

# Departmental Disclosure Statement

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Deposit Takers Bill
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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 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.

1 September 2022

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## Part One: General Policy Statement

The Deposit Takers Bill (the **Bill**) is an omnibus Bill introduced under Standing Order 267(1)(c). That Standing Order provides that an omnibus Bill to amend more than one Act may be introduced if the Business Committee has agreed to the Bill's introduction as an omnibus Bill.

The Bill will modernise the Reserve Bank of New Zealand's legislation for prudential regulation and supervision of the deposit-taking sector. The main purpose of the Bill is to promote the prosperity and well-being of New Zealanders and contribute to a productive and sustainable economy by protecting and promoting the stability of the financial system. The provisions in the Bill are intended to help protect society from the damage to New Zealand's financial system and wider economy that could be caused by unexpected external factors, excessive risk taking by the deposit-taking sector, and the unmanaged failures of individual deposit takers.

In 2017, the Government announced a review of the Reserve Bank of New Zealand Act 1989 (the **Review**). Phase 1 of the Review dealt with monetary policy arrangements, resulting in the introduction of the Monetary Policy Committee and an economic objective of supporting maximum sustainable employment. Phase 2 of the Review, which began in June 2018, focused on the institutional structure of the Reserve Bank (the **Bank**), the framework for the prudential regulation and supervision of deposit takers, and new arrangements for depositor protection.

In August 2021, the Reserve Bank of New Zealand Act 2021 (the **RBNZ Act 2021**) was enacted as the first result of phase 2. The RBNZ Act 2021 is companion legislation to the Bill, focusing on the institutional foundations for the Bank's prudential responsibilities and other functions. The RBNZ Act 2021—

- 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):
- strengthens accountability and transparency requirements (in line with the regime under the Crown Entities Act 2004):
- mandates a new financial policy objective focused on promoting financial stability:
- requires the Minister of Finance (the **Minister**) to issue a financial policy remit:
- formalises an external departmental monitor (in this case, the Treasury) to assess the Bank's performance of its statutory functions:
- provides statutory recognition for the Council of Financial Regulators as a key forum for co-operation and co-ordination within New Zealand's financial regulatory system.

The provisions of the Bill merge the currently separate frameworks for registered banks and licensed non-bank deposit takers under a single regulatory regime. Resetting the prudential boundary for deposit taking will require the Bank to update the broader framework for the regulation and supervision of entities that fall within this boundary.

Updates to the Bank's prudential framework include modernising the licensing process, enabling a range of prudential standards to be applied to individual deposit takers or classes of deposit takers, and expanding the suite of supervisory and enforcement tools. The Bill introduces the Depositor Compensation Scheme (the **DCS**), a fund that will compensate eligible depositors up to \$100,000. The DCS may also be used to compensate creditors or shareholders that may be made worse off as a result of a resolution action, relative to outcomes under liquidation.

The Bill, once it comes into force, will replace the Banking (Prudential Supervision) Act 1989 and the Non-bank Deposit Takers Act 2013.

## **Preliminary provisions**

The main statutory 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. To that end, other purposes of the Bill include—

- promoting the safety and soundness of deposit takers:
- promoting public confidence in the financial system:
- avoiding or mitigating adverse effects of risks involving the financial system.

The Bill includes a set of decision-making principles the Bank must take into account when performing or exercising its functions, powers, and duties. The principles are designed to guide the exercise of powers under the Bill, and to ensure that the Bank takes a range of factors into account when pursuing the statutory purposes. This includes ensuring that relevant considerations are taken into account (for example, proportionality considerations) and that longer-term risks are well managed.

## **Licensing**

The Bill sets out requirements for the licensing of entities involved in the activity of borrowing and lending, conditions of a licence, and penalties that may result from non-compliance.

The Bank will primarily implement prudential policy through standards developed in consultation with the industry. Beyond standards, the Bank may impose conditions on licences. Licence conditions may apply particular prudential standards to firms (see the section below on regulation), and make other firm-specific restrictions on the business of a deposit-taker.

The Bill contains fit and proper requirements for directors and senior managers of deposit takers. It further outlines under what circumstances a deposit taker will need to obtain approval from the Bank for changes of control and other significant transactions, and when the Bank may cancel a licence.

## **Regulation**

Prudential requirements for all licensed deposit takers will primarily be set out in standards issued by the Bank. Standards are secondary legislation under the Legislation Act 2019. The Bill outlines the scope of prudential standards the Bank may impose on deposit takers.

The Bill further outlines the due diligence duty of directors, requiring them to ensure that their deposit taker complies with its prudential obligations.

## **Supervision**

The Bill details the Bank's powers to gather information, undertake on-site inspections, investigate non-compliance with prudential obligations, and seek remedial action by the deposit taker.

## **Enforcement**

The Bill provides a range of powers to sanction deposit takers for non-compliance. The penalty regime for contraventions in the Bill includes criminal offences, civil pecuniary penalty liability, and infringement offences. Enforcement provisions include the power to accept undertakings. The Bill further criminalises the making of false or misleading declarations or provision of false or misleading information.

## **Depositor Compensation Scheme**

The Bill introduces the DCS, which provides each eligible depositor up to \$100,000 for their covered deposits in New Zealand dollars at each deposit-taking institution. Natural persons and businesses are generally eligible depositors. However government agencies, some financial institutions, and associated persons or directors of licensed deposit takers, as defined in the Bill, are excluded. In general terms, compensation will be paid to eligible depositors by the DCS where a deposit taker is in financial or other difficulties that cause serious or prolonged disruption to the ability of eligible depositors to access their covered deposits. The Bill sets up a DCS fund by charging levies to licensed deposit takers. The fund is also backed up by public funds in case the balance of the DCS fund is insufficient to meet its obligations in a pay-out event. Under the Bill, the Bank has the role of collecting levies, managing the DCS fund, determining entitlements, and making compensation payments. The Bank can also use the DCS fund to support resolution measures when certain conditions are met.

## **Crisis management and resolution**

The Bill provides the Bank with powers to address a deposit taker in financial distress, and to compensate creditors or shareholders that may be made worse off as a result of a resolution action relative to outcomes under liquidation.

## **Other provisions**

The Bill restricts the use of certain words (for example, “bank” and “banking”) and provides for co-operation with Australian authorities.

## **Transitional arrangements and commencement**

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. This is necessary to give effect to the intended arrangements for implementing the Bill. The DCS is expected to come into force via an Order in Council at an earlier date than many other provisions in the Bill.

The following powers will come into force on the day after the date of the Royal assent:

- powers to issue standards (*subpart 2 of Part 3*):
- powers to make regulations (*subpart 5 of Part 8*).

A transitional period will then be used to license deposit takers and issue the relevant standards. At the end of that period, the remaining provisions of the Bill will come into force and the Banking (Prudential Supervision) Act 1989 and the Non-bank Deposit Takers Act 2013 will be repealed.

It is intended that the Bill will be divided by the select committee or at the committee of the whole House stage into separate Bills as follows:

- *Parts 1 to 8 and Schedules 1 and 2* will become the Deposit Takers Bill:
- *Part 9 and Schedule 3* will become the Deposit Takers (Repeals and Amendments) Bill.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<p>Policy was developed by a team at the Reserve Bank of New Zealand and the Treasury. In developing the policy, the team produced a number of public consultation and issues papers. The most relevant papers are:</p> <p><b>Consultation 1:</b> Safeguarding the future of our financial system: The role of the Reserve Bank and how it should be governed, 01/11/2018:  <a href="https://www.treasury.govt.nz/sites/default/files/2019-03/rbnz-safeguarding-future-financial-system-c1.pdf">https://www.treasury.govt.nz/sites/default/files/2019-03/rbnz-safeguarding-future-financial-system-c1.pdf</a></p> <p><b>Consultation Document 2A:</b> In-principle decisions and follow-up questions on: The role of the Reserve Banks and how it should be governed, 24/06/2019:  <a href="https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2a.pdf">https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2a.pdf</a></p> <p><b>Consultation Document 2B:</b> The Reserve Bank's role in financial policy: tools, powers, and approach, 24/06/2019: <a href="https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2b.pdf">https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2b.pdf</a></p> <p><b>Consultation Document 3:</b> Further consultation on the prudential framework for deposit takers and depositor protection, 13/03/2020:  <a href="https://www.treasury.govt.nz/sites/default/files/2020-03/rbnz-further-consultation-phase-2.pdf">https://www.treasury.govt.nz/sites/default/files/2020-03/rbnz-further-consultation-phase-2.pdf</a></p> <p><b>Exposure draft of the Deposit Takers Bill</b>, 06/12/2021: <a href="https://www.rbnz.govt.nz/exposure-draft-of-the-deposit-takers-bill">Exposure draft of the Deposit Takers Bill (rbnz.govt.nz)</a></p> <p><b>Explanatory notes of the Exposure Draft</b>, 06/12/2021: <a href="https://www.rbnz.govt.nz/explanatory-notes-of-the-exposure-draft">Deposit Takers Bill - Exposure Draft: Explanatory Notes (rbnz.govt.nz)</a></p> <p>Summary of Submissions, August 2022, published on the Reserve Bank website</p> <p>Other relevant papers and reports, as well as proactively released advice, is available on RBNZ and Treasury websites at:  Reserve Bank: <a href="https://www.rbnz.govt.nz/proposed-deposit-takers-act">Proposed Deposit Takers Act - Reserve Bank of New Zealand (rbnz.govt.nz)</a>  The Treasury: <a href="https://www.treasury.govt.nz/news-and-events/reviews-consultation/reviewing-reserve-bank-act/deposit-takers-bill">https://www.treasury.govt.nz/news-and-events/reviews-consultation/reviewing-reserve-bank-act/deposit-takers-bill</a></p>	

### Relevant international treaties

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

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>The regulatory impact assessments can be found and downloaded at:</p> <p>Regulatory Impact Statement Reserve Bank Act Review – Deposit Takers Act – Regulatory Impact Statement: A New Prudential Framework for the regulation and supervision of deposit takers and the introduction of deposit insurance, 07/04/2021:  <a href="https://www.treasury.govt.nz/system/files/2021-04/rbnz-dtb-RIA-4444132.pdf">https://www.treasury.govt.nz/system/files/2021-04/rbnz-dtb-RIA-4444132.pdf</a></p> <p>Regulatory Impact Statement: Deposit Takers Bill (Supplementary decisions), 13/10/2021:  <a href="https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments">Regulatory Impact Statement: Deposit Takers Bill (Supplementary decisions) (rbnz.govt.nz)</a></p> <p>Regulatory Impact Statement: Deposit Takers Bill (Supplementary decisions), 22/06/2022:  <a href="https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments">https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments</a></p>	

<b>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?</b>	<b>YES</b>
<p>A Quality Assurance Panel with representatives from the Reserve Bank and the Treasury reviewed the 'A New Prudential Framework for the regulation and supervision of deposit takers and the introduction of deposit insurance' Regulatory Impact Assessment (RIA) produced by the Treasury and dated April 2021.</p> <p>Representatives from the Reserve Bank reviewed the 'Deposit Takers Bill (Supplementary decisions)' Regulatory Impact Assessment (RIA) produced by the Reserve Bank and dated October 2021.</p> <p>Representatives from the Reserve Bank reviewed the 'Deposit Takers Bill (Supplementary decisions)' Regulatory Impact Assessment (RIA) produced by the Reserve Bank and dated June 2022.</p>	

<b>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?</b>	<b>NO</b>
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## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>The Reserve Bank has prepared three Regulatory Impact Statements in relation to the Bill, referred to in the answer to question 2.3, which include a detailed qualitative analysis on the potential costs and benefits.</p> <p>Prudential regulation of deposit takers (under the Bill or the Acts it will replace) affects the business models of regulated entities. One key aim is to reduce the risks of sudden losses of wealth (through firm failure) for depositors. The impact of individual policies adopted under the Bill in future will be examined through Regulatory Impact Assessments made in connection with consultations on proposed standards.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The Bill establishes a single regulatory framework for all deposit takers. The Bill, standards and regulations to be made under the Bill will largely continue the existing framework of obligations and prudential requirements that apply to deposit takers, while introducing some new requirements, particularly for non-bank deposit takers. The Bill will increase compliance requirements for non-bank deposit takers generally and, to a lesser extent, for banks. One key aim of the Bill is to reduce the risks of sudden losses of wealth (through firm failure) for depositors. The purposes of the Bill are to:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• promote the safety and soundness of deposit takers;</li> <li>• promote public confidence in the financial system;</li> <li>• avoid or mitigate adverse effects of risks involving the financial system.</li> </ul> <p>The most significant new elements of the Bill include:</p> <ul style="list-style-type: none"> <li>• improving the range of regulatory tools available for the Reserve Bank.</li> <li>• the introduction of the Depositor Compensation Scheme (<b>DCS</b>), which provides each eligible depositor up to \$100,000 for their covered deposits in New Zealand dollars at each deposit taking institution.</li> <li>• powers for the Reserve Bank to address a deposit taker in financial distress, and to compensate creditors or shareholders that may be made worse off as a result of a resolution action relative to outcomes under liquidation.</li> </ul> <p>The Reserve Bank will need to monitor deposit takers' compliance with, and enforce obligations imposed by, the Bill, once enacted.</p>	

## 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?

The Core principles for effective banking supervision by the Basel Committee on Banking Supervision (the **Basel Core Principles**) sets out minimum standards for sound prudential regulation of banks. However, those standards are not strictly obligations. The Basel Core Principles have been taken into account as part of the policy development process.

### 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?

Some targeted consultation was undertaken with representative groups. This Bill does not impact on the principles of the Treaty of Waitangi.

### 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/humanrights/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)?

YES

The Bill establishes new criminal offences, civil pecuniary penalty liability, and infringement offences for the breach of requirements imposed by or under the Bill. Refer to the table in **Appendix 1** for further details.

The Bill also establishes the High Court's jurisdiction, on the application of the Reserve Bank, to enforce a voluntary undertaking entered into under the Bill, and impose any penalties established by the Bill. The Bill also gives rights to appeal certain regulatory decisions.

#### 3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Reserve Bank 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 Reserve Bank engaged with the Ministry of Justice by email, and met with relevant Ministry of Justice representatives in person to discuss these matters. The Ministry of Justice was consulted on each Cabinet paper seeking relevant policy decisions. Feedback from the Ministry of Justice was reflected in the Bill, and the penalties for the infringement offences were adjusted to reflect guidance from the Ministry of Justice.

## Privacy issues

<b>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?</b>	<b>YES</b>
<p>The Bill gives the Reserve Bank the ability to set standards relating to depositor compensation, including making available information to the Bank that is necessary or desirable for the Bank to carry out its functions, duties or powers relating to the Depositor Compensation Scheme (<b>DCS</b>). These standards may require deposit takers to produce and provide to the Reserve Bank, Single Customer View files for their customers to enable the Reserve Bank to administer the DCS. The Bill also enables the Reserve Bank to collect personal depositor information to open new accounts on behalf of depositors. The Bill further provides the Reserve Bank with extensive information gathering powers required for the supervision of deposit takers.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Reserve Bank has consulted with the Office of the Privacy Commissioner about matters related to the collection and sharing of private information as part of the process of making a pay-out under the DCS. The purpose of this engagement is to ensure that only necessary information is shared for, and only for the purposes of, facilitating the pay-out process under the DCS.</p>	

## External consultation

<b>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?</b>	<b>YES</b>
<p>Policy was developed by a team comprising the Reserve Bank of New Zealand and the Treasury. In developing the policy, the team produced a number of public consultation and issues papers. The most relevant papers are:</p> <p><b>Consultation 1:</b> Safeguarding the future of our financial system: The role of the Reserve Bank and how it should be governed, 01/11/2018:  <a href="https://www.treasury.govt.nz/sites/default/files/2019-03/rbnz-safeguarding-future-financial-system-c1.pdf">https://www.treasury.govt.nz/sites/default/files/2019-03/rbnz-safeguarding-future-financial-system-c1.pdf</a></p> <p><b>Consultation Document 2A:</b> In-principle decisions and follow-up questions on: The role of the Reserve Banks and how it should be governed, 24/06/2019:  <a href="https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2a.pdf">https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2a.pdf</a></p> <p><b>Consultation Document 2B:</b> The Reserve Bank's role in financial policy: tools, powers, and approach, 24/06/2019: <a href="https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2b.pdf">https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2b.pdf</a></p> <p><b>Consultation Document 3:</b> Further consultation on the prudential framework for deposit takers and depositor protection, 13/03/2020:  <a href="https://www.treasury.govt.nz/sites/default/files/2020-03/rbnz-further-consultation-phase-2.pdf">https://www.treasury.govt.nz/sites/default/files/2020-03/rbnz-further-consultation-phase-2.pdf</a></p> <p><b>Exposure draft of the Bill:</b> A round of public consultation on the exposure draft of the Bill was undertaken. The Reserve Bank published consultation documents, alongside summary material and background papers. The consultation ran from December 2021 to February 2022. Twenty-one submissions were received based on the exposure draft consultation. One submission requested the Reserve Bank to treat it as confidential in its entirety; the remaining 20 submissions have been published on the Reserve Bank website. Information and documents relating to the public consultation process, including summaries of public feedback, are available on the Reserve Bank's website. Where appropriate, the Bill was amended to account for feedback from submitters.</p>	

## Other testing of proposals

<b>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?</b>	<b>YES</b>
<p>The International Monetary Fund (<b>IMF</b>) carried out a <a href="#">Financial System Assessment Programme (FSAP) review</a> of New Zealand in 2016/17. The review identified a number of areas where New Zealand did not fully meet the Basel Core Principles for Effective Banking Supervision. The Reserve Bank has also further engaged with the IMF on the exposure draft.</p> <p>The Reserve Bank reached out and engaged with relevant agencies and bodies in other jurisdictions such as the Australian Prudential Regulation Authority, the Australian Treasury, the Bank of England and the International Association of Deposit Insurers. Given New Zealand's role as host of large and systemically important Australian-owned banks, particular attention was paid to aspects of the Australian prudential regime in the development of the Bill.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>YES</b>
<p>The Bill provides for powers to the Reserve Bank to address a deposit taker in financial distress, including taking control of a deposit taker and rearranging claims. However, this power exists in the Banking (Prudential Supervision) Act 1989; it is common internationally and listed under 'Key attributes of Effective Resolution Regimes for Financial Institutions' by the Financial Stability Board. The Bill goes further by giving the Reserve Bank the power to compensate creditors or shareholders that may be made worse off as a result of a resolution action relative to outcomes under liquidation.</p>	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>Clause 234 allows for regulations requiring deposit takers to pay levies for the purposes of funding the Depositor Compensation Scheme (<b>DCS</b>) and reimbursing the Crown for any public money used to make up a deficiency in the DCS fund in the event of a pay-out. Any target fund size for the scheme will be determined by the Minister of Finance's <i>Statement of Funding Approach</i>.</p> <p>Deposit takers may also be required to pay levies to allow the Crown to recover the cost of providing public money to support to the resolution of a deposit taker (or associated person) or that is provided under an amendment to the Public Finance Act (<b>PFA</b>) (clause 465). The Bill will amend the PFA to address a gap in the crisis management framework around the ability for the Government to use public funds in cases where funds need to be provided quickly and exceed Imprest Supply or an existing available appropriation.</p>	

### Retrospective effect

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

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
<p>The Bill establishes number of strict liability offences. Refer to <b>Appendix 2</b> for further details.</p>	

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>The Bill makes a consequential amendment to the RBNZ Act 2021, adding the Deposit Takers Act (DTA), once enacted, to the definition of “prudential legislation” in the RBNZ Act 2021. This amendment brings the DTA within the scope of the immunities in sections 181 and 182 of the RBNZ Act 2021. The amendment also has the effect of carrying over existing immunities in respect of the supervision of registered banks (section 179 of the Banking Prudential Supervision Act 1989) and non-bank deposit takers (section 80 of the Non-bank Deposit Takers Act 2013).</p>	

## Significant decision-making powers

<b>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?</b>	<b>YES</b>
<p>The following Parts and subparts in the Bill are notable in this regard:</p> <ul style="list-style-type: none"> <li>• <b>Part 2, subpart 1</b> sets out requirements for all deposit takers to hold a licence. A failure to comply with these duties is an offence with a penalty of imprisonment, a fine, or both.</li> <li>• <b>Part 2, subpart 3</b> allows the Reserve Bank to impose conditions on a licence.</li> <li>• <b>Part 2, subpart 4</b> sets out fit and proper requirements for new directors and senior managers of deposit takers, including requiring the Reserve Bank’s approval.</li> <li>• <b>Part 2, subpart 5</b> sets out details in relation to approval required for a change in control of a deposit taker.</li> <li>• <b>Part 2, subpart 6</b> allows the Reserve Bank to cancel a licence under certain circumstances.</li> <li>• <b>Part 3</b> sets out the requirements for being a deposit taker and the potential consequences of failure to meet such requirements.</li> <li>• <b>Part 4</b> sets out the Reserve Bank’s supervision powers.</li> <li>• <b>Part 5</b> sets out enforcement tools available to the Reserve Bank.</li> <li>• <b>Part 6</b> establishes the Depositor Compensation Scheme but allows for regulations to fine tune eligibility rules and requirements.</li> <li>• <b>Part 7, subpart 9</b> establishes no creditor or shareholder worse off which provides for certain creditors and shareholders that have been put into resolution to receive compensation if they have received, as a result of a resolution, less favourable treatment than would have been the case had the entity been put into liquidation.</li> </ul> <p>These powers are necessary to ensure the stability of the financial system.</p>	

## Powers to make delegated legislation

<b>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?</b>	<b>YES</b>
<p><b>Part 3, subpart 1</b> allows the Reserve Bank to grant an exemption for deposit takers from holding a credit rating under certain circumstances.</p> <p><b>Part 8, subpart 5</b> authorises for regulations relating to the Depositor Compensation Scheme (including prescribing classes of persons that are not eligible investors under Part 6 of the Bill).</p> <p><b>Schedule 2, clause 6</b> provides that the Governor-General may, by Order in Council, declare that a person or a persons of a particular class is not a deposit taker for the purposes of the Deposit Takers Act.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The Bill contains provisions that allow the Reserve Bank to make legally-binding standards, which will apply to deposit takers. These standards are secondary legislation, and set requirements relating to a wide range of topics.</p> <p>The Bill includes safeguards around this power, including the requirement to consult with affected parties before standards are made, the requirement for standards to relate to certain matters, and the requirement for the Reserve Bank to have regard to certain principles when making standards.</p> <p>The Bill also authorises the making of regulations for a range of purposes. A full set of secondary legislation authorised under the Bill can be found in <b>Appendix 2</b>.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
<p>The Bill establishes the Depositor Compensation Scheme (<b>DCS</b>), a scheme to protect eligible depositors by up to \$100,000 per deposit taking institution. The scheme will be funded by regulations imposing levies on deposit takers. These levies are expected to be proportionate to a deposit taker's eligible depositor base and the risk profile of the deposit taker. DCS funds may also be used to support a resolution of a deposit taker as an alternative way to protect covered deposits.</p>	

## Appendix 1: Further Information Relating to Part Three

### Offences, penalties and court jurisdictions – question 3.4(a)

The Bill establishes new criminal offences, civil pecuniary penalty liability, and infringements offences for the breach of requirements imposed by or under the Bill. Strict liability offences are noted in Appendix 2.

<b>Deposit Takers Bill: fines for new offences and fines that have increased for existing offences carried over from the RBNZ 1989 Act</b>		
<b>Indvl = individual BC = Body Corporate All = any individual or other person</b>		<b>Penalty</b>
11 A person carries on deposit taking business without a licence	Indvl BC	Fine not exceeding \$500,000 or imprisonment for a term not exceeding 2 years (or both) Fine not exceeding \$5,000,000
14 A person who is not licensed holds itself out to be licensed	Indvl BC	Fine not exceeding \$500,000 or imprisonment for a term not exceeding 2 years (or both) Fine not exceeding \$5,000,000
24 A licensed deposit taker fails to comply with conditions of licence	Indvl BC	Pecuniary penalty not exceeding \$1,000,000 The greater of \$5,000,000 and 0.1% of total assets
27 A licensed deposit taker appoints a new director or senior manager without RBNZ approval	BC	Fine not exceeding \$500,000
29 A licensed deposit taker does not adhere to RBNZ's suspension of director or senior manager	Indvl	Fine not exceeding \$100,000 or imprisonment for a term not exceeding 1 year (or both)
30 Overseas licenced deposit takers fails to notify Bank of a new director or senior manager within 20 working days	BC	An infringement fee of \$10,000; or a fine imposed by a court not exceeding \$25,000
31 Failure to provide fit and proper certificate for a director or senior manager	BC	An infringement fee of \$10,000; or a fine imposed by a court not exceeding \$25,000
33 A licensed deposit taker fails to notify RBNZ on becoming aware of fit and proper concerns	BC	Fine not exceeding \$500,000
36 A licensed deposit taker (or the person removed as a director or senior manager) fails to comply with a direction not to be reappointed	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000
40 Overseas licenced deposit taker that fails to notify Bank of change in control	BC	An infringement fee of \$10,000; or a fine imposed by a court not exceeding \$25,000

<b>Deposit Takers Bill: fines for new offences and fines that have increased for existing offences carried over from the RBNZ 1989 Act</b>		
<b>Indvl = individual</b>		<b>Penalty</b>
<b>BC = Body Corporate</b>		
<b>All = any individual or other person</b>		
43 Overseas licensed deposit taker fails to notify Bank of amalgamation with another person	All	An infringement fee of \$10,000; or a fine imposed by a court not exceeding \$25,000
44 A licensed deposit taker fails to get RBNZ approval for changes of control, major transactions, etc./ comply with any conditions of approval	Indvl BC	Fine not exceeding \$100,000 or imprisonment for a term not exceeding 1 year (or both) Fine not exceeding \$2,500,000
51 A licensed deposit taker fails to comply with any conditions of approval	Indvl BC	Fine not exceeding \$100,000 Fine not exceeding \$2,500,000
60 A licensed deposit taker fails to hold a current credit rating	BC	Fine not exceeding \$2,500,000
64 Failure to disclose a change in credit rating within 20 days	BC	An infringement fee of \$10,000; or a fine imposed by a court not exceeding \$25,000
65 Failure to disclose a credit watch warning within 20 days	BC	An infringement fee of \$10,000; or a fine imposed by a court not exceeding \$25,000
66 A licensed deposit taker fails to disclose rating on its website	BC	An infringement fee of \$20,000; or a fine imposed by a court not exceeding \$50,000
67 A licensed deposit taker fails to comply with requirements for advertising of credit rating	BC	An infringement fee of \$20,000; or a fine imposed by a court not exceeding \$50,000
68 A licensed deposit taker discloses rating from non-approved agency	BC	An infringement fee of \$20,000; or a fine imposed by a court not exceeding \$50,000
69 A licensed deposit taker fails to give public notice of credit rating downgrade	BC	An infringement fee of \$20,000; or a fine imposed by a court not exceeding \$50,000
73 Failure to comply with applicable standards	Indvl BC	Pecuniary penalty not exceeding \$1,000,000 The greater of \$5,000,000 and 0.1% of total assets
83 Failure to comply with lending standard	Indvl BC	Pecuniary penalty not exceeding \$1,000,000 The greater of \$5,000,000 and 0.1% of total assets
92 Directors due diligence duty	Indvl	Pecuniary penalty not exceeding \$1,000,000

<b>Deposit Takers Bill: fines for new offences and fines that have increased for existing offences carried over from the RBNZ 1989 Act</b>		
<b>Indvl = individual BC = Body Corporate All = any individual or other person</b>		<b>Penalty</b>
100 A person fails to supply information	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000
104 A person fails to give or publish a report	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000
106 A person contravenes a requirement that information be audited or reviewed	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000
114 An employee, director or agent of a licensed deposit taker fails to provide information or answer questions in the course of an on-site inspection	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000
117 A licensed deposit taker fails to comply with its obligations to monitor and report contraventions	BC	Fine not exceeding \$500,000
125 A licensed deposit taker contravenes a remedial notice, fails to give an amended remedial plan fails to comply with a remedial plan	BC	Fine not exceeding \$2,500,000
129 A person hinders etc. an investigator or fails to comply with any lawful requirement of an investigator	Indvl BC	Fine not exceeding \$100,000 Fine not exceeding \$2,500,000
132 A person publishes, discloses or uses information in contravention of confidentiality order	Indvl BC	Fine not exceeding \$100,000 or imprisonment for a term not exceeding 1 year (or both) Fine not exceeding \$2,500,000
137 A person to whom an order is made to disclose a warning refuses or fails to disclose the warning	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000
143 A licensed deposit taker fails to comply with a notice permitting an overseas supervisor to conduct an inspection of the deposit taker or provide the overseas supervisor with information	BC	Fine not exceeding \$500,000
151 Contravention of undertaking	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000
174 A person makes false declarations or representations to the Bank	Indvl BC	Fine not exceeding \$100,000 or imprisonment for a term not exceeding 1 year (or both) Fine not exceeding \$2,500,000

<b>Deposit Takers Bill: fines for new offences and fines that have increased for existing offences carried over from the RBNZ 1989 Act</b>		
<b>Indvl = individual BC = Body Corporate All = any individual or other person</b>		<b>Penalty</b>
179 A person participates in a deposit taking business in contravention of a banning order	Indvl	Fine not exceeding \$100,000 or imprisonment for a term not exceeding 1 year (or both)
192 Failure to publish a list of protected deposits	BC	An infringement fee of \$20,000; or a fine imposed by a court not exceeding \$50,000
255 No holding out that product is protected deposit	Indvl BC	Fine not exceeding \$100,000 or imprisonment for a term not exceeding 1 year (or both) Fine not exceeding \$2,500,000
270 Offence for contravening prohibition	Indvl BC	Fine not exceeding \$100,000 Fine not exceeding \$2,500,000
342 A person must not, without the Bank's consent, transfer or remove from New Zealand any property of a licensed deposit taker that is in resolution.	Indvl BC	Fine not exceeding \$500,000 or imprisonment for a term not exceeding 2 years (or both) Fine not exceeding \$5,000,000
343 Offence for destroying, altering, or concealing records	Indvl BC	Fine not exceeding \$100,000 or imprisonment for a term not exceeding 1 year (or both) Fine not exceeding \$2,500,000
385 Failing to supply information	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000
387 Use of information and confidentiality	Indvl	Fine not exceeding \$100,000 or imprisonment for a term not exceeding 1 year (or both)
399 Failure of valuer's duties in relation to records	Indvl	Fine not exceeding \$50,000
403 Issue, or permit the issue of, a covered bond other than under a registered covered bond programme.	Indvl BC	Fine not exceeding \$100,000 Fine not exceeding \$2,500,000
415 Failure to take corrective action	Indvl BC	Fine not exceeding \$100,000 Fine not exceeding \$2,500,000
423 A financial service provider contravenes the restrictions on the use of restricted words	Indvl BC	Fine not exceeding \$100,000 Fine not exceeding \$2,500,000
432 Use of restricted word in advertisement	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000

<b>Deposit Takers Bill: fines for new offences and fines that have increased for existing offences carried over from the RBNZ 1989 Act</b>		
<b>Indvl = individual BC = Body Corporate All = any individual or other person</b>		<b>Penalty</b>
434 Contravening requirement to change name	Indvl BC	Fine not exceeding \$50,000 Fine not exceeding \$500,000
444 Unauthorised disclosure or use of information	Indvl BC	Fine not exceeding \$100,000 or imprisonment for a term not exceeding 1 year (or both) Fine not exceeding \$2,500,000

## Appendix 2: Further Information Relating to Part Four

### Strict liability for offences – question 4.4

The Bill establishes the following strict liability offences:

Clause	Offence	Penalty
27	A licensed deposit taker appoints a new director or senior manager without RBNZ approval	Fine not exceeding \$500,000
33	A licensed deposit taker fails to notify RBNZ on becoming aware of fit and proper concerns	Fine not exceeding \$500,000
36(1)	A licensed deposit taker fails to comply with a direction for a director or senior manager not to be reappointed	Fine not exceeding \$500,000
36(2)	A person removed as a director or manager accepts reappointment to a position of director or senior manager	Fine not exceeding \$50,000
51	A licensed deposit taker fails to comply with any conditions of approval	Indvl: Fine not exceeding \$100,000 BC: Fine not exceeding \$2,500,000
60	A licensed deposit taker fails to hold a current credit rating	Fine not exceeding \$2,500,000
100	A person fails to supply information in compliance with notice under clause 99	Indvl: Fine not exceeding \$50,000 BC: Fine not exceeding \$500,000
104	A person fails to give or publish a report in contravention of requirements under clauses 101—103	Indvl: Fine not exceeding \$50,000 BC: Fine not exceeding \$500,000
106	A person contravenes a requirement under clause 105 that information be audited or reviewed	Indvl: Fine not exceeding \$50,000 BC: Fine not exceeding \$500,000
114	An employee, director, or agent of a licensed deposit taker fails to provide information or answer questions required under clause 113, or resists, obstructs, or delays the Bank, in relation to an on-site inspection	Indvl: Fine not exceeding \$50,000 BC: Fine not exceeding \$500,000
117	A licensed deposit taker fails to comply with its obligations to monitor compliance and report contraventions	Fine not exceeding \$500,000

Clause	Offence	Penalty
129	A person hinders etc. an investigator or fails to comply with any lawful requirement of an investigator	Indvl: Fine not exceeding \$100,000 BC: Fine not exceeding \$2,500,000
137	A person or an associated person of a deposit taker to whom an order is made to disclose a warning refuses or fails to comply with the order	Indvl: Fine not exceeding \$50,000 BC: Fine not exceeding \$500,000
143	A licensed deposit taker fails to comply with a notice permitting an overseas supervisor to conduct an inspection of the deposit taker or provide the overseas supervisor with information	Fine not exceeding \$500,000
151	A person contravenes an undertaking that the person has given that is in force	Indvl: Fine not exceeding \$50,000 BC: Fine not exceeding \$500,000
270	Offence for contravening prohibition on disclosing or publishing direction or notice	Indvl: Fine not exceeding \$100,000 BC: Fine not exceeding \$2,500,000
385	Failing to supply information	Indvl: Fine not exceeding \$50,000 BC: Fine not exceeding \$500,000
399	Failure to perform valuer's duties in relation to records	Fine not exceeding \$50,000
403	Issue, or permit the issue of, a covered bond other than under a registered covered bond programme	Indvl: Fine not exceeding \$100,000 BC: Fine not exceeding \$2,500,000
415	Failure to take corrective action	Indvl: Fine not exceeding \$100,000 BC: Fine not exceeding \$2,500,000
423	A financial service provider contravenes the restrictions on the use of restricted words	Indvl: Fine not exceeding \$100,000

Clause	Offence	Penalty
		BC: Fine not exceeding \$2,500,000
432	Use of restricted word in advertisement	Indvl: Fine not exceeding \$50,000 BC: Fine not exceeding \$500,000
434	Contravening requirement to change name	Indvl: Fine not exceeding \$50,000 BC: Fine not exceeding \$500,000

### Powers to make delegated legislation - question 4.8

The Bill contains provisions which authorise the Reserve Bank (**RBNZ**) or the Governor-General to make legally binding standards and regulations which will apply to deposit takers. These standards and regulations are secondary legislation, and set requirements relating to a wide range of topics as set out below.

Clause	Description	Type	Maker
2(4)	Order in Council to commence provisions of the Act	Order in Council	Governor-General
6	Regulations prescribing an Australian public authority for the purposes of the definition of Australian financial authority	Regulations	Governor-General
17(1)(g)	Eligibility criteria for a licence	Regulations	Governor-General
70	Bank may grant exemptions from credit rating requirements	Exemption	RBNZ
72	Bank may issue standards for the purposes of the Act	Standards	RBNZ
77	Standards for governance and incorporation structure of deposit taker, and remuneration of, and incentives available to, directors, etc.	Standards	RBNZ
78	Standards for capital, liquidity, security interests, and credit ratings	Standard	RBNZ
79	Bail-in standards	Standard	RBNZ
80	Fit and proper person standards	Standard	RBNZ
81	Lending and other exposures standards	Standard	RBNZ
82	Regulations for class or classes of lending	Regulations	Governor-General
83	Lending standards for non-deposit taker lenders	Standard	RBNZ

Clause	Description	Type	Maker
83	Regulations authorising issuing lending for non-deposit taker lenders	Regulations	Governor-General
84	Standards for risk management, business continuity planning, and problem assets	Standard	RBNZ
85	Depositor compensation standards	Standard	RBNZ
86	Standards for covered bonds and securitisation	Standard	RBNZ
87	Disclosure standards	Standard	RBNZ
88	Standards for contingency and recovery plans and facilitating resolution	Standard	RBNZ
89	Standards for outsourcing, significant transactions, restriction or prohibitions on activities, internal controls, internal assurance, other matters prescribed in regulations	Standard	RBNZ
89(1)(e)	Regulations prescribing other matters that standards may regulate	Regulations	Governor-General
116(2)(c)	Other information requirements prescribed for a licensed deposit to include in contravention report	Regulations	Governor-General
170	Form for infringement notices	Regulations	Governor-General
173	Form for reminder notices	Regulations	Governor-General
190(1)(v)	Meaning of eligible investor being a person of a class prescribed	Regulations	Governor-General
191(1)(c)(ii) and (2)(d)	Meaning of protected deposit, debt securities specified to be, or declared not to be, protected deposit	Regulations	Governor-General
201(2)	Compensation entitlement calculation manner	Regulations	Governor-General
202(3)	Meaning of temporary high balance limit	Regulations	Governor-General
203(2)	Specifying shares in protected deposits held by or on behalf of 2 or more persons jointly	Regulations	Governor-General
204(2)	Shares in protected deposits held by or on behalf of 2 or more persons other than jointly	Regulations	Governor-General
208	Entitlement rules for deposits held on trust, excluding certain trusts	Regulations	Governor-General
211	The calculation of amount of person's protected deposits or share of protected deposits	Regulations	Governor-General
212	Regulations may take into account transactions that have not been	Regulations	Governor-General

Clause	Description	Type	Maker
	processed at quantification time		
213	Regulations may take into account funds that are withdrawn or available to eligible investors during resolution	Regulations	Governor-General
214	Regulations may impose conditions on person's entitlement to compensation	Regulations	Governor-General
218	Paying entitlements in a manner prescribed by regulations	Regulations	Governor-General
230	Regulations may prescribe maximum amount that may be used from the depositors compensation fund to support resolution and associated requirements	Regulations	Governor-General
234	Licensed deposit takers must pay levy prescribed by regulations for Depositor Compensation Scheme	Regulations	Governor-General
236	Interest on unpaid levies assessed at the rate and applied by the method (if any) prescribed by the regulations	Regulations	Governor-General
237	Levy regulations for licensed deposit taker	Regulations	Governor-General
271	Resolution of licensed deposit takers and associated persons	Order in Council	Governor-General
272	Order in Council declaring subsidiary to be acquired not in resolution	Order in Council	Governor-General
276	Limitation on application of provisions to covered bond and certain other securitisation SPVs	Regulations	Governor-General
279	Declaration that licensed deposit taker or associated person that is in resolution is no longer in resolution	Order in Council	Governor-General
290	Specified instrument and specified declarations as prescribed in regulation	Regulations	Governor-General
311	Declare that the whole or any part of any property, rights, and liabilities of A relating to its New Zealand business will vest in B on a date specified in the order	Order in Council	Governor-General
330	Ancillary or additional powers for the Bank or the resolution manager	Regulations	Governor-General
333(2)	Order in Council to disapply provisions of certain Acts to licensed deposit taker in resolution	Order in Council	Governor-General

Clause	Description	Type	Maker
364	Prescribe the entities that fit within the definition of pre-resolution shareholder	Regulations	Governor-General
368	Valuer must act in manner prescribed by regulations	Regulations	Governor-General
373	Discount rate the valuer must apply	Regulations	Governor-General
374	Information that must be contained in the valuer's draft report	Regulations	Governor-General
377	Permit or require the Bank to redact information from the published valuer's report	Regulations	Governor-General
378(2)(d)	Other information that compensation notice sent to a pre-resolution creditor or pre-resolution shareholder must set out	Regulations	Governor-General
379	Manner in which information is to be made public	Regulations	Governor-General
381	Manner in which the Bank must may payment	Regulations	Governor-General
383(3)(b)	Prescribing circumstances where transfer of entitlement by appointment or operation of law does not apply	Regulations	Governor-General
392(1) and (2)	Who may be appointed as valuer—prescription of knowledge, experience, and skills, and meaning of independence requirements	Regulations	Governor-General
402	Meaning of an issuer—entity, or a member of a class of entities, specified in the regulations	Regulations	Governor-General
408(2)	Determination of application for registration of covered bond programme—meeting of requirements	Regulations	Governor-General
408(2)(g)	Requirements for registration of covered bond programme	Standards	RBNZ
417(e)	Matters to be reported by the cover pool monitor	Regulations	Governor-General
418(4)	Securitisation arrangement of a type or class prescribed	Regulation	Governor-General
426	Bank may, by notice, authorise class of persons to use restricted words in name or title	Notice	RBNZ
447	Bank may, by notice, require class of persons to comply with requirements	Notice	RBNZ
451	General regulations	Regulations	Governor-General

Clause	Description	Type	Maker
451(1)(c)	Regulations to authorise Bank to determine or prescribe, by notice, any matters under section 451(1)(b)	Regulations	Governor-General
452	Regulations relating to Depositor Compensation Scheme	Regulations	Governor-General
465	Levy regulations	Regulations	Governor-General
Sch 2, clause 1	Definition of credit contract, excluding certain class of contract from definition	Order in Council	Governor-General
Sch 2, clause 2	Definition of deposit taker, excluding a person or certain class of contract from definition	Order in Council	Governor-General
Sch 2, clause 6	Certain declarations relating to credit contracts, debt securities, and deposit takers	Order in Council	Governor-General