

Reserve Bank of New Zealand Amendment Bill (No 3)

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Reserve Bank of New Zealand Amendment Bill (No 3) and recommends that it be passed with the amendments shown.

Introduction

This bill would implement the main elements of the new regulatory framework for non-bank deposit takers—mainly, the matters for which prudential regulations may be prescribed—and increase the Reserve Bank of New Zealand’s accountability and transparency arrangements in relation to its financial sector functions.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Transition period for credit rating requirements

We recommend that clause 2 be amended to provide that the credit rating requirements in clause 11 (section 157I) would come into force

18 months after the commencement of the Act. The bill as introduced provides no transition period to allow deposit takers time to comply with the new credit rating requirements. We are concerned that deposit takers might not be in a position to comply with these provisions immediately, partly since approving rating agencies under new section 157J might take some time.

We trust that eighteen months will prove sufficient time for the bank to approve enough rating agencies to allow most deposit takers to comply with the credit rating requirements. We note that, in the event that deposit takers were still not in a position to comply after 18 months the Bank could grant temporary exemptions from credit rating requirements, under new section 157G, to ensure that non-compliance would not be an issue.

We were told by the Reserve Bank that it expected an initial list of rating agencies to be available in the last quarter of this year.

Advice requested by the Minister

We recommend that clause 8 be amended to clarify that the advice that can be requested by the Minister under this regime must be connected with the functions of the Bank, and to confirm that this advisory function must not limit the Bank in the performance of its primary monetary policy function. This is intended to ensure that the advisory role established under this bill would not compromise the Bank's independence or the exercise of its primary functions.

Confidentiality

We recommend the insertion of new clause 8A to confirm that information collected by the Bank from non-bank financial institutions must remain confidential to the Bank, unless it is shared in statistical form with persons with a proper interest, or with the consent of the person from whom it is collected. This amendment would ensure that information collected from non-bank financial institutions was accorded a similar standard of confidentiality to that collected from banks and payment system participants.

The new regulatory responsibilities of the Bank proposed in this bill, along with its expanded policy advisory services and the new requirement that it produce a financial stability report, would mean that the Bank would be collecting more information from non-bank financial

deposit takers than ever before. It is important that the information collected be subject to appropriate confidentiality protections.

Conflict of interest restrictions

We recommend the insertion of new clauses 8B, 8C, and 8D, which would prevent the Governor and Deputy Governor of the Bank from holding interests in deposit takers. The Governor and Deputy Governor are already prevented from holding interests in a registered bank. This restriction recognises the conflict that could arise should they do so, given their roles and responsibilities. In the regime proposed by this bill, the Bank would gain wide discretion over matters such as exemptions and prosecution of breaches, and the potential for similar conflicts might arise. This amendment would help to prevent conflicts of interest arising for the Governor or Deputy Governor in relation to non-bank deposit takers.

Application of the regulatory regime

Clause 11 inserts new part 5D into the Reserve Bank of New Zealand Act 1989, which relates to the regulation of deposit takers.

We recommend a number of amendments to the definition of “deposit taker” in clause 11 (section 157C). This definition is vital in determining the application of the regime. We recommend that the definition be extended so that a person who had offered debt securities to the public that remained unpaid could be subject to the regime. We considered whether issuers of collective investment schemes should be included also, but decided that the business in which these issuers are engaged does not lend itself conceptually or practically to regulation under the bill.

The definition allows groups to be excluded from, or included in, the regime by Order in Council (157C(4)). We recommend an amendment, in section 157C(5), to ensure that the power to exempt or include could be targeted according to the nature of the business undertaken. We are concerned that individuals or organisations whose primary business is not related to deposit taking, such as hire businesses that accept deposits as security for the return of goods, could be unintentionally captured by the regime. Conversely, those who are not typical deposit takers, but whose business is analogous to deposit taking, might be inadvertently excluded. The addition of a test to the

effect that the regime should apply when the nature of a business is analogous to deposit taking would help to ensure that the regime was appropriately applied in such circumstances.

Exemptions

Consultation

We recommend that clause 11 be amended to remove from new section 157E(1) the requirement for the Bank to consult when granting an exemption from regulatory requirements. We consider consultation an unnecessary administrative inconvenience in relation to the granting of exemptions, as it is extremely unlikely that anyone would not wish to be exempted (the consultation would serve no purpose). Consultation would still be required before inclusion in the regime (which is effected through regulation).

Criteria for exemptions

We recommend that clause 11 be amended so that section 157G specifies the tests that must be met before an exemption could be granted. The bill as introduced allows the Bank discretion to grant exemptions without fetter. We are concerned that this could result in inconsistent decisions by the Bank, and uncertainty for people potentially subject to the regime. The amendment we recommend would provide clear guidance for the Bank and certainty for potential subjects, and is intended to help ensure consistent treatment under the regime.

We recommend minor amendments to make it clear that exemptions could be granted only to deposit takers and their trustees, and that the Bank must provide reasons for imposing terms and conditions on an exemption.

We examined whether the Bank needs the ability to make an exemption from all obligations. We recognised the possibility that allowing “blanket” exemptions might increase the risk of hasty or ill-considered decisions. However, we accept that in some instances a blanket exemption might be appropriate, for example for a supranational such as the World Bank. We trust that the discretion the bill would allow the Bank would be used sparingly and wisely.

Principles on which the Bank acts

We recommend amendments to clause 11 (in sections 157F and 157J) to ensure that the principles on which the Bank must act when carrying out its responsibilities under the bill are clearly set out. The bill as introduced requires only that the Bank publish the principles on which it might act, without specifying those principles. We consider it vital that the rationale behind the exercise of the Bank's powers under the regime be clear, and therefore recommend that the key principles be clearly laid out in the bill.

The principles set out in new section 157F would apply to the Bank's powers to grant exemptions and impose terms and conditions on exemptions, its power to recommend regulations, and the principles that the Bank would need to take into account when deciding whether to approve a rating agency would be set out in section 157J.

We examined the desirability of amending section 157ZU, which sets out matters relating to regulation-making powers, to provide for equality of treatment of non-bank deposit takers in the application of regulations except where the application of different requirements was required on the basis of objective risk assessment. However, we consider that the principles we recommend including in section 157F adequately emphasise the need for organisations to be treated fairly and equally where appropriate, whilst recognising that outcomes for organisations could vary according, for example, to the level of risk they expose themselves to.

Risk management and governance requirements

We recommend amendments to clause 11 to ensure that governance and risk management requirements are included in the primary legislation. The bill as introduced allows these matters to be established through regulation. We consider it more appropriate that basic requirements for governance and risk management be laid out explicitly in the bill.

The amendments we recommend to governance requirements, contained in new section 157L, would require the governing body of a deposit taker to include at least two independent directors (who were not employed by, nor had an ownership interest in, the deposit taker or related entities) and to ensure that the chairperson was not an employee of the deposit taker or a related party.

The amendments we recommend in relation to risk management requirements, contained in new section 157N, would require non-bank deposit takers to have a risk management programme that the trustee considered appropriate. We examined whether it would be useful to include content requirements in the legislation, but decided that appropriate risk management programmes for the range of organisations this regime might apply to are likely to be too diverse for encapsulation in legislation. We were assured by the Reserve Bank that it would provide guidelines for organisations to assist them in understanding risk management concepts and requirements, and expect this to help organisations to develop risk management programmes tailored to their needs.

We recommend amendments to clause 11, in section 157ZP, to provide that non-compliance with risk management provisions would be an offence.

We recommend amendments to clause 2 to provide for a transition period before the governance and risk assessment requirements come into effect. This would allow organisations time to comply with the requirements we recommend.

Obligations of trustees to Reserve Bank

Materiality of non-compliance

We recommend amendments to clause 11 to clarify that, under new section 157ZE, trustees would be required to report only material non-compliance on the part of non-deposit-takers to the Bank. The bill as introduced does not qualify the kind of non-compliance that must be reported. The amendment we recommend would ensure that immaterial non-compliance, such as technical non-compliance with no serious or ongoing implications, need not be reported. This amendment is intended to avoid unnecessarily onerous obligations on trustees, and administrative difficulties for the Bank.

We consider a test of materiality appropriate, and do not consider it desirable to define this term further, as we acknowledge that in some cases seemingly small compliance issues could be of import. For example, if an organisation were two days late in producing a risk management plan, this is likely to be immaterial as regards whether a plan had in fact been produced. However, it might be material if the organisation had just collected a number of deposits. We expect ma-

teriality to be judged case by case, and trustees to exercise judgment and common sense when determining whether a matter is material.

Reasonableness test

We recommend an amendment to clause 11, in section 157ZF, to include a test of reasonableness regarding whether an opinion has been formed. The act of “forming an opinion” triggers the requirement that a trustee disclose information to the bank. The bill as introduced provides that the trustee obligation arises only when the trustee has formed an opinion, and is silent on what should happen when the trustee is aware of facts on which they should have reasonably formed an opinion. We consider that the correct trigger is whether a trustee has formed an opinion or should have reasonably formed an opinion, and recommend this amendment accordingly.

Cost of an investigatory report

We recommend an amendment to clause 11 to make it clear in section 157ZH that, where the Bank requests that a copy of a report relating to a deposit taker be prepared by an approved party, the costs of the report must be borne by the deposit taker. We considered this amendment carefully, as we wanted to ensure that in practice this amendment could not be used to unduly distress or disadvantage a deposit taker already under pressure.

The Reserve Bank assured us that, although no explicit limits are set in the bill on the exercise of this power, it would be used only as a last resort when the trustee had not been able to obtain the necessary information for the Bank, or when the trustee was not co-operating with the Bank. We were told that the power would be invoked after other avenues had been exhausted, and where the Bank had reasonably formed an opinion that non-compliance was likely. The Bank also assured us that the operation of this power would not interfere with the role of trustees or receivers, and that the application of the power would be governed by the general requirement that the Bank act with a proper purpose. The Bank noted that requirements for confidentiality, which would be contained in new section 157M, would apply to all information gained by using this power.

Search warrants

We recommend an amendment to clause 11 to provide, in new section 157ZL, that a search warrant can be issued by a District Court as well as the High Court. The bill as introduced allows search warrants under the regime to be issued by the High Court only. We consider that allowing search warrants to be issued by the District Court has administrative advantages, and we see no reason that it should not be able to do so.

Legal privilege

We recommend an amendment to clause 11 to insert new section 157ZLA. This amendment would ensure that the legal privileges that would apply in relation to enforcement powers would be consistent with those that apply for evidentiary purposes in proceedings, and would accord with the recommendations of the Law Commission in its Report on Search and Surveillance Powers [NZLC R 97, 30 June 2007]; it would entail a consequential amendment to the reference to legal privilege in section 157ZJ as drafted.

Confidentiality of information

We recommend that clause 11 be amended to expand the confidentiality provisions in section 157ZM, to cover information once it has been disclosed by the Bank to the Registrar and the Securities Commission.

Statutory defences

We recommend that clause 11 be amended by inserting new section 157ZQA, which would provide statutory defences for deposit takers where contravention was due to the actions or default of another person, or in any other way beyond the defendant's control, and the deposit taker took reasonable precautions and exercised due diligence to avoid the contravention. We consider these fair and reasonable defences to the offences contained in the bill. We also recommend the insertion of new section 157ZQB, which would confirm a court's power to discharge a defendant where the alleged contravention was in respect of matters that are immaterial.

Regulatory impact statements

We recommend a number of amendments to clause 13 to the requirements for regulatory impact statements in section 162AB, including amendments to clarify that the Bank's assessment of regulatory impact statements should precede the adoption and application of the policies, and to provide that the Bank must publish every assessment report unless the policy is of a minor or technical nature. Information that is commercially sensitive would not need to be published. These amendments are intended to ensure that assessments can be given practical effect by the Bank, and to increase transparency and accountability throughout the regime. We also recommend amendments to clarify that regulatory impact statement assessments are not required for policies that are minor and technical in nature, to avoid an unnecessary administrative burden.

Review of regime

We recommend clause 11 be amended by inserting new section 157ZUA, which provides that the regime (inserted by clause 11 of this bill) must be reviewed within five years of commencement. The findings of the review would be reported to the Minister of Finance, who would in turn be required to present a copy of the report to the House. We consider such a review desirable given the novelty of some features of the regime, such as the use of trustees, and that the threshold for the credit rating requirement would be set by delegated legislation.

Calculation of annual dividend

We recommend the insertion of new clause 12C and an amendment to clause 15, which would change the way that the Bank was required to calculate its annual dividend to the Crown. At present, the Bank calculates this dividend in accordance with a legislative formula. This formula-based determination does not always reflect changes to the Bank's balance sheet, market, and accounting, and in recent years has not accurately reflected the amount that should be available for distribution in an economic sense. The amendments we recommend would allow the Bank to determine the principles, which must be published in its Statement of Intent, upon which it would recommend the dividend. The Minister would continue to be responsible for fi-

nally determining the amount of the dividend, taking into account the recommendation of the Bank and the views of the Bank's Board.

Financial stability reports

We recommend an amendment to clause 19, section 165A, to allow some flexibility in the timing of the Bank's issuing of financial stability reports. We expect them to be issued approximately every six months.

Definition of terms

We considered recommending amendments to define some of the terms in the bill, such as "capital" (clause 11, section 157P), "exposures" (clause 11, section 157ZU), and "framework" (clause 11, section 157V). We decided not to do so, however, as these concepts are technical and can change over time. We note that some concepts, such as capital, will be effectively defined through regulations, which would allow flexibility that definition in the primary legislation would not.

Appendix

Committee process

The Reserve Bank of New Zealand Amendment Bill (No. 3) was referred to the committee on 12 December 2007. The closing date for submissions was 15 February 2008. We received and considered 17 submissions from interested groups and individuals. We heard 8 submissions.

We received advice from the Reserve Bank of New Zealand, the Treasury, and an independent specialist adviser. The Regulations Review Committee reported to the committee on the powers contained in clause 11 (sections 157L, 157N and 157G).

Committee membership

Charles Chauvel (Chairperson)

Hon Bill English

Jeanette Fitzsimons

Craig Foss

Hon Mark Gosche

Hone Harawira

Rodney Hide

Moana Mackey

Dr the Hon Lockwood Smith (Deputy Chairperson)

Hon Paul Swain

Chris Tremain

Judy Turner

R Doug Woolerton

Reserve Bank of New Zealand
Amendment Bill (No 3)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr Michael Cullen

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Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Reserve Bank of New Zealand Amendment Act (No 23) **2007**.

2 Commencement

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(1) **Sections 157M to 157O** of the principal Act (as inserted by **section 11** of this Act) come into force on 1 September 2009.

(2) **Section 157I** of the principal Act (as inserted by **section 11** of this Act) comes into force on 1 March 2010.

(3) **Section 157L** of the principal Act (as inserted by **section 11** of this Act) comes into force on a date to be appointed by the Governor-General by Order in Council.

(4) ~~This~~ The rest of ~~this~~ Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

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This Act amends the Reserve Bank of New Zealand Act 1989.

Part 1

**Amendments outside Part 6 of principal
Act**

4 Long Title repealed

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The Long Title is repealed.

5 New section 1A inserted

The following section is inserted after section 1:

“1A Purpose

- “(1) The purpose of this Act is to provide for the Reserve Bank of New Zealand, as the central bank, to be responsible for— 5
- “(a) formulating and implementing monetary policy designed to promote stability in the general level of prices, while recognising the Crown’s right to determine economic policy; and
- “(b) promoting the maintenance of a sound and efficient financial system; and 10
- “(c) carrying out other functions, and exercising powers, specified in this Act.
- “(2) This section does not limit the functions or powers given to the Bank by any other enactment.” 15

5A Interpretation

The definition of **operating expenses** in section 2(1) is amended by adding “; or” and also by adding the following subparagraph:

- “(iii) any expenses agreed by the Minister and the Bank not to be operating expenses”. 20

6 New section 16 substituted

Section 16 is repealed and the following section substituted:

“16 Dealing in foreign exchange by Bank

- For the purposes of performing its functions and fulfilling its obligations under this Act or any other enactment, the Bank may deal in foreign exchange, on such terms and conditions as it thinks fit,— 25
- “(a) with any person, including the Crown; and
- “(b) on behalf of any person, including the Crown.” 30

7 Foreign reserves

Section 24 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) The Bank must hold and maintain foreign reserves at that level or within those levels.” 35

8 New section 33 substituted

Section 33 is repealed and the following section substituted:

“33 Policy advice

“(1) On request by the Minister, the Bank must provide advice to the Minister on any matter specified in the request that is connected with the functions of the Bank. 5

“(1A) A request may not be made under **subsection (1)** that may limit the Bank in exercising its primary function in section 8.

“(2) The Bank may also provide advice to the Minister, at any time, on any matters or subjects within the responsibility of the Bank.” 10

8A Bank may require financial institution to supply information

Section 36 is amended by adding the following subsection:

“(6) Sections 156G to 156I and 156J(2)(c) and (d) (which relate to the publication or disclosure of information or data supplied to the Bank) apply with all necessary modifications in respect of information and data supplied to the Bank under this section as if for each reference to section 156C in sections 156G(1) and (3) and 156J(2)(c) there were substituted a reference to section 36. 15 20

8B Disqualification of Governor and Deputy Governor

Section 46(1)(b) is amended by inserting “or of a deposit taker as defined in **section 157C**” after “a registered bank”.

8C Removal of Governor from office

Section 49(2)(h)(iii) is amended by inserting “or a deposit taker as defined in **section 157C**” after “a registered bank”. 25

8D Removal of Deputy Governor from office by Order in Council

Section 50(2)(d)(iii) is amended by inserting “or a deposit taker as defined in **section 157C**” after “a registered bank”. 30

9 Duties of Board

(1) Section 53(1) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) keep under constant review the performance of the Bank in carrying out— 5

“(i) its primary function; and

“(ii) its functions relating to promoting the maintenance of a sound and efficient financial system; and

“(iii) its other functions under this Act or any other enactment.” 10

(2) Section 53(3)(f)(iii) is amended by inserting “or a deposit taker as defined in **section 157C**” after “a registered bank”.

10 New section 68B inserted

The following section is inserted after section 68A: 15

“68B Bank to have regard to directions about government policy objectives

“(1) The Minister may direct the Bank to have regard to a government policy that relates to the Bank’s functions under **this Part** and Parts 5B to **5D**. 20

“(2) The Bank must have regard to every direction given by the Minister under this section.

“(3) The Minister must consult with the Bank before giving a direction.

“(4) A direction must— 25

“(a) be set out in a written statement signed by the Minister; and

“(b) as soon as practicable after it is given, be—

“(i) presented to the House of Representatives by the Minister; and 30

“(ii) published in the *Gazette*.

“(5) The Minister may not give a direction that requires the performance or non-performance of a particular act by the Bank, or any employee or office holder of the Bank, or the bringing about of a particular result, in respect of a particular person. 35

“(6) A direction may be amended, revoked, or replaced in the same way as it may be given.

“Compare: 2004 No 115 ss 104(1), 113(1)(b), 114, 115(2)”.

10A Further matters that may be prescribed

(1) Section 81AA(2) is amended by adding the following paragraph: 5

“(g) incorporate by reference a framework, standard, specification, or requirement that is published by, or on behalf of, any body or person in any country—

“(i) in whole or in part; and 10

“(ii) with any modifications, additions, or variations specified in the Order in Council.”

(2) Section 81AA is amended by adding the following subsection:

“(3) **Schedule 3** applies to any material incorporated by reference in an Order in Council made under section 81.” 15

11 New Part 5D inserted

The following Part is inserted after section 156ZE:

“Part 5D

“Deposit takers

“Preliminary provisions” 20

“157A Exercise of powers under this Part

The powers conferred on the Governor-General, the Minister, and the Bank by **this Part** must be exercised for the purposes of—

“(a) promoting the maintenance of a sound and efficient financial system; or 25

“(b) avoiding significant damage to the financial system that could result from the failure of a deposit taker.

“157B Interpretation

“(1) In **this Part**, unless the context otherwise requires,— 30

“**approved rating agency** means a rating agency approved by the Bank under **section 157J**

“**borrowing group**, in relation to a deposit taker, means the deposit taker and all its guaranteeing subsidiaries

“**capital ratio**, in relation to a deposit taker or borrowing group, means the level of capital in relation to the credit exposures and other risks of a deposit taker or borrowing group

“**collective investment scheme** means— 5

“(a) an arrangement or scheme to which a participatory security (within the meaning of section 2(1) of the Securities Act 1978) relates; and

“(b) a superannuation scheme (within the meaning of section 2A(1) of the Superannuation Schemes Act 1989); and 10

“(c) a unit trust (within the meaning of section 2(1) of the Unit Trusts Act 1960)

“**debt security** has the meaning given to it by section 2(1) of the Securities Act 1978

“**governing body** means,— 15

“(a) in relation to a body corporate, the board of directors (or other persons or body exercising powers of management, however described) of the body corporate:

“(b) in relation to a trust, the trustees:

“(c) in relation to a unit trust, the manager and trustee: 20

“(d) in relation to a partnership, unincorporated joint venture, or other unincorporated body of persons, either—

“(i) the board of directors (or other persons or body exercising powers of management, however described) of the partnership, unincorporated joint venture, or other unincorporated body of persons; 25
or

“(ii) if there is no board or other persons or body as described in **subparagraph (i)**, the partners of the partnership or members of the unincorporated joint venture or other unincorporated body of persons 30

“**governing document** means the rules and instruments constituting, or defining the constitution of, an entity

“**guaranteeing subsidiary**, in relation to a deposit taker, means a subsidiary of the deposit taker that— 35

“(a) is unconditionally liable (whether or not jointly or severally with the deposit taker or any other person) to re-

- pay some or all debt securities issued by the deposit taker; or
- “(b) is liable to repay some or all debt securities issued by the deposit taker subject only to the condition that the deposit taker or any other person has failed to do so 5
- “**related party**, in relation to a deposit taker, means—
- “(a) the directors of the deposit taker; and
- “(b) the senior office holders of the deposit taker; and
- “(c) the relatives of persons referred to in **paragraphs (a) and (b)**; and 10
- “(d) subsidiaries; and
- “(e) in the case of a deposit taker that is a company, any person who—
- “(i) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the ordinary shares of the company; or 15
- “(ii) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the voting rights of the company; or 20
- “(iii) has, by any other means, 10% or more of the control of the company; and
- “(f) in the case of a deposit taker that is an entity other than a company, any person who— 25
- “(i) is in a position to control (whether directly or indirectly) 10% or more of the voting rights in relation to that entity; or
- “(ii) has, by any other means, 10% or more of the control of that entity; and 30
- “(g) any person who has control (whether directly or indirectly) or significant influence over 25% or more of the composition of the governing body of the deposit taker; and
- “(h) any person or class of persons declared by regulations to be a related party for the purposes of **this Part** 35
- “**relative**, in relation to any person, means—
- “(a) that person’s spouse, civil union partner, or de facto partner; and

- “(b) any parent (including step-parent), brother, sister, or child (including stepchild) of that person; and
- “(c) any parent (including step-parent), brother, sister, or child (including stepchild) of that person’s spouse, civil union partner, or de facto partner 5
- “**senior office holder**,—
- “(a) in relation to a deposit taker, means a person occupying a position that allows the person to exercise significant influence over the management or administration of the deposit holder (for example, a chief executive or a chief financial officer); and 10
- “(b) includes any class or classes of persons declared by regulations to be senior office holders for the purposes of **this Part**; but
- “(c) does not include any class or classes of persons declared by regulations not to be senior office holders for the purposes of **this Part** 15
- “**subsidiary** means a subsidiary within the meaning of sections 5 to 8 of the Companies Act 1993
- “**trust deed**, in relation to a deposit taker, means a trust deed required by section 33(2)(a) of the Securities Act 1978 in respect of any debt security offered to the public by the deposit taker 20
- “**trustee**, in relation to a deposit taker, means a person appointed as trustee in accordance with the Securities Act 1978 in respect of any debt security offered to the public by the deposit taker. 25
- “(2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for either or both of the following purposes: 30
- “(a) declaring a person or class of persons to be a related party for the purposes of **this Part**:
- “(b) declaring a class of persons to be, or not to be, senior office holders for the purposes of **this Part**. 35
- “**157C Deposit taker defined**
- “(1) For the purposes of **this Part**, **deposit taker**—

- “(a) means a person who—
- “(i) offers debt securities to the public in New Zealand; and
 - “(ii) carries on the business of borrowing and lending money, or providing financial services, or both; and
- “(b) includes—
- “(i) ~~building societies~~ a building society as defined in section 2(1) of the Building Societies Act 1965, unless the building society is a registered bank; and
 - “(ii) ~~credit unions~~ a credit union as defined in section 2(1) of the Friendly Societies and Credit Unions Act 1982; and
 - “(iii) a person or class of persons that is declared by regulations to be a deposit taker for the purposes of **this Part**; but
- “(c) does not include—
- “(i) an issuer of a collective investment scheme:
 - “(ii) a registered bank;
 - “(iii) a local authority;
 - “(iiia) the Crown (as defined in section 2(1) of the Public Finance Act 1989);
 - “(iv) a person or class of persons that is declared by regulations not to be a deposit taker for the purposes of **this Part**.
- “(2) For the purposes of **this Part**, a reference to an offer of debt securities to the public has the same meaning as an offer of securities to the public as set out in section 3 of the Securities Act 1978.
- “(2A) If a person has, before this section comes into force, offered debt securities to the public in New Zealand and any of those securities remain unpaid, the person must be treated as satisfying the requirement in **subsection (1)(a)(i).**
- “(3) A person remains a deposit taker until all debt securities offered to the public in New Zealand by the person are repaid.
- “(4) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for the purpose of declaring

a person or class of persons to be, or not to be, a deposit taker for the purposes of **this Part**.

- “(5) In considering whether to advise and recommend the making of regulations under **subsection (4)**, the Minister and the Bank must have regard to— 5
- “(a) the purposes of **this Part**; and
 - “(b) the nature of the business activities carried on by the person or class of persons; ~~and~~ and the extent to which those activities—
 - “(i) are similar in substance to the activities of a deposit taker (as defined in **subsection (1)**); or 10
 - “(ii) involve activities as a deposit taker; and
 - “(c) the public interest; and
 - “(d) any other matters the Minister or the Bank considers relevant. 15

“**157D Application of Part**

This Part, in so far as it applies to trust deeds, applies to every trust deed whether or not the trust deed was registered under the Securities Act 1978 before the date of commencement of **this Part**. 20

“**157E Bank to consult before recommending making of regulations under this Part**

- “(1) The Bank must consult with the following before making a recommendation for the making of any regulations under **this Part** and before ~~granting, amending, or revoking an exemption under **section 157G**:~~ 25
- “(a) the Securities Commission; and
 - “(b) if reasonably practicable, other persons, or the representatives of those persons, who the Bank considers will be substantially affected by any ~~Order in Council~~ regulations made in accordance with the recommendation. 30
- “(2) Failure to comply with **subsection (1)** does not affect the validity of—
- “(a) regulations made under **this Part**; or
 - “(b) an exemption granted or amended under **section 157G**; or 35
 - “(c) a revocation of an exemption under **section 157G**.

“(2) Failure to comply with **subsection (1)** does not affect the validity of regulations made under **this Part**.

“157F Publication of principles

“(1) The Bank must publish the principles on which it acts, or proposes to act, in respect of matters within its discretion under **this Part**, including— 5

“(a) approval of rating agencies:

“(b) granting of exemptions:

“(c) imposition of terms and conditions in relation to exemptions: 10

“(d) considerations it takes into account before making recommendations to the Minister for the making of regulations under **this Part**.

“(2) The Bank complies with the obligation in **subsection (1)** if it publishes the principles on an Internet website that is publicly accessible at all reasonable times. 15

“157F Principles to be taken into account under this Part

“(1) The Bank must take into account the principles in **subsection (2)** when carrying out its functions and exercising its powers under **this Part**, including— 20

“(a) granting exemptions:

“(b) imposing terms and conditions in relation to exemptions:

“(c) making recommendations to the Minister for the making of regulations under **this Part**. 25

“(2) The principles are the following:

“(a) the desirability of consistency in the treatment of similar institutions, regardless of matters such as their corporate form:

“(b) the importance of recognising— 30

“(i) that it is not the purpose of **this Part** to eliminate all risk in relation to the performance of deposit takers or to limit diversity among deposit takers; and

“(ii) that depositors are responsible for assessing risk in relation to potential investments and for their own investment choices: 35

- “(c) the desirability of providing to depositors adequate information to enable them to assess risk in relation to potential investments and to distinguish between high-risk and low-risk deposit takers:
- “(d) the desirability of sound governance of deposit takers: 5
- “(e) the desirability of effective risk management by deposit takers:
- “(f) the need to avoid unnecessary compliance costs:
- “(g) the need to maintain competition within the deposit taking sector. 10

“157G Exemptions from Part

- “(1) The Bank may, by notice in the *Gazette*, exempt any ~~person or class of persons~~ deposit taker, class of deposit takers, or trustee from compliance with any provision or provisions of—
- “(a) **this Part**; or 15
- “(b) any regulations made under **this Part**.
- “(1A) The Bank must not grant an exemption under this section unless it is satisfied that—
- “(a) the exemption will be consistent with the maintenance of a sound and efficient financial system; and 20
- “(b) compliance with the relevant provision or provisions would, in the circumstances, require the deposit taker, class of deposit takers, or trustee to comply with requirements that are unduly onerous or burdensome; and
- “(c) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption. 25
- “(2) An exemption may be granted on any terms and conditions that the Bank thinks fit, including, in relation to a deposit taker,—
- “(a) a requirement that the deposit taker have a minimum capital ratio: 30
- “(b) a requirement that the deposit taker have a specified minimum level of capital:
- “(c) a requirement that the deposit taker comply with specified liquidity requirements: 35
- “(d) a requirement that the deposit taker disclose that it does not have a rating of its creditworthiness under **section 157I**, and the form and content of that disclosure:

- “(e) a prohibition or restriction on disclosure by the deposit taker of any rating of creditworthiness or financial condition that is not from an approved rating agency:
- “(f) a maximum limit on exposures to related parties:
- “(g) a requirement that the deposit taker comply with specified requirements in relation to the governance of the deposit taker: 5
- “(h) a requirement that the deposit taker comply with specified requirements in relation to systems, policies, and standards to be adopted and complied with by the deposit taker for the purpose of managing credit risk, liquidity risk, market risk, and operational risk: 10
- “(i) any other prudential requirements the Bank considers necessary or desirable to achieve the purposes of **this Part**. 15
- “(3) The Bank may amend or revoke an exemption in the same way as an exemption may be granted under this section.
- “(4) The Bank’s reasons for granting an exemption (including why an exemption is appropriate) must be notified in the *Gazette*, together with the exemption. 20
- “(5) However, the Bank may defer notifying or not notify the reasons for granting an exemption if the Bank is satisfied on reasonable grounds that it is proper to do so on the ground of commercial confidentiality.
- “(6) An exemption under this section is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989. 25
- “157H Effect of exemption**
- A person does not breach a requirement of **this Part** if—
- “(a) an exemption from the requirement applies to that person; and 30
- “(b) the person complies with the terms and conditions of the exemption.

*“Credit ratings***“157I Deposit taker must have current credit rating**

A deposit taker must have a current rating of its creditworthiness, or, if required by regulations made under **section 157K**, the creditworthiness of the borrowing group of which the deposit taker is part, that—

- “(a) complies with the requirements prescribed by regulations made under **section 157K**; and
- “(b) is given by an approved rating agency.

“157J Bank may approve rating agencies

“(1) The Bank may approve a person as a rating agency for the purposes of **this Part**.

“(1A) In deciding whether to approve a person as a rating agency, the Bank must have regard to the following:

- “(a) the independence of the rating agency:
- “(b) the adequacy of resources available to the rating agency:
- “(c) the credibility and objectivity of the rating agency’s methodology:
- “(d) the consistency and comparability of the rating agency’s ratings when assessed against ratings industry practice:
- “(e) the adequacy of the rating agency’s disclosure of information, including information about its processes, experience, and ownership:
- “(f) relevant international standards, codes, and recommended practices relating to the ratings industry.

“(2) The Bank must publish a list of approved rating agencies on an Internet ~~w~~website maintained by, or on behalf of, the Bank that is publicly accessible at all reasonable times.

“157K Regulations relating to credit ratings

The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for either or both of the following purposes:

- “(a) providing for the following matters in relation to ratings of creditworthiness required to be held by deposit takers:

- “(i) the type of rating (for example, whether it is a short-term or long-term rating):
- “(ii) what the rating relates to (for example, whether it indicates the creditworthiness of a deposit taker with respect to a specific financial obligation or applies to the deposit taker’s overall creditworthiness): 5
- “(b) requiring a deposit taker to have a rating of creditworthiness of the borrowing group of which the deposit taker is part. 10

“Governance requirements

“157L Regulations may prescribe requirements for governance of deposit takers

- “(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for the purpose of imposing requirements in relation to the governance of deposit takers, including all or any of the following: 15
 - “(a) a requirement that the governing body of the deposit taker meet a specified minimum size: 20
 - “(b) a requirement that the governing body of the deposit taker have a particular composition (for example, that it include a certain number of independent directors, or non-executive directors, or both):
 - “(c) a requirement that particular provisions or provisions of a particular nature be included in the governing document of the deposit taker for the purpose of better ensuring that the deposit taker acts in a prudent manner (for example, provisions imposing duties on directors of the governing body): 25 30
 - “(d) a requirement that particular provisions or provisions of a particular nature not be included in the governing document of the deposit taker (for example, provisions empowering directors to act in the interests of a parent entity): 35
- “(2) Regulations under this section may prescribe clauses relating to all or any of the matters referred to in **subsection (1)(a) to**

~~(c)~~ that are deemed to be contained in the governing document of the deposit taker.

“157L Governance requirements

- “(1) If a deposit taker is a company or a building society,—
- “(a) the governing body of the deposit taker must include at least 2 independent directors; and 5
- “(b) the chairperson of the governing body of the deposit taker may not be an employee of either the deposit taker or a related party.
- “(2) If a deposit taker is a subsidiary (within the meaning of section 5 of the Companies Act 1993), the constitution of the deposit taker must not include any provision under which directors of the deposit taker may act otherwise than in the best interests of the deposit taker. 10
- “(3) For the purposes of this section, **independent director** means a director that— 15
- “(a) is not an employee of either the deposit taker or a related party; and
- “(b) is not a director of a related party; and
- “(c) does not, directly or indirectly, have a qualifying interest in more than 10% of the voting securities of the deposit taker or a related party. 20

“157M Deposit taker must comply with governance requirements

A deposit taker must comply with all requirements in relation to governance of the deposit taker imposed by regulations made under **section 157L**, including all provisions in relation to governance required to be or deemed to be included in a governing document by regulations made under that section. 25

“Risk management 30

“157N Regulations may prescribe requirements relating to risk management

The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for the purposes of— 35

- “(a) imposing requirements in relation to the systems, policies, and standards that must be adopted and complied with by a deposit taker for identifying and managing credit risk, liquidity risk, market risk, and operational risk in relation to the deposit taker and the borrowing group of which the deposit taker is part; and 5
- “(b) providing for the audit of those systems, policies, and standards, including—
 - “(i) who may conduct audits; and
 - “(ii) how often audits must be conducted; and 10
 - “(iii) the outcomes and objectives of audits; and
 - “(iv) when audits must be completed; and
 - “(v) to whom audit reports must be provided.

“157O Deposit taker must comply with risk management requirements 15
A deposit taker must comply with all requirements in relation to risk management, including requirements in relation to audits, imposed by regulations made under **section 157N**:

“157M Deposit taker must have and comply with risk management programme 20

“(1) Every deposit taker must have a risk management programme and take all practicable steps to comply with that programme.

“(2) The risk management programme must—

- “(a) be in writing; and
- “(b) set out the procedures that the deposit taker will use for the effective identification and management of the following risks:
 - “(i) credit risk;
 - “(ii) liquidity risk;
 - “(iii) market risk; 30
 - “(iv) operational risk; and
- “(c) set out appropriate and auditable documentation and record keeping requirements; and
- “(d) describe the steps that the deposit taker will take to ensure that the programme remains current, which must include procedures for— 35

- “(i) regular review of the programme to systematically identify deficiencies in the effectiveness of the programme; and
- “(ii) obtaining the approval of the trustee to amendments to the programme that are necessary to address such deficiencies; and 5
- “(e) be appropriate to the operations of the deposit taker, having regard to the factors relevant to the risks referred to in **paragraph (b)** (for example, the size of the deposit taker, its funding structure, the market sector in which it operates, its business strategy, and its relationship with its borrowing group). 10
- “(3) The Bank may issue, in the manner that the Governor thinks fit, guidelines for the purpose of interpreting the risk categories referred to in **subsection (2)(b)** that must be covered by the risk management programme. 15
- “157N Risk management programme must be provided to trustee and must be amended if required by trustee**
- “(1) The deposit taker must give a copy of its risk management programme to the trustee. 20
- “(2) The trustee must, as soon as practicable after receiving the copy of the risk management programme, inform the deposit taker whether the trustee is satisfied that the risk management programme meets the requirements in **section 157M(2)**.
- “(3) If the trustee is not satisfied that the risk management programme meets the requirements in **section 157M(2)**,— 25
- “(a) the trustee may require the deposit taker to amend the programme and to resubmit the programme to the trustee for approval within any reasonable time that the trustee may specify; and 30
- “(b) the deposit taker must comply with those requirements.
- “157O Trustee may require deposit taker to have risk management programme audited**
- “(1) The trustee may require the deposit taker to have the risk management programme audited in a specified manner, at the cost of the deposit taker, within any reasonable time that the trustee may specify. 35

“(2) The deposit taker must comply with a requirement of the trustee under **subsection (1)** within the time specified by the trustee.

“Minimum capital requirement

“157P Trust deed must set out minimum capital that deposit taker is required to maintain 5

“(1) A deposit taker and the trustee must ensure that the trust deed sets out the minimum capital that the deposit taker is required to maintain, including—

“(a) the amount of that capital; and 10

“(b) the form of that capital (for example, the financial instruments that may be taken into account in calculating capital).

“(2) The amount of capital must not be less than the amount prescribed by regulations for the purposes of this section. 15

“(3) The form of capital must be a form prescribed by regulations for the purposes of this section.

“(4) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations prescribing for the purposes of this section— 20

“(a) amounts of capital; and

“(b) forms of capital.

“157Q Deposit taker must maintain not less than minimum capital prescribed 25

A deposit taker must maintain minimum capital of not less than the amount prescribed by regulations for the purposes of **section 157P** in a form prescribed by regulations for the purposes of that section.

“Capital ratio requirement 30

“157R Regulations may impose requirement that trust deed includes capital ratio

“(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for the purpose of imposing 35

- a requirement that deposit takers and trustees ensure that trust deeds include a capital ratio, calculated in accordance with a prescribed framework, that the deposit taker must maintain.
- “(2) Regulations made under this section may do 1 or more of the following: 5
- “(a) provide for the capital ratio to be calculated in respect of—
- “(i) the deposit taker; or
- “(ii) a borrowing group of which the deposit taker is part: 10
- “(b) provide for the capital ratio to be set at a specified minimum level for a particular deposit taker or a class of deposit takers:
- “(c) prescribe the framework in accordance with which the capital ratio must be calculated: 15
- “(d) provide for variation (whether as to content or otherwise) of the framework to apply to particular deposit takers or classes of deposit takers:
- “(e) incorporate by reference a framework published by, or on behalf of, any body or person in any country— 20
- “(i) in whole or in part; and
- “(ii) with modifications, additions, or variations specified in the regulations.
- “(3) The provisions of **Schedule 3** apply to a framework incorporated by reference in regulations made under this section. 25
- “**157S Deposit takers and trustees must ensure capital ratio included in trust deed**
- A deposit taker and the trustee must comply with any requirement imposed by regulations made under **section 157R**.
- “**157T Deposit taker must maintain capital ratio required to be included in trust deed** 30
- A deposit taker must maintain any capital ratio that is required to be included in the trust deed by regulations made under **section 157R**.

“Restrictions on related party exposures

“157U Regulations may impose requirement that trust deed includes maximum limit on exposures to related parties

- “(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for the purpose of imposing a requirement that deposit takers and trustees ensure that trust deeds include a maximum limit on exposures to related parties. 5
- “(2) Regulations made under this section may— 10
- “ (a) provide that the maximum limit on exposures to related parties is relative to—
- “ (i) the capital of the deposit taker; or
- “ (ii) the capital of the borrowing group of which the deposit taker is part: 15
- “ (b) provide that the maximum limit on exposures to related parties applies in respect of exposures of the deposit taker or exposures calculated across the borrowing group of which the deposit taker is part:
- “ (c) require every deposit taker and trustee to ensure that the trust deed includes a specified maximum limit on exposures to related parties: 20
- “ (d) require every deposit taker and trustee to ensure that the trust deed includes a maximum limit on exposures to related parties that is fixed by agreement between the deposit taker and the trustee (*see section 157ZC* for provisions that apply if there is no agreement). 25
- “ (3) If **subsection (2)(d)** applies, the regulations must specify the framework (for example, covering matters as to the identification and measurement of credit exposures) in accordance with which the deposit taker and the trustee must fix the maximum agreed limit. 30

“157V Regulations may incorporate by reference framework for calculation of maximum limit on exposures to related parties

- “ (1) Regulations made under **section 157U** may incorporate by reference a framework published by, or on behalf of, any person or body in any country. 35

- “(2) A framework incorporated by reference in the regulations—
 “(a) may be incorporated in whole or in part; and
 “(b) with modifications, additions, or variations specified in the regulations.
- “(3) The provisions of **Schedule 3** apply to a framework incorporated by reference in regulations made under **section 157U**. 5

“**157W Deposit takers and trustees must ensure maximum limit on exposures to related parties is included in trust deed**
 A deposit taker and the trustee must comply with any requirement imposed by regulations made under **section 157U**. 10

“**157X Deposit taker must not exceed maximum limit on related party exposures**
 A deposit taker must not exceed any maximum limit on exposures to related parties required by regulations made under **section 157U** to be included in the trust deed. 15

“Liquidity requirements

“**157Y Regulations may impose requirement that liquidity requirements be included in trust deed**

- “(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for the purpose of imposing a requirement that deposit takers and trustees ensure that trust deeds include liquidity requirements. 20
- “(2) Regulations made under this section may, in relation to the liquidity requirements to be included in the trust deed, prescribe 25
 1 or more of the following:
- “**(a)** assets that qualify as liquid assets for the purposes of the regulations:
- “**(b)** minimum amounts of liquid assets relative to liabilities that must be maintained by deposit takers: 30
- “**(c)** requirements concerning matching maturity of assets and liabilities:
- “**(d)** requirements in respect of a deposit taker that require the liquidity of the borrowing group of which the deposit taker is part to be taken into account: 35

- “(e) other measures to better ensure that a deposit taker maintains prudent cash flows and a level of liquid assets sufficient to enable it to withstand a plausible range of liquidity shocks (for example, events that result in it experiencing a significantly reduced inflow of liquid assets). 5

“**157Z Deposit takers and trustees must ensure liquidity requirements are included in trust deeds**

A deposit taker and the trustee must comply with any requirement prescribed by regulations made under **section 157Y**. 10

“**157ZA Deposit takers must comply with liquidity requirements in trust deeds**

A deposit taker must comply with the liquidity requirements required to be included in the trust deed by regulations made under **section 157Y**. 15

“Other matters relating to trust deeds

“**157ZB Amendment to trust deed must be treated as if authorised to be made**

- “(1) If **this Part** requires, or any regulations made under **this Part** require, a deposit taker and the trustee to ensure that a matter is included in or excluded from a trust deed, an amendment to the trust deed in compliance with that requirement— 20

“(a) must be treated for all purposes as if it were authorised to be made and were made in accordance with the provisions of the trust deed before the amendment was made; 25
and

“(b) applies despite any defect in the form or mode of execution of the amendment.

- “(2) **Subsection (1)** applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment, rule of law, or agreement. 30

“**157ZC Trustee may execute amendment to trust deed**

- “(1) This section applies if—

- “(a) **this Part** requires, or regulations made under **this Part** require, a deposit taker and the trustee to ensure that a matter is included in or excluded from a trust deed; and
- “(b) it is necessary to amend the trust deed within a certain time in order to comply with that requirement; and 5
- “(c) the trustee has made reasonable efforts, in good faith, to negotiate with the deposit taker for the purpose of agreeing to an amendment to the trust deed to ensure compliance with the requirement; and
- “(d) the trustee has not, within a reasonable period before the expiry of the time allowed for amending the trust deed, been able to reach an agreement with the deposit taker about the amendment to be made to the trust deed. 10
- “(2) If this section applies, the trustee may execute a deed amending the trust deed without the consent or agreement of the deposit taker or any other person in order to ensure that the trust deed complies with the requirement of **this Part** or the regulations. 15
- “(3) The deed amending the trust deed—
- “(a) has effect despite there being no consent or agreement of the deposit taker or any other person; and 20
- “(b) must be treated for all purposes as if it were authorised to be made and were made in accordance with the provisions of the trust deed before the amendment was made; and 25
- “(c) applies despite any defect in its form or mode of execution.
- “(4) **Subsection (3)** applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment, rule of law, or agreement. 30

“Obligations of trustees to Bank

“157ZD Bank may require trustee to attest as to deposit taker’s compliance with requirements

- “(1) The Bank may require a trustee to attest to the Bank, at a time and in a manner specified by the Bank, as to whether the trustee is satisfied that the deposit taker is complying with the requirements of **this Part** or of regulations made under **this Part**. 35

- “(2) If the Bank requires a trustee to attest to the Bank under this section, the trustee must either—
- “(a) provide that attestation; or
 - “(b) if the trustee is not able to attest to the Bank as required, the trustee must report the reason, including the details of any non-compliance or suspected non-compliance by the deposit taker. 5

“**157ZE Trustee must report to Bank non-compliance or likely non-compliance by deposit taker**

If a trustee has reasonable grounds to believe that a failure on the part of the deposit taker to comply in a material respect with **this Part** or any regulations made under **this Part** has or may have occurred, or is likely to occur, the trustee must report the non-compliance or likely non-compliance to the Bank as soon as practicable. 10 15

“**157ZF Obligation on trustees to disclose information to Bank in certain circumstances**

- “(1) This section applies if a trustee, in the course of or in connection with the performance of functions as trustee, ~~forms an opinion that~~ becomes aware of information on the basis of which he or she could reasonably form an opinion that— 20
- “(a) the deposit taker is unable to pay the deposit taker’s debts as they become due in the normal course of business; or
 - “(b) the value of the deposit taker’s assets is less than the value of the deposit taker’s liabilities, including contingent liabilities; or 25
 - “(c) it is likely that—
 - “(i) the deposit taker will be unlikely to be able to pay the deposit taker’s debts as they become due in the normal course of business; or 30
 - “(ii) the value of the deposit taker’s assets will be less than the value of the deposit taker’s liabilities, including contingent liabilities; or
 - “(d) the deposit taker has breached, or is likely to breach, in a material respect,— 35
 - “(i) the terms of the trust deed; or

“(ii) the terms of any offer of debt securities to which the trust deed relates.

“(2) ~~If this section applies, the trustee must—~~

~~“(a) inform the Bank of that opinion; and~~

~~“(b) disclose to the Bank all information relating to the affairs of the deposit taker relevant to that opinion obtained in the course of, or in connection with, the performance of functions as trustee.~~ 5

“(2) If this section applies, the trustee must disclose to the Bank all information relating to the affairs of the deposit taker relevant to the matter referred to in **subsection (1)** obtained in the course of or in connection with the performance of functions as trustee. 10

“**157ZG Protection of trustees**

“(1) No civil, criminal, or disciplinary proceedings lie against a trustee arising from the disclosure in good faith of information to the Bank under **section 157ZD to 157ZF**. 15

“(2) No person may terminate the appointment of a trustee by reason of the trustee disclosing information to the Bank in good faith under **section 157ZD to 157ZF**. 20

“(3) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of a trustee, may make an order against, or do any act in relation to, that person in respect of the fact of that disclosure.

“*Investigation and enforcement powers of Bank* 25

“**157ZH Bank may require report relating to deposit taker**

“(1) For the purpose of investigating whether a deposit taker is complying with the requirements of **this Part**, or regulations made under **this Part**, the Bank may, by notice to the deposit taker, require the deposit taker to supply the Bank with a report or series of reports prepared by a person approved or appointed by the Bank on matters relating to the business, operation, or management of the deposit taker. 30

“(2) The deposit taker must provide the approved or appointed person with access to the accounting and other records of the deposit taker and must provide information relating to those 35

records if the person preparing the report requests the deposit taker to do so for the purposes of the report.

“(3) **Subsection (2)** is subject to **section 157ZJ**.

“(4) To avoid doubt, the deposit taker is liable for the cost of every report that it is required to supply to the Bank under this section. 5

“**157ZI Power to obtain information and documents**

“(1) This section applies if the Bank has reasonable cause to believe that a deposit taker has committed an offence against **this Part**. 10

“(2) If this section applies, the Bank may,—

“(a) by notice in writing to the deposit taker, require the deposit taker to supply to the Bank, within the time specified in the notice, the information, papers, documents, records, or things specified in the notice; or 15

“(b) appoint in writing a suitably qualified person to enter and search any place and inspect, remove, and take copies of any information, papers, documents, records, or things in the possession, custody, or control of any person. 20

“**157ZJ Limitations on information required to be provided**

Nothing in **section 157ZH(2)** or **157ZI(2)** requires a person to—

“(a) provide any information or produce any document that would be privileged in a court of law; or 25

“(b) produce any information, papers, documents, records, or things if compliance with that requirement would be a breach of an obligation of secrecy or non-disclosure imposed on the person by an enactment (other than the Official Information Act 1982 or the Privacy Act 1993). 30

“**157ZJ Limitation on information to be provided**

Nothing in **section 157ZH(2)** or **157ZI(2)** requires a person to produce any information, papers, documents, records, or things if compliance with that requirement would be a breach of an obligation of secrecy or non-disclosure imposed on the 35

person by an enactment (other than the Official Information Act 1982 or the Privacy Act 1993).

“157ZK Limitations on entering and searching place

A person appointed under **section 157ZI(2)(b)** must not enter and search any place, or inspect, remove, or take copies of any information, papers, documents, records, or things in the possession, or under the control, of any person unless that person is authorised by search warrant issued under **section 157ZL**. 5

“157ZL Search warrant may be issued

(1) A Judge of the High Court or the District Court may issue a search warrant in terms of **clause 5** of **Schedule 4** to a person appointed under **section 157ZI(2)(b)** if the Judge is satisfied that there is reasonable cause to believe that a deposit taker has committed an offence under **this Part**. 10 15

(2) The provisions of **Schedule 4** apply to a search warrant issued under this section.

“157ZLA Privileges

(1) If a person could, in a criminal proceeding, assert a privilege under sections 54 to 57 of the Evidence Act 2006 in respect of any communication or information, the person is taken to have the same privilege for the purposes of— 20

(a) a request to supply access to accounting and other records of the deposit taker or provide information relating to those records under **section 157ZH(2)**; and 25

(b) a notice under **section 157ZI(2)(a)**; and

(c) a search warrant issued under **section 157ZL**.

(2) **Subsection (3)** applies to documents that are books of account or accounting records referred to in section 55(1) of the Evidence Act 2006. 30

(3) The application by **subsection (1)** of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—

- “(a) the issue of, or the obligation to comply with, a notice under **section 157ZI(2)(a)** in respect of a document to which this subsection applies; or
- “(b) the issue or execution of a search warrant under **section 157ZL** in respect of a document to which this subsection applies; or 5
- “(c) the admissibility, in a criminal proceeding under **this Part**, of any evidence that relates to the contents of a document obtained as a result of a notice under **section 157ZI(2)(a)** or a search warrant issued under **section 157ZL**. 10
- “(4) A person who has a privilege under this section has the right—
- “(a) to refuse to disclose a communication or information to which the privilege would apply if it were sought to be disclosed in a criminal proceeding; and 15
- “(b) to prevent the search of any such communication or information; and
- “(c) to require the return of such communication or information if it is seized by a person exercising a power of search pending determination of the claim to privilege. 20
- “(5) If a person refuses to disclose a communication or information on the ground that it is privileged under this section, the Governor may apply to a District Court Judge for an order determining whether the claim of privilege is valid; and, for the purpose of determining any such application, the District Court Judge may require the communication or information to be produced to him or her. 25
- “(6) A District Court Judge may, on the application of the Governor, disallow a privilege claimed under this section if the Judge is satisfied that the claim to privilege would, under section 67(1) of the Evidence Act 2006, be disallowed in a proceeding. 30
- “(7) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this section. 35
- “(8) Nothing in this section affects the application of section 60 of the Evidence Act 2006.

*“Confidentiality of information***“157ZM Confidentiality of information**

- “(1) This section applies to—
- “(a) information supplied or disclosed to, or obtained by,—
 - “(i) the Bank, under or for the purposes of, or in connection with, the exercise of powers conferred by **this Part**: 5
 - “(ii) a person appointed by the Bank under **section 157ZI(2)(b)**: 10
 - “(b) information derived from, or based on, information referred to in **paragraph (a)**: 10
 - “(c) information relating to the exercise, or possible exercise, of the powers conferred by **this Part**.
- “(2) The Bank, and any person appointed by the Bank under **section 157ZI(2)(b)**, must not publish or disclose information to which this section applies except— 15
- “(a) with the consent of the person to whom the information relates; or
 - “(b) to the extent that the information is available to the public under any Act, other than the Official Information Act 1982, or in a public document; or 20
 - “(c) for the purposes of **this Part** or in connection with the exercise of powers conferred by **this Part**; or
 - “(d) in connection with any proceedings for an offence against **this Part**; or 25
 - “(e) to the Registrar of the Companies Office or the Securities Commission; or
 - “(f) to the trustee of the deposit taker to whom the information relates; or
 - “(g) to any person who the Bank is satisfied has a proper interest in receiving the information. 30
- “(3) Information to which this section applies must not be published or disclosed under **subsection (2)(f) or (g)** unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of the information published or disclosed. 35
- “(4) A person to whom information to which this section applies is published or disclosed under **subsection (2)(c)** must not publish, disclose, or use the information except—

- “(a) for the purposes of **this Part** or in connection with the exercise of powers conferred by **this Part**; or
 - “(b) in accordance with any conditions that may be specified by the Bank.
- “(5) A person to whom information to which this section applies is disclosed under **subsection (2)(e), (f), or (g)** must not publish, disclose, or use the information unless the publication, disclosure, or use is—
- “(a) authorised by the Bank; or
 - “(b) necessary or desirable in connection with the exercise of any function or power conferred by any enactment.

“**157ZN Person who does not comply with section 157ZM commits offence**

Every person who does not comply with **section 157ZM** commits an offence and is liable, on summary conviction,—

- “(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000; or
- “(b) in the case of a body corporate, to a fine not exceeding \$500,000.

“**157ZO Application of Official Information Act 1982, etc**

Nothing in the Official Information Act 1982 or any other Act, other than this Act, applies to information to which **section 157ZM** applies, whether or not that information has been published or disclosed to any person under that section.

“Offences and penalties

“**157ZP Offences by deposit takers against this Part**

Every deposit taker who breaches any of the following sections commits an offence:

- “(a) **section 157I** (which relates to the requirement to have a current credit rating):
- “(b) **section 157M** (which relates to the obligation to comply with all requirements in relation to governance imposed by regulations):

- “(b) **section 157L** (which relates to requirements concerning the governance of deposit takers):
- “(c) **section 157O** (which relates to the obligation to comply with all requirements in relation to risk management imposed by regulations): 5
- “(c) **section 157M** (which relates to the requirement to have and comply with a risk management programme):
- “(ca) **section 157N** (which relates to the requirement to provide a copy of the risk management programme to the trustee and amend the programme as required): 10
- “(cb) **section 157O** (which relates to the obligation to comply with a requirement of the trustee that the deposit taker have its risk management programme audited):
- “(d) **section 157P** (which relates to the obligation to ensure the trust deed sets out the minimum capital that the deposit taker is required to maintain): 15
- “(e) **section 157Q** (which relates to the obligation to maintain minimum capital of not less than the amount prescribed by regulations):
- “(f) **section 157S** (which relates to the obligation to ensure that the trust deed complies with any requirement imposed by regulations to include a capital ratio in the trust deed): 20
- “(g) **section 157T** (which relates to the obligation to maintain any capital ratio required to be included in the trust deed by regulations): 25
- “(h) **section 157W** (which relates to the obligation to ensure that the trust deed complies with any requirement imposed by regulations to include a maximum limit on exposures to related parties): 30
- “(i) **section 157X** (which relates to the obligation not to exceed any maximum limit on exposures to related parties required by regulations to be included in the trust deed):
- “(j) **section 157Z** (which relates to the obligation to ensure the trust deed complies with any requirement imposed by regulations to include liquidity requirements in the trust deed): 35

- “(k) **section 157ZA** (which relates to the obligation to comply with any liquidity requirements required by regulations to be included in the trust deed).

“**157ZQ Other offences by deposit takers against this Part**

Every deposit taker commits an offence who— 5

“(a) fails to provide a report to the Bank if required to do so under **section 157ZH**; or

“(b) fails to provide access to accounting and other records of the deposit taker or fails to provide information relating to those records if requested to do so for the purposes of a report under **section 157ZH**; or 10

“(c) fails to provide any information, papers, documents, records, or things as and when required to do so by notice under **section 157ZI**; or

“(d) fails, as and when required by **this Part** or any regulations made under **this Part**, to deliver any paper, document, record, report, copy, or thing; or 15

“(e) fails, as and when required by **this Part** or any regulations made under **this Part**, to allow a person to look at a paper, document, record, report, copy, or thing; or 20

“(f) fails, as and when required to do so by **this Part** or regulations made under **this Part**, to supply any information; or

“(g) makes any statement or supplies any paper, document, record, copy, or thing to the Bank knowing that it is false or misleading in a material particular; or 25

“(h) without reasonable excuse, obstructs or hinders an authorised person in the execution of any powers conferred on that person by or under **this Part** or any regulations made under **this Part**. 30

“**157ZQA Defence for deposit takers charged with offences against this Part**

“(1) In any prosecution of a deposit taker for an offence against **section 157ZP or 157ZQ**, it is a defence if the deposit taker proves that— 35

- “(a) the contravention was due to the act or omission of another person, or some other cause beyond the deposit taker’s control; and
- “(b) the deposit taker took reasonable precautions and exercised due diligence to avoid the contravention. 5
- “(2) For the purposes of **subsection (1)(a)**, the term **another person** does not include a director, employee, or agent of the deposit taker.
- “(3) A deposit taker is not, without the leave of the court, entitled as part of a defence provided by this section to rely on any of the matters specified in **subsection (1)(a)** unless the deposit taker has, not later than 7 working days before the date on which the hearing of the proceedings commences, served on the prosecution a notice in writing identifying the act, omission, or cause relied on by the deposit taker. 10 15
- “157ZQB Power of court to discharge deposit taker**
- “(1) If a deposit taker is charged with an offence against **section 157ZP or 157ZQ**, the court may direct that the defendant be discharged if the court considers that the alleged contravention was in respect of matters that were immaterial. 20
- “(2) A direction under subsection (1) may be made at any stage of the proceeding—
- “(a) on the motion of the court or on the application of the defendant; and
- “(b) after giving both the prosecutor and the defendant a reasonable opportunity to be heard on the matter. 25
- “(3) A discharge under this section is deemed to be an acquittal.
- “(4) Nothing in this section limits sections 106 to 109 of the Sentencing Act 2002.
- “157ZR Liability of directors** 30
- If a body corporate is convicted of an offence under **section 157ZP or 157ZQ**, every director of the body corporate is guilty of an offence if it is proved—
- “(a) that the act that constituted the offence took place with his or her authority, permission, or consent; and 35
- “(b) that he or she—

- “(i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and
- “(ii) failed to take reasonable steps to prevent or stop it.

5

“**157ZS Offences by trustees against this Part**

“(1) Every trustee who breaches any of the following sections commits an offence:

“(a) **section 157P** (which relates to the obligation to ensure the trust deed sets out the minimum capital that the deposit taker is required to maintain):

10

“(b) **section 157S** (which relates to the obligation to ensure that the trust deed complies with the requirement imposed by regulations to include a capital ratio in the trust deed):

15

“(c) **section 157W** (which relates to the obligation to ensure that the trust deed complies with a requirement imposed by regulations to include a maximum limit on exposures to related parties):

“(d) **section 157Z** (which relates to the obligation to ensure the trust deed complies with a requirement imposed by regulations to include liquidity requirements in the trust deed):

20

“(e) **section 157ZD** (which relates to the obligation to provide an attestation to the Bank or reasons why an attestation cannot be provided):

25

“(f) **section 157ZE** (which relates to the obligation to report to the Bank any non-compliance or likely non-compliance by the deposit taker):

“(g) **section 157ZF** (which relates to the obligation to provide information to the Bank in certain circumstances).

30

“(2) Every trustee commits an offence who makes a statement to the Bank in relation to its obligations to the Bank, including providing an attestation, knowing it to be false or misleading in a material particular.

35

“157ZT Penalties for offences

- “(1) Every deposit taker who commits an offence under **section 157ZP(a)** is liable, on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 18 months or to a fine not exceeding \$200,000, or both; or 5
- “(b) in the case of a body corporate, to a fine not exceeding \$2,000,000.
- “(2) Every deposit taker who commits an offence under any other provision in **section 157ZP or 157ZQ** is liable, on summary conviction,— 10
- “(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000, or both; or
- “(b) in the case of a body corporate, to a fine not exceeding \$1,000,000. 15
- “(3) Every director who commits an offence under section **157ZR** is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$100,000, or both. 20
- “(4) Every trustee who commits an offence under any provision in **section 157ZS** is liable, on summary conviction, to a fine not exceeding \$200,000.

“Miscellaneous

- “157ZU Matters relating to regulation-making powers under this Part** 25
- Regulations made under **section 157K, 157L, 157N, 157P, 157R, 157U, or 157Y** may—
- “(a) prescribe clauses relating to all or any of the matters referred to in those sections that are deemed to be contained in, or adopted by, trust deeds; and 30
- “(b) prescribe requirements or clauses that apply to all deposit takers; and
- “(c) prescribe different requirements or clauses for different classes of deposit takers; and 35
- “(d) prescribe different requirements or clauses for particular deposit takers.

“157ZUA Bank must review and report on operation of this

Part

“(1) The Bank must, not later than 5 years after the commencement of this section,—

“(a) review the operation of **this Part since the commencement of this section; and** 5

“(b) prepare a report on the review for the Minister.

“(2) The report on the review must include recommendations to the Minister on whether any amendments to the Act concerning the matters dealt with in **this Part are necessary or desirable.** 10

“(3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.”

Part 2

Amendments to Part 6 of principal Act 15

12A Section 158 repealed
Section 158 is repealed.

12B Funding agreements
Section 159(1) is amended by inserting the following paragraph after paragraph (d): 20
“(da) **Part 5D.”**

12C New section 162 substituted
Section 162 is repealed and the following section substituted:

“162 Determination of annual dividend
“(1) The Bank must, as soon as practicable after the end of each financial year, recommend to the Minister the amount appropriately payable by the Bank to the Crown as an annual dividend in respect of the financial year. 25

“(2) The Bank must determine the amount it recommends to the Minister under **subsection (1) in accordance with the principles set out in its statement of intent.** 30

“(3) The Minister must determine the amount that the Bank must pay to the Crown as an annual dividend in respect of the financial year having regard to—

- “(a) the recommendation of the Bank; and
 - “(b) the views of the Board of the Bank; and
 - “(c) any other relevant matters.
- “(4) The Bank must publish in its annual report—
 - “(a) the amount it recommends to the Minister under **sub-** 5
section (1); and
 - “(b) the determination made by the Minister under **subsec-**
tion (3).”

- 12 New Part 6 heading substituted**
The Part 6 heading is repealed and the following heading sub- 10
stituted:

“Part 6
“Financial and accountability matters”.

- 13 New heading and sections 162AA and 162AB inserted**
The following heading and sections are inserted after section 15
162:

“Accountability documents

“162AA Purpose of accountability documents
The purpose of the 3 accountability documents required under
this Part is as follows: 20

 - “(a) statement of intent: to promote the public accountabil-
ity of the Bank by—
 - “(i) enabling the Crown to participate in the process
of setting the Bank’s medium-term intentions and
undertakings; and 25
 - “(ii) setting out for the House of Representatives those
intentions and undertakings; and
 - “(iii) providing a base against which the Bank’s actual
performance can be later assessed:
 - “(b) annual report: to— 30
 - “(i) report on the activities of the Bank during the
previous year; and
 - “(ii) assess those activities against the intentions and
undertakings set out in the latest statement of in-
tent; and 35

- “(iii) ensure the accountability of the Bank for the funds available to it:
 - “(c) financial stability report: to—
 - “(i) report on matters relating to the soundness and efficiency of the financial system and other matters associated with the Bank’s statutory prudential purposes; and 5
 - “(ii) allow assessments to be made of the effectiveness of the Bank’s use of its powers to achieve its statutory prudential purposes. 10
- “Compare: 2004 No 115 s 138

“162AB Assessment of regulatory impacts of policies

- “(1) The Bank must regularly assess the regulatory impacts of the policies adopted or applied under Part 5 and Parts 5B to **5D**; and must give reports on the assessments to the Minister. 15
- “(2) Reports on the assessments of regulatory impacts may be—
 - “(a) provided to the Minister as part of any accountability document or other report; or
 - “(b) provided as a stand-alone report, either following a request by the Minister or prepared on the Bank’s own initiative. 20

“162AB Assessment of regulatory impacts of policies

- “(1) The Bank must—
 - “(a) assess the expected regulatory impacts of any policy that it intends to adopt under Part 5 and Parts 5B to **5D**; 25
 - and
 - “(b) assess the regulatory impacts of the policies adopted and applied under Part 5 and Parts 5B to **5D** at intervals appropriate to the nature of the policy being assessed; 30
 - and
 - “(c) give reports on the assessments to the Minister.
- “(2) Subsection (1) does not apply in respect of any policy that is of a minor or technical nature.
- “(3) The Bank may provide reports on the assessments of regulatory impacts to the Minister— 35
 - “(a) as part of an accountability document or other report; or

- “(b) as a stand-alone report prepared following a request by the Minister or on the Bank’s own initiative.
- “(4) The Bank must publish every report on the assessment of regulatory impacts on an Internet site maintained by, or on behalf of, the Bank. 5
- “(5) However, the Bank may omit information from any report published if it is satisfied on reasonable grounds that it is proper to omit the information on the ground of commercial confidentiality relating to a financial institution.
- “(6) To avoid doubt, the publication of an accountability document that includes a report on the assessments of regulatory impacts satisfies the obligation in **subsection (4)**.” 10
- 14 New heading inserted**
The following heading is inserted above section 162A: “*Statement of intent*”. 15
- 15 Content of statement of intent**
- (1) Section 162B(1) is amended by repealing paragraphs (c) and (d) and substituting the following paragraphs:
- “(c) the specific impacts, outcomes, or objectives that the Bank seeks to achieve or contribute to: 20
- “(d) how the Bank intends to perform its functions and conduct its operations to achieve those impacts, outcomes, or objectives:
- “(da) if a direction has been given under **section 68B**, how the Bank has had regard to the direction:” 25
- (2) Section 162B(1) is amended by adding the following paragraphs:
- “(fa) a statement of the principles in accordance with which the Bank must determine the amount it recommends to the Minister as appropriately payable by the Bank to the Crown as an annual dividend: 30
- “(g) the main financial and non-financial measures and standards by which the future performance of the Bank may be judged:
- “(h) the matters on which the Bank will consult or notify the Minister before making a decision, the matters on 35

which it will report to its Minister, and the frequency of reporting:

- “(i) any other matters that are reasonably necessary to achieve an understanding of the Bank’s intentions and direction.”

5

Compare: 2005 No 115 s 141(1)(c)(d)(f)(g) and (j)

16 Process for providing statement of intent to Minister

Section 162C is amended by adding the following subsection as subsection (2):

- “(2) If the Minister’s comments include comment on the financial sector regulatory outcomes set out in the Bank’s draft statement of intent, the Bank must, when providing its final statement of intent to the Minister, also provide a response to the Minister’s comments that demonstrates how the Bank has taken those comments into account in formulating its objectives.”

10

15

17 New heading inserted

The following heading is inserted above section 163: “*Annual reports*”.

18 Annual reports and accounts

20

Section 163(2) is amended by inserting the following paragraph before paragraph (a):

- “(aaa) an assessment against the intentions, measures, and standards set out in the statement of intent prepared at the beginning of the financial year; and”.

25

19 New heading and section 165A inserted

The following heading and section are inserted above section 166:

Financial stability reports

“165A Financial stability reports

30

- “(1) The Bank must, ~~within 6 months after this section comes into force and then at intervals of not more than 6 months from the date of publication of the preceding report~~ not less than twice in every calendar year,—

-
- “(a) deliver a financial stability report to the Minister; and
“(b) publish the report on ~~the Bank’s Internet website~~ an Internet site maintained by, or on behalf of, the Bank.
- “(2) A financial stability report must—
- “(a) report on the soundness and efficiency of the financial 5
system and other matters associated with the Bank’s
statutory prudential purposes; and
- “(b) contain the information necessary to allow an assess-
ment to be made of the activities undertaken by the
Bank to achieve its statutory prudential purposes under 10
this Act and any other enactment.
- “(3) The Minister must, as soon as practicable after receiving the
report, present it to the House of Representatives.”

20 New heading inserted

The following heading is inserted above section 166: “*Audits*”. 15

21 New Schedules 3 and 4 added

The **Schedules 3 and 4** set out in the **Schedule** of this Act
are added.

Schedule

s 21

New Schedules 3 and 4 added

Schedule 3

**ss 81AA(3), 157R(3),
157V(3)** 5

**General provisions relating to material
incorporated by reference under Part 5D**

- 1 Effect of material incorporated by reference in regulations**
- (1) This clause and **clauses 2 to 7** apply to material incorporated by reference in ~~regulations made under Part 5D~~—
- (a) an Order in Council made under section 81; and
- (b) regulations made under **Part 5D**.
- (2) Material incorporated by reference in an Order in Council made under section 81 or regulations has effect as part of the Order in Council or regulations. 15
- 2 Effect of amendments to, or replacement of, material incorporated by reference in regulations**
- An amendment to, or replacement of, material incorporated by reference in regulations (**regulations A**) has legal effect as part of regulations A only if regulations made under **Part 5D** after the making of regulations A state that the particular amendment or replacement has that effect. 20
- An amendment to, or replacement of, material incorporated by reference in an Order in Council or regulations has legal effect as part of that instrument only if an Order in Council made under section 81 or regulations made under **Part 5D** after the making of that instrument state that the particular amendment or replacement has that effect. 25
- 3 Proof of material incorporated by reference** 30
- (1) A copy of the material incorporated by reference in an Order in Council or regulations, including any amendment to, or replacement of, the material, must be—
- (a) certified as a correct copy of the material by the Governor; and 35
- (b) retained by the Governor.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient

Schedule 3—*continued*

evidence of the incorporation in the Order in Council or regulations of the material.

4 Effect of expiry or revocation of material incorporated by reference

Material incorporated by reference in an Order in Council or regulations that expires or is revoked, or that ceases to have effect, ceases to have legal effect as part of the Order in Council or regulations only if an Order in Council made under section 81 or regulations made under **Part 5D** state that the material is revoked or ceases to have legal effect. 5 10

5 Access to material incorporated by reference

(1) The Governor—

- (a) must make the material referred to in **subclause (2)** available for inspection during working hours free of charge at the head office of the Bank and at any other places that the Governor determines are appropriate; and 15
- (b) must make copies available for purchase at a reasonable price; and
- (c) may make copies of the material available in any other way that the Governor considers appropriate in the circumstances (for example, on an Internet website); and 20
- (d) must give notice in the *Gazette* stating that—
 - (i) the material is incorporated in the regulations and the date on which the regulations were made; and 25
 - (ii) the material is available for inspection during working hours, free of charge, and the location of the place or places at which it can be inspected; and
 - (iii) copies of the material can be purchased and the location of the place or places at which they can be purchased; and 30
 - (iv) if copies of the material are available under **paragraph (c)**, the material is available in other ways,

Schedule 3—*continued*

and giving the details of how and where it can be accessed and obtained.

- (2) The material is—
- (aaa) a framework, standard, specification, or requirement incorporated by reference in an Order in Council made under section 81: 5
 - (aa) any amendment to, or replacement of,—
 - (i) the framework, standard, specification, or requirement incorporated by reference in the Order in Council; or 10
 - (ii) the framework, standard, specification, or requirement referred to in **paragraph (aaa)** with the amendments or replacement framework, standard, specification, or requirement incorporated within it: 15
 - (a) a framework incorporated by reference in regulations made under **section 157R or 157U:**
 - (b) any amendment to, or replacement of,—
 - (i) the framework that is incorporated in the regulations; or 20
 - (ii) the framework referred to in **paragraph (a)** with the amendments or replacement framework incorporated within it.
- (3) ~~A failure to comply with this clause does not invalidate regulations that incorporate a framework by reference.~~ 25
- (3) A failure to comply with this clause does not invalidate—
- (a) an Order in Council that incorporates a framework, standard, specification, or requirement by reference; or
 - (b) regulations that incorporate a framework by reference.
- 6 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference** 30
- The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in an Order in Council or regulations or to an amendment to, or replacement of, that material. 35

Schedule 3—*continued*

- 7 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference**
- (1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in an Order in Council or regulations to be laid before the House of Representatives. 5
- (2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of that Act made by **subclause (1)** of this clause, applies to an Order in Council or regulations that incorporate material by reference. 10
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Schedule 4

s 157ZL(2)

**General provisions relating to search
warrants issued under Part 5D**

- 1 Interpretation** 5
In this schedule, **Judge** means a Judge of the High Court.
- 2 Application of clauses 3 to 13**
Clauses 3 to 13 apply to every search warrant applied for and issued under **Part 5D** that would enable the entry and inspection, or entry and search, of any place. 10
- 3 Application for search warrant**
- (1) An application for a search warrant must contain, in reasonable detail, the following particulars:
- (a) the name of the applicant:
 - (b) the grounds on which the application is made: 15
 - (c) the address or other description of the place to be searched:
 - (d) a description of the item or items, believed to be at the place, that are sought by the applicant.
- (2) The Judge may require the applicant to supply further information concerning the grounds on which the search warrant is sought. 20
- (3) The applicant must disclose in the application—
- (a) details of any other applications for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place proposed to be searched; and 25
 - (b) the result of that application or applications.
- (4) The applicant must, before making an application for a search warrant, make reasonable inquiries for the purpose of complying with **subclause (3)**. 30
- (5) The Judge may authorise the search warrant to be executed on more than 1 occasion if he or she is satisfied that this is required for the purposes for which the warrant is being issued.
- 4 Mode of application for search warrant** 35
- (1) An application for a search warrant—

Schedule 4—*continued*

- (a) must be in writing, unless **subclause (3)** applies; and
 - (b) may be transmitted to the Judge electronically.
 - (2) The applicant must appear in person before the Judge unless **subclause (3)** applies.
 - (3) A Judge may allow an application for a search warrant to be made orally (for example, by telephone call) and excuse the applicant from making a personal appearance if the Judge is satisfied that—
 - (a) the delay that would be caused by requiring an applicant to appear in person would compromise the effectiveness of the search; and
 - (b) the question of whether the warrant should be issued can properly be determined on the basis of an oral communication (together with the information described in **paragraph (c)**); and
 - (c) the information required by **clause 3(1) to (3)** has been supplied to the Judge.
- 5 Form and content of search warrant**
- (1) Every search warrant issued must be directed to an authorised person by name, to every authorised person holding a specified office or authorisation, or to every authorised person.
 - (2) A search warrant issued—
 - (a) may be executed by all or any of the persons to whom it is directed;
 - (b) may be subject to any conditions specified in the warrant that the Judge considers reasonable;
 - (c) may be executed only once, unless execution on more than 1 occasion has been authorised.
 - (3) Every search warrant must contain, in reasonable detail, the following particulars:
 - (a) the place or thing that may be searched;
 - (b) the provision authorising the issue of the warrant;
 - (c) a description of what may be seized;
 - (d) the period during which the warrant may be executed, being a period not exceeding 14 days from the date of issue;

Schedule 4—*continued*

- (e) any conditions specified by the Judge under **subclause (2)(b)**:
- (f) if the warrant may be executed on more than 1 occasion, the number of times, or the period of time over which, the warrant may be executed. 5

6 Transmission of search warrant

If it is not possible for the person charged with executing the warrant to have it in his or her possession at the time of execution, one of the following documents (which is deemed for all legal purposes to constitute the warrant) may be executed: 10

- (a) a faxed copy or electronic copy of a warrant issued by the Judge:
- (b) a copy made by the person to whom the warrant is directed, at the direction of the Judge and endorsed to that effect. 15

7 Retention of documents

- (1) A copy of every written application for a search warrant or (in the case of an oral application) the written record of the application made by the Judge must be retained permanently by, or on behalf of, the Judge. 20
- (2) An applicant to whom a search warrant is issued must retain the warrant, a copy of the application (if made in written form), and all documents tendered by the applicant in support of the application until,—
 - (a) in the case of a warrant that is executed, the completion of all proceedings in respect of which the validity of the warrant may be in issue; and 25
 - (b) in any other case, the destruction or transfer of the warrant and other documents is required by the Public Records Act 2005 or any other enactment or rule of law. 30

8 When search warrant is executed

A search warrant is executed when the person executing the warrant—

Schedule 4—*continued*

- (a) has seized all the items specified in the warrant; or
- (b) leaves the place or thing being searched and does not return within 4 hours.

9 Powers conferred by search warrant

- (1) Every search warrant issued under **Part 5D** authorises the person executing it to— 5
- (a) enter and search the place or thing specified in the warrant, and any item or items found in that place or thing, at any time that is reasonable in the circumstances: 5
 - (b) request any person to assist in the execution of the warrant (including, without limitation, a member of a hapū or iwi if the place to be entered is of cultural or spiritual significance to that hapū or iwi): 10
 - (c) use any force that is reasonable for the purposes of executing the warrant: 15
 - (d) seize any thing authorised by the warrant:
 - (e) bring, and use in or on the place or thing searched, any equipment, to use any equipment found on the place or thing, and to extract any electricity from the place or thing to operate the equipment that is reasonable to use in the circumstances, for the purposes of executing the warrant: 20
 - (f) copy any document, or part of a document, that may be seized under the warrant:
 - (g) require any person to reproduce, or to assist the person executing the warrant to reproduce, in usable form, any information recorded or stored in any document that may be seized under the warrant: 25
 - (h) take photographs or video recordings of the place or thing searched, and of any thing found in that place, if the person executing the warrant has reasonable grounds to believe that the photographs or video recordings may be relevant in any proceedings arising from the execution of the warrant. 30
- (2) The person executing the search warrant may seize any item or items that he or she, or any person assisting him or her, finds 35

Schedule 4—*continued*

in the course of executing the warrant if the person executing the warrant has reasonable grounds to believe that he or she or any other person who can apply for a search warrant under **Part 5D** could obtain a warrant to seize it under **Part 5D**.

- (3) The person executing a search warrant may, in a manner and for the duration that is reasonable for the purposes of executing the warrant,— 5
- (a) secure the place searched, any area within that place, or any thing found within that place:
 - (b) exclude any person from the place searched, or from any area within the place or thing, if the person executing the warrant has reasonable grounds to believe that the person to be excluded will obstruct or hinder the execution of the warrant. 10
- (4) The powers conferred by this clause are subject to any conditions imposed under **clause 5(2)(b)**. 15
- (5) Section 198B of the Summary Proceedings Act 1957 applies in respect of every search warrant as if for each reference to a constable there were substituted a reference to a person authorised to execute the search warrant. 20

10 Powers of persons called to assist

- (1) Every person called on to assist a person executing a search warrant may—
- (a) enter the place to be searched:
 - (b) while in the company and under the direction of the person executing the warrant, use reasonable force in respect of any property for the purposes of executing the warrant: 25
 - (c) search areas within the place that the person executing the warrant has determined may lawfully be searched: 30
 - (d) seize any thing that the person executing the warrant has determined may lawfully be seized:
 - (e) take photographs and video recordings of the place and things found in the place or thing if the person executing the warrant has determined that those things may be lawfully taken: 35

Schedule 4—*continued*

- (f) bring onto the place or thing and use any equipment, make use of any equipment found on the place or thing, or extract electricity from the place or thing for the purposes of operating the equipment that the person executing the warrant has determined may be lawfully used: 5
- (g) copy any document, or part of a document, that the person executing the warrant has determined may be lawfully copied.
- (2) If a member of the police is assisting another person executing a search warrant, that member of the police may exercise any power ordinarily exercisable by him or her in executing a search warrant. 10
- (3) The person executing a search warrant must—
 - (a) accompany any assistant on the first occasion when the assistant enters the place or thing to be searched; and 15
 - (b) provide such other supervision of any assistant as is reasonable in the circumstances.
- (4) The powers conferred by this clause are subject to any conditions imposed under **clause 5(2)(b)**.
- 11 Person executing warrant to produce evidence of authority** 20
- (1) The person exercising the search warrant must—
 - (a) before initial entry into or onto the place or thing to be searched—
 - (i) announce his or her intention to enter and search the place pursuant to a search warrant; and 25
 - (ii) identify himself or herself; and
 - (b) before initial entry into or onto the place or thing to be searched—
 - (i) give the occupier (if present) of the place or thing a copy of the search warrant; and 30
 - (ii) produce to the occupier (if present) of the place or thing evidence of his or her identity; and
 - (c) if requested to do so at any time after initial entry into or onto the place or thing to be searched, produce— 35
 - (i) a copy of the search warrant; and

Schedule 4—*continued*

- (ii) evidence of his or her identity.
- (2) The person executing the search warrant is not required to comply with **subclause (1)(a) and (b)** if he or she believes on reasonable grounds that no person is lawfully present in or on the place to be searched. 5
- (3) The person executing the search warrant may use reasonable force in order to effect entry into or onto the place if—
- (a) **subclause (2)** applies; or
- (b) following a request, the person present refuses entry or does not allow entry within a reasonable time. 10
- (4) On completion of the execution of the search warrant, the person executing it must provide written notice containing the following particulars:
- (a) the date and time of the commencement and completion of execution of the warrant: 15
- (b) the name of the person executing the warrant who had overall responsibility for that execution:
- (c) the address of the police station or other office to which inquiries should be made:
- (d) if nothing is seized, the fact that nothing was seized: 20
- (e) if anything was seized, the fact that seizure occurred and that an inventory of the things seized will be provided to the occupier not later than 7 days after the seizure.
- (5) If the occupier is not present at any time during the execution of the warrant, or if it is not reasonably practicable to comply with **subclause (1)(c)**, the person executing the warrant must on completion of execution leave a copy of the warrant and the notice required by **subclause (4)** in a prominent position on the place, except where this is not reasonably practicable. 25
- (6) This clause is subject to **clause 13**. 30
- 12 Inventory of items seized**
- (1) The person who executed the search warrant must, not later than 7 days after the seizure of any property or evidence, provide to the occupier, and to every other person who the person who executed the search warrant has reason to believe may have an interest in what was seized,— 35

Schedule 4—*continued*

- (a) written notice specifying what was seized; and
 - (b) a copy of the warrant and the written notice required by **clause 11(4)**.
- (2) A person who executes a search warrant must make reasonable inquiries for the purposes of complying with **subclause (1)**. 5
- (3) This clause is subject to **clause 13**.
- 13 Compliance with certain provisions may be deferred in certain circumstances**
- (1) A person executing a search warrant may apply to a Judge for a postponement of the obligation to comply with **clause 11(1), (4), and (5) or 12** on the grounds that— 10
- (a) compliance would endanger the safety of any person; or
 - (b) compliance would prejudice ongoing investigations of breaches or potential breaches of **Part 5D** or executions of the warrant on subsequent occasions. 15
- (2) An application may be made under **subclause (1)** at the time of the initial application for the warrant or until the expiry of 7 days after the warrant is finally executed.
- (3) On an application under **subclause (1)**, the Judge may postpone for a specified period not exceeding 12 months the obligation to comply with **clause 11(1), (4), and (5) or 12**, if the Judge is satisfied there were reasonable grounds for believing that compliance would— 20
- (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations under **Part 5D** or the exercise of entry and search powers on subsequent occasions. 25
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**Reserve Bank of New Zealand
Amendment Bill (No 3)**

Legislative history

21 November 2007
11 December 2007

Introduction (Bill 174-1)
First reading and referral to Finance and
Expenditure Committee
