

**Reprint  
as at 1 December 2010**



## **Reserve Bank of New Zealand Amendment Act 2008**

Public Act    2008 No 59  
Date of assent    9 September 2008  
Commencement    see section 2

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#### **Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Treasury.**

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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 2008.

**2 Commencement**

- (1) Sections 157M to 157O of the principal Act (as inserted by section 17 of this Act) come into force on 1 September 2009.
- (2) Section 157I of the principal Act (as inserted by section 17 of this Act) comes into force on 1 March 2010.
- (3) Section 157L of the principal Act (as inserted by section 17 of this Act) comes into force on a date to be appointed by the Governor-General by Order in Council.
- (4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Section 2(3): section 157L brought into force, on 1 December 2010, by the Reserve Bank of New Zealand Amendment Act 2008 Commencement Order 2010 (SR 2010/168)

**3 Principal Act amended**

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

**Part 1**

**Amendments outside Part 6 of principal Act**

**4 Long Title repealed**

The Long Title is repealed.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—

- (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
  - (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.

## 6 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

## 7 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,—

- (a) with any person, including the Crown; and
- (b) on behalf of any person, including the Crown.

## 8 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.

## 9 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.
- (2) A request may not be made under subsection (1) that may limit the Bank in exercising its primary function in section 8.

- (3) The Bank may also provide advice to the Minister, at any time, on any matters or subjects within the responsibility of the Bank.

**10 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.

**11 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”.

**12 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”.

**13 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”.

**14 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—
- (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:

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

**15 New section 68B inserted**

The following section is inserted after section 68A:

**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.

- (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—
  - (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
    - (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.
- (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)

## **16 Further matters that may be prescribed**

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

## **17 New Part 5D inserted**

The following Part is inserted after section 156ZE:

### **Part 5D** **Deposit takers**

#### *Preliminary provisions*

#### **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

- (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,—

**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—

- (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
- (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,—

- (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;
- (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; 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

**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—

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

**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
- (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
  - (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
  - (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—
  - (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
- (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

**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

**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
- (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

**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

**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.

- (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:
  - (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.

### 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) 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) a credit union as defined in section 2 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;
  - (iv) the Crown (as defined in section 2(1) of the Public Finance Act 1989);
  - (v) 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.
- (3) 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).
- (4) A person remains a deposit taker until all debt securities offered to the public in New Zealand by the person are repaid.
- (5) 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.
- (6) In considering whether to advise and recommend the making of regulations under subsection (5), the Minister and the Bank must have regard to—
- (a) the purposes of this Part; and
  - (b) the nature of the business activities carried on by the person or class of persons 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
    - (ii) involve activities as a deposit taker; and
  - (c) the public interest; and
  - (d) any other matters the Minister or the Bank considers relevant.

#### **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.

#### **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:
- (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 regulations made in accordance with the recommendation.
- (2) Failure to comply with subsection (1) does not affect the validity of regulations made under this Part.

**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—
  - (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.
- (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—
    - (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:
  - (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:
  - (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.

**157G Exemptions from Part**

- (1) The Bank may, by notice in the *Gazette*, exempt any deposit taker, class of deposit takers, or trustee from compliance with any provision or provisions of—
  - (a) this Part; or
  - (b) any regulations made under this Part.
- (2) 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

- (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.
- (3) 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:
  - (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:
  - (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:
  - (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:
  - (i) any other prudential requirements the Bank considers necessary or desirable to achieve the purposes of this Part.
- (4) The Bank may amend or revoke an exemption in the same way as an exemption may be granted under this section.
- (5) The Bank's reasons for granting an exemption (including why an exemption is appropriate) must be notified in the *Gazette*, together with the exemption.
- (6) 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.
- (7) 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.

### **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
- (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.
- (2) 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.
- (3) The Bank may, at any time, review the approval of a person as a rating agency, and in conducting the review the Bank must have regard to the matters in subsection (2).
- (4) If, after conducting the review, the Bank considers that the person should no longer be an approved rating agency, it may revoke the approval.
- (5) The Bank must publish and keep up to date a list of approved rating agencies on an Internet site 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):
- (b) requiring a deposit taker to have a rating of creditworthiness of the borrowing group of which the deposit taker is part.

*Governance requirements***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
  - (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, 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.
- (3) For the purposes of this section, **independent director** means a director that—
  - (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.

*Risk management***157M Deposit taker must have and comply with risk management programme**

- (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;
    - (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—
    - (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
  - (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).
- (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.

**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.
- (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),—
  - (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
  - (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.
- (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 Regulations may impose requirement that trust deed sets out minimum capital that deposit taker is required to maintain**

- (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 the trust deed sets out the minimum capital that the deposit taker is required to maintain.
- (2) Regulations made under this section may—
  - (a) require the trust deed to set out—
    - (i) the amount of the minimum capital that the deposit taker is required to maintain; and
    - (ii) the form of that capital (for example, the financial instruments that may be taken into account in calculating capital); and
  - (b) provide that the amount of the minimum capital set out in the trust deed must be not less than an amount prescribed in the regulations; and
  - (c) provide that the form of the capital set out in the trust deed must be a form prescribed by the regulations.

**157Q Deposit takers and trustees must ensure trust deed sets out minimum capital deposit taker is required to maintain**

A deposit taker and the trustee must comply with any requirement imposed by regulations made under section 157P.

**157R Deposit taker must maintain not less than minimum capital prescribed**

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*

**157S 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 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:
  - (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:
  - (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:
  - (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—
    - (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.

**157T 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 157S.

**157U Deposit taker must maintain capital ratio required to be included in trust deed**

A deposit taker must maintain any capital ratio that is required to be included in the trust deed by regulations made under section 157S.

*Restrictions on related party exposures***157V 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.
- (2) Regulations made under this section may—
  - (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:
  - (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:
  - (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 157ZD for provisions that apply if there is no agreement).
- (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.

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

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

**157X 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 157V.

**157Y 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 157V to be included in the trust deed.

*Liquidity requirements*

**157Z 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.
- (2) Regulations made under this section may, in relation to the liquidity requirements to be included in the trust deed, prescribe 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:
  - (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:
  - (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).

**157ZA 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 157Z.

**157ZB 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 157Z.

*Other matters relating to trust deeds***157ZC 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—
  - (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; 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.

**157ZD 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
  - (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.
- (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.
- (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
  - (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
  - (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.

*Obligations of trustees to Bank*

**157ZE 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.
- (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.

**157ZF 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.

**157ZG 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, becomes aware of information on the basis of which he or she could reasonably form an opinion that—
- (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
  - (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
    - (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,—
  - (i) the terms of the trust deed; or
  - (ii) the terms of any offer of debt securities to which the trust deed relates.
- (2) This section also applies if the Bank, by notice in writing to the trustee, requires the trustee to provide the Bank with information relating to the business, operation, or management of a deposit taker.
- (3) If this section applies, the trustee must, as soon as practicable, disclose to the Bank all information held by the trustee that is relevant to the matter referred to in subsection (1) or, as the case may be, the matters referred to in the notice under subsection (2), obtained in the course of, or in connection with, the performance of functions as trustee.

#### **157ZH 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 157ZE to 157ZG.
- (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 157ZE to 157ZG.
- (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*

#### **157ZI 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.
- (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 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 157ZK.
- (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.

### **157ZJ 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.
- (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
  - (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.

### **157ZK Limitation on information to be provided**

Nothing in section 157ZI(2) or 157ZJ(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 person by an enactment (other than the Official Information Act 1982 or the Privacy Act 1993).

### **157ZL Limitations on entering and searching place**

A person appointed under section 157ZJ(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 157ZM.

### **157ZM Search warrant may be issued**

- (1) A Judge of the High Court or a District Court Judge may issue a search warrant in terms of clause 5 of Schedule 4 to a person appointed under section 157ZJ(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.
- (2) The provisions of Schedule 4 apply to a search warrant issued under this section.

### **157ZN 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—
  - (a) a request to supply access to accounting and other records of the deposit taker or provide information relating to those records under section 157ZI(2); and
  - (b) a notice under section 157ZJ(2)(a); and
  - (c) a search warrant issued under section 157ZM.

- (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.
- (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 157ZJ(2)(a) in respect of a document to which this subsection applies; or
  - (b) the issue or execution of a search warrant under section 157ZM in respect of a document to which this subsection applies; or
  - (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 157ZJ(2)(a) or a search warrant issued under section 157ZM.
- (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
  - (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.
- (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.
- (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.
- (7) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this section.
- (8) Nothing in this section affects the application of section 60 of the Evidence Act 2006.

### *Confidentiality of information*

#### **157ZO 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:
    - (ii) a person appointed by the Bank under section 157ZJ(2)(b):
  - (b) information derived from, or based on, information referred to in paragraph (a):
  - (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 157ZJ(2)(b), must not publish or disclose information to which this section applies except—
- (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
  - (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
  - (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.
- (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.
- (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.

**157ZP Person who does not comply with section 157ZO commits offence**

Every person who does not comply with section 157ZO 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.

**157ZQ 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 157ZO applies, whether or not that information has been published or disclosed to any person under that section.

*Offences and penalties***157ZR 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 157L (which relates to requirements concerning the governance of deposit takers):
- (c) section 157M (which relates to the requirement to have and comply with a risk management programme):
- (d) 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):
- (e) 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):
- (f) section 157Q (which relates to the obligation to ensure that the trust deed complies with any requirement imposed by regulations to set out the minimum capital that the deposit taker is required to maintain):
- (g) section 157R (which relates to the obligation to maintain minimum capital of not less than the amount prescribed by regulations):
- (h) section 157T (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):
- (i) section 157U (which relates to the obligation to maintain any capital ratio required to be included in the trust deed by regulations):

- (j) section 157X (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):
- (k) section 157Y (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):
- (l) section 157ZA (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):
- (m) section 157ZB (which relates to the obligation to comply with any liquidity requirements required by regulations to be included in the trust deed).

**157ZS Other offences by deposit takers against this Part**

Every deposit taker commits an offence who—

- (a) fails to provide a report to the Bank if required to do so under section 157ZI; 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 157ZI; or
- (c) fails to provide any information, papers, documents, records, or things as and when required to do so by notice under section 157ZJ; 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
- (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
- (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
- (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.

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

- (1) In any prosecution of a deposit taker for an offence against section 157ZR or 157ZS, it is a defence if the deposit taker proves that—

- (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.
- (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.

#### **157ZU Power of court to discharge deposit taker**

- (1) If a deposit taker is charged with an offence against section 157ZR or 157ZS, 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.
- (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.
- (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.

#### **157ZV Liability of directors**

If a body corporate is convicted of an offence under section 157ZR or 157ZS, 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
- (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.

#### **157ZW Offences by trustees against this Part**

- (1) Every trustee who breaches any of the following sections commits an offence:
- (a) section 157Q (which relates to the obligation to ensure that the trust deed complies with a requirement imposed by regulations to set out the minimum capital that the deposit taker is required to maintain):

- (b) section 157T (which relates to the obligation to ensure that the trust deed complies with a requirement imposed by regulations to include a capital ratio in the trust deed):
  - (c) section 157X (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 157ZA (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):
  - (e) section 157ZE (which relates to the obligation to provide an attestation to the Bank or reasons why an attestation cannot be provided):
  - (f) section 157ZF (which relates to the obligation to report to the Bank any non-compliance or likely non-compliance by the deposit taker):
  - (g) section 157ZG (which relates to the obligation to provide information to the Bank in certain circumstances).
- (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.

#### **157ZX Penalties for offences**

- (1) Every deposit taker who commits an offence under section 157ZR(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
  - (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 157ZR or 157ZS is liable, on summary conviction,—
- (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.
- (3) Every director who commits an offence under section 157ZV is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$100,000, or both.
- (4) Every trustee who commits an offence under any provision in section 157ZW is liable, on summary conviction, to a fine not exceeding \$200,000.

#### *Miscellaneous*

#### **157ZY Matters relating to regulation-making powers under this Part**

Regulations made under section 157K, 157P, 157S, 157V, or 157Z 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
- (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
- (d) prescribe different requirements or clauses for particular deposit takers.

**157ZZ 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
  - (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.
- (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****18 Section 158 repealed**

Section 158 is repealed.

**19 Funding agreements**

Section 159(1) is amended by inserting the following paragraph after paragraph (d):

(da) Part 5D:

**20 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.
- (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.

- (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 subsection (1); and
  - (b) the determination made by the Minister under subsection (3).

**21 New Part 6 heading substituted**

The Part 6 heading is repealed and the following heading substituted:

**Part 6**  
**Financial and accountability matters**

**22 New heading and sections 162AA and 162AB inserted**

The following heading and sections are inserted after section 162:

*Accountability documents*

**162AA Purpose of accountability documents**

The purpose of the 3 accountability documents required under this Part is as follows:

- (a) statement of intent: to promote the public accountability of the Bank by—
  - (i) enabling the Crown to participate in the process of setting the Bank's medium-term intentions and undertakings; and
  - (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—
  - (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 intent; and
  - (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
- (ii) allow assessments to be made of the effectiveness of the Bank's use of its powers to achieve its statutory prudential purposes.

Compare: 2004 No 115 s 138

### **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; 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; 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—
  - (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) 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).

### **23 New heading inserted**

The following heading is inserted above section 162A: "*Statement of intent*".

### **24 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;
  - (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:
- (2) Section 162B(1) is amended by adding the following paragraphs:
- (g) 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:
  - (h) the main financial and non-financial measures and standards by which the future performance of the Bank may be judged:
  - (i) the matters on which the Bank will consult or notify the Minister before making a decision, the matters on which it will report to its Minister, and the frequency of reporting:
  - (j) any other matters that are reasonably necessary to achieve an understanding of the Bank's intentions and direction.

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

## 25 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.

## 26 New heading inserted

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

## 27 Annual reports and accounts

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

## 28 New heading and section 165A inserted

The following heading and section are inserted above section 166:

### *Financial stability reports*

#### **165A Financial stability reports**

- (1) The Bank must, not less than twice in every calendar year,—
- (a) deliver a financial stability report to the Minister; and

- (b) publish the report on 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 system and other matters associated with the Bank’s statutory prudential purposes; and
  - (b) contain the information necessary to allow an assessment to be made of the activities undertaken by the Bank to achieve its statutory prudential purposes under 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.

**29 New heading inserted**

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

**30 New Schedules 3 and 4 added**

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

**Schedule**  
**New Schedules 3 and 4 added**

s 30

**Schedule 3**  
**General provisions relating to material incorporated by reference**

ss 81AA(3), 157S(3), 157W(3)

**1 Effect of material incorporated by reference**

- (1) This clause and clauses 2 to 7 apply to material incorporated by reference in—
- (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.

**2 Effect of amendments to, or replacement of, material incorporated by reference**

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.

**3 Proof of material incorporated by reference**

- (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
  - (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 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 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
  - (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
  - (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
    - (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
    - (iv) if copies of the material are available under paragraph (c), the material is available in other ways, and giving the details of how and where it can be accessed and obtained.
- (2) The material is—
- (a) a framework, standard, specification, or requirement incorporated by reference in an Order in Council made under section 81;
  - (b) any amendment to, or replacement of,—
    - (i) the framework, standard, specification, or requirement incorporated by reference in the Order in Council; or
    - (ii) the framework, standard, specification, or requirement referred to in paragraph (a) with the amendments or replacement framework, standard, specification, or requirement incorporated within it;
  - (c) a framework incorporated by reference in regulations made under section 157S or 157V;
  - (d) any amendment to, or replacement of,—
    - (i) the framework that is incorporated in the regulations; or
    - (ii) the framework referred to in paragraph (c) with the amendments or replacement framework incorporated within it.
- (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**

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.

**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.
- (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.

**Schedule 4****General provisions relating to search warrants issued under Part 5D**

s 157ZM(2)

**1 Interpretation**

In this schedule, **Judge** means a Judge of the High Court or a District Court Judge.

**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.

**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;
  - (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.
- (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
  - (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).
- (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**

- (1) An application for a search warrant—
  - (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:
  - (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.

## **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:

- (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.

**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.
- (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
  - (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.

**8 When search warrant is executed**

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

- (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—
  - (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;
  - (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);
  - (c) use any force that is reasonable for the purposes of executing the warrant;
  - (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;
  - (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:

- (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.
- (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 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,—
  - (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.
- (4) The powers conferred by this clause are subject to any conditions imposed under clause 5(2)(b).
- (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.

#### **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:
  - (c) search areas within the place that the person executing the warrant has determined may lawfully be searched:
  - (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:
  - (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:

- (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.
- (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
  - (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**

- (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
    - (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
    - (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—
    - (i) a copy of the search warrant; and
    - (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.
- (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.
- (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:
  - (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:
  - (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.
- (6) This clause is subject to clause 13.

## **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,—
- (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).
- (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—
- (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.
- (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—
- (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.

## Contents

- 1 General
- 2 Status of reprints
- 3 How reprints are prepared
- 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
- 5 List of amendments incorporated in this reprint (most recent first)

## Notes

### ***1 General***

This is a reprint of the Reserve Bank of New Zealand Amendment Act 2008. The reprint incorporates all the amendments to the Act as at 1 December 2010, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

### ***2 Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### ***3 How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

### ***4 Changes made under section 17C of the Acts and Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted

enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)

- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint  
(most recent first)***

Reserve Bank of New Zealand Amendment Act 2008 Commencement Order 2010 (SR 2010/168)