

# Short-Form Supplementary Departmental Disclosure Statement

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Deposit Takers Bill
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A short form supplementary disclosure statement for proposed Government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Deposit Takers Bill, dated 1 September 2022, which can be found at this link

<https://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2022-162.pdf>

This supplementary disclosure statement was prepared by the Reserve Bank of New Zealand.

The Reserve Bank of New Zealand certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

15 June 2023.

## Significant Legislative Features

### Offences, penalties and court jurisdictions

<b>1. Do the proposed amendments create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?</b>	<b>YES</b>
<i>There are minor changes to the scope of certain requirements with associated offences such as the limits on use of restricted terms (clause 422 and 425).</i>	
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>

### Privacy issues

<b>2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<i>Clause 128 of the Bill limits the power of investigations (essentially to assess and gather evidence of (suspected) non-compliance with prudential requirements) to a 'place'. The Supplementary Order Paper amends clause 128 to provide for the searching of a vehicle or other thing (e.g. computer). Section 29 of the Financial Markets Authority Act 2011 contains such a broader provision.</i>	
<b>2.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<i>The Privacy Commissioner was consulted about the search power amendment. No issues were raised which required action to address.</i>	

### Compulsory acquisition of private property

<b>3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<i>Clauses 198(ca) and 237(2)(ba) provide for certain costs of the Crown to be paid out of the Depositor Compensation Fund. These are costs incurred in connection with the Minister performing, or preparing to perform, the Minister's duties under subpart 8 of Part 6 (for example, the costs incurred in the Crown holding additional liquidity in preparation for the Minister being required to make available funds under that subpart).</i>	

### Retrospective effect

<b>5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the burden of proof for offences

<b>6. Do the proposed amendments:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>7. Do the proposed amendments create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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### Powers to make delegated legislation

<b>9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p><i>The Bill integrates two, currently separate regulatory regimes for registered banks and licensed non-bank deposit takers (NBDTs), respectively. The transition from the current regimes to the new single framework may involve additional complexities from that provided for in the Bill as initially introduced into Parliament.</i></p> <p><i>For example, NBDTs are currently required to have a trust deed that effectively gives depositors security over the assets of the NBDT itself, while appointing a trustee to oversee their interests. There may be unintended consequences tied to these trust deeds being unwound, and oversight being assumed by the Reserve Bank as supervisor.</i></p> <p><i>The Supplementary Order Paper inserts a Regulation-making power (along the lines of section 547 of the Financial Market Conduct Act 2013) that allows necessary modifications to other legislation for the purpose of facilitating the implementation of the Bill.</i></p> <p><i>As a safeguard to ensure the power will be properly constrained, it will be for a limited time of three years.</i></p>	

<b>10. Do the proposed amendments create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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### Any other unusual provisions or features

<b>11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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