

Short-Form Departmental Disclosure Statement

Financial Market Infrastructures Bill

A short form 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 Financial Market Infrastructures Bill, dated 4 December 2019, which can be found at this link

<http://disclosure.legislation.govt.nz/bill/government/2019/212/>

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.

4 March 2021.

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

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?	NO
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Compulsory acquisition of private property

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

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

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

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

Civil or criminal immunity

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

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?	NO
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Powers to make delegated legislation

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?	NO
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10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
<p><i>Clause 31 of the Bill provides the regulators (i.e. the Reserve Bank and Financial Markets Authority) with the power to issue standards applying to designated FMIs. These standards may apply to all designated FMIs, a class of designated FMIs, or an individual FMI. The regulators are required to consult with affected parties and have regard to certain matters when making, amending, or revoking a standard. Standards must be published and there is a pecuniary penalty for breaching a standard.</i></p> <p><i>Standards can also only relate to certain matters prescribed in clause 35. These matters cover a broad range of topics including governance, the management of certain risks, FMI contingency plans, and restrictions or prohibitions on the activities that an operator may carry out otherwise than in their capacity as an operator. The final matter that a standard may relate to is “requirements relating to 1 or more standards issued by international organisations that impose requirements or provide for recommended practices in relation to FMIs” (see clause 35(1)(k)).</i></p> <p><i>The standard setting power in the Bill is necessary to set detailed regulatory requirements for designated FMIs that will ensure that the purposes of the Bill are met (e.g. to ensure that the Bill most effectively promotes the maintenance of a sound and efficient financial system).</i></p> <p><i>The Supplementary Order Paper amends this power to provide additional specificity about the circumstances where the regulators can make a standard relating to the matter specified in clause 35(1)(k) (given the potentially excessive breadth of the delegated power to make standards relating to the matter specified in clause 35(1)(k) at present).</i></p> <p><i>This additional specificity is provide in two parts. Firstly, the amendments mean that requirements imposed under such a standard may apply in relation to a designated FMI and its operator even if the FMI or operator:</i></p> <ul style="list-style-type: none"> <i>• Operates wholly or substantially only within the financial system in New Zealand; or</i> <i>• For any other reason, would not otherwise be subject to a standard issued by an international organisation.</i> 	

Secondly, the amendments mean that before issuing a standard under clause 35(1)(k), the regulators must be satisfied of certain additional matters. Specifically that that it is necessary or desirable for the requirement to apply for 1 or more of the following reasons:

- Applying the requirement will help ensure that a proposed standard will not apply to a particular operator or designated FMI in an unreasonable way (as referred to in clause 32(1)(b)) (this ensures, amongst other things, that standards applying to an overseas operator do not unreasonably conflict with rules they are subject to in their home jurisdiction); or
- Applying the requirement will help ensure maintain and enhance New Zealand's international reputation by adopting, where appropriate in the New Zealand context, international standards (this ensures that we can align with international standards when it is in New Zealand's interest): or
- Applying the requirement will help ensure that New Zealand's law and regulatory requirements for FMIs can be recognised (in whole or in part) as equivalent, or substantially equivalent, to the law and regulatory requirements of 1 or more other jurisdictions (equivalence assessments occur internationally for a variety of reasons and may, for example, help ensure that participants from other jurisdictions can use New Zealand FMIs. By allowing these standards to be made to support equivalence assessments, this helps support New Zealand's integration with the global financial system).

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?

NO