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4 February 2021

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

Dear Committee Members,

ICNZ submission on the Reserve Bank of New Zealand Bill

Thank you for the opportunity to submit on the *Reserve Bank of New Zealand Bill* (**Bill**), which was introduced to Parliament on 28 July 2020.

By way of background, ICNZ's members are general insurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars' worth of New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).

We wish to appear before the Committee to speak to our submission. Please contact Nick Whalley (nickw@icnz.org.nz) if you have any questions on our submission or require further information.

Submission

We are supportive of enhancements to the Reserve Bank of New Zealand's (the **Bank's**) governance, accountability and transparency under the Bill as well as statutory recognition of the Council of Financial Regulators (**CoFR**). However, we are concerned about the potential for entities the Bank regulates to be charged levies and the broad information gathering and sharing powers proposed.

Further details about these matters are set out below.

Enhanced governance, accountability and transparency

As above, we are supportive of aspects of the Bill that strengthen the Bank's governance arrangements, accountability and transparency. This includes support for:

- The creation of a new governance board for the Bank with powers sitting with it rather than the Governor (other than in relation to monetary policy, which is separately managed by the Monetary Policy Committee already).[1]

- The introduction of a requirement for the Minister of Finance to issue a financial policy remit, setting out matters that the Bank's Board must have regard to when setting and implementing its strategic approach

[1] See Part 2, subpart 4 of the Bill.
[*] Licensed insurers fall under Class 3 of the Financial Markets Authority (Levies) Regulations. See http://www.legislation.govt.nz/regulation/public/2012/0121/29.0/DLM4491364.html (2019/20 levies) and http://www.legislation.govt.nz/regulation/public/2020/0318/latest/LMS431850.html (new levies).

to financial stability. In our view this will enhance transparency by reducing the likelihood that the Government will need to use informal channels to this end instead.

- Aligning the Bank's reporting requirements more closely to standards that apply to Crown Entities.

- Bringing the Bank within the scope of the Ombudsmen Act 1975 and Public Audit Act 2001, which enables the Ombudsmen and Attorney General to review the Bank's activities.

- The introduction of a mechanism for the Minister to appoint a Government department (i.e. The Treasury) as the Bank's monitor.

- The expansion of provisions addressing the assessment of the regulatory impact of proposed policies to include, amongst other things, an outline of the problem to be solved and an evaluation of costs and benefits and alternative options.[2]

Statutory recognition of the Council of Financial Regulators

We are supportive of the statutory recognition of the CoFR under the Bill and the Bank's role co-operating with other government agencies that also have a role in regulating New Zealand's financial system. The need for greater co-ordination between various government agencies regarding their activities is a significant and ongoing concern for the general insurance sector. In our view, there is a significant opportunity to reduce confusion, duplication, unnecessary regulatory burden and added costs in this respect, which these changes should support.

Specific recent examples which highlight the challenges the sector face in this regard include:

- Formal consultation with the Bank, The Treasury, the Financial Markets Authority (**FMA**) and the Ministry of Business, Innovation and Employment (**MBIE**) over recent months on a range of highly technical and/or significant issues to the general insurance sector, in some cases with very tight timeframes. This includes consultation related to culture and conduct, EQC Act, unfair contract terms and final details of the new financial advice regime.[3] This approach inhibits ICNZ and its members' ability to properly consider and respond on these matters, noting that insurers are already under pressure undertaking significant change programmes to implement recent regulatory changes, including the new financial advice regime. Careful consideration should be given to appropriately sizing work programmes that require industry engagement and their sequencing, taking all other regulatory activities and the wider economic context into account.

- Engagement with different regulators (including information requests and consultation) on a range of the same or overlapping matters, including COVID-19 impacts, consumer protection measures, outsourcing arrangements and cyber resilience. Much of this work has had tight timeframes and/or necessitated wide-ranging inquiries being made across various units of organisations. Identifying one lead agency for each matter and ensuring work on that matter is fed through it, or that enquiries are made with before another agency goes out for information, would greatly assist in this regard. This could, for example, minimise the potential for multiple responses to be provided to different regulators with essentially the same or similar information in different formats and/or through different channels. This is particularly important where there is an acute event such as a COVID-19 lockdown, natural disaster or cyber breach. While we appreciate the need for the Government and regulators to have confidence in our response, with respect, the key focus for our sector during these times should be applying resources to support customers. Looking forward more generally, governance issues, climate change and cyber resilience are

[2] See clauses 252 to 254 of the Bill.

[3] For completeness, other on-going or upcoming regulatory matters of significance include the Financial Markets (Conduct of Institutions) Amendment Bill, reviews of the EQC Act, Insurance (Prudential Supervision) Act, Solvency Standards applicable to insurers, insurance contract law and Class Actions and Litigation Funding, and the introduction of climate change related financial disclosures and a potential consumer data right.

three key areas where the Bank and the FMA appear to have overlapping roles, noting that a number of entities are regulated by both bodies.

For completeness, beyond the need for improved governmental co-ordination and sequencing, we consider there is pressing need for deeper engagement between government agencies and industry on significant sectorial issues in a forum/workshop setting, including emerging issues, risks and implications and/or issues/clashes in regulatory activities. We welcome the establishment of an Insurance Forum in this context, the provision for regular participation by industry bodies in this regard, and look forward to engaging with this forum in due course.[4]

Levies

We are concerned about the mechanism under the Bill which would enable the Bank to fund a portion of its operating costs through collecting levies on the entities it regulates.[5]

First, at a principled level, we disagree with the narrow framing of regulated entities as beneficiaries of the Bank's prudential regime. The Bank has a broad public and financial system remit and unlike many other regulated sectors there is a strong alignment between the current funders of the Bank (New Zealand taxpayers) and public at large, as customers of entities regulated by the Bank.

Secondly, if levies were introduced, these added costs are likely to be ultimately passed on, and borne, by regulated entities' customers (e.g. in the form of increased premiums for insurance) at a time when they may already be under financial strain due to the impacts of COVID-19.

Such an added cost also needs to viewed in wider context including:

- Entities regulated by the Bank (including licensed insurers) are already required to pay levies to the FMA. These levies are subject to significant increases over the three years they are being fully phased in (see appendix for details).[6] New fees are also payable under the new financial advice regime.[7]
- Potential additional levies payable under the upcoming fair conduct regime that is currently making its way through Parliament[8] and the upcoming climate-related financial disclosures regime. Again, a number of entities that the Bank regulates, are also likely to be subject to these.

Without resiling from this position:

- in the event these levies provisions are to remain, and the Bank is to mandate them, prior to their introduction we would appreciate it if these could be the subject of a thorough policy process involving consultation and a thoughtful costs and benefits analysis.
- Additionally, from a technical/drafting perspective, it would assist if the method of levy calculations under clause 291(4)(h) of the Bill could be clarified. Based upon our reading of this provision, it appears that levy amounts will only reflect costs related to the Bank performing its functions under the prudential legislation for the first financial year the levy applies. We question the rationale for this and what this means in practice. For completeness, in the event these provisions are to remain, while we support regular reviews to ensure cost recovery is appropriately maintained, reviewing and changing them every year would be undesirable from a certainty and budgeting perspective.

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[4] See paragraph 10 of the Review of Insurance Solvency Standard October 2020 consultation document, available here.

[5] See clauses 290 to 294 of the Bill.

[6] See paragraphs 10 to 12 of the Cabinet paper https://www.mbie.govt.nz/dmsdocument/11383-policy-decisions-on-the-financial-markets-authoritys-levy-proposal-proactiverelease-pdf as to the broader policy rationale for these and other industry levies/fees the FMA imposes.

[7] https://www.fma.govt.nz/compliance/fees-and-levies/#fees.

[8] Financial Markets (Conduct of Institutions) Amendment Bill.

Information gathering and sharing powers

We are also concerned about the broad framing of proposed information gathering and sharing powers under the Bill. As outlined in our submission to the Bank's consultation on deposit takers and depositor protection,[9] we do not consider that a one size fits all approach to information gathering and sharing powers is appropriate. This could lead to unintended consequences and mechanisms applying where there is no justification for them, or which would not work well in practice. We consider that such powers, should be located in the applicable sectoral Acts (to the extent relevant and necessary), being tailored to the sector concerned. Accordingly, from an insurer perspective, it may be more appropriate to consider this matter in the context of the review of the Insurance (Prudential Supervision) Act 2010.[10]

In any event, if a broad information sharing power is to remain, we suggest that provision should be made for the regulated entity to be advised of the nature of the information shared and who it has been shared with. This is consistent with the Reserve Bank's commitment to honesty and transparency under their Relationship Charter. This would also provide the regulated entity with an opportunity to provide their views to the party who has been provided with this information.

For completeness, we note that proposals outlined in that deposit takers and depositor protection regarding information gathering and sharing powers are potentially inconsistent with those set out under the Bill and so may need to be aligned.[11] Regard should also be had to the outcomes of the Bank's recent consultation on cyber resilience (which includes proposals regarding data gathering and collection, although noting that further consultation on that is expected to occur in mid-2021) [12] and what is learned from the recent Reserve Bank data breach.

Conclusion

Thank you again for the opportunity to submit on the Bill. If you have any questions, please contact our Regulatory Affairs Manager by emailing nickw@icnz.org.nz.

Yours sincerely,

Tim Grafton
Chief Executive

Nick Whalley
Regulatory Affairs Manager

[9]https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_submission_on_RBNZ_Deposit_takers_and_depositor_protection_consultation.pdf

[10] To this end, we note that the fifth module in this review specifically focussed on the Bank's enforcement tools. See https://www.rbnz.govt.nz/-/media/ReserveBank/Files/Publications/Policy-development/Insurers/IPSA-review/Public-Consultation-Scope-of-IPSA-and-Overseas-Insurers-Nov-2020.pdf?revision=bb99aefa-bf86-4d9d-b4e9-a11fa8c69e17&la=en (page 6).

[11] https://www.treasury.govt.nz/sites/default/files/2020-03/rbnz-further-consultation-phase-2.pdf. See chapter 6 (supervision and enforcement powers).

[12] https://www.rbnz.govt.nz/-/media/ReserveBank/Files/Publications/Policy-development/Cyber%20resilience/Cyber-resilience-Consultation-paper.pdf?revision=dbda8f5e-5cc1-4ccd-b0eb-c6963fd0a32d&la=en. See section 4 (view on information gathering and sharing).

APPENDIX – FMA LEVIES PAYABLE BY LICENSED INSURERS[*]

Annual GPR (annual gross revenue from premiums)	2019/20*	2020/21*	% increase	2021/22*	% increase	2022/23*	% increase	Overall % increase (2019/20 versus2022/23)
Not more than $10 million	$2,200.00	$4,200	190.91%	$4,300	102.38%	$5,200	120.93%	236.36%
Exceed $10 million but not $50 million	$11,000.00	$16,000	145.45%	$17,000	106.25%	$20,000	117.65%	181.82%
Exceed $50 million but not $100 million	$24,000.00	$41,000	170.83%	$43,000	104.88%	$50,000	116.28%	208.33%
Exceed $100 million but not $500 million	$38,000.00	$70,000	184.21%	N/A	N/A	N/A	N/A	N/A
Exceed $500 million	$150,000.00	$300,000	200.00%	N/A	N/A	N/A	N/A	N/A
Exceed $100 million but not $250 million (new)	N/A	N/A		$79,000	N/A	$94,000	118.99%	247.37%
Exceed $250 million but not $500 million (new)	N/A	N/A		$106,000	N/A	$136,000	128.30%	357.89%
Exceed $500 million but not $1 billion (new)	N/A	N/A		$310,000	N/A	$370,000	119.35%	246.67%
Exceed $1 billion (new)	N/A	N/A		$400,000	N/A	$480,000	120.00%	320.00%

*Excluding GST

[*]Licensed insurers fall under Class 3 of the Financial Markets Authority (Levies) Regulations. See http://www.legislation.govt.nz/regulation/public/2012/0121/29.0/DLM4491364.html (2019/20 levies) and http://www.legislation.govt.nz/regulation/public/2020/0318/latest/LMS431850.html (new levies).