markets Authority and the Commerce Commission. The Treasury has not been convinced that there are any further protections from liability that are justifiable or would address any of the issues raised by the Reserve Bank (a summary of the protections is included in the annex). Further, increasing the protections runs the risk of reducing the Reserve Bank's accountability and incentives to prepare resolution strategies. Neither the Treasury nor Reserve Bank recommend any changes to these provisions.

Clarification between on-site inspection notice and legal privilege

14. The Reserve Bank and the Treasury presented split advice on the merits of a statutory notice period attached to the new on-site inspection power, and on the scope of privilege settings in the Bill (RBNZ #5938 refers). You agreed:
 - To confirm Cabinet's original decision to provide for an on-site power without a notice requirement (the Treasury preferred option).
 - To recommend that Cabinet rescind the decision that prevents the Reserve Bank from compelling privileged, or self-incriminatory information from individuals, and instead agree that the Bill should waive this privilege against self-incrimination, subject to safeguards (the Reserve Bank preferred position).
15. These decisions were subject to clarification about any dependency between the two issues.
16. From the Reserve Bank's standpoint, the two issues are largely separable from a policy perspective. The proposal to allow the ability for the Reserve to compel self-incriminatory information from individuals concerns the efficacy of the supervisory framework and the ability of the Reserve Bank to receive all the necessary information to adequately fulfil this function and support its mandate to promote financial stability. This does not hinge on whether a formal statutory notice period for on-site inspections is required.
17. The proposal from the Reserve Bank to have a minimum 3 day notice period was motivated by a response to external stakeholder feedback around the design of what is an intrusive regulatory power (and internal feedback from Reserve Bank frontline supervisors on the extent to which a notice period would unduly restrict the flexibility of using this new power, while maintaining a constructive relationship with industry). Note, we expect the Reserve Bank would routinely give a notice of an upcoming inspection even if not required to.
18. However, while individually separable from a policy perspective, together the decisions taken on these two issues are likely to generate further stakeholder comment during

the select committee process. For example, the Ministry of Justice's BORA vetting process is likely to focus on how property rights and individual freedoms are fettered and reflected in the Bill, with the design of the on-site power and privilege settings receiving potential scrutiny from industry.

Next Steps

19. Subject to your agreement, the relevant dates and milestones will be:

Milestone	Date
Paper lodged with the LEG Committee	21 July
LEG Committee consideration	28 July
Cabinet consideration	1 August
Introduction	August
First reading	August

Recommendations

It is recommended that you:

- a) **agree** to lodge the Cabinet Legislation Committee paper and Departmental Disclosure Statement by 21 July for consideration by the Cabinet Legislation Committee on 28 July 2022

Agree/disagree

- b) **note** that a near-final copy of the Deposit Takers Bill has been provided for your information

Noted

- c) **note** that the Bill's 1st Reading will need to be expedited given your desired timeframe for introduction of the depositor compensation scheme

Noted

- d) **note** that no significant changes have been made to the Bill as a result of agency consultation

Noted

- e) **agree** to recommend Cabinet assigns the powers related to the day-to-day management of an entity in resolution directly to the resolution manager, who will be subject to monitoring and oversight by the Reserve Bank Board as resolution authority

Agree/disagree

- f) **note** the two issues concerning an on-site inspection notice and the scope of legal privilege – issues that were the focus of split agency advice – are largely separable from a policy perspective

Noted

Hon Grant Robertson
Minister of Finance

s9(2)(a)

A large black rectangular redaction box covering the majority of the text in this section.

Christian Hawkesby
**Deputy Governor / GM Financial Stability
Reserve Bank of New Zealand**

s9(2)(a)

A large black rectangular redaction box covering the majority of the text in this section.

James Beard
**Acting Deputy Secretary,
Macroeconomics and Growth Group
The Treasury**

Annex – liability of the Reserve Bank Board

The protections from liabilities and indemnities in the *Reserve Bank of New Zealand Act 2021* (the Act) are broad, covering both Reserve Bank personnel and the entity itself. The protection for the entity goes beyond what is typical for Crown Entities.¹

In particular:

- The Act provides that the Reserve Bank is not liable for any act or omission that is done in good faith and in the performance of its functions and powers. This protection does not apply to a number of serious offences and does not limit the liability of the Reserve Bank in relation to a contract entered into by the Reserve Bank.
- The Act also protects members of the Board, the Governor, employees, investigators, and statutory managers (or resolution managers) from liability where they act in good faith and in the performance of the Reserve Bank's functions and powers. This is subject to similar limitations as the Reserve Bank's protection from liability. The Act states explicitly that this does not affect the right of any person to apply, in accordance with the law, for judicial review.
- Further, under the Act, the Crown indemnifies the Reserve Bank and statutory managers appointed under prudential legislation for any liability that arises from acts done in good faith and in performance of the statutory manager's functions or powers in relation to statutory management.

There are limits to these protections, including:

- The protections from liability do not apply for acts or omissions in bad faith.
- s9(2)(h) [REDACTED]
- s9(2)(h) [REDACTED]

¹ The Financial Markets Authority and the Commerce Commission, as entities, have protections for actions undertaken in good faith and *with reasonable care*, which would allow them to be sued for negligence.