

In Confidence

Office of the Minister of Finance

Cabinet Legislation Committee

## **Deposit Takers Bill: Approval for Introduction**

### **Proposal**

- 1 This paper seeks the Cabinet Legislation Committee's approval for the introduction of the Deposit Takers Bill (the Bill).
- 2 In addition, this paper asks the Committee to agree to a policy proposal on the relationship between the Reserve Bank Board and the resolution manager, in order to support the Bill's statutory purposes for crisis management and resolution.

### **Policy**

- 3 The Bill will implement policy decisions made by the Cabinet Economic Development Committee (DEV) regarding the development of a new framework for the prudential regulation of 'deposit takers', and the introduction of depositor protection. These decisions were made on:
  - 3.1 14 April 2021 [DEV-21-MIN-0076, DEV-21-MIN-0077, DEV-21-MIN-0078, and DEV-21-MIN-0079], and confirmed by Cabinet on 19 April 2021 [CAB-21-MIN-0128]
  - 3.2 20 October 2021 [DEV-21-MIN-0204], and confirmed by Cabinet on 26 October 2021 [CAB-21-MIN-0429]
  - 3.3 29 June 2022 [DEV-22-MIN-0158], and confirmed by Cabinet on 4 July 2022 [CAB-22-MIN-0250.01].
- 4 The Bill will enact changes to the prudential framework for regulating registered banks and licensed non-bank deposit takers (NBDTs) – collectively defined as 'deposit takers' – developed through Phase 2 of the Review of the Reserve Bank Act of New Zealand 1989 (the '1989 Act'). The Bill will also introduce a scheme to protect depositors from loss (up to a pre-specified amount) in the event a deposit taking institution fails.
- 5 The purpose of the Bill is to promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy by protecting and promoting the stability of the financial system. In the context of the deposit taking sector, this is achieved through promoting the safety and soundness of individual deposit takers, promoting public confidence, and avoiding or mitigating risks to the financial system, and from the financial system to the broader economy.

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- 6 Phase 2, which began in June 2018, has involved a wide-ranging review of the institutional design and governance arrangements for the Reserve Bank, alongside the financial policy and regulatory provisions of the 1989 Act. In August 2021 a new Reserve Bank of New Zealand Act was passed into law and is companion legislation to the Deposit Takers Bill focussing on the institutional foundations for the Reserve Bank's prudential responsibilities. The new 2021 Act:
- 6.1 establishes a new governance model for prudential policy (a shift away from the single decision-maker in the form of the Governor, to a board)
  - 6.2 strengthens accountability and transparency requirements, in line with the Crown Entities regime
  - 6.3 mandates a new financial policy objective focussed on 'protecting and promoting financial stability'
  - 6.4 requires the Minister of Finance to issue a *Financial Policy Remit*
  - 6.5 formalises an external departmental monitor (in this case the Treasury) to assess the performance of the Reserve Bank across its statutory functions
  - 6.6 provides statutory recognition for the Council of Financial Regulators as a key forum for cooperation and coordination across New Zealand's financial regulatory system.
- 7 The Deposit Takers Bill will modernise and strengthen the way deposit taking institutions are prudentially regulated, while significantly improving New Zealand's financial system 'safety net' through the introduction of depositor protection. The key changes include:
- 7.1 integrating the currently separate prudential regimes for registered banks (under parts 4 and 5 of the 1989 Act) and licensed NBDTs (under the NBDT Act 2013) into a single coherent framework based on these financial intermediaries carrying on essentially the same business – the business of 'borrowing and lending'
  - 7.2 providing clarity for the Reserve Bank around Parliament's expectations for regulating deposit takers through specific statutory purposes, conditioned by a number of decision-making principles the Reserve Bank must take into account when performing or exercising its functions, powers and duties – including the desirability of taking a proportionate approach to regulation and supervision, maintaining competition within the deposit taking sector, and minimising compliance costs
  - 7.3 strengthening the legal basis for the Reserve Bank to exercise delegated authority to set prudential requirements via secondary legislation (i.e. through prudential 'standards'), while providing greater Parliamentary oversight through disallowance

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- 7.4 empowering the Reserve Bank as New Zealand's prudential regulator through new supervisory and enforcement tools – such as an on-site inspection power, remedial notices and enforceable undertakings, and a revamped penalty regime – to promote compliance with prudential requirements and effect corrective action on the part of deposit takers
  - 7.5 introducing a framework – the Depositor Compensation Scheme (DCS) – to protect eligible depositors from loss (\$100,000 per depositor, per institution) in the event a deposit taker is liquidated or a specified payout event occurs
  - 7.6 strengthening the framework for managing and resolving a deposit taker in financial distress by providing clear resolution objectives for the Reserve Bank and associated powers, while introducing a new regime to compensate creditors and shareholders that may be made worse off as a result of a resolution action of the Reserve Bank (relative to outcomes under a liquidation).
- 8 The Bill will be a complex piece of legislation integrating two previously separate prudential regimes for banks and NBDTs respectively, while introducing a new function for the Reserve Bank in the form of depositor protection. While the intent of the Phase 2 Review to develop a new prudential regime for deposit takers and improve the financial safety net is relatively uncontentious and enjoys broad support from stakeholders, there will be specific design issues tied to the Bill that stakeholders may raise in submissions during the select committee process, and with the Reserve Bank directly. These include:
- 8.1 the design of the Reserve Bank's new on-site inspection power, including the absence of a notice requirement
  - 8.2 design elements of the DCS surrounding coverage of eligible depositors and products, and costs associated with information collection requirements imposed on deposit takers, for example:
    - 8.2.1 the exclusion of foreign currency deposits, and debentures
    - 8.2.2 the calculation of entitlement
  - 8.3 the methodology and subsequent determination of DCS levies, although this is only provided for in the primary legislation through a regulation-making power and the Minister's *Statement of Funding Approach*, rather than being determined per se by the primary legislation
  - 8.4 the option for the Minister, within the crisis management framework, to impose an *ex post* levy on deposit takers to recover costs where public funds are expended by the Crown to support a resolution.
- 9 In addition, some stakeholders may re-raise issues that were discussed during the passage of the RBNZ Act 2021 around statutory purposes and the

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degree of operational dependence afforded to the Reserve Bank in the new regime. For example, there are no statutory purposes in the Bill related to financial system efficiency, and some stakeholders may question why the Reserve Bank needs to privilege the achievement of financial stability over financial system competition and innovation. That said, the decision-making principles laid out in the Bill – that include various efficiency-related elements and proportionality – will act to temper how the Reserve Bank goes about pursuing financial stability and the specific purposes under the Bill. NBDTs, for example, are particularly concerned that the Reserve Bank does not adopt a ‘one size fits all’ approach, and are interested in how proportionality will be reflected in regulatory and supervisory settings.

- 10 In terms of operational independence, the potential criticism of the Bill could be two-sided. On the one hand, the Bill affords the Reserve Bank significant discretion to set prudential requirements with limited input from elected officials outside of having regard to my *Financial Policy Remit* that I am required to issue to the Board. The Bill also gives the Reserve Bank a new improved set of supervisory and enforcement powers to monitor compliance, effect corrective action, and sanction non-compliance. Some stakeholders may suggest the framework gives the Reserve Bank too much regulatory autonomy without balancing this with democratic legitimacy or private property rights.
- 11 On the other hand, there are a number of touchpoints I have in the new regime, as Minister of Finance, particularly in the crisis management context. For example, I am able to issue a direction to the Reserve Bank on the management of public funds, where such funds have been used to support the resolution of a deposit taker. Some stakeholders may suggest this lever risks undermining the Reserve Bank’s ability to achieve its resolution objectives and the extent these contribute to the primary purpose of financial stability. In addition, the option to recoup public funds via an *ex post* resolution levy could be misconstrued as the Crown preferring ‘bail-out’ as a first-best resolution option, rather than as a last resort as the framework intends.

### Further development of Cabinet decisions

- 12 The Minister of Finance was authorised by Cabinet to clarify and develop policy matters relating to the Cabinet decisions on the Bill [DEV-21-MIN-0076 and DEV-21-MIN-0204]. I have made a variety of technical changes, including:
  - 12.1 **The regulatory and supervisory framework.** I have agreed to extend the current credit rating definition to fifteen months to align with industry best practices. I have agreed to include a definition for voting securities to mean a security that confers voting rights (with the same meaning of section 6(1) of the Financial Markets Conduct Act (FMCA) 2013). I have agreed that fit and proper requirements in the Bill will not extend to interim appointments of new directors or senior managers.
  - 12.2 **The Depositor Compensation Scheme.** I have agreed that deposit takers licensed in a jurisdiction other than New Zealand be added to

the list of non-eligible depositors. I have agreed that the Bill is to provide a regulation-making power to specify the name of a product as a covered product under the DCS, supplementing the regulation-making power currently in the Bill describing required characteristics of covered products.

- 12.3 **Use of the Depositor Compensation Scheme fund in resolution.** I have agreed that regulations made by Order in Council may prescribe further requirements in relation to the Reserve Bank's estimate of the maximum amount the DCS fund can contribute to a resolution. I have agreed that in the event of a DCS contribution to resolution of a licenced deposit taker, the Reserve Bank must appoint an independent reviewer in relation to the contribution. Further, I have agreed to an outline of the duties of the independent reviewer including to assess the compliance of the Reserve Bank's calculation with the legislation, consult the Reserve Bank and provide a final report, which the Reserve Bank must publish on its website.
- 12.4 **The crisis management and resolution framework.** I have agreed that the resolution regime should incorporate the key provisions of the statutory management regime from the 1989 Act. As the Resolution Authority, the Reserve Bank will either be able to exercise these powers or supervise their use by a resolution manager (there is a related decision for Cabinet below). The Minister's residual direction power in a resolution shall be to direct the Reserve Bank to exercise or not exercise a specific resolution power in accordance with the terms of that direction. Additionally, I have agreed to the criteria and procedural requirements for exercising the direction power. I have taken a number of decisions in regard to the 'no creditor worse off' (NCWO) mechanism, including the appointment of an independent valuer and the process for the calculation of NCWO compensation. I have also agreed that the stay on close out rights in a resolution apply to repos and securities lending transactions as well as derivatives.
- 12.5 **Ex post resolution levy.** I have agreed that the *ex post* resolution levy is to be effected through a regulation-making power in the Bill, with process requirements to consult affected entities. I have agreed to the details that the levy regulations must specify, including defining the levy base, method of levy calculation, period over which the levy will apply and how the levy is to be paid. The levy may only recoup funds expended to support the deposit-taking sector if the funds have not been directly recovered and in the Minister's opinion are unlikely to be recovered in the future.

### **Resolution manager and the Reserve Bank**

- 13 A key aim of the resolution reforms is to clarify the Reserve Bank's accountability for the overall conduct of a resolution (as Resolution Authority). This is achieved through vesting key resolution powers in the Reserve Bank directly. While the resolution manager may be involved in the exercise of these Reserve Bank powers (via delegation) the Reserve Bank remains

accountable. The exposure draft took the approach of treating all resolution powers in this way. Officials have subsequently advised me that certain powers related to the day-to-day management of the entity in resolution are best placed in the hands of the resolution manager. The Reserve Bank would remain accountable for the overall conduct of the resolution, with a duty to monitor the resolution manager, and the ability to step in and direct the resolution manager if they consider it necessary. I ask Cabinet to approve a recommendation below that clarifies earlier decisions on resolution. I propose that powers related to the day-to-day management of a deposit-taker in resolution will be directly assigned to the resolution manager and that the resolution manager will be subject to oversight by the Reserve Bank to ensure that the resolution manager is acting consistently with the purposes of the Bill.

### **Omnibus bill criteria**

- 14 The Bill is an omnibus bill as it proposes to amend the RBNZ Act 2021 to create a statutory function to issue warnings under prudential legislation with an associated qualified protection privilege covering this new function, and amend the Public Finance Act 1989 (PFA) to allow for spending in financial emergencies. I am advised that the Bill could be introduced under SO 267(1)(a) if the qualified privilege amendment is removed and the PFA amendment is narrowed to only apply to distressed deposit takers in order to tie it more closely to the overall purposes of the Bill. Alternately, I may seek the agreement of the Business Committee to the Bill's introduction under SO 267(1)(c). I seek authorisation to make a final decision on these limited matters prior to introduction.

### **Impact analysis**

- 15 A regulatory impact assessment (RIA) was prepared by the Reserve Bank in relation to the core foundations for a new prudential framework for deposit takers and depositor protection, in accordance with the necessary requirements and submitted to Cabinet in April 2021 [DEV-21-MIN-0076, DEV-21-MIN-0077, DEV-21-MIN-0078, and DEV-21-MIN-0079].
- 16 Supplementary RIAs were also prepared in accordance with the necessary requirements and submitted to Cabinet in October 2021 [DEV-21-MIN-0204] and June 2022 [DEV-22-MIN-0158].
- 17 All three RIAs were assessed as meeting the quality assessment requirements.
- 18 No RIA was prepared for the proposal in this paper relating to the assignment of some resolution powers to the resolution manager, as this proposal has no, or only minor, impacts on businesses, individuals, or not for profit entities.

### **Compliance**

- 19 The Bill complies with:

- 19.1 **The principles of the Treaty of Waitangi.** Targeted consultation was undertaken with representative groups during the early policy development phase of the Bill. The Bill does not impact on the principles of the Treaty of Waitangi.
- 19.2 **The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.** A number of changes to the Bill have been made in response to feedback from the Ministry of Justice's BORA vetting process. For example, the Ministry of Justice identified a number of strict liability offences that carried imprisonment as a potential penalty. For most, imprisonment has been subsequently removed, while several now carry a *mens rea* element. In addition to strict liability offences, the Bill engages a number of rights (e.g. freedom of expression and freedom from unreasonable search and seizure). Any limits to these rights in the Bill are no more than necessary, proportionate and justifiable with regards to the overall objectives and purposes of the prudential regime which is to promote the stability of New Zealand's financial system. The Ministry of Justice will provide advice regarding the consistency of the Bill to the Attorney-General.
- 19.3 **The disclosure statement requirements.** A disclosure statement has been prepared consistent with the requirements (see attached).
- 19.4 **The principles and guidelines set out in the Privacy Act 2020.** The Bill has privacy implications in that it contains clauses that require licensed deposit takers, account holders of 'bare trusts' and account holders of accounts held under 'relevant arrangement' (e.g. a lawyer's client account) to disclose depositor's personal information with the Reserve Bank for the purpose of a payout under the DCS. In addition, the Bill allows the Reserve Bank to subsequently disclose this information to another deposit taker to support DCS functionality. The power to disclose this personal information without obtaining depositors' consent would override Information Privacy Principle 11 in the Privacy Act, according to the interpretation of the Office of the Privacy Commissioner (OPC). The OPC supports the policy intent which is to ensure prompt payout under the DCS, and views the override as justifiable in the circumstances. OPC emphasises that on the operational side, all involved parties (deposit takers, account holders, and the Reserve Bank) should understand and ensure they comply with their responsibilities under the Privacy Act.
- 19.5 **International standards and obligations.** The International Monetary Fund assessed New Zealand's framework for financial sector regulation as part of its Financial Sector Assessment Programme (FSAP) carried out over 2016/17. The FSAP included a grading of the Reserve Bank's approach to banking regulation against the Basel Committee's *Core Principles for Effective Banking Supervision*. The results of the FSAP and its recommendations were a key input into the initial scope of the Phase 2 Review, problem definition and gap analysis, and the subsequent development of policy proposals. In

addition, given New Zealand's role as host of large and systemically important Australian-owned banks, particular attention has been paid to aspects of the Australian prudential regime in the development of the Bill.

19.6 **The Legislation Guidelines (2018 edition), maintained by the Legislation Design and Advisory Committee.** LDAC has been consulted, and provided advice on the Bill. LDAC have noted that there are a number of key *Legislation Guidelines* issues arising in the Bill, including:

- 19.6.1 the appropriate delegation of powers to make secondary legislation
- 19.6.2 the creation of an effective infringement offence regime
- 19.6.3 ensuring that legislation is necessary and the most appropriate means of achieving the policy objective
- 19.6.4 matters to take into account when considering appeal rights
- 19.6.5 limiting the use and scope of powers to amend or override an Act.

LDAC's advice has been considered by officials and largely reflected in the version of the Bill for introduction, with the exception of LDAC's reflections on the merits of legislating for Statements of Approach, and their concerns around the inclusion of a Ministerial direction power to manage risks to public funds.

## Consultation

20 A Review team comprised of employees from the Reserve Bank and the Treasury led the policy development of the Bill between June 2018 and May 2021. From that point, the Reserve Bank has been policy lead, working to a joint Reserve Bank-Treasury Steering Committee. The Reserve Bank is the agency instructing the Parliamentary Counsel Office.

21 An Independent Expert Advisory Panel supported the Review, with the Chair of the Panel also represented on the Steering Committee. The Panel was disbanded in August 2021.

22 There has been an extensive public consultation process for Phase 2 of the Review in relation to the new prudential framework for deposit takers and depositor protection, as well as the complementary institutional design and governance arrangements. Three rounds of consultation were undertaken under the auspices of the joint Review:

22.1 *Consultation Document 1 – Reserve Bank Act Review: Safeguarding the future of our financial system* (November 2018)



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- 22.2 *Consultation Document 2A – The Role of the Reserve Bank and how it should be governed* (June 2019)
- 22.3 *Consultation Document 2B – The Reserve Bank’s role in financial policy: tools, powers and approach* (June 2019)
- 22.4 *Consultation Document 3 – Further consultation on the prudential framework for deposit takers and depositor protection* (March 2020).
- 23 In addition, an exposure draft of the Bill was published by the Reserve Bank in early December 2021 with consultation open until late February 2022. An explanatory note accompanied the release of the exposure draft to help stakeholders navigate the Bill and to draw attention to various issues my officials were particularly interested in industry’s views on – for example, detailed questions on design features of the DCS.
- 24 Across the three formative policy consultations and the exposure draft consultation submissions were received from a variety of stakeholders including banks, NBDTs, industry associations and members of the public. In addition to written submissions, the joint Review team, and subsequently the Reserve Bank, has facilitated stakeholder engagement through workshops and numerous bilateral discussions with relevant parties.
- 25 Relevant government departments and other public bodies were consulted during policy development and discussion of the exposure draft Bill. Agencies include:
- 25.1 the Financial Markets Authority
- 25.2 the Inland Revenue Department
- 25.3 the Ministry of Business, Innovation and Employment
- 25.4 the Ministry of Justice
- 25.5 the Office of the Privacy Commissioner
- 26 The Review has also reached out and engaged with relevant agencies and bodies in other jurisdictions such as the Australian Prudential Regulation Authority, the Bank of England and the International Association of Deposit Insurers.
- 27 Feedback from this consultation and engagement process has been reflected in calibration and design choices tied to the prudential framework for deposit takers and the depositor compensation scheme.
- 28 Further consultation with the Ministry of Justice took place in July 2022 which covered the consistency with the New Zealand Bill of Rights Act 1990.
- 29 Officials met with LDAC and Parliamentary Counsel on 17 December 2021 to discuss the exposure draft of the Bill. LDAC subsequently provided advice to

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the Reserve Bank on 22 February 2022. Officials also met LDAC on a number of occasions during the earlier formative policy stages of the Phase 2 Review.

- 30 The Government and support parties have been updated during policy development. Workshops have been held with relevant Government Ministers.

### **Binding on the Crown**

- 31 Cabinet has decided that this Bill will be binding on the Crown upon commencement [DEV-21-MIN-0076].

### **Creating new agencies or amending law relating to existing agencies**

- 32 The Bill does not create a new entity, but amends the law relating to the Reserve Bank by establishing a new regime for the prudential regulation, supervision and resolution of deposit takers. The Reserve Bank will assume a new function under the Bill to manage and administer the DCS, including, amongst other things, determining entitlements to compensation, paying out money from the fund to support a resolution, collecting levies, as well as administering, managing and investing the fund. The DCS function may be organised as a subsidiary of the Reserve Bank.
- 33 Part 9 of the Bill outlines the repeals and amendments to other legislation. For example, the Bill amends the Reserve Bank of New Zealand Act 2021 by adding the management and administration of the deposit compensation scheme to a list of the Reserve Bank's functions. The Public Finance Act 1989 has been amended to provide the Minister of Finance the ability to approve expenses or capital expenditure in connection with a Reserve Bank regulated entity in financial distress, without Parliamentary appropriation, subject to a number of conditions. Consequential amendments to other legislation are laid out in Schedule 3 of the Bill, including the Companies Act 1993 and the Corporations (Investigation and Management) Act 1989.

### **Allocation of decision making powers**

- 34 Decision making powers under the Bill are primarily regulatory in nature and exercised by the Reserve Bank and, in certain cases, by the Minister of Finance, or person appointed to manage the resolution of a distressed deposit taker. Where deposit takers breach requirements under the Bill, the Reserve Bank has the ability to require remedial actions or undertake enforcement actions. Apart from conventional infringement notice provisions, all civil or criminal penalties in the Bill are adjudicated by the Courts. The Bill also introduces an ability for shareholders and creditors to apply for compensation if a resolution has led to them receiving less value than they would have in a conventional liquidation (the 'no creditor worse off' or NCWO provision). This process involves a determination by an independent valuer with capacity for appeal to the High Court.

### **Associated regulations**

- 35 Regulations will be required to give full effect to the new Act. In addition to a general regulation making power, there are regulation making powers relating to licensing of deposit takers, protected deposits, levies, pay out conditions, resolution, use of the DCS fund and the form and content of reminder notices.
- 36 As the Act will be implemented in three stages regulations will also need to be passed in three stages, DCS commencement, pre-licensing commencement and full commencement.

### **Other instruments**

- 37 The Bill contains provisions that empower the making of other instruments that are legislative and disallowable instruments:
- 37.1 The Bill allows the Reserve Bank to issue standards to regulate deposit takers (e.g. all deposit takers, a particular deposit taker, or a class of deposit takers) for one or more of the purposes of the Bill.
- 38 The Bill outlines both the procedure for the issuance of standards (ministerial notification, consultation with member agencies of the Council of Financial Regulators, and consultation with affected persons), and the scope of standards. For example, in terms of scope, the Reserve Bank may set standards to regulate the governance of deposit takers, impose capital and liquidity requirements, and to influence the management of various forms of financial risk (such as credit and operational risk). Regulations are required to define the class or classes of lending that relate to a given lending standard regulating the provision of credit to borrowers (for example through loan-to-value ratio restrictions on residential mortgage lending). The Reserve Bank may extend lending standards to non-deposit taking lenders.
- 39 Prudential requirements on deposit takers are imposed mainly through standards issued by the Reserve Bank in order to maintain operational independence and avoid the politicisation ('time inconsistency') of prudential policy.

### **Definition of Minister/department**

- 40 The Bill contains definitions of Minister, the Reserve Bank, and the Governor of the Reserve Bank.

### **Commencement of legislation**

- 41 Most of the Bill will come into force on a date or dates specified by Orders in Council, but no later than 4 years after the date of Royal assent. The DCS is expected to come into force via an Order in Council at an earlier date than many other provisions in the Bill.
- 42 The reason for the deferred commencement is that secondary legislation needs to be made to give effect to some parts of the Bill. Powers to make

regulations and issue standards come into force on the day after Royal assent.

- 43 It is expected that the DCS will come into force via an Order in Council in early 2024 while other parts of the Bill are expected to come into force via a number of dates specified by Orders in Council (with the entire Bill in force by early 2026).
- 44 The explanatory note to the bill sets out the reasons for commencement by Order in Council.

### Parliamentary stages

- 45 The Bill should be introduced in August 2022 or shortly thereafter in order to be passed by July 2023. It should be referred to the Finance and Expenditure select Committee.

### Proactive Release

- 46 I propose to proactively release this paper, subject to redactions as appropriate under the Official Information Act 1982, within 30 business days.

### Recommendations

The Minister of Finance recommends that the Committee:

- 1 **note** that the Deposit Takers Bill holds a category 4 priority on the 2022 Legislation Programme (to be referred to select committee in 2022)
- 2 **note** that the Deposit Takers Bill's main purpose is to promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy by protecting and promoting the stability of the financial system
- 3 **note** that the Bill gives effect to 'protecting and promoting the stability of the financial system' through additional purposes to: promote the safety and soundness of individual deposit takers; promote public confidence in the financial system, and; avoid or mitigate risks to the stability of the financial system, and risks from the financial system that may damage the broader economy
- 4 **note** the decisions made by the Minister of Finance under the authority delegated by Cabinet to further clarify and develop policy matters relating to the detail of the Bill [DEV-21-MIN-0076 and DEV-21-MIN-0204] as follows:
  - 4.1 regulatory and supervisory matters, including the definitions of credit ratings and voting securities, and that fit and proper requirements will not extend to interim appointments of directors and senior managers
  - 4.2 various design elements of the Depositor Compensation Scheme including the non-eligibility of deposit takers licensed in another

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jurisdiction, and a regulation-making power to support the identification of covered (i.e. protected) products

- 4.3 matters related to the use of the Depositor Compensation Scheme fund in resolution, including the appointment and duties of an independent reviewer
- 4.4 matters relating to the crisis management framework including the design of a ministerial direction power around the management of public funds, the design of a 'no creditor worse off' mechanism, and the parameters of a mechanism for the Crown to recoup public funds expended to support the resolution of a deposit taker
- 5 **agree** that the Bill directly vest general (i.e. day-to-day) management powers related to an entity in resolution in the resolution manager
- 6 **agree** that the resolution manager will be subject to oversight by the Reserve Bank to ensure that the resolution manager is acting consistently with the purposes of the Bill
- 7 **note** that the Bill as currently drafted is an omnibus bill and may not be introduced in its current form, unless the leave of the Business Committee is obtained under SO 267(1)(c) or the Bill is amended in a way that makes it qualify under SO 267(1)(a)
- 8 **authorise** the Minister of Finance, in consultation with the Leader of the House, to decide whether to seek leave of the Business Committee to introduce the Bill to the House, or alternatively to amend the Bill so that the amendments to the RBNZ Act 2021 and Public Finance Act 1989 can be regarded as implementing a single broad policy, by:
  - 8.1 narrowing the scope of the amendment to the Public Finance Act 1989 relating to financial emergencies so that it only applies to supporting deposit takers rather than all financial institutions regulated by the Reserve Bank, and/or
  - 8.2 removing the amendments to the Reserve Bank of New Zealand Act 2021 that provide qualified privilege for warnings issued under the proposed new function to issue warnings
- 9 **approve** the Deposit Takers Bill for introduction, after any final changes made by the Minister of Finance as authorised above, subject to the final approval of the government caucus and sufficient support in the House of Representatives
- 10 **agree** that the Bill be introduced in August 2022 or shortly thereafter
- 11 agree that the government propose that the Bill be:
  - 11.1 referred to the Financial and Expenditure committee for consideration
  - 11.2 enacted early in the second half of 2023.

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Authorised for lodgement

Hon Grant Robertson  
Minister of Finance

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