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Submission on the exposure draft of the Deposit Takers Bill

This is a submission by Te Tumu Paeroa – Office of the Māori Trustee (**‘Te Tumu Paeroa’**) on the exposure draft of the Deposit Takers Bill (**‘Bill’**) released by the Reserve Bank of New Zealand (**‘RBNZ’**).

About Te Tumu Paeroa

Te Tumu Paeroa is the organisation that supports the Māori Trustee to carry out her statutory responsibilities, roles and functions under the Māori Trustee Act 1953 (**‘MT Act’**), including to accept and carry out appointment as trustee and agent for Māori land trusts. The current Māori Trustee and Chief Executive of Te Tumu Paeroa is Dr Charlotte Severne, who was initially appointed in September 2019 and was reappointed for a five year term in October 2021. The Māori Trustee is most commonly appointed by the Māori Land Court as the responsible trustee or agent of a Māori land trust to administer the whenua and assets vested in that trust in accordance with the terms of a trust order. Currently the Māori Trustee administers as trustee or agent one in three Māori land trusts (some 1,800 individual trusts). Te Tumu Paeroa assists the Māori Trustee to discharge her statutory and common law trustee responsibilities in this regard.

Te Tumu Paeroa welcomes the opportunity to make submissions on the Bill.

Summary

Under the current definition of ‘deposit taker’ in Schedule 2 of the Bill, the Māori Trustee would not be captured in the Bill’s regulatory scope. However, this statutory office holder has the potential to be caught within the scope of the current definition if the Māori Trustee was to slightly expand the services it provides under the MT Act. This creates a potential regulatory burden for the Māori Trustee that may serve to limit its provision of services under the MT Act, with a consequential constraint on the office-holder’s potential effectiveness in discharging statutory functions.

The Bill includes a list of entities which are expressly excluded from the definition of ‘deposit taker’ and so do not fall within the Bill’s regulatory scope. We submit that the Māori Trustee is analogous to those entities in terms of current regulatory oversight and protection for those entities and individuals that engage with the Māori Trustee.

Therefore, Te Tumu Paeroa submits that the Bill should be altered to include an express carve-out exclusion for the Māori Trustee when discharging that office-holder’s statutory functions under the MT Act.

Regulatory perimeter of the Bill in relation to the Māori Trustee

Clause 2(1)(a) of Schedule 2 of the Bill sets out the definition of a ‘deposit taker’. This clause states that a person is a deposit taker if they carry on the business of borrowing or lending money. This requires that a person is both:

- a ‘in the business’, as opposed to merely incidentally borrowing or lending; and
- b carrying out both borrowing and lending.

The definition of borrowing in clause 2(2) of Schedule 2 has four limbs:

- a makes a DT regulated offer of debt securities;
- b makes, in New Zealand, an offer of call debt securities;
- c makes, in New Zealand, an offer of any debt securities of a class that is declared by the RBNZ for the purposes of this clause; and/or
- d receives money from a conduit issuer of debt securities.

Clause 2(2) of Schedule 2 defines lending as ‘carries on a business of providing credit under credit contracts’.

Under the MT Act, the Māori Trustee is expressly empowered to advance money i.e. lend for the benefit of Māori and for other statutory purposes set out in the MT Act. The MT Act and other legislation, in fact, requires the Māori Trustee to advance funds in this manner in certain circumstances. The activities of the Māori Trustee under the MT Act clearly include ‘lending’ under the Bill’s definition of that term. It is, however, unlikely that any of the office-holder’s current activities could be considered as extending to ‘borrowing’ under any of the four limbs of the definition of that term. We are therefore comfortable that the current activities of the Māori Trustee under the MT Act sit outside the regulatory perimeter of the Bill.

However, a small change in the provision of services may be enough to bring the Māori Trustee within the scope of the Bill. By way of example, all that would be required would be for the Māori Trustee to determine that it would be conducive to the discharge of its statutory functions to offer a call debt security facility for any of its trust clients.

Clause 2(1)(b) of Schedule 2 sets out the express carve-out exclusions to the definition of 'deposit taker' as the following:

- a a local authority;
- b the Crown;
- c a Crown entity; and
- d the RBNZ.

The Māori Trustee is not included in any of these exclusions, as they are defined in the Bill. This means that, were the services of the Māori Trustee expanded so as to be considered a 'borrowing', it would become subject to the obligations provided for deposit takers in the Bill, even though it would only make such an expansion in order to further its statutory objectives and in accordance with its statutory powers.

Te Tumu Paeroa believes that the position of the Māori Trustee is analogous to the other entities which benefit from an express carve out exclusion in the Bill. Clause 2(1)(b) of Schedule 2 should therefore be expanded to include the Māori Trustee.

Express carve-out provision for the Māori Trustee

Te Tumu Paeroa submits that clause 2(1)(b) of Schedule 2 of the Bill should be altered to include a sub paragraph (vi) which would read:

- “(vi) the Māori Trustee (as defined in section 2(3) of the Māori Trustee Act 1953) when acting in performance of its functions under that Act.”

Te Tumu Paeroa believes that it is appropriate to consider the position of the Māori Trustee as analogous to other entities benefiting from an exclusion under clause 2(1)(b) of Schedule 2 for the following reasons:

- a The Māori Trustee is a Schedule 4 Public Finance Act 1989 entity and, as such, is already treated as a Crown entity for annual reporting and audit purposes.
- b The Māori Trustee is subject to the same Select Committee annual review process as core government agencies and Crown entities. The Office of the Auditor General monitors and reports to the Committee and the Minister for Māori Development regarding audits.
- c The MT Act provides that the Māori Trustee can only borrow with the consent of the Minister of Finance, meaning that there is already an appropriate level of oversight if the Māori Trustee were to engage in borrowing.
- d Under the MT Act, those entities and individuals that have a claim to money held by the Māori Trustee in its Common Fund benefit both from a General Purposes Fund guarantee and a Crown guarantee. This provides adequate protections for entities and individuals engaging with the Māori Trustee, without needing to put it to the additional expense and regulatory burden of complying with the Bill.

- e The Māori Trustee is already regulated under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 regime in respect of lending to Māori pursuant to its statutory powers.
- f The Māori Trustee is under a legislative obligation to advance money from its General Purposes Fund for matters associated with the benefit of Māori. It would be unfortunate if the ability of the Māori Trustee to observe this statutory obligation were constrained by the regulatory burden of the Bill.

An express carve-out exclusion from the application of the Bill would remove any risk of an additional regulatory burden falling on the Māori Trustee, and ensure that the resources of the Māori Trustee are able to be fully committed to discharging the office-holder's statutory purpose and not diverted towards regulatory compliance, with no corresponding benefit for Māori or the wider general public.

Expressly excluding the Māori Trustee from the regulatory scope of the Bill has the benefit of preventing a constraint being imposed on the extent of the services the Māori Trustee is able to efficiently provide under the MT Act for the benefit of Māori. Where the Māori Trustee acts at the edge of the regulatory perimeter of the Bill, Te Tumu Paeroa anticipates the Māori Trustee would need to act in a more risk averse way with respect to borrowing and lending in case additional services put it within the regulatory scope of the Bill.

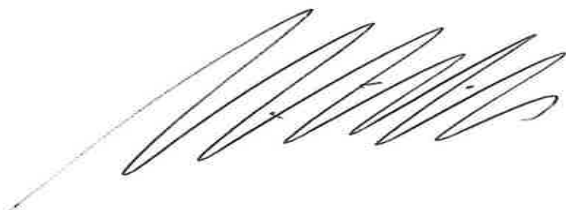
The key limit to the exclusion we are seeking is that it would not extend to any activities of the Māori Trustee beyond those involved in performing its statutory functions, meaning it would not obtain an unfair advantage over non-excluded entities and all statutory protections under the MT Act would remain available.

Given sub paragraphs a through f above, Te Tumu Paeroa believes that the Māori Trustee is regulated in its borrowing and lending to a similar extent as any of the Crown entities already benefitting from express carve-out exclusions. Further, individuals who engage in borrowing or lending with the Māori Trustee have suitable protections in place. In our view, this justifies an express exclusion for the Māori Trustee.

Further information - We are happy to discuss any aspect of our feedback on the Bill.

Thank you for the opportunity to submit.

Yours faithfully



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