

Departmental Disclosure Statement

Reserve Bank of New Zealand Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Treasury

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

14 July 2020

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Part One: General Policy Statement

This Bill relates to the institutional arrangements of the Reserve Bank of New Zealand (the **Reserve Bank**).

The purposes of the Bill are to provide for the continuation of the Reserve Bank, and to promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy. The Bill provides for the objectives and functions of the Reserve Bank, and the Reserve Bank's governance, accountability and transparency, and funding arrangements. The Bill increases coordination between public agencies responsible for the financial system, and creates a new framework to better manage the use of New Zealand's foreign exchange reserves.

The Bill is part of the review of the Reserve Bank of New Zealand Act 1989 (the **1989 Act**). The Bill follows the Reserve Bank of New Zealand (Monetary Policy) Amendment Act 2018 (the **2018 Act**), which introduced maximum sustainable employment as an objective of monetary policy alongside price stability, and created the monetary policy committee (MPC). The focus of the Bill is on reforming the overall governance and accountability arrangements of the Reserve Bank, while retaining the changes made through the 2018 Act. The Bill repeals and replaces the parts of the 1989 Act that provide for the institutional form, governance and accountability arrangements, and central bank powers of the Reserve Bank. The remainder of the 1989 Act, which creates a framework for the registration and supervision of banks, remains in force but is renamed the Banking (Prudential Supervision) Act 1989.

Setting objectives and functions

The Bill introduces a new objective for the Reserve Bank of protecting and promoting the stability of New Zealand's financial system, which is relevant in its role as prudential regulator and supervisor of financial institutions. The primary objectives of monetary policy remain to achieve and maintain stability in prices and support maximum sustainable employment. The Bill sets out the functions of the Bank, most importantly to act as central bank and prudential regulator and supervisor, which must be performed consistently with these objectives. The Bank's role as lender of last resort is reframed as a part of its liquidity function.

Strengthening institutional arrangements

To strengthen the institutional arrangements of the Reserve Bank, the Bill—

- creates a new governance board for the Reserve Bank, appointed by the Minister of Finance. The powers and responsibilities of the Reserve Bank (other than those of the MPC) will sit with the board rather than the Governor. Group decision-making will bring a breadth of skills and perspectives to support the decisions the Reserve Bank makes. The board will have functions, powers, and responsibilities similar those of Crown entity boards. The Minister will continue to appoint the Governor, but the Governor's remuneration will be set by the Remuneration Authority;
- requires the Minister of Finance to issue a financial policy remit to the Reserve Bank regarding prudential policy. The board must have regard to the Remit when setting its strategic objectives in relation to financial stability, when making significant policy decisions about how achieve these objectives and when issuing and reviewing prudential standards. The remit does not apply to operational decisions made by the Reserve Bank or to decisions in respect of particular entities, balancing democratic oversight with operational independence. The Remit replaces the power of the Minister of Finance to direct the Reserve Bank to have regard to Government policies;
- establishes a more robust process for the Minister of Finance and the Reserve Bank to agree the Reserve Bank's funding. A portion of the Reserve Bank's costs for regulatory functions will be able to be recouped through levies, which fairly place the cost of regulation on the parties that benefit from it. The funding agreement will cover both the Reserve Bank's operating expenses and capital expenditure;
- increases oversight and accountability by bringing the Reserve Bank within the scope of the Ombudsmen Act 1975 and the Public Audit Act 2001, allowing the Auditor-General

and the Ombudsmen to review the activities of the Reserve Bank. The Reserve Bank's reporting requirements will also be aligned more closely with the standards that apply to Crown entities. Whole-of-Government directions to Crown entities can now be directed to the Reserve Bank:

- provides a department, such as the Treasury, with a formal role as the monitor of the Reserve Bank. The Bill provides the monitor with the power to seek information from, and review the operations of, the Reserve Bank. The Minister of Finance will provide the monitor with a notice of expectations setting out how this role should be performed.

Increasing coordination in regulation of financial sector

To increase coordination in the regulation of the financial sector, the Bill—

- gives statutory recognition to the Council of Financial Regulators. The function of the council is to facilitate cooperation and coordination between members of the council to support effective and responsive regulation of the financial system in New Zealand:
- provides a function for the Reserve Bank to cooperate with other law enforcement or regulatory agencies that have a role in the regulation of the New Zealand financial system. The Bill provides the Reserve Bank with a power to share information with these agencies, and ensures that such information is appropriately managed during court proceedings.

Better accountability and transparency of Reserve Bank's financial risk management and use of foreign reserves

The Bill continues the Reserve Bank's existing central bank functions, including formulating and implementing monetary policy, being the provider of liquidity to the financial system, issuing bank notes and coins, and operating payments and settlements systems. The Bill strengthens accountability over these functions by requiring the Reserve Bank to publish a framework setting out its approach to managing financial risks.

In addition, the Bill requires the Minister of Finance and the Reserve Bank to agree a Reserves Management and Co-ordination Framework for the Reserve Bank's management and use of foreign reserves. This will provide greater clarity and transparency as to the Reserve Bank's objectives and management of foreign exchange reserves, and allow for co-ordinated actions between the Debt Management Office and the Bank when necessary, such as in the case of market disorder. The Minister will retain the ability to direct the Reserve Bank to deal in foreign exchange within guidelines.

Managing cash quality

The Bill allows the Reserve Bank to set standards for devices which check the authenticity and/or quality of a banknote in preparation for its distribution to the public. These standards would apply to automated note dispensers such as ATMs and automated self-check-outs, as well as note counters and sorters used by cash handlers, banks, and large retailers to test the fitness of banknotes before they are distributed by machine or over-the-counter.

Providing for these standards will support public confidence in banknotes and coins by preventing worn, damaged, or counterfeit notes from staying in circulation, and lower the costs of banknote quality management and counterfeit detection.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Policy was developed by a Review Team of the Reserve Bank and the Treasury. In developing the policy the Review Team produced a number of public consultation and issues papers. The most relevant papers are:</p> <ul style="list-style-type: none"> • Consultation Document 1: Safeguarding the future of our financial system: The role of the Reserve Bank and how it should be governed, 1/11/2018, https://treasury.govt.nz/publications/consultation/rbnz-review-safeguarding-future-financial-system-consultation-document • Background Paper: The case for and against separating prudential regulation and supervision from the Reserve Bank of New Zealand, 1/11/2018, https://treasury.govt.nz/publications/background/rbnz-review-separating-prudential-regulation-supervision • Background Paper: Current governance arrangements for the Reserve Bank of New Zealand, 1/11/2018, https://treasury.govt.nz/publications/background/rbnz-review-current-governance-arrangements • Consultation Document 2A: In-principle decisions and follow-up questions on: The role of the Reserve Bank and how it should be governed, 1/06/2019, https://treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2a.pdf <p>Other relevant papers and reports, as well as proactively released advice, is available on the Treasury website at: https://treasury.govt.nz/news-and-events/reviews-consultation/reviewing-reserve-bank-act</p> <p>The changes relating to managing cash quality were developed by the Reserve Bank as part of its review of the future of the cash system. The consultation paper is available on the Reserve Bank's website: https://www.rbnz.govt.nz/notes-and-coins/future-of-cash/the-future-of-the-cash-system.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A New Institutional Framework for the Reserve Bank, The Treasury, March 2020, https://treasury.govt.nz/publications/information-release/reserve-bank-act-review-phase-2-july-2020-proactive-release</p> <p>Standards for devices testing the quality and authenticity of New Zealand bank notes, The Reserve Bank, June 2020, available on the Reserve Bank’s website: https://www.rbnz.govt.nz/-/media/ReserveBank/Files/Publications/Information-releases/2020/Regulatory-Impact-Summary-July-2020.pdf</p> <p>The regulatory impact assessments can also be found and downloaded at: http://www.treasury.govt.nz/publications/informationreleases/ria</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>A Quality Assurance Panel with representatives from the Ministry of Business, Innovation & Employment and the Treasury reviewed the ‘A New Institutional Framework for the Reserve Bank’ Regulatory Impact Assessment (RIA) produced by the Treasury and dated March 2020.</p> <p>The Panel considered that the RIA met the Quality Assurance criteria. The proposals have been well-consulted and the assessment of the trade-offs between, and rationales for, the options considered is comprehensive. The acknowledged uncertainties around the final arrangements and/or their impact means that the monitoring and review will be important in ensuring that the Government’s objectives are achieved (in particular the most recent proposals, the foreign exchange reserves management framework and the liability of the Reserve Bank).</p> <p>A Quality Assurance Panel with representatives from the Treasury and the Reserve Bank of New Zealand reviewed the ‘Standards for devices testing the quality and authenticity of New Zealand bank notes’ RIA produced by the Reserve Bank of New Zealand in March 2020.</p> <p>The Panel considered that the RIA met the Quality Assurance criteria. The RIA contains clear criteria to assess a range of options identified. Alongside the non-monetised costs benefits analysis, it also attempts to quantify costs and benefits of the preferred option, with assumptions clearly laid out. The proposal has been well consulted and stakeholders’ views have been addressed. It has developed a workable approach to give effect to the new arrangements and monitor the impact of the new arrangements.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

There are no relevant international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Review Team sought Treasury legal advice on meeting any relevant Treaty of Waitangi obligations, and considered Crown Law advice on this matter. The Review Team used the general public consultation process as a forum to consult with Māori.

The Bill requires the Reserve Bank to be a good employer, which includes considering the aspirations of Māori.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill replaces, amends, and updates a number of existing offences in the Reserve Bank of New Zealand Act 1989 that relate to the Bank's central banking functions:</p> <ul style="list-style-type: none"> • Clause 151 makes it an offence to deface bank notes, with a fine upon conviction of up to \$1,000. • Clause 152 makes it an offence to make or issue other bank notes or coins, with a penalty of up to 3 years and/or \$100,000 for individuals, and \$300,000 for bodies corporate. • Clause 153 makes it an offence to reproduce or imitate currency, with a penalty of up to 1 year and/or \$10,000 for individuals, and \$25,000 for bodies corporate • Clause 163 creates an infringement offence for a failure to comply with a notice requiring an operator of a bank note handling machine to test or cease operating that machine. This has fees of \$1,000 for individuals, and \$3,000 for other persons; and fines of up to \$3,000 and \$9,000. • Clause 164 creates an offence if an operator of a bank note handling machine intentionally or recklessly fails to comply with a notice requiring an operator of a bank note handling machine to cease operating that machine, within 6 months of the operator having received a previous such notice. This offence has penalties of up to \$50,000 for individuals and \$200,000 for any other persons. • Clause 262 creates an infringement offence for a failure to supply certain information to the Reserve Bank. This has fees of \$1,000 for individuals, and \$3,000 for other persons; and fines of up to \$3,000 and \$9,000. • Clause 263 creates an offence for a person to intentionally fail to provide this information to the Reserve Bank, with a penalty of up to \$50,000 for individuals and \$200,000 for other persons. • Clause 265 creates an offence for intentional or reckless failure to comply with requirements that the information be reviewed, with a penalty of up to \$50,000 for individuals and \$200,000 for other persons. • Clause 267 creates an offence for an officer, member, or employee of the Reserve Bank to intentionally disclose confidential information, with a penalty of up to \$50,000. • Clause 270 creates an offence for a person to whom certain information is disclosed to by the Reserve Bank to disclose or use that information contrary to any conditions imposed by the Bank. There is a penalty of up to \$50,000 for individuals and \$200,000 for other persons. 	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Review Team consulted the Ministry of Justice on the provisions relating to offences and penalties, the New Zealand Bill of Rights Act 1990, and potential privacy considerations. The Review team engaged with the Ministry of Justice by email, and met with relevant Ministry of Justice representatives in person to discuss these matters.</p> <p>The Ministry of Justice was consulted on each Cabinet paper seeking relevant policy decisions. Feedback from the Ministry of Justice was reflected in the paper, and the penalties for the infringement offences were adjusted to reflect guidance from the Ministry of Justice</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>Clause 279 provides the Reserve Bank with a power to share information with other regulatory and law enforcement agencies, which may include personal information – even where the Privacy Act would otherwise prevent that. In doing so, the Reserve Bank may impose conditions on the use or further disclosure of that information. In imposing those conditions the Reserve Bank must have regard to whether conditions are necessary or desirable to protect the privacy of any individual.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner was consulted via email on the proposed clause 271. As it is unlikely this clause would be used in relation to personal information, given the importance of collaboration in regulating the financial system, and the recognition given to personal information in clause 280, the Privacy Commissioner had no comment on the proposal.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Two rounds of public consultation on the policy leading to the Bill were undertaken. The Review Team published consultation documents, alongside summary material and background papers. The first round of consultation ran from November 2018 to January 2019. The second round ran from June to August 2019. 67 submissions were received in relation to the first round of consultation, and 45 in relation to the second round. All information and documents relating to the public consultation process, including summaries of public feedback, are available at: https://treasury.govt.nz/news-and-events/reviews-consultation/reviewing-reserve-bank-act/public-consultation</p> <p>The Reserve Bank undertook a separate consultation process in relation to the quality of cash amendments, as part of its wider project around the Future of Cash. The consultation material is available on the Reserve Bank’s website: https://www.rbnz.govt.nz/notes-and-coins/future-of-cash</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill’s provisions are workable and complete?	YES
<p>The Review has an Independent Expert Advisory Panel with legal, financial, governance, and policy expertise. The Panel supported the policy development process and provided quality assurance. The Panel also provided independent advice to the Minister of Finance on the work being carried out by the Review team, as appropriate. The Panel engaged on all major issues covered by Phase 2 of the Review, and its feedback and advice informed policy decisions.</p> <p>More information on the panel is available at https://treasury.govt.nz/news-and-events/reviews-consultation/reviewing-reserve-bank-act/independent-expert-advisory-panel</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	YES
Clause 154 provides that, following a conviction for imitating currency, the court may order that imitation currency, and instruments used to imitate currency, be destroyed. This is necessary to prevent the creation of imitation currency.	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
Clause 289 allows for levies to be made prescribing fees and charges paid to the Bank. These must be linked to the performance by the Bank of a function, power or duty of the Bank, or in relation to an application or request made to the Bank to perform a function, power or duty. Clause 291 of the Bill allows the Governor-General, on the advice of the Minister, to make regulations setting levies to be paid by entities regulated by the Reserve Bank. These levies reflect the fact that a proportion of the costs of providing a well regulated environment should fall on those entities which benefit most from the regulation. The Minister is required to consult the Reserve Bank and have regard to a report from the Bank on the outcome of stakeholder consultation before making any recommendation to the Governor General.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
The Bill creates two infringement offences: <ul style="list-style-type: none">• Clause 163 creates an infringement offence for a failure to comply with a notice requiring an operator of a bank note handling machine to test or cease operating that machine.• Clause 262 creates an infringement offence for failure to provide certain information to the Reserve Bank. This information is normally in the form of surveys of statistical data gathered from financial firms, and used to inform the Reserve Bank's monetary policy functions. In both cases the failures are relatively minor and a prosecution would be disproportionate in cost to the Reserve Bank. The creation of an infringement offence allows the Reserve Bank to promote compliance in a proportionate and efficient manner. A strict liability offence for breach of confidentiality in the Reserve Bank of New Zealand Act 1989 has been repealed. This has been replaced by a similar provision in the Bill, which has a <i>mens rea</i> element.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>The Bill amends and creates protection from certain liability.</p> <ul style="list-style-type: none"> • Clause 178 provides the Reserve Bank is not liable for acts or omissions done in good faith and in the performance or exercise of its functions, powers and duties. • Clause 179 provides that members of the board or MPC, the Governor, employees, investigators, or statutory managers are not liable for certain acts or omissions in the performance of the Bank's functions, powers or duties in good faith. <p>These protections from liability do not apply to certain criminal offences.</p> <p>These liability protections are necessary to ensure the Reserve Bank is not subject to vexatious or strategic litigation, and can undertake its regulatory and central bank responsibilities without the need to be overly defensive. The Reserve Bank is subject to judicial review and to scrutiny by the Office of the Ombudsman and the Auditor-General.</p>	

Significant decision-making powers

4.6. Does this Bill 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?	NO
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Powers to make delegated legislation

4.7. Does this Bill 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?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clauses 118 continues the power of the Minister of Finance to issue an MPC remit. In certain circumstances this will be issued by the Governor-General via an Order in Council, in which case it will be a legislative instrument.</p> <p>Clause 157 allows the Reserve Bank to issue standards to provide reasonable assurance in relation to devices that check the authenticity and/or quality of banknotes. These standards are not legislative instruments, but are disallowable instruments, and will be classed as secondary legislation after the commencement of the Legislation Act 2019.</p> <p>Clause 288 of the Bill allows the Governor-General, on the advice of the Minister, to make regulations prescribing entities to be 'law enforcement or regulatory agencies', prescribing the form and content of infringement notices, and providing for any other matters contemplated by the Act, necessary for administration, or necessary for full effect.</p> <p>Clauses 289 and 291 allow for regulations to be made for fees and levies, as set out at 4.2.</p> <p>These are relatively minor provisions and are intended to allow for the operation of the regime going forward. The Minister must consult with the Bank before making any recommendations.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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