

Proactive release – Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022

Date of issue: 2 December 2022

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1.	Expiring Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 <i>Cabinet Paper</i> Ministry of Justice 24 August 2022	<ul style="list-style-type: none">• No redactions
2.	DEV-22-MIN-0197 - Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016: Revocation of Expiry Clause <i>Cabinet Committee Minute</i> Cabinet Economic Development Committee 24 August 2022	<ul style="list-style-type: none">• No redactions
3	Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022 <i>Cabinet Paper</i> Ministry of Justice 22 September 2022	<ul style="list-style-type: none">• No redactions
4	LEG-22-MIN-0154 - Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022 <i>Committee Minute</i> Cabinet Legislation Committee 22 September 2022	<ul style="list-style-type: none">• No redactions

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In-Confidence

Office of the Minister of Justice
Cabinet Legislation Committee

Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022 (**Amendment Regulations**) to be made under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Background

- 2 The Anti-Money Laundering and Countering Financing of Terrorism (**AML/CFT**) regime is a risk-based system that detects and deters money laundering and terrorism financing and implements relevant international obligations. There are currently six AML/CFT instruments containing regulations that implement the detail of obligations for the financial sector.
- 3 In 2017, the AML/CFT regime was expanded to require financial institutions and certain non-financial businesses to report all international wire transfers over NZD1,000, and all domestic cash transactions over NZD10,000, to the Police Financial Intelligence Unit (**FIU**). These reports are known as “prescribed transaction reports” (**PTRs**), and approximately half a million PTRs have been submitted since 2017 providing details on NZD 6.14 trillion worth of transactions.
- 4 PTR obligations were introduced to enable the collection of financial intelligence on flows of money and value into, out of, and around New Zealand. In doing so, PTRs help make certain money laundering and terrorism financing typologies harder and improve the detection, and thus disruption, of organised crime, fraud, and tax evasion.
- 5 The Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 (**PTR Regulations**) set the threshold for reporting and provide the details of what needs to be reported in a PTR.

The PTR Regulations are due to expire on 31 October 2022

- 6 The PTR Regulations are due to expire on 31 October 2022. This expiry date was included to ensure that the government reviewed the PTR obligations to

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determine whether they were fit-for-purpose and whether the reporting thresholds were still appropriate.

- 7 As part of the recent statutory review of the AML/CFT Act the Ministry of Justice has identified areas where the effectiveness of the PTR Regulations can be improved. However, policy proposals to give effect to these recommendations will be progressed on a timeframe that extends past the expiry date. The Ministry of Justice has assessed the PTR Regulations in their current form and have not identified any significant issues that mean they should not continue past 31 October 2022, and that they are fulfilling an important role in supporting the FIU's intelligence gathering activities.
- 8 If the PTR Regulations expire there would be no enforceable obligation for reporting entities to submit PTRs, which would remove a valuable source of financial intelligence. It would also impose additional compliance costs on businesses to adjust their policies and processes and disable automatic reporting of transactions as they would not have a specific mandate to report private information, resulting in an uncertain regulatory environment. I note that expiry dates for other Regulations made under the AML/CFT Act have previously been revoked for the same reasons in 2018 (LI 2017/304), 2020 (LI 2020/91), and 2021 (LI 2021/145).
- 9 Cabinet agreed to remove the expiry date from the PTR Regulations [DEV-22-MIN-0197 Minute refers]. The Amendment Regulations amend clause 3 of the PTR Regulations to remove the expiry date. This will allow for the progression of any work required to improve the effectiveness of the PTR Regulations without disrupting their important function in New Zealand's AML/CFT regime.

Timing and 28-day rule

- 10 No waiver of the 28-day rule is sought. The Amendment Regulations will come into force on 28 October 2022, which is 28 days after they will be notified in the New Zealand Gazette.

Compliance

- 11 The Order in Council complies with each of the following:
 - 11.1 the principles of the Treaty of Waitangi;
 - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 11.3 the principles and guidelines set out in the Privacy Act 2020
 - 11.4 relevant international standards and obligations;
 - 11.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Statutory requirements

- 12 The Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022 relate to the application of the AML/CFT Act and are made pursuant to sections 48A-C and 153 of the AML/CFT Act.

Regulations Review Committee

- 13 I do not consider there are any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 14 The Regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

- 15 The Treasury's RIA team has determined that this proposal is exempt from the requirement to provide a RIA on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

- 16 The nature of the proposed amendments do not require general publication apart from a proactive release (see paragraph 17).

Proactive release

- 17 I propose to proactively release this paper on the Ministry of Justice's website, subject to redactions as appropriate and consistent with the Official Information Act 1982.

Consultation

- 18 The Ministry of Justice consulted with member agencies of the AML/CFT National Coordination Committee as part of its recent statutory review of the AML/CFT Act, during which the PTR Regulations were consulted on. These agencies were: Reserve Bank of New Zealand, New Zealand Police, Inland Revenue, the Serious Fraud Office, Department of Internal Affairs, the Financial Markets Authority, and New Zealand Customs Service. The Department of Prime Minister and Cabinet and the Treasury were informed.
- 19 The Ministry of Justice consulted with key industry stakeholders and peak bodies as part the statutory review of the AML/CFT Act. In this consultation, no concerns were raised about the PTR regulations.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 24 August 2022 the Cabinet Economic Development Committee agreed to amend clause 3 of the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 to remove the expiry date of the Regulations [DEV-22-MIN-0197 Minute refers];
- 2 **note** that the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022 will give effect to the decision referred to in recommendation 1 above;
- 3 **authorise** the submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022; and
- 4 **note** that the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022 come into force on 28 October 2022.

Authorised for lodgement

Hon Kiri Allan
Minister of Justice



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016: Revocation of Expiry Clause

Portfolio **Justice**

On 24 August 2022, the Cabinet Economic Development Committee:

- 1 **noted** that the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 (the Regulations) will expire on 31 October 2022;
- 2 **agreed** that the Regulations should not expire;
- 3 **agreed** to amend clause 3 of the Regulations to remove the expiry date of the Regulations;
- 4 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 5 **invited** the Minister of Justice to report back to the Cabinet Legislation Committee no later than 22 September 2022 seeking approval to the amendment regulations, so that the above amendments can come into force before the Regulations expire.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Andrew Little
Hon Damien O'Connor
Hon Stuart Nash
Hon Willie Jackson
Hon Michael Wood
Hon Kiri Allan
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan
Hon Meka Whaitiri
Hon Kieran McAnulty
Dr Deborah Russell, MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

In-Confidence

Office of the Minister of Justice
Cabinet Economic Development Committee

Expiring Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016

Proposal

1. This paper seeks approval to remove the expiry date of the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 (**PTR Regulations**) made under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

The PTR Regulations are due to expire on 31 October 2022

2. The Anti-Money Laundering and Countering Financing of Terrorism (**AML/CFT**) regime is a risk-based system that detects and deters money laundering and terrorism financing and implements relevant international obligations. There are currently six AML/CFT instruments containing regulations that implement the detail of obligations for the financial sector.
3. In 2017, the AML/CFT regime was expanded to require financial institutions and certain non-financial businesses to report all international wire transfers over NZD1,000, and all domestic cash transactions over NZD10,000, to the Police Financial Intelligence Unit (**FIU**). These reports are known as “prescribed transaction reports” (**PTRs**), and approximately half a million PTRs have been submitted since 2017 providing details on NZD 6.14 trillion worth of transactions.
4. PTR obligations were introduced to enable the collection of financial intelligence on flows of money and value into, out of, and around New Zealand. In doing so, PTRs help make certain money laundering and terrorism financing typologies harder and improve the detection, and thus disruption, of organised crime, fraud, and tax evasion. However, PTR obligations also impose significant compliance costs on some businesses, particularly banks and remitters, who needed to develop new tools and processes to automatically submit PTRs to the FIU.
5. The PTR Regulations – which set the threshold for reporting and provide the details of what needs to be reported – are due to expire on 31 October 2022. This expiry date was included to ensure that the government reviewed the PTR obligations to determine whether they were fit-for-purpose and whether the reporting thresholds were still appropriate.
6. As part of the statutory review of the AML/CFT Act, which concluded on 30 June 2022, the Ministry of Justice has identified areas where the effectiveness

of the PTR Regulations can be improved. However, policy proposals to give effect to these recommendations will be progressed on a timeframe that extends past the expiry date. The Ministry of Justice has assessed the PTR Regulations in their current form and have not identified any significant issues that mean they should not continue past 31 October 2022, and that they are fulfilling an important role in supporting the FIU's intelligence gathering activities.

7. I recommend removing the expiry date from the PTR Regulations. This will allow for the progression of any work required to improve the effectiveness of the PTR Regulations without disrupting their important function in New Zealand's AML/CFT regime.
8. If the PTR Regulations expire there would be effectively no obligation for reporting entities to submit PTRs, which would remove a valuable source of financial intelligence. It would also impose additional compliance costs on businesses to adjust their policies and processes and disable automatic reporting of transactions, and result in an uncertain regulatory environment. I note that expiry dates for other Regulations made under the AML/CFT Act have previously been revoked for the same reasons in 2018 (LI 2017/304), 2020 (LI 2020/91), and 2021 (LI 2021/145).

Financial Implications

9. There are no financial implications from the proposals in this paper.

Legislative Implications

10. In order for any amendment regulations removing the expiry date to come into force before the PTR Regulations expire on 31 October 2022, I intend to report back to the Cabinet Legislation Committee with the amendment regulations no later than 22 September 2022.

Impact Analysis

11. The Treasury's RIA team has determined that this proposal is exempt from the requirement to provide a RIA on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Human Rights

12. The proposals in this paper appear to be consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Communications

13. The nature of the proposed amendments do not require general publication apart from a proactive release (see paragraph 14).

Proactive release

14. I propose to proactively release this paper on the Ministry of Justice's website, subject to redactions as appropriate and consistent with the Official Information Act 1982.

Consultation

15. The Ministry of Justice consulted with member agencies of the AML/CFT National Coordination Committee as part of its recent statutory review of the AML/CFT Act, during which the PTR Regulations were consulted on. These agencies were: Reserve Bank of New Zealand, New Zealand Police, Inland Revenue, the Serious Fraud Office, Department of Internal Affairs, the Financial Markets Authority, and New Zealand Customs Service. The Department of Prime Minister and Cabinet and the Treasury were informed.
16. The Ministry of Justice consulted with key industry stakeholders and peak bodies as part of the statutory review of the AML/CFT Act. In this consultation, no concerns were raised about the PTR regulations.

Recommendations

I recommend that the Cabinet Economic Development Committee:

- 1 **note** that the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 will expire on 31 October 2022;
- 2 **agree** that the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 should not expire;
- 3 **agree** to amend clause 3 of the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 to remove the expiry date of the Regulations;
- 4 **invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendation 3; and
- 5 **invite** the Minister of Justice to report back to the Cabinet Legislation Committee no later than 22 September 2022 with amendment regulations giving effect to recommendation 3, so that the amendment regulations come into force before the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 expire.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022

Portfolio Justice

On 22 September 2022, the Cabinet Legislation Committee:

- 1 **noted** that on 24 August 2022, the Cabinet Economic Development Committee agreed to amend clause 3 of the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016 to remove the expiry date of the Regulations [DEV-22-MIN-0197];
- 2 **noted** that the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022 will give effect to the decision referred to in paragraph 1 above;
- 3 **authorised** the submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022 [PCO 24815/2.0];
- 4 **noted** that the Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Amendment Regulations 2022 come into force on 28 October 2022.

Rebecca Davies
Committee Secretary

Present:

Hon Poto Williams
Hon Michael Wood (Chair)
Hon Kiri Allan
Hon Priyanca Radhakrishnan
Dr Duncan Webb, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG