

The Treasury

Reserve Bank Act Review Phase 2 Review Update Proactive Release

March 2020

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- [26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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Date: 2 August 2019

To: Minister of Finance
(Hon Grant Robertson)

Deadline: None

Aide Memoire: Legislative design of the Reserve Bank Act

The Review team proposes splitting the Reserve Bank Act into an 'Institutional Act' and a 'Deposit Takers Act'. At a meeting with the Review team on 1 August 2019, you asked for the Parliamentary Counsel Office's (PCO) and the Legislation Design and Advisory Committee's (LDAC) views on the proposal.

Background

The current Reserve Bank Act is large and relatively complex, reflecting its piecemeal evolution over time as the Reserve Bank has been given new responsibilities for regulating more types of financial firms. The Review team proposes splitting the legislation to enhance its clarity, purpose, and accessibility. The Review Team believes that splitting the legislation would be a sensible way to improve accessibility by providing each financial sector with focused legislation. A similar approach was taken when setting up the FMA with the Financial Markets Authority Act 2011. In reaching its views, the Review team has considered LDAC's legislation guidelines which note that accessibility is a key factor when considering new legislation and its interaction with existing law. Splitting the legislation would also allow the Institutional Act to be progressed on a faster timeframe, as policy decisions are more advanced and the legislation has less direct impact on regulated industry.

Parliamentary Counsel Office

PCO has provided the following advice on the proposal:

PCO's view on the proposal

In considering this legislative design proposal, PCO agrees with LDAC that the focus should be on the users of the legislation. PCO aims to make legislation accessible to all users. This includes ensuring the legislation is reasonably easy to find, use, and understand. PCO also aims to make legislation that is fit for purpose. This includes ensuring the legislation is flexible for the future and fits neatly within the wider system.

Financial markets legislation provides a good example of these design principles at work. This model involves an “institutional” Act that contains “boilerplate” provisions for the FMA and separate substantive Acts that impose duties on financial market participants. This approach ensures that the FMA has a clear and consistent set of functions, powers, and duties that apply across various substantive Acts. It helps each user group to find and understand the legislation that applies to that particular group. Separate substantive Acts can also provide more flexibility to accommodate future reforms.

PCO has carefully considered whether similar advantages apply in the context of the Reserve Bank legislation. There are some strong similarities between Reserve Bank and financial markets legislation. On the other hand, we understand that the proposed “institutional” Act for the Bank will continue to include some substantive matters relating to monetary policy, foreign exchange, and currency. In this respect, it is somewhat different from financial markets legislation. PCO has considered whether it might be artificial or otherwise difficult to separate the prudential supervision of banks from other core functions of a central bank. In addition, PCO has also not yet seen the substantive policy details for a deposit takers’ regime so the extent of the linkages (or interactions) between the deposit takers’ regime and other provisions of the “institutional” Act is not yet clear. There would be less benefit from dividing the legislation into multiple Acts if the linkages were significant.

PCO is confident that both a single Act model or a multiple Act model are workable and would be acceptable in terms accessibility and fitness for purpose.

However, on balance, PCO considers that an “institutional” Act with separate substantive Acts is likely to be a better overall legislative design. This assumes that the various Acts can work well together as a cohesive package and that the linkages between the various Acts are not too complex. If timing is not an issue, PCO recommends that we remain open to adjusting the legislative design while the policy details for a deposit takers’ regime are being developed.

PCO’s advice on timing

PCO considers that this reform will involve a large Bill (or Bills) of high complexity. Merging and aligning the different and detailed regimes for registered banks and non-bank deposit takers will be detailed, time-consuming, and difficult work, both at a policy and drafting level. There are complex interactions between Reserve Bank legislation and the wider system. Close engagement with stakeholders and providing exposure drafts can help to iron out significant difficulties (this was the experience with the financial markets legislation). Skipping these stages increases risk. In PCO’s experience, a faster process often constrains the breadth or scope of a reform. That is, the faster the process, the less ambitious the reform is likely to be. A truncated policy or drafting stage (or both) can also lead to a slower or more difficult passage for the Bill once it is in the House and significant workability problems post-enactment.

Considering the financial markets legislation again as a similar example, PCO notes that the “institutional” Act for the FMA was given a higher priority by the then Government and was enacted in 2011. The more complex substantive reform (the Financial Markets Conduct Act) was enacted in 2013 after a robust development process (including considerable stakeholder engagement).

PCO’s overall sense of things is that introducing a high-quality “institutional” Act towards the middle of next year is achievable. With a highly organised and focused approach from the Treasury, the Bank, and PCO, PCO thinks it would be possible (but very challenging) to introduce the complete package on the same timeframe. However, such a timeframe for the complete package is very likely to engage some or all of the risks identified above.

Legislation Design and Advisory Committee

The Review team met with LDAC on 6 March 2019 to discuss the review. LDAC’s letter of advice following that meeting is included in the annex. LDAC’s views on legislative design are included in paragraphs 4 – 8 of the letter.

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Annex 1 – Letter of advice from LDAC