Review of the AML/CFT Act

Summary Document

Ministry of Justice

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MINISTRY OF JUSTICE
Tāhū o te Ture

New Zealand Government

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Introduction

Keeping New Zealand safe from dirty money and terrorism financing

The *Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009* (the Act) helps to keep New Zealand safe from money laundering and terrorism financing. By making it harder for criminals to launder money or finance terrorism, we also make profit-motivated crime (like selling drugs or defrauding people) less appealing.

A review of the Act began on 1 July 2021. This document provides a summary of the key issues that have been identified so far as part of this review. It is based on, and designed to be read alongside, the Consultation Document, which more comprehensively sets out the various issues in full detail. The page numbers referred to in this document correspond to the relevant sections of the Consultation Document.

You can find the Consultation Document here

The review looks at – and seeks your feedback on – issues relating to institutional arrangements and stewardship, the current and future scope of the Act, supervision, regulation and enforcement, preventative measures, and other issues such as border cash reporting.

What's your perspective?

This is an important opportunity to strengthen New Zealand's AML/CFT system and ensure it is fit for purpose, and we encourage you to have your say.

For each topic that the review looks at, we would like you to consider and let us know:

- Your views on, and experiences of, the issues identified.
- Your thoughts on possible solutions.
- If there are any other issues (within scope of the Terms of Reference) that the review should consider

There are several ways you can provide feedback:

- read about the proposals and give your feedback online at consultations.justice.govt.nz
- download and read the consultation document and either:
  - email a submission to aml@justice.govt.nz
  - post a written submission to AML/CFT consultation team, Ministry of Justice, SX 10088, Wellington, New Zealand

Please send us your views by 5pm, Friday 3 December 2021. However, if you need more time to respond, please contact us, as we may be able to accommodate you.

Submissions will be published on the Ministry's website, however, you can ask to keep it confidential but make this clear in your submission request. For more information about how we will use your personal information and submission, including release of information under the Official Information Act 1982, see page viii of the Consultation Document.

About the AML/CFT regime

To put it simply, money laundering is a crime. It's the process criminals use to "clean" the money they make from crimes such as fraud, dealing in illegal drugs and trafficking. By making the money look like it comes from a legitimate source, they can cover their tracks and avoid detection. Criminal organisations and people who finance terrorism target businesses and countries they believe have weak systems and controls that they can exploit.

Money laundering is happening every day across the country. It's estimated that over $1 billion a year comes from drug dealing and fraud, and can be laundered through New Zealand businesses. However, the true cost and impact is many times that figure when you factor the crimes that generate "dirty" money and their rippling effect.

People who finance terrorism also use these methods to send money to violent causes and to disguise who is providing and receiving the money. While the likelihood of terrorism financing in New Zealand is low, the potential consequences are significant.

Our Act makes it harder for criminals to launder money, finance terrorism, and provides a significant disincentive to carrying out the criminal activity in the first place.

About the review

The Minister of Justice, Hon Kris Faafoi, commenced a review of the AML/CFT Act on 1 July 2021. This review presents an opportunity to look back on the past eight years and ask ourselves: have we got this right? Does the regime effectively achieve its purposes in the most cost-efficient way? What can we do better? What can we do without?

The review is being led by Te Tāhū o Te Ture, the Ministry of Justice. We are being supported in this process by the other government agencies which have roles and responsibilities in the AML/CFT regime, specifically Department of Internal Affairs, Financial Markets Authority, New Zealand Customs Service, New Zealand Police, and Reserve Bank of New Zealand. We have also established an Industry Advisory Group to provide additional guidance and support as we conduct the review.

We have developed Terms of Reference for the review, which are available here: www.justice.govt.nz/amlcft-review. These Terms set out our aspirations for the review, which is that New Zealand becomes the hardest place in the world for money laundering and terrorism financing. In doing so, the AML/CFT regime will help maintain a safe, trusted, and legitimate economy.

Why we might recommend changes

The Ministry must report back to the Minister of Justice by 30 June 2022 with recommendations about whether anything in the Act needs to change. There are a number of reasons why we might recommend changes, but any recommendation will involve a careful balance between addressing the harms of money laundering and terrorism financing and ensuring that businesses can operate efficiently and innovatively.

Some of the reasons why changes may be recommended include:

- addressing new areas of concern and supporting other Government priorities
- improving New Zealand's compliance with the international Financial Action Task Force standards following our Mutual Evaluation

- ensuring compliance costs are in line with risks we have identified, improving efficiencies, and enabling innovation
- modernising the Act and our approach to reflect the digital economy
- avoiding or mitigating unintended consequences

Next steps following the review

In many ways, we see the review as the start of a possible reform process and the beginning of a conversation about how we can do things better. While we might recommend that things change, it will likely take at least two to three years for any legislative changes to be made. We might be able to make some changes at an earlier stage by using regulations or "secondary legislation".

We are operating along the following indicative timeframe:

- **3 December 2021** – public consultation closes
- **February 2022 to April 2022** – further targeted consultation with private sector and communities to form recommendations
- **March 2022** – advice provided to Minister Faafoi about what change can be made at an earlier stage using regulations or secondary legislation
- **30 June 2022** – review concludes, and report provided to Minister Faafoi

Institutional arrangements and stewardship

Laying the foundation for an effective system

The first topic, institutional arrangements and stewardship, looks at the foundation of our AML/CFT regime: what the purposes or goals of the Act should be, whether we take the right approach, and whether the right people or agencies are involved and have the powers they need to do their jobs. Most people will be interested in some or all of this section as it grapples with the core parts of our regime.

Purpose of the Act *(page 1)*

We want to make sure what hat the Act is trying to do is still relevant to New Zealand and ask questions about the purpose and goals of the Act. And the Act itself requires a review. The Act currently has three goals: putting off others from laundering money and financing terrorism and spotting it when it happens, complying with our international obligations, and making sure the public is confident about our businesses operating lawfully.

We set the goals for the Act in 2009, but a lot has changed since. We want to hear views about whether we need to update the goals of the Act. One potential change we want to explore is whether the Act should have the goal of actively stopping money laundering and terrorism financing, instead of putting people off from doing this.

Mitigating unintended consequences *(page 7)*

While the Act aims to keep New Zealand safe, sometimes the Act can make it difficult for people going about their daily lives. We know that the Act has made it harder for some people to open bank accounts. This can make it hard for people to take part in society and can also make it hard for people to send money overseas for valid reasons.

We want to understand how the Act may be causing challenges for people and businesses. We are also interested in knowing if there are any other unintended consequences and how we can fix the challenges we have identified.

Risk-based approach to regulation *(page 4)*

A key idea in our regime is that we should take a “risk-based approach”. In other words, the things that businesses do to protect themselves should be in line with the chance or risk of money laundering or terrorism financing happening. However, our Act does not fully follow this approach: in some places we set strict rules that all businesses have to follow in an effort to provide more certainty. We want to check that we have the right balance between a risk-based approach and providing businesses with certainty about what they need to do.

Licensing and registration *(page 15)*

We do not know with total certainty how many businesses have AML/CFT obligations. We want to explore how to fix this. One option is to make all AML/CFT businesses register with the government. This would enable supervisors to be able to clearly identify which businesses need

to be supervised and could also be used to make sure that only fit and proper people can control these businesses.

In addition, we want to explore whether some really risky types of businesses should need an AML/CFT licence to operate to further protect New Zealand.

Other topics for consideration

Further topics for your consideration within this section include:

- whether all suitable government agencies are involved and can do what is needed *(pages 9 – 12)*
- what role businesses can, or should have, to ensure the regime works properly *(pages 8 – 9)*
- whether we can create additional rules and regulations in the right way and for the right reasons *(pages 12 – 13)*
- how we can better allow agencies to share information with each other *(pages 14 – 15)*

Scope of the Act

Who has obligations? Who doesn't?

The second topic area looks at whether the right types of activities or businesses have AML/CFT obligations. It is important that we capture all the right activities and businesses as any gaps in the regime can be exploited by people who want to launder money or finance terrorism. It is also important to consider whether the existing ways we capture activities still work, especially given changes in technology.

This is quite a technical part of the reform and likely to be of most interest to current AML/CFT businesses. However, other businesses and organisations should also consider this part as we are considering whether the regime should cover additional types of businesses or activities.

Challenges with existing terminology *(page 19)*

We know that some of the terms used in the Act can cause confusion. For example, we know that "managing client funds" is not always clear, nor is what is "in the ordinary course of business". We want to make sure that the Act is as clear as possible, and welcome feedback about any challenges with existing terminology.

Potential new activities *(page 25)*

We have identified several potential new activities or types of businesses that could be included in the AML/CFT regime to further protect New Zealand and want to explore this further. For example, we could include:

- people who act as secretaries for companies, partners in partnerships, or equivalent positions for other legal persons;
- all businesses which provide "virtual asset" (e.g. cryptocurrency) services;
- businesses that prepare or process invoices and/or prepare annual accounts and tax statements;
- criminal defence lawyers and non-life insurance companies (with very limited obligations); and
- non-profit organisations which are not registered charities who send or receive money to or from overseas.

Including additional types of activities or businesses in our AML/CFT regime would further protect New Zealand from money laundering and terrorism financing. However, we will need to carefully consider the costs and compliance burden before making any recommendation to include new activities or businesses.

New and existing exemptions *(page 30)*

We can exempt businesses and activities where the chance they will be used for money laundering or terrorism financing is low. An exemption means that these businesses no longer have to comply with some or all of their obligations. We want to make sure our existing exemptions are still appropriate, and also want to see whether we need to create any new exemptions.

Territorial scope *(page 34)*

The Act applies to businesses in New Zealand, but it does not set out when a business is “in” or “out” of New Zealand. Businesses can provide services internationally to and from New Zealand, and we want to clearly set out when any international businesses have obligations under the Act.

Supervision, regulation, and enforcement

How can we ensure businesses comply?

Businesses with AML/CFT obligations are supervised by the Department of Internal Affairs (DIA), Financial Markets Authority (FMA), and Reserve Bank of New Zealand (RBNZ). Supervision helps ensure businesses do what they are supposed to and protect themselves from money laundering and terrorism financing.

We want to understand whether the supervision, regulation, and enforcement of the Act is fit for purpose. We also have identified some areas where additional supervision, or regulation could be needed.

This section will likely be of primary interest to businesses with AML/CFT obligation, but other people who support the regime (e.g. auditors or consultants) will also be interested.

Supervision model *(page 37)*

We currently have three different supervisors who are each responsible for various types of businesses. Other countries have one supervisor (e.g. Australia) or many, including professional bodies (e.g. the United Kingdom). While changing our supervision model would be expensive and time consuming, we want to hear whether the current model is working or whether it needs to be updated.

Ensuring consistency *(page 38)*

As we have three supervisors, it is important that the Act is interpreted and applied consistently by each supervisor. We recognise that there has been the occasional situation where there has not been perfect consistency, and we are interested in understanding how we can better ensure a consistent application and interpretation of the law.

Power and functions *(page 39)*

The Act sets out what DIA, FMA, and RBNZ can or cannot do as supervisors. Generally, supervisors monitor risks and levels of compliance within their sectors, provide guidance to businesses, and investigate and enforce the Act. We want to make sure that they have all the right powers, so we are seeking your views. We are particularly interested in hearing whether supervisors should have the power to do remote inspections or onsite inspections in homes (with consent).

Regulating auditors, consultants, and agents *(page 40)*

Auditors, consultants, and agents are types of third parties that can play an important role in helping a business comply with the Act. However, the Act does not set out who can be an auditor, consultant, or agent, and what is expected of people who provide these services. This can create risks for businesses who rely on these third parties, particularly where consultants or auditors do not do a good job. We want to explore whether the Act should better regulate these types of third parties.

Offences and penalties *(page 42)*

Businesses can face serious penalties if they do not properly comply with the Act. We want to make sure the offences in the Act and penalties are still appropriate. In particular, we want to make sure supervisors can properly respond when a business does not comply, no matter how big or small the business is or how serious the failure was.

One option we particularly want to explore is whether there should be penalties for employees, senior managers, and directors of businesses. This approach would ensure that the people who actually make the decisions within a business can be held responsible.

Preventive measures

What do businesses need to do to protect themselves?

The fourth section looks at what the Act requires businesses to do to protect themselves from money laundering or terrorism financing. This is by far the most technical section of the document and will likely be of most interest to businesses who have AML/CFT obligations.

We want to make sure our preventive measures work for businesses and ultimately protect New Zealand from harm. Effective preventative measures should be based on a business's understanding of their risks and reduce the potential for money laundering or terrorism financing. However, these measures can also impose significant compliance costs that may not be in line with the risks a business has.

Customer due diligence *(page 47)*

Businesses knowing who their customers are and verifying any information provided by a customer protects them from misuse. In this subsection we look at how the Act defines a customer (including in real estate transactions), when customer due diligence must be done, and what information businesses need to obtain and verify. We also look at whether the requirements for businesses to identify who ultimately owns or controls a customer are working, and whether businesses should be required to verify a customer's address in all situations.

Politically exposed persons *(page 66)*

Customers who are people that have been entrusted with prominent public functions (e.g. politicians and senior government officials) can pose significant risks that businesses need to be aware of and manage. These "politically exposed persons" may have control or influence over how a government spends money and can be targets for corruption.

While not all politically exposed persons are risky, we are interested in feedback about how we currently manage these types of customers, including whether businesses need to take extra steps for politically exposed persons in New Zealand.

Implementation of targeted financial sanctions *(page 71)*

Businesses have obligations under the *Terrorism Suppression Act 2002* and the *United Nations Act 1946* to freeze the property of designated people and not provide them with any financial or related services. People might be designated because they are involved with terrorism or because they are trying to obtain or help others obtain weapons of mass destruction.

We want to explore whether there is more the Act could to do to help businesses implement their obligations under the *Terrorism Suppression Act 2002* and *United Nations Act 1946*. This could include requiring businesses to conduct a risk assessment or screen every customer or transaction.

Virtual asset service providers *(page 80)*

Businesses which provide "virtual asset" services (e.g. buying and selling cryptocurrencies) have been identified globally as being highly vulnerable to money laundering and terrorism financing. We do not have any specific obligations for these types of businesses and want to explore how

we can tailor AML/CFT obligations for virtual asset service providers. In particular, we want to understand what a suitable occasional transaction threshold would be and how we should deal with international transactions involving virtual assets.

Wire transfers *(page 81)*

Wire transfers, or international transfers of funds, are vulnerable to being used by terrorists or criminals to send money around the world. Our Act requires businesses involved in wire transfers to collect information about the sender and recipient of the funds and ensure this information is passed along with the funds themselves. We want to explore whether our requirements are fit for purpose and we are interested in feedback about a range of issues including the definition of a wire transfer and the obligations on the businesses involved in the transfer.

Prescribed transaction reports *(page 85)*

The Act requires businesses to submit prescribed transaction reports for domestic cash transactions which exceed NZD 10,000 and international wire transfers which exceed NZD 1,000. These reports allow government to understand how money is flowing into, out of, and around New Zealand.

However, we recognise that the obligation is not always clear, particularly where other AML/CFT businesses are involved in the transfer. We want to explore how to make the obligation as clear as possible for businesses while also ensuring that the necessary financial intelligence is gathered. We also want to explore whether a lower threshold is more appropriate for New Zealand's risk environment, particularly given the increased threat of terrorism

Higher-risk countries *(page 95)*

Combatting money laundering and terrorism financing is an international effort, but some countries are not as effective as others. These countries are considered "high risk" and the Act requires New Zealand businesses to take extra steps when dealing with people from those countries. Some countries are considered so high risk that they are publicly identified by the FATF and added to the FATF's grey list or black list.

We want to hear whether we need to do more to deal with high risk countries. In particular, we want to understand whether it would be helpful to ban or regulate transactions and business relationships with people from blacklisted countries, or with people who have been involved in serious crime or corruption.

Suspicious activity reporting *(page 97)*

Businesses reporting suspicious activities is a bedrock of a successful AML/CFT system as it allows for financial crimes to be detected, investigated, and prosecuted. We are interested in understanding how we can make suspicious activity reporting better and easier for businesses to understand, as well as how we can improve the quality of reports made.

High value dealers *(page 99)*

Businesses which buy or sell various high value goods for cash have AML/FT obligations where the total value of the transaction(s) exceeds NZD 10,000. However, these businesses have reduced obligations compared to other AML/CFT businesses. This approach is due to the broad and diverse nature of the sector, but since then it has posed significant challenges for DIA as

supervisor of high value dealers. The approach was also criticised by the FATF during New Zealand's mutual evaluation. We want to explore whether we should bring high value dealers in line with other AML/CFT businesses.

Other topics for consideration

Further topics for your consideration within this section include:

- Whether the record keeping obligations are fit for purpose *(page 65);*
- Reviewing the requirements of correspondent banking *(pages 75 – 76);*
- Managing risks of money or value transfer service providers *(pages 76 – 78)*;
- Assessing the appropriateness of the measures in place to mitigate any risks associated with new technologies (*pages 78 – 79*).
- Whether any changes are needed in relation to the internal policies, procedures, and controls that businesses put in place to protect themselves against risks (*pages 92 – 94*).

Other topics and issues

Is there anything else we need to consider?

The AML/CFT regime does not operate in a vacuum, and there are many other things that can or should be considered as part of the review to ensure the Act is fit for purpose.

Harnessing technology *(page 104)*

Technology that is properly used by businesses and governments can help overcome many challenges associated with AML/CFT. Technology can help data collection and analysis, and be used to identify and manage money laundering and terrorism financing risks more accurately and quickly. Technology can also make payments faster, record keeping easier, and ease challenges with identifying customers.

We are interested in knowing what challenges or barriers you have identified regarding adopting or harnessing technology. Furthermore, we would like to hear your views of the adoption of digital identity services.

Privacy and protection of information *(page 104)*

Businesses are required to collect a large amount of personal information from their customers, particularly where the risks are high. We want to ensure that the Act properly protects people's privacy and does not intrude more than is necessary. We are particularly interested in understanding whether the Act should require the government to delete information it obtains, and in what circumstance legally privileged information is protected.

Harmonisation with Australia *(page 106)*

We recognise that many businesses operate in both Australia and New Zealand, and harmonising obligations would achieve greater efficiencies for businesses and Government.

We are interested to find out your thoughts on whether there are areas of New Zealand's regulations that should be more harmonised with Australia's, and how we could achieve this.

Minor changes

There are a number of minor changes at the end of the Consultation Document relating to:

- Definitions and terminology *(page 107)*
- Information sharing *(page 108)*
- SARs and PTRs *(page 108)*
- Exemptions *(page 109)*
- Offences and penalties *(pages 110)*

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