Review of the AML/CFT Act

Summary of submissions

Ministry of Justice

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MINISTRY OF JUSTICE
Tāhū o te Ture

New Zealand Government

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Contents

Glossary of terms

AML/CFT	Anti-money laundering/Countering Financing of Terrorism
Act	Anti-Money Laundering and Countering Financing of Terrorism Act 2009
AML/CFT supervisors	The Department of Internal Affairs, the Financial Markets Authority, and the Reserve Bank of New Zealand, are the entities which regulate reporting entities covered by the AML/CFT Act
CDD	Customer Due Diligence
DBG	Designated Business Group
DIA	The Department of Internal Affairs
DNFBPs	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FIU	New Zealand Police Financial Intelligence Unit
FMA	The Financial Markets Authority
HVDs	High Value Dealers
IFT	International Funds Transfer
IR	Inland Revenue
ME	Mutual Evaluation (undertaken by the FATF)
ML/TF	Money laundering/terrorist financing
PTR	Prescribed transaction report
RBNZ	The Reserve Bank of New Zealand
SAR	Suspicious activity report
TCSP	Trust and Company Service Provider
TFS	Targeted financial sanctions
VASPs	Virtual Asset Service Providers

Introduction

New Zealand's Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 (the Act) is a core part of our effort to detect and deter money laundering and terrorism financing.

Money laundering is the criminal process used to 'clean' the money made from crimes such as fraud, dealing in illegal drugs, tax evasion and trafficking. By making the money look like it comes from a legitimate source, criminals can cover their tracks and avoid detection. Terrorist financiers also use similar methods to send money to violent causes and to disguise who is providing and receiving the money. Criminal organisations and people who finance terrorism target businesses and countries they believe have weak systems and controls they can exploit.

Money laundering is happening every day across New Zealand. The Financial Intelligence Unit estimated that over $1 billion a year of dirty money comes from drug dealing and fraud which may be laundered through New Zealand businesses. The social and economic costs of crimes enabled by money laundering is significantly higher than the value of the laundered proceeds.

While the likelihood of terrorism financing in New Zealand is low, the potential consequences are significant. AML/CFT tools and information can be invaluable to terrorism investigations although financing of lone actor terrorists is difficult to detect before an attack. New Zealand has identified vulnerabilities to financing of terrorism offshore.

Our Act makes it harder for criminals to launder money and provides a significant disincentive to carrying out the criminal activity in the first place. The Act requires businesses to, among other things, check customer's identification, monitor accounts for suspicious activity, and report suspected money laundering and terrorism financing to the New Zealand Police. As a result, the Act will also make New Zealand less attractive as a destination of international money laundering and offending and reduce the ability for terrorism to be financed through our businesses. The Act also helps ensure New Zealand meets its international obligations by implementing the recommendations of the Financial Action Task Force, which helps maintain New Zealand's global reputation.

However, these protections come at a significant cost, primarily to the approximately 10,000 businesses who have some exposure to money laundering and terrorism financing risks. These businesses have been required to comply with the AML/CFT regime for a number of years and have faced an increased cost of doing business and other restrictions with how they can operate. The regime has also made it harder, if not impossible, for some people and businesses to get access to basic banking services and participate in the economy.

A review commenced on 1 July 2021

The Minister of Justice, Hon Kris Faafoi, commenced a review of the AML/CFT Act on 1 July 2021. This review is 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. However, we are 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. The Ministry

has 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, terrorism financing, and financing the proliferation of weapons of mass destruction. In doing so, the AML/CFT regime will help maintain a safe, trusted, and legitimate economy.

Our review will be guided by a series of principles, which we will use to inform what recommendations we eventually make. These principles are to:

- create a financial environment which is hostile to serious and organised crime and national security threats;
- appropriately and responsibly manage the risks we are exposed to through clear obligations on businesses, agencies, and the public;
- ensure agencies have proportionate and appropriate powers and functions;
- facilitate support and enhance domestic and international collaboration and cooperation;
- adopt international best practices where appropriate to ensure New Zealand fulfils its international obligations and addresses matters of international concern;
- work in cooperation with industry, public, and Māori and other impacted communities;
- ensure the AML/CFT regime produces the necessary type and quality of information to support other frameworks and to combat money laundering, terrorism financing, and serious and organised crime;
- ensure that human rights and privacy considerations are addressed and that intrusions on personal rights and freedoms are no more than necessary; and
- support efficient long-term administration of the regime.

Ultimately, we see this review as the start of a conversation about how we can make our AML/CFT regime the best it can be. We want an AML/CFT regime that maintains New Zealand's status as having a high quality and effective regime for combatting money laundering and terrorism financing without compromising the ease of doing business or unduly impacting the lives of New Zealanders. We also want to make sure the regime contains sufficient tools to enable flexibility and ensure the regime responds to changing risks and new opportunities for addressing harm.

About this document

This document summarises submissions the Ministry of Justice received from the public and other agencies. In total, 220 submissions were received following the release of the consultation document, and the key points that each submitter made are reflected under the appropriate topic at a high level.

Note that the full detail of each submission has not been reflected in this summary, but a copy of most of the submissions received is available on the Ministry's website at www.justice.govt.nz/amlcft-review. In accordance with submitters' wishes, we have not published any submission that was received in confidence or where the submitter requested that the submission not be published.

Submissions received

1. Anonymous Submission
2. MTF Finance Hamilton
3. Connect Legal
4. Select Realty
5. Zindels Barristers and Solicitors
6. Anonymous Submission
7. Anonymous Submission
8. East Asia Transnational
9. David Harrison
10. Deb Koia
11. Red Crayon
12. Oak Park Chartered Accountants
13. Mackenzies Agency
14. Ray White Rangiora
15. Dyson Smythe and Gladwell Lawyers
16. Glasgow Harley Barristers and Solicitors
17. Polson Higgs
18. Omega Commercial
19. Laura Williams
20. SeniorLAW
21. Anonymous Submission
22. Anonymous Submission
23. Anonymous Submission
24. Richardsons
25. Anonymous Submission
26. Anonymous Submission
27. Lex Dean
28. Perfect Numbers Bookkeeping
29. Lyons Asset Brokerage
30. Alex Sinton
31. Elevate (1)
32. Falcon Advances
33. Accounting 4 U
34. Harcourts Bay of Islands Realty
35. Riverlea Finance Limited
36. Anonymous Submission
37. Ausfix Forex Brokers Limited
38. Chrystall Law
39. Professor Michael Littlewood
40. Anonymous Submission
41. Elevate (2)
42. Anonymous Submission
43. Withdrawn Submission
44. Anonymous Submission
45. Bridging Finance
46. Samoa Money Transfer
47. Clyde Law
48. Berry & Co
49. Retail Commercial
50. Gulf Accountants
51. Vigilance
52. VPGam
53. Anonymous Submission
54. Anonymous Submission
55. Kaye Baldock
56. Anonymous Submission
57. Akahu
58. Anonymous Submission
59. Freeman Accounting
60. Private Box
61. Anonymous Submission
62. Snowball Effect
63. Tommys
64. Howard & Co
65. Harcourts Gold Star
66. LJ Hooker Timaru
67. Axis Realty
68. ABC Business
69. Lynda Smyth
70. Simplicity Accounting
71. Anonymous Submission
72. Anonymous Submission
73. Harcourts Pinnacle
74. Property Brokers
75. Kendons
76. Barfoot & Thompson Auckland City
77. Harveys Warkworth
78. Graeme White & Associates
79. Ray White Whitianga (1)
80. Anonymous Submission
81. Ray White Whitianga (2)
82. Bayleys Hawkes Bay
83. Ray White Tauranga
84. New Zealand Green Investment Finance **(NZGIF)**
85. Anonymous Submission
86. Richardsons Tairua
87. One Agency
88. Min Sarginson Real Estate
89. Trustees Executors Limited
90. Grenadier Real Estate
91. Anonymous Submission
92. Anonymous Submission
93. Lane Neave
94. Linfox Aramaguard Group
95. Anonymous Submission
96. Ray White Whitianga (3)
97. Maxima
98. FinCap
99. FireSuper Scheme

100. MISS Scheme
101. NZ Society of Conveyancers
102. Law Box
103. Anonymous Submission
104. AuditsAML
105. Digital Identity NZ
106. Confidential Submission
107. Stephens Lawyers
108. Anonymous Submission
109. NZAS Retirement Fund Trustee Limited
110. Public Trust
111. Grey Street Legal
112. Westpac NZ Staff Superannuation Scheme Trustee Limited
113. Anonymous Submission
114. Anonymous Submission
115. 2compli
116. Anonymous Submission
117. Carson Fox
118. Anonymous Submission
119. BlockchainNZ
120. Agent Commercial
121. Barfoot and Thompson
122. CA ANZ
123. Christian Savings Limited
124. CPA Australia
125. Dairy Industry Superannuation Scheme
126. Harcourts Hoverd & Co
127. Financial Services Council
128. Premium Real Estate
129. Harcourts Group
130. HSBC
131. illion
132. Insurance Council of New Zealand
133. AG Kosoof & Co
134. Confidential Submission
135. Maritime Retirement Scheme
136. MATTR
137. Medical Assurance Society
138. MIA Limited
139. Milford Asset Management
140. MinterEllisonRuddWatts
141. Anton Moiseienko
142. NZ Realtors
143. NZX Clearing
144. NZX Wealth Technologies
145. Property Brokers
146. PwC
147. Confidential Submission
148. REINZ
149. ReMAX
150. Retirement Villages Association
151. Richardson Real Estate
152. Risk Robin
153. Confidential Submission
154. Aro Advisors
155. SkyCity
156. LJ Hooker MacKenzie Country
157. Trustee Corporations Association of NZ
158. Wealthpoint
159. Westpac
160. Confidential Submission
161. Anonymous Submission
162. Anonymous Submission
163. Miller Johnson
164. Anonymous Submission
165. Anonymous Submission
166. Anonymous Submission
167. Anonymous Submission
168. Nolans
169. Simpson Grierson
170. Anonymous Submission
171. Deloitte
172. Cleland Hancox
173. Anonymous Submission
174. Anonymous Submission
175. VCFO Group
176. North Law
177. Patrick Adamson
178. Confidential Submission
179. ATAINZ
180. Cygnus Law
181. MERW Client
182. Privacy Commissioner
183. Banking Ombudsman
184. UniSaver
185. Devender Anand
186. BitPrime
187. Bayleys Mangawhai
188. Anonymous Submission
189. ADLS
190. BNZ
191. British High Commission
192. Easy Crypto
193. FNZ
194. Kiwi Wealth
195. NZLS
196. RITANZ
197. Russell McVeagh
198. Securities Industry Association
199. Unity
200. ASB
201. Institute of Certified New Zealand Bookkeepers **(ICNZB)**

202. Financial Advice NZ
203. Adyen
204. Mainland Capital
205. Boutique Investment Group
206. Sharesies
207. National Council of Women NZ
208. Dentons Kensington Swan
209. Financial Services Federation **(FSF)**
210. Transparency International NZ
211. NZBA
212. Buddle Findlay
213. Compliance Plus
214. AML360
215. Calibre Partners
216. Pacific Lawyers Association
217. Confidential Submission
218. Reserve Bank of New Zealand
219. Equifax
220. Reuben Otto

General comments

1. We invited general comments about the regime by asking some overall questions about the Act and how it is performing, specifically:

    - How is the Act operating? Is it achieving its purposes? Are there any areas of risk that the Act does not appropriately deal with?
    - What is working and what is not? Are there areas that are particularly challenging or costly to comply with? How could we alleviate some of those costs while also ensuring the effectiveness of the system?
    - What could we do to improve the operation of the Act?
    - Is there anything we need to do to "future proof" the Act and ensure it can respond to the modern and largely digital economy?

Submitters were generally supportive of the need for the regime and the role it plays

2. Most submitters supported the need for and the high-level objectives of the Act.[1] However, some noted that they have not identified any suspicious activities or transactions as a result of having AML/CFT obligations.[2] Only a few submitters thought that the Act fails and will continue to fail in its attempt to detect and deter money laundering, and that the new laws have made no difference or that the risk has shifted and changed.[3] By contrast, two submitters consider that the Act results in every person being treated as a criminal by default, which has alienated sections of the community.[4]

3. Some submitters noted the importance of achieving compliance with FATF recommendations, but also considered that these should not be considered binding nor treated as fully effective and appropriate for New Zealand.[5] **East Asia Transnational** considered that AML/CFT laws should only exist in certain countries, such as those identified in the Pandora Papers, and considered that New Zealand should therefore not need such complex AML laws.

However, the regime is far from perfect, with many submitters noting areas for improvement

4. A very common frustration submitters raised is with the amount of duplication that can occur, with some suggesting that a centralising AML/CFT functions such as ID verification could address this issue and provide greater privacy protections with others considering that free

[1] MTF Finance Hamilton, Oak Park Chartered Accountants, Stuart Morris, Perfect Numbers Bookkeeping Harcourts Bay of Islands, LJ Hooker Timaru, Milford Asset Management, BitPrime, Russell McVeagh, Financial Advice NZ, Boutique Investment Group, National Council of Women NZ, FSF

[2] Lyons Asset Brokerage Harcourts Bay of Islands, Snowball Effect, AG Kosoof & Co

[3] Patrick Adamson, Aro Advisors, and submitter 1

[4] Perfect Numbers Bookkeeping, AG Kosoof & Co

[5] Maxima, Cygnus Law, Mainland Capital, Boutique Investment Group 153

access to RealMe or other government databases would achieve this outcome (see further *Partnering in the fight against financial crime*).[6]

5. A few submitters felt that some of the requirements regarding CDD, such as asking for the source of wealth or source of funds, can be overly and unnecessarily intrusive. This reluctance can be shared by some customers who can be resistant to providing ID for verification, including through secure online channels (see further *Privacy and protection of information*).[7]

6. **ADLS** and **Dentons Kensington Swan** noted that the Act was not sufficiently tailored for DNFBPs and as a result it has been difficult to readily integrate into practice and for many lawyers the burden has been disproportionate both in terms of risk and cost.

7. Several submitters criticised the amount and nature of support provided by regulators and the FIU, and that regulators need more resources to properly engage and develop effective and appropriate guidance (see further *Agency supervision model*).[8] **BitPrime** noted that traditional law-making processes and conventional approaches by regulators have failed to keep up with new technologies, particularly cryptocurrencies.

8. Some submitters have felt frustrated trying to engage with their regulator to understand their compliance obligations, potentially due to fear of the regulator (see further *Balancing prescription with risk-based obligations*).[9] In a similar vein, some submitters noted that some reporting entities are focused more on administration and demonstrating compliance rather than what the AML legislation is trying to achieve.[10]

9. **AG Kosoof & Co** and **Submitter 106** identified that the lack of plain language is one of the major difficulties of the legislation, guidelines, and code of practice. This impacts the ability of compliance officers to understand what is required and improving accessibility would help understanding and overall compliance (see further *Capacity of smaller and larger reporting entities*).

10. A few submitters were frustrated that no feedback is provided to their business about whether their compliance has made a difference, such as money laundering being investigated and prosecuted.[11] **Maxima** further noted that the FIU not dealing with SARs in a swift timeframe or providing feedback to reporting entities can generate resentment from businesses which have obligations, particularly where businesses feel they are being put in a quasi-Police role (see further *Improving the quality of reports received*).

11. **Laura Williams** and **Lex Dean** queried whether the regime has limited the ability for New Zealanders to receive money from overseas. Other submitters similarly noted that opening accounts for New Zealand companies owned by offshore persons can be challenging, potentially due to offshore money being treated as high risk.[12]

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[6] East Asia Transnational, Polson Higgs, Harcourts Bay of Islands, LJ Hooker Timaru, AG Kosoof & Co, Milford Asset Management, REINZ, Patrick Adamson, NZLS, Financial Advice NZ, East Asia Transnational, Lyons Asset Brokerage, VPGam, Akahu, Harveys Warkworth, One Agency, Cygnus Law, Kiwi Wealth, Financial Advice NZ, Vigilance, Snowball Effect, and submitters 106, 188

[7] MTF Finance Hamilton Clyde Law, Harcourts Gold Star, Red Crayon, Polson Higgs, Agent Commercial

[8] Snowball Effect, Risk Robin, Aro Advisors, Kiwi Wealth, NZLS

[9] Polson Higgs, North Law, and submitters 106, 164

[10] Risk Robin, Banking Ombudsman and submitters 106, 153

[11] Falcon Advances, Maxima, AG Kosoof & Co, Risk Robin

[12] East Asia Transnational, Perfect Numbers Bookkeeping and submitter 56

The cost of complying is by far the biggest concern submitters raised with the regime

12. The biggest area of concern submitters raised is the cost of complying with the regime, with some considering that the cost-benefit ratio is out of proportion for many businesses and more significant for small businesses than originally assumed.[13]

    - **Ray White Rangiora** estimated that the compliance with the regime has reduced 25% of their profits, with **Chrystall Law** estimating that customer due diligence has reduced productivity by 50%**.** Other businesses estimate their costs to be between $15,000 to $150,000 per annum.[14]
    - **Lyons Asset Brokerage** considered that the cost of complying has meant that some transactions, particularly those involving trusts, are no longer viable. **Grey Street Legal** and **Submitter 106** noted that the costs of complying with AML/CFT is prohibitive and disproportionate for small businesses, with **North Law** noting that the costs of the regime have led to them declining all new clients.
    - A few submitters expressed concerns about the amount of work that needs to be done in order to comply and the amount of time required to understand what is required.[15] Some submitters note that there appears to be a "one size fits all" approach being taken by the regulators, with little consideration of how the particular business operates or the risks involved (see further *Capacity of smaller and larger reporting entities*).[16]
    - Other submitters noted that an AML/CFT service industry has emerged, who are able to charge large amounts of money to support compliance, but for questionable quality or value in the support provided.[17] **Submitter 106** noted that these providers are often not cost effective for small firms (see further *Regulating consultants*).

13. In addition to direct financial costs of the regime, several submitters noted the potential for the regime to have indirect impacts on the broader economy and society:

    - some submitters noted that the regime can present a significant barrier to changing financial and non-financial providers, which introduces inefficiencies into the market and reduces the potential for competition.[18]
    - the **National Council for Women New Zealand** noted the risk of any additional costs being passed onto customers, as this could have a disproportionate impact on women, particularly women living in poverty. **Digital Identity NZ** and **MinterEllisonRuddWatts** similarly noted that the costs associated with CDD may disincentivise services being provided to perceived higher risk customers (see further *De-risking and financial exclusion*).

[13] East Asia Transnational, Stuart Morris, Dyson Smythe and Gladwell, Polson Higgs, Chrystall Law, Elevate (2 Clyde Law, Barfoot & Thompson, Harveys Warkworth, Stephens Lawyers, Grey Street Legal, Agent Commercial, Milford Asset Management, Cygnus Law, ADLS, NZLS, ICNZB, Financial Advice NZ, Sharesies, FSF and submitter 188

[14] Linfox Armaguard Group, Patrick Adamson

[15] Red Crayon, Oak Park Chartered Accountants, BitPrime

[16] Stephens Lawyers, AG Kosoof & Co, Milford Asset Management and submitter 108

[17] Red Crayon, Lyons Asset Brokerage Chrystall Law, Clyde Law, LJ Hooker Timaru, AG Kosoof & Co

[18] Polson Higgs, Digital Identity NZ, MinterEllisonRuddWatts

- some submitters considered that the AML/CFT regime has become a barrier to legitimate offshore investment into the New Zealand economy, as well as the uptake of government-sponsored initiatives such as “open banking”.[19]

[19] Snowball Effect, Digital Identity NZ, MinterEllisonRuddWatts and submitter 56

Cross-cutting topics

14. The consultation document raised several topics which cut across the chapters we used. For ease of reference, these topics are dealt with holistically here, and include whether and how the Act should incorporate targeted financial sanctions, and the treatment of Virtual Asset Service Providers and High Value Dealers.

Supporting the implementation of targeted financial sanctions

15. The consultation document asked a range of questions about whether the Act or the regime should be utilised to support the implementation of targeted financial sanctions to combat terrorism financing and proliferation financing. We asked whether this should form a purpose of the Act, which agency should be responsible for supervision, and whether there needed to be supplementary obligations imposed by the Act to support businesses with their existing obligations.

Including targeted financial sanctions as a purpose of the Act

16. This section considered whether a purpose of the Act should be that it supports the implementation of targeted financial sanctions (TFS). TFS are a key mechanism in the fight against terrorism and proliferation financing, and everyone in New Zealand has obligations to implement TFS under the *Terrorism Suppression Act 2002* and *United Nations Act 1946*.

17. Overall, submitters were split on whether targeted financial sanctions should be included as a purpose of the Act. More submitters supported the proposal[20] than were opposed,[21] however a large number of submitters indicated they were neither supportive nor opposed to the idea, largely because they were not clear what impact the change would have.[22]

18. Submitters who supported the inclusion considered that doing so would ensure that New Zealand meets its international expectations as well as ensuring a more holistic implementation of financial crime risk management.[23] However, those who were opposed thought the existing approach to TFS was sufficient or should be kept separate from the AML/CFT regime.[24] Submitters were also concerned about the potential for sanctions being misused for political purposes and the potential for additional obligations being imposed on businesses.[25]

[20] Law Box, AuditsAML, Nolans, Deloitte, Kiwi Wealth, ICNZB, Riverlea Finance Limited, Ausfix Forex Brokers, VCFO Group and submitters 7, 23, 25, 40, 42, 53, 58, 80, 113, 118, 134

[21] BNZ, Bridging Finance, Aro Advisors, and submitters 21, 22, 44, 54, 71, 85, 92, 103, 160, 164, 165, 188

[22] Richardsons, Retail Commercial, Private Box, Kendons, 2compli, Carson Fox, Simpson Grierson, and submitters 1, 6, 26, 61, 95, 116, 166, 174,

[23] Deloitte, Kiwi Wealth, and submitter 134

[24] BNZ, Westpac, FNZ and submitters 92, 160, 188,

[25] Aro Advisors and submitters 85, 164, 165

Supervising the implementation of targeted financial sanctions

19. A related topic is considering which agency or agencies should be empowered to monitor whether businesses are complying with their TFS obligations. Currently no agency is expressly empowered to supervise TFS, and we noted the role could be fulfilled by the AML/CFT supervisors or some other agency.

20. The vast majority of submitters thought supervision of TFS should fall within the scope of the AML/CFT regime. However, a minority of submitters were opposed to supervision being included[26] or were neither supportive nor opposed to the idea.[27]

21. Most submitters thought the existing supervisors should be responsible for supervision given they already have relationships with the businesses.[28] However, a small number of submitters thought another agency should be responsible, such as a law enforcement agency (i.e. the Police, FIU, GSCB, or NZSIS),[29] the Ministry of Foreign Affairs and Trade,[30] or dedicated TFS agency.[31]

Additional AML/CFT obligations to support implementation

22. In addition to asking whether implementing targeted financial sanctions should become a purpose of the Act, we asked whether there should be any additional obligations to support businesses to comply with their existing obligations. These were:

    - requiring businesses to assess their exposure to designated individuals or entities and sanctions evasion
    - including TFS implementation as part of their AML/CFT programme
    - requiring businesses to get prompt notification of changes to designation lists
    - screening for designated persons and entities
    - providing notification of actions taken, and
    - providing assurance for ongoing action

23. Submitters broadly recognised that more could be done to support businesses in complying with their existing obligations, but there was no clear preference from businesses as to how this could be done with several submitters urging caution due to the potential for significant compliance costs.[32] Several submitters also noted the need for more support from the Government across the board, such as issuing guidance and Codes of Practice or providing resources for businesses to use.[33] **Kiwi Wealth** and **Submitter 188** also noted the need for a sufficient implementation period if any obligations are introduced.

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[26] BNZ, VCFO Group and submitters 71, 160, 164, 165

[27] Retail Commercial, Private Box, 2compli, Carson Fox, and submitters 85, 92, 95, 103, 116, 174

[28] Richardsons, Bridging Finance, Kendons, AuditsAML, Nolans, Deloitte, FNZ, Kiwi Wealth, Ausfix Forex Brokers and submitters 7, 21, 23, 25, 26, 42, 44, 53, 58, 80, 113, 118, 166,

[29] Richardsons, Ausfix Forex Brokers and submitter 80

[30] submitters 71, 160

[31] BNZ, Westpac and submitter 113

[32] Russell McVeagh, Financial Services Council, submitter 134

[33] BNZ, FSF, ICNZB, Westpac, ASB, MISS Scheme, Kiwi Wealth, Kendons and submitters 100, 160, 188

24. Submitters were split on whether businesses should be required to assess their exposure to designated individuals or entities and sanctions evasion, with roughly the same number of submitters in support[34] of and opposed[35] to the proposal. Submitters who were supportive of the idea thought the assessment could inform what policies, procedures, and controls were required, while some submitters who were opposed thought there was no benefit in aligning sanctions management with the AML/CFT regime or were concerned about the potential compliance costs.

25. Most submitters were likewise not supportive of including implementation of TFS in an AML/CFT programme, largely due to the likely increase in compliance costs that would result from the change.[36] A small number of submitters supported the proposal,[37] and other submitters though that the requirement should be risk-based if introduced or should only apply to sectors that are a high risk.[38]

26. As for ensuring prompt notification of changes to the designations list, most submitters did not think the Act should be amended,[39] while other submitters noted there needs to be a better way for the government to communicate information in relation to designated persons and entities.[40]

27. A number of submitters indicated they already screen for customers or transactions involving designated persons and entities using third party platforms.[41] However, submitters noted that many businesses would not be able to afford using such platforms and suggested that screening should use a risk-based approach.[42] Submitters also noted that any screening obligations should be as clear as possible, with particular lists identified in legislation, regulation, or guidance.[43]

28. Some submitters were supportive of requiring notification of actions taken such as freezing assets or blocking transactions, but submitters noted the need to avoid duplication with existing reporting obligations.[44]

29. Finally, submitters were supportive of the government providing assurance for ongoing freezing action.[45] **Mainland Capital** and **Submitter 160** also thought the government should indemnify businesses who have frozen assets, including where assets are held in trust.

[34] FNZ, ICNZB, FSF, ASB and submitters 100, 134, 188

[35] Aro Advisors, Boutique Investment Group, Dentons Kensington Swan, Compliance Plus and submitter 160

[36] FNZ, Aro Advisors, Dentons Kensington Swan, ASB, Mainland Capital, MISS Scheme and submitter 160

[37] ICNZB, NZBA, Kiwi Wealth

[38] Boutique Investment Group, Unity and submitter 160

[39] BNZ, Dentons Kensington Swan and submitter 160, 188

[40] Russell McVeagh, FSF and submitter 160

[41] BNZ, Westpac, Dentons Kensington Swan, Aro Advisors, Kiwi Wealth, NZBA, and submitters 160, 188

[42] ICNZB, NZBA, Boutique Investment Group, Westpac and submitter 188

[43] BNZ and submitters 160, 188

[44] BNZ, Westpac and submitters 160, 188

[45] BNZ, ICNZB, Mainland Capital, Compliance Plus and submitters 160, 188

Virtual Asset Service Providers

30. The consultation examined two separate but related parts of regulating VASPs. The first was how the Act should capture these businesses and define what constitutes a VASP, while the second then part focused on whether any particular obligations should be adjusted for VASPs.

Definition of a VASP

31. Most submitters agreed that the capture of VASPs needs to be updated to clarify precisely which activities attract capture.[46] Some submitters similarly noted that it is crucial that any definition accounts for new forms of virtual assets such as gaming tokens and non-fungible tokens.[47]

32. In terms of what definition should be used, the majority of submitters supported using definitions in line with those used by the FATF. In particular, most submitters considered that all 'types' of VASPs should have AML/CFT obligations including custodial wallet providers.[48] However, **Submitter 165** disagreed.

33. **BitPrime** submitted that a better approach would be focusing on the activity that VASPs provide rather than the type of business and that we should draw inspiration from the FATF's recent virtual asset guidance, while **EasyCrypto** similarly emphasised the need for quality and technology neutral definitions. **BitPrime** also noted that it is important that peer-to-peer transactions are included, while **BNZ** thought that any definition should ensure that trading of stable coins and central bank digital currencies are also included.

VASP obligations

34. We noted that the FATF updated its standards in 2019 to require VASPs to have tailored obligations to mitigate the risks these businesses generally face, in particular with respect to occasional thresholds and how wire transfers should be treated. We also asked whether there are any other obligations that need to be tailored for VASPs.

Occasional transaction thresholds for VASPs

35. The majority of submitters supported a specific occasional transaction threshold for VASPs,[49] while a small number of submitters were opposed to the proposal.[50] Some submitters supported a threshold of NZD 1,500 which would be consistent with the FATF's requirements, while **BNZ** thought the threshold should be the same for all businesses whether a virtual asset service provider, or another type of financial institution. The submitter did however note that if the PTR threshold was lowered to NZD 0 then the occasional transaction threshold should be removed regardless. However, **EasyCrypto** noted that stricter thresholds in New Zealand could displace the risks associated with cryptocurrencies to countries with less ability to

[46] Private Box, Kendons, AuditsAML, BlockchainNZ, MinterEllisonRuddWatts, Aro Advisors, Simpson Grierson, BitPrime, Easy Crypto, ICNZB, Graeme White & Associates, BNZ and submitters 26, 40, 44, 80, 103, 165, 188

[47] BitPrime, BlockchainNZ

[48] Private Box, Kendons, AuditsAML, BlockchainNZ, MinterEllisonRuddWatts, Aro Advisors, Simpson Grierson, BitPrime, Easy Crypto, Graeme White & Associates, BNZ and submitters 40, 44, 80, 103, 165, 188

[49] BlockchainNZ, MinterEllisonRuddWatts, Aro Advisors, Simpson Grierson, BitPrime, BNZ, Easy Crypto, ICNZB and submitters 165, 188

[50] submitters 40, 44, 60

monitor and disrupt criminal activity. Additionally, it was noted that a stricter threshold may put New Zealand out of step with the international community which typically has VASP thresholds at the equivalent of NZD 1,500.

Wire transfers for VASPs

36. Most submitters were supportive of all virtual asset transactions being considered wire transfers[51], with some submitters opposed to the suggestion.[52] **BitPrime** considered that defining all virtual asset transactions as "cross border" removes the ability for VASPs to assign a different level of risk to the transaction, but also noted that the approach may not be technically correct as it would capture domestic wallet-to-wallet transactions. In a similar vein, **EasyCrypto** preferred starting with a ground-up approach and working with the industry to understand what a wire transfer looks like for a VASP as a first step.

High Value Dealers

37. High value dealers are businesses which trade in a range of valuable goods for cash. It includes businesses which buy and sell precious metals and stones, as well as businesses which sell vehicles and boats. High value dealers came into the regime in 2017 but have had lesser obligations compared to other sectors. We asked whether the definition of a high value dealer is still appropriate, including if pawnbrokers should have obligations, and also considered what obligations high value dealers should have.

Definition of "high value dealer"

38. The current definition only captures businesses which trade in high value goods "in the ordinary course of business". This means that businesses who only occasionally engage in relevant cash transactions do not meet the definition of a high value dealer, and as a result, it can be unclear whether a business is captured. We asked whether the definition should be amended so businesses which deal in high value goods are captured irrespective of how frequently they undertake the relevant transactions.

39. Most submitters supported amending the definition of high value dealer to include all businesses dealing in high value articles.[53] None of the submitters were opposed to the change but several were unsure.[54] Submitters who were supportive thought the change would provide clarity and better address the risks of money laundering in the sector.[55] Some submitters also thought we should consider whether non-cash transactions are relevant to address risks that are not associated with cash.[56]

40. The biggest impact that submitters identified from this change would be the compliance costs for these businesses due to the increase in the number of transactions which attract AML/CFT

[51] Private Box, AuditsAML, Westpac and submitters 44, 80

[52] Bitprime, EasyCrypto

[53] Richardsons, Kendons, Aro Advisors, BNZ, ICNZB, FSF, Graeme White & Associates and submitters 26, 40, 42, 44, 53, 58, 95, 113, 165, 188

[54] Private Box and submitters 26, 80, 85, 92, 103, 118

[55] BNZ, ICNZB, Aro Advisors and submitter 42

[56] BNZ and submitters 44, 165

obligations, as well as increased costs for the supervisor.[57] However, **Submitter 188** noted that businesses can avoid obligations by not engaging in cash transactions above the threshold, with **Submitter 113** noting that this may drive businesses towards trying to structure transactions to avoid obligations.

Exemption for pawnbrokers

41. Pawnbrokers are currently excluded from the regime, and we asked whether this exclusion should be removed to ensure that pawnbrokers dealing in high value goods are properly addressing their risks. However, we also noted that pawnbrokers have some obligations under the *Secondhand Dealers and Pawnbrokers Act 2004* which are mostly, but not entirely, in line with the obligations for high value dealers. Therefore, we also asked what obligations from this existing regime should we avoid duplicating to avoid unnecessary compliance costs.

42. Most submitters were supportive of removing the exclusion to ensure a consistent approach to addressing risks associated with dealing in high value goods,[58] with a small number who were unsure.[59] Submitters were also supportive of aligning requirements between the AML/CFT Act and *Secondhand Dealers and Pawnbrokers Act* where relevant.[60] However, **BNZ** noted that adhering to a higher standard where requirements are duplicated (such as record keeping) are unlikely to materially increase compliance costs and will ensure there are no unintended coverage gaps in the overall regime.

Appropriate cash transaction threshold

43. This section considered whether we should lower the applicable threshold for high value dealers from NZD 10,000 to a lower value such as NZD 5,000, to enable better intelligence about cash transactions. We noted that many high value assets can be easily hidden and transferred to third parties with limited documentation, and with no transactions visible to other financial institutions. We also asked several additional questions such as the appropriate threshold, the amount of additional transactions that would be captured, and whether they would stop using or accepting cash to avoid AML/CFT obligations.

44. Most submitters were not supportive of a lower threshold, noting that this would increase compliance costs for high value dealers and would be inconsistent with how other businesses are treated. Submitters also noted that banks may have some visibility of repeat transactions, and that no threshold amount will achieve perfect visibility of the transactions.[61] **FSF** noted that removing the word “ordinary” will address the gap better than a lower threshold would, while **Submitter 53** thought high value dealers should be required to report repeat transactions if they collectively exceed the threshold.

45. The minority of submitters supported lowering the threshold for high value dealers to improve visibility and mitigation of risks,[62] while a similar number of submitters were unsure about the

[57] BNZ and submitters 40, 165, 188

[58] Richardsons, Private Box, Kendons, AuditsAML, BNZ, 2compli, Kiwi Wealth, FSF, Pacific Lawyers Association, BNZ and submitters 42, 53, 58, 113, 118

[59] Nolans and submitters 40, 80, 85, 92, 103

[60] Aro Advisors, BNZ, Richardsons and submitters 53, 188

[61] Dentons Kensington Swan, Richardsons, Kendons, FSF, Reserve Bank of New Zealand, Ausfix Forex Brokers, Graeme White & Associates and submitters 26, 42, 44, 53, 165

[62] Private Box, AuditsAML, BNZ, Kiwi Wealth, ICNZB and submitters 58, 113, 118

proposal.[63] Submitters who supported lowering the threshold suggested that it be set between NZD 1,000 to NZD 5,000.[64] By contrast, **Submitter 42** thought the threshold should be set at NZD 200,000 per annum per customer while **Submitter 165** thought the threshold should be adjusted to account for inflation.

High value dealer obligations

46. This section considered whether we should extend additional AML/CFT obligations to high value dealers as they currently have fewer obligations in comparison to other types of business covered by the Act. Requiring high value dealers to fully comply with the AML/CFT Act would address the issues we have identified and bring New Zealand more in line with FATF requirements but would significantly increase compliance costs for these businesses and would go further than the FATF's requirements which only relate to dealers in precious metals and stones.

47. The majority of submitters thought high value dealers should have increased or full obligations to improve intelligence collection and better address the risks in the sector.[65] **ICNZB** and **AuditsAML** specifically noted that high value dealers should have a mandatory SAR obligation and **Submitter 188** thought that obligations should be informed by the risks in the sector. However, a minority were opposed to increasing obligations for high value dealers due to the increase in costs and complexity for the businesses.[66] Two submitters were unsure about whether high value dealers should have increased obligations.[67]

[63] 2compli, Nolans and submitters 40, 80, 85, 95, 103

[64] ICNZB, Private Box, AuditsAML, BNZ

[65] Private Box, Kendons, AuditsAML, Aro Advisors, ICNZB and submitter 58, 113, 118

[66] FSF and submitters 26, 164, 165

[67] submitters 44, 80

Institutional arrangements and stewardship

Purpose of the AML/CFT Act

48. This section of the consultation document broadly considered whether the purpose of the Act (as set out in section 3) was still appropriate or whether the purpose needs to be updated. We identified three ways we could potentially update the purpose of the Act, such as including active prevention of money laundering and terrorism financing as a purpose, as well as supporting the implementation of targeted financial sanctions.

49. The vast majority of submitters considered the purposes of the Act were generally still appropriate, and that no changes were needed.[68] However, some submitters identified additional ways the purpose of the Act could be amended:

- remove "maintaining public confidence in the financial system" [69] or replace the purpose with "enhancing New Zealand's reputation for ease of doing business" or a purpose focused on international trade agreements;[70]
- reduce the focus on terrorism and instead focus more on addressing transnational money laundering and corruption threats;[71]
- include "reduce social harms";
- include "avoid unnecessary compliance costs" or require an explicit consideration of the cost effectiveness of compliance obligations;[72]

Actively preventing money laundering and terrorism financing

50. A minority of submitters supported including prevention as a focus of the Act either outright or in principle.[73] Some submitters thought this purpose would enable a more efficient and proactive approach to combatting financial crime and would be aligned with what most consumers expect.[74] Others supported the idea but thought it should be achieved by enhancing other parts of the system, such as the ability to recover criminal proceeds or improving information sharing between agencies and the private sector.[75]

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[68] Richardsons, Bridging Finance, Private Box, Kendons, AuditsAML, 2compli, Carson Fox, Financial Services Council, MIA Limited, PwC, Wealthpoint, Nolans, Simpson Grierson, Deloitte, Cleland Hancox, BitPrime, NZLS, RITANZ, ICNZB, Riverlea Finance Limited, VCFO Group and submitters 7, 23, 25, 26, 42, 44, 53, 58, 85, 92, 95, 103, 114, 116, 118, 164, 166, 174

[69] Submitter 54

[70] Aro Advisors and submitter 61

[71] Ausfix Forex Brokers and submitter 80

[72] Trustees Executors Limited and submitters 40, 54

[73] Carson Fox, ReMAX, Banking Ombudsman, BNZ, One Agency, MIA Limited, Riverlea Finance Limited, Ausfix Forex Brokers and submitters 21, 22, 23, 25, 26, 40, 42, 58, 61, 80, 92, 106, 113, 116, 217

[74] Banking Ombudsman and submitters 40, 106

[75] Trustees Executors Limited, HSBC, ASB, BNZ, Reserve Bank of New Zealand, Ausfix Forex Brokers and submitter 44

51. However, a clear majority of submitters were opposed to the proposal.[76] Submitters who were opposed thought the purpose would result in businesses being effectively required to act in the role of the Police,[77] be costly and difficult to implement,[78] be contrary to a risk-based approach,[79] increase risks associated with tipping off,[80] and potentially offend the principles of natural justice.[81]

Combatting proliferation financing

52. The majority of submitters supported expanding the purpose of the Act to also combat proliferation financing. [82] Of those who supported this expansion, almost all supported a purpose focused generally on combatting proliferation financing, rather than specifically combatting the efforts of the Democratic People's Republic of Korea (DPRK) and Iran to obtain weapons of mass destruction. Submitters who were supportive generally considered that this approach would bring New Zealand in line with international expectations and developments.[83] or it would align with our moral responsibilities as a nation to combat weapons of this nature.[84]

53. A minority of submitters were opposed to the proposal, largely because they were not convinced that proliferation financing is a risk in New Zealand, or that doing so would be ineffective or too burdensome for businesses and should be resolved by Government rather than businesses. [85] **Westpac** and **Submitter 92** were supportive of combatting proliferation financing but were opposed to the AML/CFT framework being leveraged for that purpose.

54. A small number of submitters were neither supportive nor opposed to the proposal.[86] **Submitter 61** urged caution with respect to this approach and whether it would open the floodgates and also include other worthy causes, such as slavery. **Simpson Grierson** agreed there was a need to develop an anti-proliferation financing regime but was not clear as to whether this should be through the AML/CFT framework or through a separate framework tailored to the proliferation financing risks. Submitters noted the need for clear definitions and guidance if proliferation financing is included,[87] while **2compli** thought the proposal should be further reviewed based on data about the risk within New Zealand.

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[76] Bridging Finance, Retail Commercial, Kendons, NZGIF, AuditsAML, 2compli, Harcourts Hoverd & Co, Financial Services Council, MIA Limited, Milford Asset Management, Simpson Grierson, Deloitte, Cleland Hancox, BitPrime, Easy Crypto, NZLS, Unity, ICNZB, VCFO Group and submitters 1, 44, 54, 71, 85, 103, 116, 118, 164, 165, 166, 174

[77] Kendons, NZGIF, AuditsAML, MIA Limited, Deloitte, Easy Crypto, NZLS, Unity, ICNZB and submitters 61, 85, 164,

[78] Law Box, 2compli, Simpson Grierson, Cleland Hancox, BitPrime, Bayleys Mangawhai, NZLS, Unity Milford Asset Management, BitPrime and submitters 7, 42, 116, 161, 174,

[79] Financial Services Council

[80] Unity Credit Union and submitter 188

[81] NZGIF

[82] Richardsons, Private Box, Kendons, Law Box, AuditsAML, BNZ, Carson Fox, Aro Advisors, ASB, ICNZB, Riverlea Finance Limited, VCFO Group and submitters 1, 6, 23, 25, 26, 42, 44, 53, 113, 116, 118, 134, 166

[83] AuditsAML, BNZ, and submitters 113, 116

[84] Richardsons, Aro Advisors and submitter 25

[85] Bridging Finance, Westpac, Howard & Co, Deloitte, Ausfix Forex Brokers and submitters 7, 21, 22, 40, 54, 58, 71, 80, 85, 92, 95, 103, 165, 188, 217

[86]Retail Commercial, 2compli, Nolans, Cleland Hancox and submitters 61, 174

[87] Westpac, Lawbox and submitters 21, 40

Risk-based approach to regulation

55. This section was focused on the extent to which the regime is delivering a 'risk-based approach', which is a fundamental part of the regime. We first looked at whether we are appropriately assessing New Zealand's risks overall and sharing that information with businesses so they can properly assess and understand their risks. We then asked whether there is the appropriate balance between prescriptive obligations and more principled, risk-based obligations in the regime.

Understanding our risks

56. This section explored whether we could improve the current framework for assessing and sharing information regarding national and sectoral risks. The current framework relies on the FIU assessing national risks with supervisors assessing sectoral risks and publishing these assessments in the National Risk Assessment (NRA) and various sectoral risk assessments (SRAs). We also asked whether the risk assessment requirements in section 58 are still appropriate.

Framework for sharing risk information

57. While some submitters thought the current approach is sufficient,[88] a large number of submitters identified areas where the framework could be improved:

    - greater amounts of risk information, intelligence, and feedback could be shared (with sufficient legislative authority and adequate privacy protections), including information about typologies and data driving conclusions about risks;[89]
    - risk assessments could be more nuanced and targeted to particular industries or thematic areas, and make better use of the experience of people operating in those sectors;[90]
    - national and sectoral risk assessments could be kept more up to date to ensure continued relevance and accurate benchmarking;[91]
    - the various assessments should have a standardised methodology and format or be combined into one document to enable a holistic understanding of risks;[92]

58. **Risk Robin** submitted that the SRAs and NRAs do not help people working in businesses to genuinely understand the nature of threats and vulnerabilities they are exposed to. They noted that the documents are wildly generalised, quickly outdated, and easily provide prospective criminals and terrorists with a checklist for how to best avoid raising suspicion and detection. Similarly, **Transparency International NZ** noted that the risk-based approach relies on a well-informed and capable professional workforce with public understanding of the importance of various mitigation measures, but this is not always achieved.

[88] Dentons Kensington Swan, VCFO Group

[89] Financial Services Council, HSBC, ASB, BNZ, Boutique Investment Group, FSF, NZBA, Private Box, Kendons, Law Box, 2compli, Deloitte, VCFO Group and submitters 23, 26, 42, 80, 85, 113, 160

[90] Chrystall Law, Stephens Lawyers, Property Brokers, Unity, AML360, Property Brokers, Nolans, Deloitte and submitter 56

[91] Risk Robin, Kiwi Wealth

[92] Cygnus Law, FNZ, Reserve Bank of New Zealand and submitter 188

Business risk assessment requirements

59. Most submitters considered the requirements in section 58 are still appropriate and do not require any changes.[93] However, some submitters identified areas for improvement, such as removing overlap between requirements and providing more clarity about what is required by various subsections, particularly sections 58(a), (f), (g), and (h).[94] Submitters noted that some of the requirements are not fully relevant to all businesses, which could lead to disproportionate compliance costs and businesses treating the requirements as a "tick box" exercise, particularly where supervisors expect a large amount of detail about niche situations.[95]

60. A small number of submitters were opposed to the current requirements in general.[96] **Oak Park Chartered Accountants** and **Submitter 40** considered the current requirements are a "bureaucratic indulgence" or an "overkill", and **Grey Street Legal** did not consider that businesses should be required to formally assess the risk of every customer or transaction and thought the risk assessment and compliance programme provided little value to their business.

61. A couple of submitters noted there should be a better distinction between customer risk assessments and business risk assessments, and that the current requirements conflate the two. **Submitter 134** and **AML360** also thought risk assessments should look at both inherent and residual risks, while **Risk Robin** thought the Act should encompass a rational and defendable risk framework that supports businesses creating functional risk profiles.

Balancing prescription with risk-based obligations

62. A risk-based approach is fundamentally at odds with a prescriptive approach. We noted that New Zealand's framework attempts to strike the appropriate balance between these two approaches and noted that some obligations are tightly prescribed or have minimum standards while others should be left to the business to implement. We sought views about whether the Act achieves the right balance, as well as whether some areas require minimum standards. We also sought views about the role that guidance should play in implementing a risk-based approach.

What is the right approach, and are we achieving the right balance?

63. Almost all submitters were supportive of a risk-based approach generally being taken. Some submitters indicated that the Act currently achieves the right balance between these approaches,[97] but a large number of submitters thought there could be less[98] or more[99] prescription. **Lane Neave** noted that a pure risk-based approach can be challenging for

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[93] Aro Advisors, FNZ, Unity, ASB, BNZ, Dentons Kensington Swan, NZBA, Richardsons, Bridging Finance, private Box, Kendons, Law Box, AuditsAML, 2compli, Carson Fox, Deloitte, VCFO Group and submitters 6, 26, 42, 61, 85, 95, 113, 116, 160, 188

[94] Mainland Capital, HSBC and submitters 25, 161

[95] Boutique Investmetn Group, 2compli, Nolans, Cleland Hancox and submitters 92, 103, 106, 113, 164,

[96] submitter 54

[97] NZGIF, AML360, Compliance Plus, Richardsons, Law Box and submitters 95, 116, 188

[98] RITANZ, Calibre Partners, CA ANZ, ADLS, Grey Street Legal, Barfoot and Thompson, Financial Services Council, Boutique Investment Group, Dentons Kensington Swan, BlockchainNZ, Bridging Finance, Private Box, Carson Fox, Nolans, Cleland Hancox, Ausfix Forex Brokers, VCFO Group and submitters 21, 22, 26, 40, 53, 54, 61, 103, 165

[99] Simpson Grierson, Reserve Bank of New Zealand and submitters 85, 113, 161, 166

businesses to implement in the current regime, while **HSBC** thought the regime should either be purely risk-based or purely prescriptive as the current approach leads to unclear and inconsistent expectations from regulators. **Sharesies** and **Blockhain NZ** noted that a more risk-based approach would support greater adoption of technological solutions to identify and manage risks. **Submitter 217** highlighted that not all reporting entities have the capacity to conduct regular risk assessments, therefore, prescriptive guidelines would be helpful for them.

64. Several submitters considered that the requirements for low-risk businesses and products are disproportionate, and that more efforts should be made to identify categories of low-risk products and businesses and provide regulatory relief.[100] Submitters also identified areas where current requirements are inconsistent with a risk-based approach, such as the current requirements for trusts, or some of the requirements for written procedural records being kept.[101]

65. Some submitters considered that the main challenge is not with the requirements but with how they are applied by the supervisors or auditors.[102] **ADLS** considers there is a tendency for regulators to provide conservative 'directives' to provide assurance and resolve ambiguity, while **NZLS** and **Public Trust** similarly noted a tendency for regulators to adopt the most conservative position available. **FNZ** noted that supervisors do not appear to consider a business' risk assessment when dealing with a purported compliance failure, while **Compliance Plus** thought supervisors should not be able impose their own assessments about risks or make directions to the same effect.

Is prescription ever appropriate?

66. Most submitters considered that prescription is sometimes appropriate, but only where minimum and consistent standards are required that should apply regardless of the type of business or associated risks.[103] For example, submitters considered that minimum standards are appropriate for suspicious activity reports, and identity and verification requirements.[104] Where prescription is not required, **ASB** and **NZBA** considered that obligations should be framed as "as warranted by the risk of money laundering or terrorism financing". However, a small number of submitters disagreed that some obligations require minimum standards to be prescribed.[105]

67. **FSF** noted that prescription can have the benefit of providing certainty as to what is required. In that vein, several submitters identified areas where greater prescription could be useful, such as dealing with high-risk countries, ongoing CDD, verification of identity and address information and understanding the nature and purpose of a business relationship.[106] **Submitter 108** considered there should be a different approach to prescribing some requirements, such as setting verification standards for CDD. However, **Mainland Capital** noted that prescribed requirements can be hard to change once made.

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[100] Financial Services Council, ATAINZ, Unity, ICNZB, Mainland Capital, Boutique Investment Group, FSF, Aro Advisors, Calibre Partners, FNZ, AuditsAML, and submitters 56, 58, 217

[101] NZGIF, Chrystall Law, Sharesies, submitters 106, 160

[102] Financial Services Council, Tim Brears, NZGIF, Stephens Lawyers, Bridging Finance, submitters 26, 85, 92, 103

[103] ASB, NZBA, FNZ, Easy Crypto, PwC, ADLS, NZXWT, Lane Neave, Cleland Hancox, Carson Fox, 2compli, AuditsAML, Kendons, Private Box, Ausfix Forex Brokers and submitters 7, 21, 22, 23, 25, 26, 40, 42, 44, 53, 58, 80, 85, 92, 113, 118, 161, 164, 165, 174

[104] Easy Crypto, FNZ, Kiwi Wealth, ICNZB, Dentons Kensington Swan, submitter 188

[105] Bridging Finance and submitters 6, 54, 71, 103, 116, 166

[106] Tim Brears, BNZ, Elevate, Unity and submitter 40

What is the role of guidance?

68. A common theme raised by submitters is the need for improved guidance and assistance from regulators about risk assessments and guidance more generally. Submitters noted that a greater amount of high-quality, practical, and relevant guidance would greatly assist businesses in applying a risk-based approach as well as understanding their obligations.[107] In particular, submitters noted the need for more:

    - granular and sector specific guidance and training, particularly where it is developed in consultation with industry stakeholders and uses simple and straightforward language;[108]examples of best practices, such as risk assessments for low- and medium-risk businesses;[109]
    - checklists, templates, or step-by-step instructions, particularly for compliance programmes and risk assessments;[110]
    - easily accessible and user-friendly online tools and resources, noting challenges with using goAML or finding information on supervisor's websites (see further *Improving the quality of reports received*);[111]

69. However, some submitters noted that the current framework can lead to guidance practically having the status of law or go beyond what is required in law.[112] In particular, **Sharesies** noted that, because guidance sets out supervisory expectations, it can be a challenge for businesses to deviate from the position in guidance due to a fear of public censure or legal action. They also noted there is limited dialogue when guidance is being developed, and no ability for supervisors to 'approve' alternative approaches which means businesses can be hesitant to take innovative approaches. **Lane Neave** suggested that a better approach would be to have one agency responsible for providing guidance in order to remove ambiguity and help ensure proper and consistent compliance.

Capacity of smaller and larger reporting entities

70. There are a broad range of businesses that have AML/CFT obligations, and we noted that it can be sometimes be difficult to reflect this when developing the regime. We asked whether the regime appropriately reflects the size, complexity, and resources available to the range of businesses with obligations.

71. Most submitters did not consider the regime strikes the appropriate balance,[113] with several noting that the regime takes a largely "one size fits all" approach, particularly in relation to

[107] Securities Industry Association, NZLS, Polson Higgs, Kiwi Wealth, HSBC, PwC, Aro Advisors, ADLS, Easy Crypto, Private Box, Simpson Grierson, Deloitte, Kendons, Carson Fox, Bridging Finance, AuditsAML, and submitters 21, 42, 44, 54, 85, 106, 113, 116, 118, 161, 164, 165, 188

[108] Financial Services Council, Bit Prime, Public Trust, Snowball Effect, Aro Advisors, Easy Crypto, Law Box, AuditsAML, 2compli, Cleland Hancox, Simpson Grierson, Ausfix Forex Brokers and submitters 25, 44, 92, 118, 166, 174

[109] Financial Services Council, Rachel Lattie, ASB, ICNZB, AML360, BNZ, NZBA, Boutique Investment Group, Private Box and submitters 103, 106, 166

[110] Tim Brears, Chrystall Law, Kendons, Private Box, and submitter 95

[111] Boutique Investment Group, Richardsons, Kendons submitters 40, 113, 116

[112] ADLS, ICNZB, FNZ, ICNZB, AuditsAML and submitter 25

[113] Financial Services Council, AG Kosoof & Co, Mainland Capital, NZBA, AML360, Easy Crypto, Cleland Hancox, Deloitte, Nolans, Carson Fox, 2compli, AuditsAML, Private Box, Retail Commercial, Bridging Finance, Riverlea

some obligations such as CDD.[114] While several submitters noted the impact on small businesses or businesses that only provide a small number of captured activities,[115] the **Financial Services Council** noted that some large and complex entities may also have low risks and that this is not properly recognised. In a similar vein, **Milford Asset Management** thought more could be done to support high trust and low risk entities engaging with one another.

72. **AG Kosoof & Co** noted that the lack of an appropriate balance has led them ceasing to offer captured activities in their rural community in order to avoid AML/CFT obligations, and **David Roughan** indicated that they have ceased onboarding new clients (see further *General comments*). **Grey Street Legal** noted that it can be difficult to keep staff encouraged to continue with compliance, particularly in low-risk situations, while **Submitters 44** and **106** noted that resources are not always being placed where risks are with the current balance. **Stephens Lawyers** noted the current approach is inconsistent with administrative law principles in that businesses are not empowered to determine how they conduct their business.

73. As for the cause of the imbalance, some submitters identified that it results from the overly complex approach taken to implementing the regime, with a large number of agencies, obligations, regulations and guidance material and no central source of information to make it easier for businesses to understand what is required. Submitters noted that it can take a lot of effort from small businesses to understand what is required, let alone how compliance can be achieved.[116] Several submitters also identified that there are a significant number of 'minimum level' compliance obligations that apply to all entities regardless of their size, complexity, or risk.[117]

74. Several submitters noted that a greater adoption of the risk-based approach would resolve the imbalance, including providing better guidance, simplifying some obligations, providing greater regulatory relief through class exemptions, or setting *de minimis* thresholds for some activities.[118] However, submitters also noted that there is an inherent tension with balancing obligations and ensuring smaller businesses are not made more vulnerable to misuse,[119] with **Submitter 160** noting that risk, not size, should be the primary determinant of obligations. **HSBC** also noted that a 'pure' risk-based approach may be challenging for supervisors in terms of determining whether the approach taken by a business is appropriate.

Applying for exemptions from the Act

75. The exemption provisions under section 157 allow low-risk businesses to seek relief from various obligations and ensure that their regulatory burden is proportionate to risks to which they are exposed. We identified a number of areas of the current exemption process that

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Finance Limited, Ausfix Forex Brokers and submitters 26, 40, 42, 44, 53, 54, 71, 80, 85, 92, 95, 103, 113, 114, 118, 161, 164, 165, 166, 174, 188

[114] NZGIF, Stephens Lawyers, Dentons Kensington Swan, submitter 108

[115] Rachel Lattie, Polson Higgs, CA ANZ, ATAINZ, ICNZB, AML360, Retail Commercial, Law Box, AuditsAML, 2compli, Nolans, Deloitte, Cleland Hancox, Kendons and submitters 22, 25, 44, 53, 80, 92, 95, 106, 161, 164, 165, 166, 174

[116] AG Kosoof & Co, BNZ, Cygnus Law, Unity, Mainland Capital, submitters 106, 188

[117] CA ANZ, Nolans and submitters 71, 80, 92, 161, 188

[118] NZGIF, HSBC, Mainland Capital, Bridging Finance, Retail Commercial, ICNZB, AuditsAML, BNZ, 2compli, Deloitte, Cleland Hancox and submitters 23, 25, 26, 53, 58, 71, 103, 114, 118, 160, 161, 165, Nolans, 188

[119] NZGIF, AML360, Kendons and submitters 61, 113, 160, 164

should be reviewed. We also noted the FATF's finding that it was not clear that all the exemptions granted were in cases of proven low ML/TF risks.

76. Most submitters thought that exemptions are still needed to ensure the regime operates effectively and flexibly. [120] Submitters noted that a well-functioning exemptions framework can provide a range of benefits such as reducing compliance costs, mitigating unintended consequences, providing certainty to businesses, and ensuring that innovation is not stifled. However, some submitters did not think exemptions are needed, and would rather see the introduction of *de minimis* thresholds and all businesses treated the same.[121] In addition, a small number noted that exemptions may be less relevant if the risk-based approach is applied to a greater extent. [122]

Potential improvements we identified

77. The majority of submitters thought there should be a different decision maker to the Minister of Justice for exemptions.[123] Submitters thought the change would result in better and more timely decisions, provided there is sufficient opportunity for input from the business.[124] Most thought the decision maker should be an agency-level decision maker such as the Secretary of Justice, the supervisor or FIU,[125] while some thought there should be a committee responsible for considering exemptions.[126] However, some thought the Minister of Justice should remain as decision maker,[127] with **NZGIF** noting that greater use of regulatory exemptions could reduce the associated workload.

78. Most submitters thought the decision-making factors set out in section 157(3) are largely still appropriate.[128] Some submitters identified areas where factors could be further clarified or enhanced, such as including more consideration about the nature of the business, explicitly stating how factors are weighted, and clarifying what particular risks need to be considered.[129] **Boutique Investment Group** thought "practical necessity" and "broader social imperatives" should also be included as factors.

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[120] ADLS, Boutique Investment Group, BNZ, Dentons Kensington Swan, HSBC, FNZ, FSF, Kiwi Wealth, NZGIF, NZX Clearing, SkyCity, Russell McVeagh, Trustees Executors Limited, Bridging Finance, Retail Commercial, Private Box, Kendons, Nolans, Simpson Grierson, Deloitte, MERW Client, Ausfix Forex Brokers and submitters 1, 21, 22, 23, 26, 40, 44, 54, 61, 71, 85, 92, 160, 165, 174, 188

[121] Aro Advisors, Richardsons, Law Box, 2compli and submitters 25, 42, 58, 113, 166

[122] AuditsAML and submitters 103, 117

[123] AuditsAML, BNZ, Boutique Investment Group, FSF, HSBC, ICNZB, Kiwi Wealth, Russell McVeagh, SkyCity, Private Box, Kendons, Law Box, 2compli, Simpson Grierson, MERW Client, Ausfix Forex Brokers and submitters 23, 40, 53, 58, 61, 71, 80, 160, 165

[124] NZX Clearing, Private Box, BNZ, 2compli, HSBC, NZGIF, Russell McVeagh, Simpson Grierson, Ausfix Forex Brokers and submitters 23, 40, 71, 160, 165, 188

[125] AduitsAML, Russell McVeagh, SkyCity, Law Box, Simpson Grierson HSBC, NZX Clearing, 2compli, Simpson Grierson, Kiwi Wealth, ICNZB, Boutique Investment Group, BNZ, MERW Client, Kendons, Deloitte and submitters 23, 53, 61, 160

[126] Boutique Investment Group, Ausfix Forex Brokers and submitter 80

[127] Richardsons, Nolans and submitters 1, 7, 21, 22, 26, 42, 85, 95, 113, 118, 166,

[128] BNZ, Boutique Investment Group, Kiwi Wealth, HSBC, Richardsons, Private Box, Kendons, 2compli, Simpson Grierson, Deloitte and submitters 21, 26, 58, 80, 92, 95, 160, 188

[129] AuditsAML, BNZ, ICNZB, Kiwi Wealth, Deloitte, and submitter 25, 40, 53, 92, 160, 165

79. Most submitters thought exemptions should only be granted in instances of proven or assessed low risk.[130] Submitters thought the Act or guidance should clearly articulate what would be considered low risk,[131] with most submitters favouring assessing the risk of the business[132] rather than the risk of the exemption,[133] or a combination of the two.[134] However, a substantial minority of submitters did not consider exemptions should only be able to be granted in instances of proven low risk, [135] with some preferring that compliance costs are balanced against risks when making a decision.[136] Others noted that low risk can sometimes be hard to prove and requiring proof may incentivise deliberately inaccurate risk assessments by businesses.[137]

80. Most submitters thought the Act or guidance should specify what applicants need to provide as doing so would ensure clarity of process, improve accessibility and transparency, and promote consistency.[138] However, some disagreed that there should be further requirements prescribed, with others also noting the need to retain flexibility in the process.[139]

81. Almost all submitters supported there being a simplified process when renewing an exemption.[140] Some thought the process should focus on any changes since the original exemption, or on how the business has complied while subject to an exemption.[141] **NZX Clearing** and **Ausfix Forex Brokers** thought a standardised or online application process would assist. Two submitters[142] did not think there should be a simplified process

82. Finally, submitters were split on whether there should be any other avenues beyond judicial review where the Minister decides not to grant an exemption. A small number of submitters were in favour of an alternative approach such as arbitration or an independent review.[143] A similar number of submitters disagreed that there should be an alternative, [144] with **Boutique Investment Group** noting that post hoc reviews are generally unhelpful and are time intensive.

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[130] AuditsAML, ICNZB, BNZ, Kiwi Wealth Red Crayon, Bridging Finance, Retail Commercial, Private Box, Law Box, 2compli, Nolans, Simpson Grierson, Carson Fox, Deloitte, Ausfix Forex Brokers, VCFO Group and submitters 6, 7, 21, 23, 25, 26, 53, 58, 61, 80, 85, 103, 113, 118, 166, 188

[131] Ausfix Forex Brokers and submitters 21, 102

[132]AuditsAML, ICNZB, Kiwi Wealth Retail Commercial, Private Box, Law Box, Ausfix Forex Brokers, VCFO Group and submitters 21, 80

[133] BNZ and submitters 42, 61, 113, 160

[134] Carson Fox, Simpson Grierson and submitters 26, 53

[135] Boutique Investment Group, Cygnus Law, HSBC, NZGIF, Richardsons, Kendons, and submitters 1, 40, 44, 54, 92, 95, 160, 165

[136] Cygnus Law, NZGIF, Boutique Investment Group, Security Industries Association, submitter 54

[137] HSBC and submitters 40, 92, 160

[138] ADLS, AuditsAML, HSBC, ICNZB, NZX Clearing, Richardsons, Retail Commercial, Private Box, Kendons, 85, Law Box, 2compli, Carson Fox, Deloitte, BNZ, Boutique Investment Group, Mainland Capital, NZX Clearing, VCFO Group and submitters 1, 6, 7, 21, 22, 23, 25, 26, 44, 53, 58, 61, 103, 113, 118, 160, 188

[139] Boutique Investment Group, Simpson Grierson, Ausfix Forex Brokers and submitters 40, 54, 92, 160, 165

[140] ADLS, Dentons Kensington Swan, HSBC, NZGIF, AuditsAML, FSF, ICNZB, Kiwi Wealth, Mainland Capital, Carson Fox, BNZ, Private Box, Ausfix Forex Brokers, VCFO Group and submitters 21, 25, 26, 44, 53, 54, 92, 103, 118, 160, 165

[141] ADLS, NZX Clearing, NZGIF, HSBC, FSF, and submitters 54 160,

[142] Law Box and submitter 113

[143] AuditsAML, ICNZB, Retail Commercial, Private Box, Nolans and submitters 1, 21, 25, 26, 40, 53, 61, 160, 165

[144] BNZ, Boutique Investment Group, Richardsons, Kendons, Deloitte, Ausfix Forex Brokers and submitters 6, 7, 22, 23, 44, 58, 80, 113

Other potential improvements identified by submitters

83. A number of submitters considered that there are other improvements that could be made to the exemptions function.[145] These included:

- greater clarity and transparency over the process and reasoning applied, including providing more guidance about what is required, setting statutory timeframes, and making previous exemptions more accessible;[146]
- simplifying and/or formalising the process for applying, which could include consideration as to whether a Statutory Declaration is required as these can be difficult for overseas businesses to fulfil;[147]
- clarifying the extent to which exempt businesses should be supervised, as businesses which are fully exempt are not reporting entities;[148]

Mitigating unintended consequences

84. This section of the consultation document considered whether the AML/CFT regime can do more to mitigate the potential unintended consequences, how the regime can better protect the need for people to access banking services, and if there are any other unintended consequences of the regime.

De-risking and financial exclusion

85. A large number of submitters commented on the potential for the regime to exclude people and businesses from the financial system. [149] Several submitters thought the regime is too blunt and generic in its focus,[150] particularly with some of the requirements for identity and address documentation with which some demographics can struggle to comply.[151] Some submitters noted that de-risking and financial exclusion is heavily impacting remittances, particularly to the Pacific, and driving people into riskier and ultimately more expensive situations such as relying on cash.[152]

86. In terms of how to address the issues with de-risking and financial exclusion, several submitters suggested it should be harder (but not impossible) for businesses to deny basic

[145] ADLS, AuditsAML, Boutique Investment Group, Dentons Kensington Swan, HSBC, ICNZB, Kiwi Wealth, NZX Clearing, Transparency International NZ, 2compli, Deloitte, Ausfix Forex Brokers and submitters 6, 7, 21, 23, 26, 40, 54, 58, 80, 113, 165,

[146] Transparency International NZ, ADLS, Dentons Kensington Swan, Carson Fox, Deloitte and submitter 26

[147] HSBC, Boutique Investment Group, ADLS, NZX Clearing, Deloitte, Ausfix Forex Brokers and submitters 21, 26, 61, 80, 113, 160,

[148] Kiwi Wealth

[149] Richardsons, Bridging Finance, Samoa Money Transfer, Retail Commercial, Private Box, Snowball Effect, Kendons, Maxima, FinCap,Law Box, AuditsAML, 2compli, CA ANZ, HSBC, Westpac, Nolans, Simpson Grierson, Deloitte, North Law, Patrick Adamson, Banking Ombudsman, BitPrime, FNZ, Kiwi Wealth, Securities Industry Association, Unity, ASB, BNZ, ICNZB, Financial Advice NZ, Mainland Capital, Boutique Investment Group, Sharesies, National Council of Women NZ, Dentons Kensington Swan, FSF, NZBA, Compliance Plus, AML360, Reserve Bank of New Zealand, Ausfix Forex Brokers and submitters 1, 6, 7, 21, 22, 23, 25, 26, 40, 42, 44, 53, 54, 56, 58, 61, 71, 85, 92, 95, 103, 108, 113, 116, 118, 160, 161, 164, 165, 166, 178, 188

[150] submitters 40, 56

[151] FinCap, HSBC, Pacific Lawyers Association and submitter 160

[152] ICNZB, Samoa Money Transfer and submitter 217

banking services.[153] Others considered that the regime should be more outcomes-focused to avoid legitimate business being lost.[154] Some suggested that a more risk-based approach could be achieved through rebalancing some obligations, using exemptions to provide for *de minimis* levels below which CDD is not required, better recognising alternative options for verifying a person's identity, or providing a centralised or more streamlined CDD process.[155] **Submitter 217** suggested that the central bank could offer exchange settlement accounts and allow entities who have been "de-risked" to still hold a bank account. They also submitted that banks should be granted a form of "safe harbour" that shows they have addressed the appropriate level of risk governance, so they do not take the approach of de-risking an entire industry.

Other unintended consequences which should be resolved

87. Several submitters identified other unintended consequences or areas where the regime is not working properly that should be addressed, including:

- increasing discrimination and racism against specific parts of societies, with minorities unjustifiably being considered higher risk;[156]
- the **National Council of Women NZ** noted the regime can have a disproportionate impact on women as a disproportionate number of women live in poverty or because many women run small businesses;
- there are significant compliance costs for businesses, particularly for small and low-risk entities (see further *Capacity of smaller and larger reporting entities*);[157]
- accessing bank accounts for some organisations (e.g. charities or other non-profit organisations) can be unreasonably time consuming[158]
- there are different approaches being taken by businesses due to misinterpretation or the lack of detailed guidance which results in regulatory arbitrage (see further *Agency supervision model*);[159]
- increasing the potential for cyber-security or privacy breaches (see further *Privacy and protection of information*);[160]

[153] ASB, ICNZB, AML360, FinCap, Compliance Plus and submitter 40

[154] Unity Pacific Lawyers Association, Kiwi Wealth, Reserve Bank of New Zealand and submitters 56, 160

[155] Boutique Investment Group, Deloitte, Banking Ombudsman, Sharesies, National Council of Women NZ, Mainland Capital, HSBC, Westpac, NZBA, Security Industries Association, Pacific Lawyers Association, Reserve Bank of New Zealand and submitters HSBC, Simpson Grierson and submitters 54, 160, 188

[156] submitters 1, 85, 108, 118

[157] Bridging Finance, Maxima, AuditsAML, Nolans, Patrick Adamson, ICNZB, Financial Advice NZ, Sharesies, National Council of Women NZ and submitters 40, 92, 161, 164, 165, 188,

[158] Reserve Bank of New Zealand, Patrick Adamson and submitter 166

[159] Kiwi Wealth, Financial Advice NZ

[160] Mainland Capital

The role of the private sector

Partnering in the fight against financial crime

88. We asked a series of questions to explore what more the Act could do to enable a greater partnership between the private sector and the Government to combat financial crime, including whether there should be a greater sharing of information between the public and private sectors. We also asked submitters what they considered to be the ideal future for public and private sector cooperation, and what barriers exist that prevent that future from being realised.

89. Overall, most submitters were supportive of the exploring of the Act enabling greater private sector collaboration and coordination, with only a few submitters opposed to the idea.[161] **Compliance Plus** and **Submitter 44** were only supportive of voluntary collaboration, with **Deloitte** and **Submitter 92** noting concerns about the burden that any change of this nature would place on reporting entities, particularly small entities.

90. Submitters considered that there could be better private and public sector collaboration through better information[162] sharing such as CDD or PEP information,[163] or intelligence and risk information (including information on what has resulted from a SAR);[164] more consultation and engagement on guidance,[165] and better coordination with professional organisations to ensure those who have been involved with financial crime cannot become members.[166]

91. Submitters identified restrictions on information sharing as the main barrier to better collaboration,[167] as well as government bureaucracy, systems, and attitudes towards collaboration.[168] These barriers could be overcome by establishing a dedicated information sharing framework or organisation like what exists in the UK or Singapore,[169] however others noted the need for fully considering the potential for anti-competitive behaviour or the potential for negative human rights impacts.[170]

92. Other suggestions included seconding industry staff to government agencies,[171] running more collaborative workshops to enable free and frank discussion,[172] creating a Pharmac-style

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[161] VCFO Group and submitters 22, 54, 71

[162] Richardsons, Bridging Finance, Private Box, Kendons, AuditsAML, Carson Fox, Deloitte, Ausfix Forex Brokers, VCFO Group and submitters 6, 7, 21, 25, 26, 40, 42, 54, 58, 80, 85, 92, 113, 161, 174

[163] Financial Services Council, Medical Assurance Society, Mainland Capital, Boutique Investment Group and submitters 42, 92, 174. See further *Duplication of CDD*

[164] BNZ, Bridging Finance, AuditsAML, Carson Fox, HSBC, Nolans, Easy Crypto, Kiwi Wealth, Securities Industry Association, ICNZB, FSF, Compliance Plus and submitters 106, 160. See further *Framework for sharing risk information*

[165] Private Box, Kendons, Deloitte, Kiwi Wealth, Boutique Investment Group, FSF, NZBA, Ausfix Forex Brokers and submitters 44, 54

[166] Aro Advisors

[167] BNZ, Financial Services Council, HSBC, Medical Assurance Society, FSF and submitters 25, 42, 53, 106, 188

[168] Deloitte, VCFO Group and submitters 40, 44, 54, 92, 118, 174

[169] HSBC and submitter 160

[170] ASB, NZBA, Deloitte and submitters 21, 160

[171] ASB, NZBA

[172] NZGIF, Cygnus Law, AML360 and submitter 106

centralised model for CDD and PEP screening,[173] including IRD and MSD in the regime,[174] and having a more accessible central website for AML issues.[175]

Helping to ensure the system works effectively

93. A related topic on which we asked questions was whether the Act should have a mechanism that enabled feedback to be provided to the Government on the operation and performance of the Act on an ongoing basis. We noted that the Act does not currently require feedback to be sought or collaborative discussion to occur on a regular basis, and that the private sector is not able to participate in the AML/CFT National Coordination Committee.

94. Almost all submitters thought the Act should explicitly require regular reporting and reviews on how the Act is performing[176] with only a few submitters opposed, largely because they did not consider the Act needed to be amended to allow it.[177] Submitters suggested regular (e.g. yearly or twice yearly) surveys, regular reviews of the performance of the Act and regulations, or regular assessments of the costs and benefits of the regime.[178] However, the **Boutique Investment Group** only saw value in mandating a regular review or feedback if it will lead to changes actually being considered.

95. Alternatively, submitters thought there should be an independent body responsible for assessing the performance of the Act or dealing with complaints as they arise.[179] Submitters also thought there could be a body established for private and public sector engagement, such as a permanent advisory group (provided its activities were sufficiently transparent).[180]

Powers and functions of AML/CFT agencies

Powers of the Financial Intelligence Unit

Allowing information to be requested from other businesses

96. The FIU has the ability to request additional information from reporting entities under section 143 where it is relevant for analysing information received. However, this does not extend to businesses who are not reporting entities but who may have relevant information, such as airlines or travel agents, but which the FIU may need to obtain in time-sensitive situations. We asked whether the FIU should have this power, and if so, under what circumstances the power should be used.

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[173] Boutique Investment Group, Mainland Capital and submitters 92, 174. See further *General comments*

[174] ICNZB, AuditsAML

[175] Kendons

[176] Richardsons, Bridging Finance, Retail Commercial, Private Box, Kendons, AuditsAML, 2compli, Carson Fox, Nolans, Ausfix Forex Brokers and submitters 1, 6, 7, 21, 25, 26, 40, 42, 44, 53, 54, 58, 71, 92, 108, 113, 118, 160, 161, 165, 166, 174

[177] Deloitte, Mainland Capital, NZBA, AML360 and submitter 22

[178] Retail Commercial, 2compli, Nolans, AuditsAML, BNZ, ICNZB, Kiwi Wealth, Securities Industry Association, Ausfix Forex Brokers, VCFO Group and submitters 26, 44, 45, 54, 92, 108, 160, 165

[179] AML360 and submitters 7, 42

[180] Aro Advisors, Dentons Kensington Swan, Boutique Investment Group and submitters 113, 117, 161, 188

97. The majority of submitters were supportive of providing the FIU with the proposed power,[181] with some submitters opposed to the idea.[182] Submitters who were supportive of the power considered it could be a powerful tool to combat money laundering and terrorism financing and enable the FIU to prevent illicit activity from occurring. Submitters who were opposed indicated that the power would be an overreach which is not justified, given the existing powers the FIU already has.[183]

98. **Boutique Investment Group** was opposed to the FIU having an unfettered power to request information from businesses without a clear justification, and **Dentons Kensington Swan** was supportive of a power that can only be used when absolutely necessary. The **Privacy Commissioner** noted general concerns with the proposal.

99. Most submitters agreed that the power should be constrained so it is used only in the appropriate circumstances and correctly balances competing interests such as the *Privacy Act 2020*.[184] Constraints could include only allowing the power to be used when the FIU is genuinely investigating a suspected offending or in respect of highly risky individuals, only allowing the power to be used to analyse information already received, heavily restricting who the information could be shared with, having sufficient oversight of how the power is used, or requiring a court order to be obtained.[185] However, a small number of submitters considered there should be no constraints.[186]

100. **ASB** and **NZBA** also considered that the Act should clearly articulate what information can be requested and how businesses should respond following full consultation with the Privacy Commissioner. **Boutique Investment Group** and **Easy Crypto** also noted that the FIU would need to ensure its processes and platforms (e.g. goAML) are appropriately set up to enable easy provision of information (see further *Improving the quality of reports received*).

Providing for ongoing monitoring of transactions and accounts

101. We asked whether the power in section 143 should be expanded to allow the FIU to conduct ongoing monitoring of accounts. This would enable the FIU to receive real-time information about the activity that highly risky individuals are engaging in, which could be relevant to potential criminal or civil investigations. We acknowledged in the document that any such power would need to be tightly constrained (e.g. imposing strict time limits, limitations on when the power can be used, and/or requiring judicial authorisation) to ensure there are adequate privacy and human rights safeguards.

[181] NZGIF, HSBC, NZX Wealth Technologies, Aro Advisers, BNZ, Devender Anand, EasyCrypto, Kiwi Wealth, ASB, ICNZB, Mainland Capital, FSF, NZBA, Richardsons, Bridging Finance, Private Box, Kendons, AuditsAML, Carson Fox, Deloitte, Riverlea Finance Limited, Ausfix Forex Brokers, VCFO Group and submitters 1, 6, 7, 22, 23, 25, 26, 40, 42, 44, 53, 54, 58, 71, 80, 92, 95, 113, 116, 118, 165, 166, 174, 188

[182] Dentons Kensington Swan, Compliance Plus, AML360 and submitters 21, 161, 164

[183] Dentons Kensington Swan, Compliance Plus, AML360 and submitter 164

[184] NZGIF, NZX Wealth Technologies, EasyCrypto, ASB, BNZ, NZBA and submitter 188

[185] NZGIF, HSBC, Aro Advisers, Kiwi Wealth, ICNZB, BNZ, Dentons Kensington Swan, FSF, Private Box, AuditsAML, Carson Fox, Deloitte, Ausfix Forex Brokers and submitters 22, 25, 26, 40, 44, 53, 71, 80, 113, 116, 118, 188

[186] Kendons, VCFO Group and submitters 54, 113, 174

102. Overall submitters were mixed on whether the FIU should have this power. A majority of submitters supported the proposal,[187] but a large minority were opposed. Submitters who were supportive of the power thought it could result in further complex and high-risk investigations, while submitters who were opposed thought it would create significant compliance costs and noted that businesses are already responsible for conducting ongoing monitoring of customer accounts and transactions.[188] **BNZ** also queried why the FIU is not able to achieve this through existing tools. However, submitters generally considered that any such power, if it was introduced, should only be used rarely, and should require sufficient authorisation such as a warrant.[189]

Freezing or stopping transactions to prevent harm

103. This section explored whether the FIU (or the Commissioner of Police) should be given the power to freeze assets or stop transactions for the purpose of preventing harm and victimisation, and how we could avoid potentially tipping off suspected criminals when such a power is used.

104. The majority of submitters supported providing the FIU with a freeze power,[190] but some submitters noted that it should only be used in limited circumstances (e.g. money laundering has been proven or urgency required the freeze)[191] or that the Police would need to obtain a warrant to freeze the funds or there should be independent oversight.[192] The **Banking Ombudsman** noted that there would need to be careful consideration as to how a freeze power would be managed and communicated, as banks are proactive in identifying and acting on potential fraud. In a similar vein, the **NZBA** did not think the power should apply in instances of fraud or scams.

105. Aminority of submitters were opposed to the proposal.[193] Several noted that it may be difficult or impossible to implement for some businesses, particularly where fully or partially automatic process are used.[194] Others also noted that freezing transactions can be disruptive to businesses and harmful to third parties, particularly if the threshold for using the power is set too low,[195] and that the risk of tipping off would be too great.[196] The **Privacy Commissioner** noted potential concerns with the proposal from a privacy perspective.

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[187] FSF, Mainland Capital, ICNZB, Kiwi Wealth, Richardsons, Bridging Finance, BNZ, Private Box, Kendons, AuditsAML, Nolans, Ausfix Forex Brokers, VCFO Group and submitters 6, 7, 22, 23, 25, 26, 42, 54, 58, 80, 113, 116, 174

[188] NZBA, Dentons Kensington Swan

[189] Boutique Investment Group

[190] Bridging Finance, Retail Commercial, Private Box, Kendons, NZGIF, AuditsAML, Carson Fox, HSBC, Aro Advisors, Deloitte, Banking Ombudsman, Kiwi Wealth, ASB, ICNZB, Mainland Capital, FSF, NZBA, Riverlea Finance Limited, Ausfix Forex Brokers and submitters 1, 6, 7, 22, 23, 26, 40, 42, 44, 53, 58, 80, 85, 113, 118, 165, 166, 173, 174

[191] Deloitte, Mainland Capital, HSBC, NZBA, ASB, FSF, Richardsons and submitters 1, 7, 40, 80, 25

[192] AuditsAML, ICNZB Kiwi Wealth, Ausfix Forex Brokers and submitter 165,

[193] NZX Wealth Technologies, Nolans, FNZ, Boutique Investment Group, Compliance Plus, AML360 and submitters 21, 71, 92, 95, 160, 164

[194] NZX Wealth Technologies and submitter 160

[195] AML360, Boutique Investment Group and submitter 160

[196] Boutique Investment Group

106. Most submitters who commented thought that it would be difficult to avoid tipping off criminals (if at all possible).[197] Accordingly, submitters thought that the businesses' role should be limited to freezing the account, with the Police then being responsible for further communication.[198] Others similarly thought there would need to be clear procedures or processes for when and how the power is used,[199] while **Submitter 85** thought that the power should not allow the whole account to be frozen.

Secondary legislation making powers

107. This section of the consultation document asked a range of questions about the existing secondary legislation making powers to understand how we can use this legislation to ensure the regime is agile and responsive. We asked a number of questions about Codes of Practice, such as whether they are useful for businesses and whether the process is appropriate. We also asked some specific questions about forms and annual report making powers, and also whether AML/CFT Rules or similar would be useful for the regime.

108. Submitters generally supported the need for secondary legislation to provide further clarity and guidance for the system and considered the existing powers to be appropriate.[200] Several submitters noted that the powers are not used as expediently or as efficiently as they potentially could be,[201] with **ICNZB, AuditsAML** and **Submitter 165** suggesting that secondary legislation needs to be reviewed more frequently (see further *Helping to ensure the system works effectively*).

109. **Deloitte** and **Privatebox** suggested that centralising secondary legislation would be more efficient and allow for an easier revision and amendment process. **Submitter 60** also indicated that more notice as to when regulations are changing would be beneficial.

Codes of Practice

Do Codes of Practice provide value to the regime?

110. Generally, submitters agreed that Codes of Practice are a useful tool, but with some caveats. Submitters consider that Codes can provide further elaboration on what is required, which helps address the inherent diversity and complexity in the system, particularly where the Code is aligned with current good practice.[202]

111. Several submitters expressed a desire to see Codes used and updated more often,[203] with some submitters noting that the experience of IVCOP indicates that the power is not working properly.[204] A large number of submitters noted that it is important that Codes continue to be

[197] Private Box, AuditsAML, Carson Fox, HSBC, NZX Wealth Technologies, Deloitte, Banking Ombudsman, Kiwi Wealth, Boutique Investment Group, NZBA and submitters 21, 25, 40, 44, 58, 113, 188

[198] HSBC, NZBA

[199] BNZ, Deloitte, Private Box, and submitter 26

[200] Private Box, NZGIF, PwC, Miller Johnson, Cleland Hancox, FSF, Ausfix Forex Brokers, BNZ and submitters 25, 26, 42, 44, 113, 188

[201] PwC, FSF

[202] Richardsons, FNZ, Aro Advisors, Cygnus Law, VCFO Group and submitter 21

[203] Carson Fox, NZX Wealth Technologies, FNZ and submitters 161, 173

[204] NZGIF, Security Industries Association, Boutique Investment Group, FSF

voluntary,[205] are written simply,[206] are consistently applied and interpreted,[207] achieve the right balance of being generalised and prescriptive to ensure an appropriate risk-based approach,[208] and do not purport to extend the compliance requirements beyond what is required in the Act.[209]

112. Several submitters made suggestions for topics upon which new codes that could be issued, specifically: beneficial ownership; occasional transactions; high-risk customers and enhanced CDD; politically exposed persons; correspondent banking; source of Wealth/Source of Funds; ongoing CDD; account and transaction monitoring, suspicious activity reports; prescribed transaction reports; risk assessments; training; and monitoring and assurance including system assurance.[210]

Who should be responsible for making decisions?

113. Most submitters supported devolving the decision making for Codes to a lower level if doing so allowed for a more responsive and agile framework and still ensured sufficient oversight of the process.[211] Two considered the Chief Executives of the supervisors should become the responsible decision maker,[212] while some considered that the National Coordination Committee should become responsible.[213] **Securities Industry Association** and **Submitter 25** considered the decision making should be centralised and delegated to an operational decision maker.

114. Some submitters opposed delegating the power to issue Codes as this would result in less consistent and holistic decisions being made, or difficulties in holding decision-makers to account.[214] **Dentons Kensington Swan** considered that who decides to issue the Code is less important than the consultation that takes place before a Code is issued to ensure it is practical. **Deloitte** considered there was merit in having operational decision makers but considered there was value in retaining Ministerial oversight.

Should the Police be able to issue Codes of Practice?

115. Most submitters supported the Commissioner of Police being able to issue Codes of Practice on topics such as SARs, PTRs, transaction monitoring, and tipping off.[215] **HSBC**, **BNZ** and **Submitter 44** thought that the existing requirements to consult with industry and other stakeholders should apply before a Code is issued by the Commissioner.

116. However, a large minority of submitters were opposed to the Police issuing Codes of Practice as they thought it would be inappropriate and counterproductive given Police does not have

[205] ASB and submitter 160

[206] Cleland Hancox and submitter 85

[207] HSBC, ASB, NZBA

[208] AuditsAML, HSBC, ICNZB, Dentons Kensington Swan

[209] NZGIF, Mainland Capital, Compliance Plus

[210] NZBA, BitPrime, PwC, ASB, Kiwi Wealth, BNZ

[211] Richardsons, Kendons, NZGIF, Security Industries Association, NZBA, VCFO Group and submitters 25, 108, 160, 188

[212] Reserve Bank of New Zealand, BNZ and submitter 108

[213] Kiwi Wealth, AML360

[214] AuditsAML, ICNZB, Compliance Plus, Cygnus Law, Ausfix Forex Brokers and submitters 21, 42, 80, 92

[215] Richardsons, AuditsAML, HSBC, BNZ, Simpson Grierson, Cleland Hancox, Kiwi Wealth, BitPrime, Ausfix Forex Brokers and submitters 6, 22, 23, 25, 26, 40, 44, 53, 58, 80, 113, 166, 188

expertise in advisory or supervisory capacity.[216] They suggested that a better alternative would be for greater collaboration between the Police and regulators, as well as industry, to provide feedback and publish best practice guidance.

Does "equally effective means" inhibit the use of alternative approaches?

117. Most submitters considered that the current requirement of demonstrating "equally effective means" and notifying the supervisor presents a barrier to businesses opting out of a code, which in turn potentially stifles innovation and hesitancy from reporting entities.[217] Similarly, **Dentons Kensington Swan** and **Compliance Plus** considered that Codes should be voluntary and opting out a matter of practice rather than one of notice.

118. **Submitter 108** noted that the "equally effective means" barrier is exacerbated where the Code itself is explicit, meaning there are practically no alternatives. **Private Box** noted that supervisors may not be willing to accept that an alternative approach is equally effective, while **Submitter 160** noted that the pressure to comply could also come from third parties e.g. partner banks, auditors, and investors who expect compliance with the Code.

119. By contrast, **Submitter 188** considered the requirement impacts the ability to opt out of a Code of Practice but considers this difficulty to be justified. Given Codes are designed to set out a common minimum standard, businesses should need to demonstrate equivalent compliance to avoid the regime being undermined.

120. In a similar vein, **BNZ** disagreed that the "equally effective means" impacts the ability for businesses to opt out, however they considered that clarity about how equally effective means can be demonstrated would be useful. **ICNZB**, **Deloitte** and **AuditsAML** also agreed that clarity is needed for how businesses can demonstrate equal effectiveness, while **Submitter 164** noted the time and cost involved to come up with an alternative approach can be a burden.

What should be the role of explanatory notes?

121. **HSBC** agreed that clarity is needed on the legal position of explanatory notes, and some submitters noted apparent inconsistencies with how supervisors apply the notes and whether they are binding.[218]

122. A small number of submitters consider that explanatory notes are useful, but they should not be treated as anything other than guidance unless they are incorporated into the Code themselves.[219] **Compliance Plus** considers explanatory notes should be issued following the same process required to amend a Code if the note does more than provide an explanation.

Forms and annual report making powers

123. Most submitters thought it was appropriate for operational decision makers, such as Chief Executives, to be responsible for issuing or changing forms and annual reports if it makes the

[216] Kendons, Cygnus Law, ASB, Mainland Capital, NZBA, AML360 and submitters 1, 7, 21, 42, 85, 92, 160, 164, 165

[217] Private Box, NZGIF, AuditsAML, HSBC, Kiwi Wealth, Security Industries Association, NZBA, VCFO Group and submitters 7, 22, 26, 40, 44, 58, 85, 103, 164, 165

[218] NZGIF, Security Industries Association and submitter 188

[219] NZGIF, AuditsAML, BNZ, HSBC, Cleland Hancox, FNZ, Kiwi Wealth, Dentons Kensington Swan, VCFO Group and submitters 40, 44, 92, 108

regime more effective and responsive, provided sufficient consultation occurs and enough time for implementation is provided.[220] Some submitters were opposed to operational decision makers having this power, and preferred the status quo.[221]

124. **NZX Wealth Technologies** considered that the format of reports and forms should be kept consistent across all supervisors. Similarly, **Submitter 180** did not consider that the power to issue and amend forms should be delegated to operational decision makers but should be given to a centralised function to ensure the right level of consistency and expertise is applied. **AML360** also noted it is important for agencies to consider what data is available and whether it is quality information before requiring it to be provided as part of a form or annual report.

125. **Boutique Investment Group** agreed that, in theory, devolving the responsibility to a clearer, more flexible, and collaborative process is a good idea. However, they noted that the main risk would be for the reports to increase in size and increase compliance burden as a result, and that there should be a requirement that only demonstrably necessary information be included in the report or form.

AML/CFT Rules

126. Overall, submitters supported the development of AML/CFT Rules (or similar). A number of submitters considered Rules may be useful to provide certainty, particularly where certainty lowers compliance costs.[222] Some considered that Rules would replace Codes of Practice by providing a 'safe harbour'.[223]

127. In terms of who would issue Rules, some submitters considered supervisors would be the appropriate authority,[224] while other submitters suggested Ministers, the Ministry of Justice, National Coordination Committee, a centralised authority, or relevant professional bodies.[225]

128. Several submitters did not consider that Rules would provide any material benefits over regulations or Codes of Practice and should be created,[226] particularly as this would add complexity and risk moving the regime away from being risk based. **Submitter 160** also noted the risk of the process for making or amending rules being slow-moving, particularly if supervisors needed to agree and issue rules jointly.

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[220] Private Box, Kendons, AuditsAML, Aro Advisors, BNZ, Cleland Hancox, Kiwi Wealth, ICNZB, Mainland Capital, FSF, NZBA, Ausfix Forex Brokers and submitters 22, 23, 25, 40, 42, 44, 58, 80, 103, 113, 188, 160,

[221] Submitters 1, 26, 85, 118, 165, 166

[222] Bridging Finance, Retail Commercial, Private Box, Kendons, NZGIF, AuditsAML, 2Compli, Cleland Hancox, Aro Advisors, Cygnus Law, Kiwi Wealth, Security Industries Association, Dentons Kensington Swan, FSF, Security Industries Association, VCFO Group and submitters 6, 21, 22, 23, 25, 26, 40, 42, 58, 71, 85, 95, 113, 118, 165, 166, 188

[223] BNZ, Security Industries Association and submitter 188

[224] Private Box, Aro Advisors, FSF and submitters 26, 103, 165, 188

[225] BNZ, Securities Industry Association, Kiwi Wealth, Retail Commercial, Cleland Hancox, Cygnus Law and submitters 42, 165

[226] Carson Fox, SkyCity, Simpson Grierson, Mainland Capital, Compliance Plus, FNZ, AML360 and submitters 44, 92, 164

Information sharing

Direct data access to FIU information for other agencies

129. The FIU maintains a wealth of information that may be relevant to other agencies, including the AML/CFT supervisors. However, the FIU is currently only able to share information with other government agencies on a case-by-case basis, which is administratively burdensome for the FIU and means we are unable to realise the full value of the information. We asked submitters whether regulations should be issued for a tightly constrained direct data access arrangement which enables specific government agencies to query intelligence the FIU holds.

130. Most submitters supported the proposal,[227] provided the access and use of the information was tightly constrained and there were sufficient privacy and cyber security protections.[228] Several submitters were generally supportive of improving information sharing between agencies, while others thought the proposal would allow the regime to be more responsive and effective.[229] A minority of submitters were opposed to or concerned about the proposal,[230] largely due to privacy or confidentiality concerns.[231] Submitters also noted the need for sufficient checks and balances and oversight if direct data access if provided.[232]

Data matching to combat other offending

131. Information that is held by the FIU could also be used to combat other offending more effectively if it is matched with data that other government agencies hold. We asked submitters whether they would support the development of data-matching arrangements with the FIU and other agencies to combat other financial offending, including trade-based money laundering and illicit trade.

132. The majority of submitters supported this proposal,[233] noting that data matching would improve efficiencies within and across the regime, improve the ability of agencies to detect offending, and enable a cross-agency and whole-of-government approach to combatting financial crime.[234] Most submitters also did not consider that data matching would negatively impact the willingness of businesses to file SARs.[235] However, a few submitters were opposed to or concerned about the proposal, largely due to the potential privacy impacts.[236]

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[227] Private Box, Kendons, AuditsAML, CA ANZ, Aro Advisors, Westpac, Deloitte, Easy Crypto, Kiwi Wealth, RITANZ, ICNZB, FSF, Calibre Partners, Ausfix Forex Brokers and submitters 21, 22, 23, 25, 26, 42, 53, 58, 80, 85, 92, 113, 116, 165, 188,

[228] Deloitte, Easy Crypto, FSF, Westpac Easy Crypto, Richardsons and submitters 44, 113, 116, 188

[229] AuditsAML, Kiwi Wealth, RITANZ, Calibre Partners, Ausfix Forex Brokers and submitters 122, 165

[230] Dentons Kensington Swan, NZBA, Compliance Plus, AML360 and submitters 1, 40, 164, 166

[231] Compliance Plus, NZLS, NZBA, AML360, BNZ, Dentons Kensington Swan, Privacy Commissioner, Carson Fox, and submitters 42, 44, 164, 188

[232] Submitters 25, 40, 21

[233] Richardsons, Bridging Finance, Private Box, Kendons, AuditsAML, BNZ, Carson Fox, CA ANZ, Nolans, Deloitte, Kiwi Wealth, RITANZ, ICNZB, Boutique Investment Group, FSF, Calibre Partners, Ausfix Forex Brokers and submitters 6, 21, 25, 26, 40, 42, 53, 58, 80, 113, 116, 134, 160, 165, 166

[234] Richardsons, CA ANZ, Kiwi Wealth, AuditsAML, BNZ, ICNZB, Boutique Investment Group, Ausfix Forex Brokers and submitters 25, 42, 116, 134, 160

[235] AuditsAML, Kiwi Wealth, ICNZB, Boutique Investment Group, Ausfix Forex Brokers and submitters 25, 113, 116, 160

[236] BNZ, Compliance Plus, AML360, Dentons Kensington Swan, Privacy Commissioner, Deloitte, and submitters 1, 26, 85, 116, 164, 188

Licensing and registration

Registration for all reporting entities

133. This section of the consultation document asked a range of questions about whether reporting entities should be registered or licensed to a specific AML/CFT regime, and whether a levy would be appropriate to fund these regimes. We asked questions about how a registration or licensing regime might operate, who a licensing regime should apply to, who should be required to pay a levy, and what the value of the levy should be based on if one was adopted.

134. Most submitters did not support an independent AML/CFT registration regime.[237] These submitters argued that there would be a duplication of costs and efforts between a new registration regime and existing ones.

135. Some submitters supported an explicit AML/CFT registration regime,[238] however, most submitters supported a specific AML/CFT registration regime that has integration into existing registration regimes.[239] The majority of these submitters supported the FSPR being incorporated into the proposed registration regime. Some of these submissions suggested using other industry bodies for registration such as CA ANZ, NZLS, REANZ. The submitters argued that using existing registration regimes would reduce additional compliances costs and administrative burden of an additional regime. Some submitters only supported a registration regime if it was a simple administrative task.[240]

136. **BNZ** commented that attempts to align the FSPR to reporting entity lists have been problematic so definitional alignment may be required if it is pursued (see further *Definition of financial institution activities*). They also commented that it would be better to have an additional regime that reporting entities would hold alongside existing ones. **Public Trust** commented that if separate AML registration was implemented, the FSPA and AML regimes should be de-coupled and the AML purposes of the FSPA excised.

137. Submitters commented that they would support a targeted registration regime for reporting entities who were either not registered under existing bodies and regimes or were operating in high-risk sectors, such as VASPs and TCSPs.[241] **ADLS** commented that they support a targeted licensing regime for currently unregulated service providers, such as TCSPs who currently are not subject to any professional regulation whilst providing high risk services. **ASB** suggested the use of international risk-based models for registration of reporting entities.

138. **NZGIF** commented that although they support developing a way to identify which organisations have AML/CFT Act responsibilities, it is not clear how a registration regime would ensure visibility of businesses which do not register. **Russell McVeagh** commented that it would be up the business to identify they had AML/CFT obligations and make the registration, meaning it would be unlikely to make a substantive difference to entities intentionally or not intentionally complying. **Submitter 217** suggested that a list of registered

[237] Calibre Partners, Compliance Plus, Buddle Findlay, Financial Services Federations, Dentons Kensington Swan, Boutique Investment Group, Mainland Capital, Russell McVeagh, RITANZ, ADLS, Cygnus Law, Public Trust, Cleland Hancox, Carson Fox and submitters 71, 160, 164, 166, 170

[238] ICNZB, NZLS, BlockchainNZ, BNZ, Private Box, Ausfix Forex Brokers and submitters 42, 80, 113, 118

[239] Boutique Investment Group, Mainland Capital, Kiwi Wealth, FNZ, Cygnus Law, Cleland Hancox, Simpson Grierson, Aro Advisors, and submitters 44, 53, 92, 95, 188, 217

[240] FNZ, CA ANZ, Simpson Grierson

[241] ADLS, Guardian, Sky City, Devender Anand and submitter 188

entities should not be public information. From their experience, a public register meant that banks would use it for screening, and subsequently de-risk entities.

AML/CFT licensing for some reporting entities

139. Submissions on licensing for some reporting entities followed similar themes to registration for all entities. A small number of submitters were in favour of a broad licensing system, but most were opposed.[242]

140. Some submitters commented that they saw little merit in licensing reporting entities,[243] noting they are already subject to licensing regimes and a further licensing system would only add to their costs and administrative burden.[244] **Dentons Kensington Swan** and **NZLS** generally noted that lawyers already go through a robust licensing process and are subject to high levels of ethical and conduct obligations.

141. Some submitters supported targeted licencing for reporting entities that are high-risk, such as VASPs and TCSPs, or entities that are not registered on the FSPR.[245] Some submitters thought that this would improve the willingness of others to bank high-risk sectors.[246] **Easy Crypto** thought licensing was a disproportionate response to de-banking and **Submitter 188** and **Easy Crypto** thought licensing could increase the potential for de-banking.

Registration or licensing fee

142. The majority of submissions opposed the introduction of fees for registration or licensing[247] for three broad reasons: some businesses already pay licensing fees to another regime, the fee would be disproportionate to the risk in some sectors, and AML/CFT is a public benefit and the costs should be borne by the government[248] **NZX Wealth Technologies** and **Ausfix Forex Brokers** also expressed that the cost of a levy could be passed on to consumers and decrease New Zealand's economic competitiveness.

143. If a levy had to be paid, submissions differed in opinion on what should determine the size of the levy to be paid. Some submitters argue that it should be based on entity size, risk profile or number of reports made,[249] while **FNZ** and **Submitter 42** argue businesses should pay the same nominal amount. **Submitter 160** commented that it could be based on entity size but

[242] ICNZB and submitters 118, 113, 85, 53, 26

[243] Securities Industry Association, Boutique Investment Group, Russell McVeagh, Easy Crypto, Aro Advisors, Medical Assurance Society, Financial Services Council, Reserve Bank of New Zealand and submitters 160, 24

[244] Dentons Kensington Swan, Securities Industry Association, Russell McVeagh, RITANZ, NZLS, Easy Crypto, Public Trust, CA ANZ, Deloitte, and submitters 44, 217

[245] NZBA, FSF, Dentons Kensington Swan, ADLS, BNZ, Cygnus Law, SkyCity, Public Trust, Simpson Grierson, Deloitte, and submitters 60

[246] Kiwi Wealth, Cygnus Law, BNZ

[247] Carson Fox, Cleland Hancox, Calibre Partners, FSF, Dentons Kensington Swan, Boutique Investment Group, RITANZ, NZLS, Easy Crypto, Cygnus Law, Aro Advisors, NZX Wealth Technologies, NZX Clearing, Financial Services Council, Deloitte, Kendons, Retail Commercial and submitters 42, 44, 71, 92, 114, 164, 174, 188

[248] Cleland Hancox, Calibre Partners, FSF, RITANZ, Financial Services Council, Boutique Investment Group, NZLS, Securities Industry Association, Easy Crypto, Cygnus Law, NZX Wealth Technologies, NZGIF and submitters 75, 188

[249] Mainland Capital, ICNZB, Unity, AuditsAML, Private Box, Bridging Finance, Riverlea Finance Limited and submitters 25, 80, 85, 114, 178, 188

should not be based on number of reports filed or AML/CFT risk as it might disincentivise entities from recognising genuine risk and not reporting the activity to FIU.

144. Some submitters were broadly supportive of a fee for registration or licensing to cover the cost of administration.[250] If there was a more substantive levy, submitters indicated they would like to see improved access to support and guidance, better education, more FIU funding to enable them to act on intelligence more effectively and investment in Public Private Partnerships and tools.[251]

[250] BNZ, FNZ, Private Box and submitters 25, 80, 113, 118

[251] ICNZB, NZGIF, AuditsAML BNZ

Scope of the AML/CFT Act

Challenges with existing terminology

"In the ordinary course of business"

145. This section asked whether there should be any changes to how "in the ordinary course of business" is used throughout the Act. We noted that there can be challenges applying this terminology to DNFBP activities given some of the activities may, by definition, only be provided infrequently and alongside a much wider array of non-captured services. We asked whether we should prescribe how businesses determine whether something is in the "ordinary course of business", and how we could provide more clarity.

146. Many submitters agreed that there should be flexibility in how the Act deals with infrequent activities or transactions and this helps ensure proportionate compliance costs,[252] with **Submitter 84** noting the current test is challenging and frequently requires legal advice to be provided.

147. In terms of how to achieve increased clarity, a large number of submitters thought the Act should prescribe when something is in the ordinary course of business, potentially through incorporating the existing Guideline into law.[253] However, a smaller number of submitters disagreed with this approach as it was contrary to the risk-based approach (see further *Balancing prescription with risk-based obligations*).[254]

148. Most submitters were also opposed to removing the word "ordinary" as this would lead to a disproportionate compliance burden for one-off transactions.[255] However, some disagreed on the basis that removing "ordinary" would provide further clarity and better address the risk associated with one-off transactions.[256] Other suggestions included replacing "ordinary" with "a regular action of service provision", prescribing a test for businesses to apply, or providing further guidance and examples.[257] Submitters also noted that regulatory relief would be needed if "ordinary" was removed when businesses engage in frequent transactions, as well as considering how suspicion could be determined in those circumstances.[258]

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[252] NZGIF, AuditsAML, Cygnus Law, Russell McVeagh, ICNZB, Boutique Investment Group, Dentons Kensington Swan, Buddle Findlay and submitter 188.

[253] Richardsons, Bridging Finance, Retail Commercial, Private Box, AuditsAML, BNZ, 2compli, Carson Fox, Cleland Hancox, Ausfix Forex Brokers, VCFO Group and submitters 26, 40, 44, 58, 71, 80, 85, 103, 113, 114, 160, 161, 165, 173

[254] Kendons, Nolans, Simpson Grierson, Deloitte, Buddle Findlay, Graeme White & Associates and submitters 91, 85, 165

[255] Bridging Finance, Law Box, Miller Johnson, Nolans, Simpson Grierson, Deloitte, Cleland Hancox, ATAINZ, Cygnus Law, ADLS, Russell McVeagh, Mainland Capital, Boutique Investment Group, Dentons Kensington Swan, Buddle Findlay, Graeme White & Associates, VCFO Group and submitters 44, 91, 95, 188

[256] Richardsons, Kendons, 2compli, Kiwi Wealth, Ausfix Forex Brokers and submitters 40, 42, 58, 80, 113, 160, 165, 188

[257] ICNZB, Richardsons, Private Box, ATAINZ, BNZ, Simpson Grierson, Deloitte, Bridging Finance, Carson Fox, Cleland Hancox, Kiwi Wealth, Dentons Kensington Swan and submitters 44, 116, 161, 165, 173, 188

[258] BNZ, Russell McVeagh, Private Box, AuditsAML, ICNZB and submitter 188

Businesses providing multiple types of activities

149. Some businesses provide activities which fall within multiple 'categories' within the Act, e.g. a bank (financial institution) which sets up companies (a DNFBP activity). However, section 6(4) sets out that the Act applies to a reporting entity only to the extent that a financial institution carries out financial institution activities or DNFBPs carry out DNFBP activities. This section of the Discussion Document considered whether businesses should be required to apply AML/CFT measures in respect of captured activities, irrespective of whether the business is a financial institution or a DNFBP.

150. Most submitters supported the idea that businesses should be required to apply AML/CFT measures irrespective of the type of business, noting this change would remove competitive advantage and ensure risks are consistently addressed.[259] However, a minority of submitters were opposed to the proposal, with **Submitters 92** and **165** noting that activities need to be further clarified.[260]

151. Most submitters were generally supportive of the proposal to remove "only to the extent" from section 6(4) in the long term[261] and issuing regulations in the short term[262] to ensure that AML/CFT obligations apply to activities irrespective of the type of business providing the activity. However, a minority of submitters were unsure about or opposed to the proposals,[263] with **Trustees Executors Limited** cautioning against removing "only to the extent" without further qualification. Finally, submitters noted that businesses should be able to report on these activities under one report if these changes were made.[264]

"Managing client funds"

152. This section of the consultation document asked a range of questions about whether the overlap between managing client funds and financial institution activities should be removed, and how the overlap could be removed to avoid a duplication of obligations for the same activity. We also asked whether the definition of professional fees should be clarified and what the appropriate definition would be.

[259] Reserve Bank of New Zealand, Richardsons, Bridging Finance, Private Box, Kendons, Trustees Executors Limited, AuditsAML, Aro Advisors, BNZ, Deloitte, Kiwi Wealth, ICNZB, Compliance Plus, Ausfix Forex Brokers, VCFO Group and submitters 26, 42, 44, 53, 58, 80, 85, 95, 113, 118, 160, 161, 188

[260] Retail Commercial, Nolans, Simpson Grierson, Graeme White & Associates and submitters 40, 71, 91, 92, 103, 165

[261] Kendons, AuditsAML, BNZ, Deloitte, ICNZB and submitters 42, 44, 53, 58, 80, 113, 160, 188

[262] Bridging Finance, Private Box, Kendons, AuditsAML, BNZ, 2compli, Kiwi Wealth, ICNZB, Dentons Kensington Swan, Ausfix Forex Brokers, Graeme White & Associates, VCFO Group and submitters 26, 42, 44, 53, 58, 80, 95, 113, 118, 134, 160, 161, 188

[263] Richardsons, Private Box, Bridging Finance, Trustees Executors Limited, Aro Advisors, Deloitte, Compliance Plus, Ausfix Forex Brokers, VCFO Group and submitters 26, 40, 85, 92, 95, 103, 118, 161, 165 165,

[264] Richardsons and submitters 44, 161

Overlap between "managing client funds" and financial institution activities

153. Most submitters agreed that the overlap between managing client funds and other financial institution activities should be removed to provide a one source of the truth,[265] while a few submitters[266] were unsure and a small number of [267] submitters disagreed.

154. **Cygnus Law** noted that the terms were developed by the FATF and that the concepts should be replaced with terms that are more relevant to New Zealand if possible. Several submitters similarly noted that the focus should be on the actions taken and not the type of business undertaking the activity.[268] However, **BNZ** thought removing the overlap could create unintentional gaps in the regime.

155. **Richardsons** and **Carson Fox** suggested the use of examples and a definition to define what client funds are, to be used by all relevant sectors, whereas **Submitter 113** suggested the introduction of a rule in the Act to prevent duplication.

156. A couple of submitters[269] noted the regime as activities-based and suggested the focus should be primarily on activities undertaken and not on the person or the reporting entity. **Simpson Grierson** recommended assigning a reporting entity to the appropriate AML/CFT supervisor and depending on the supervisor, treating the entity as a financial institution or DNFBP.

"Sums paid as fees for professional services"

157. Overall, submitters supported clarifying what is meant by 'professional fees' and supported the inclusion of third-party fees within the scope of professional fees.[270] Several submitters disagreed[271] and some submitters were unsure about the proposal.[272] However, some submitters[273] were of the view that DIA's interpretation within the consultation document would be appropriate.

158. Several submitters commented that professional fees should be clarified as the business' own fees including any reimbursements and third-party disbursements incurred in the ordinary course of providing services to its customer.[274] **Trustees Executors Limited** and **Simpson Grierson** however noted that payments to a third party is a typical money laundering typology while **Carson Fox** and **Buddle Findlay** considered that outsourcing costs do not attract money laundering and terrorism financing risks.

159. **BNZ** commented that third party fees are essentially the transactions of the DNFBP's customer and should therefore be monitored by the DNFBP and should not be included within the scope of professional fees.

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[265] Richardsons AuditsAML, Carlson Fox, Deloitte, ICNZB, ADLS, Dentons Kensington Swan, FSF, Buddle Findlay, Compliance Plus, VCFO Group and submitters 40, 85, 92, 113, 167

[266] Boutique Investment Group, Graeme White & Associates and submitters 103, 161, 188

[267] BNZ, Trustees Executors Limited, Aro Advisors, Simpson Grierson and submitters 44, 165

[268] Carson Fox, Graeme White & Associates and submitter 134

[269] Submitters 78, 134

[270] Richardsons, Private Box, Trustees Executors Limited, ADLS, AuditsAML, Aro Advisors, BNZ, Deloitte, ICNZB, Dentons Kensington Swan, Carson Fox, Buddle Findlay, Compliance Plus, VCFO Group and submitters 40, 44, 85, 92, 134, 161, 165, 167, 188

[271] Trustees Executors Limited, Aro Advisors, BNZ, Simpson Grierson and submitters 44, 165

[272] Private Box, Graeme White & Associates and submitters 161, 188

[273] Trustees Executors Limited, BNZ

[274] AuditsAML, ICNZB and submitters 40, 92, 161, 165, 188

160. A few submitters[275] agreed that including third party fees within the scope of professional fees would be beneficial to reporting entities. Others, however, referred to the current exemption in regulation[276] where there is only an exemption from the Act for the payment of third-party fees where the value is less than NZD 1,000. These submitters also commented that this value does not alleviate the compliance relief to firms who engage with third parties.

"Engaging in or giving instructions"

161. This section considered the appropriateness of the phrase "engaging in or giving instructions" and whether it needs to be further refined. For example, we asked whether it appropriately captures those businesses which are involved with a particular activity (including the operation and management of legal and arrangements).

162. Most submitters considered that the current definition is unclear and potentially too wide, and that more guidance is required.[277] Several submitters also indicated they had faced challenges with applying the term, such as how it applies to tax transfers, providing advice on draft real estate agreements, and when "engaging in" is triggered.[278] However, a significant portion of submitters thought the existing terminology was sufficient.[279]

163. **Buddle Findlay** and **CA ANZ** considered that changing "engaging in certain activities" to "assisting a customer to prepare for certain activities" would overly broaden the scope of activities which are captured. As such, this approach would increase compliance costs and risk capturing activities which are not intended to be caught under the Act.

Definition of financial institution activities

164. This section considered whether the terminology in the definition of financial institution should be better aligned with the meaning of financial service provided in section 5 of the *Financial Service Providers (Registration and Dispute Resolution) Act 2008* (the FSP Act).

165. The majority of submitters were in favour of greater alignment between the AML/CFT Act and FSP Act,[280] with a small number opposed.[281] Submitters noted that this change would reduce ambiguity or confusion and ensure that the FSP Register is a more complete register of reporting entities. **Submitters 24** and **169** thought the FATF's definition should be used for both Acts, however **Mainland Capital** noted the risk of capturing additional businesses who should not be captured. **NZGIF** thought including examples for each limb of the definition could be helpful.

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[275] ADLS, Buddle Findlay and Dentons Kensington Swan

[276] 24AB of the Anti-Money Laundering and Countering of Financing of Terrorism Exemptions Regulations 2011

[277] Richardsons, Kendons, AuditsAML, CA ANZ, Simpson Grierson, Deloitte, ADLS, Russell McVeagh, ICNZB, Boutique Investment Group, Graeme White & Associates, VCFO Group and submitters 40, 80, 103, 114, 165, 173

[278] Private Box, AuditsAML, 2compli, CA ANZ, ADLS, ICNZB, Dentons Kensington Swan, Graeme White & Associates and submitters 40, 58, 114, 165, 167

[279] Private Box, Aro Advisors, BNZ, Nolans, Ausfix Forex Brokers and submitters 53, 58, 95, 113, 167, 188

[280] Richardsons, Bridging Finance, BNZ, NZGIF, Trustees Executors Limited, AuditsAML, 2compli, Insurance Council of New Zealand, NZX Wealth Technologies, Simpson Grierson, Cygnus Law, Russell McVeagh, ICNZB, Mainland Capital, Dentons Kensington Swan, FSF, Compliance Plus, Ausfix Forex Brokers, Graeme White & Associates and submitters 40, 44, 53, 80, 160, 165, 188

[281] Private Box, Kendons and submitters 58, 127

166. Submitters also identified other parts of the financial institution definition that could be clarified, including:[282]

- **Submitter 80** noted that Fintech companies such as WeChat Pay and AlliPay should be captured;
- the **Insurance Council of New Zealand** and **BNZ** thought that general insurance should be more clearly excluded from the Act's operation;
- the **Securities Industry Association, Trustees Executors Limited**, and **Cygnus Law** thought that "participating in securities issues" could be updated and clarified

Stored Value Instruments

167. This section asked submitters to consider the use and risks of stored value instruments (SVI) in the AML/CFT scheme. We asked submitters to comment on whether the definition of stored value instruments should change to be neutral as to the technology involved and asked for any suggestions the public and industry may have on the topic.

168. The majority of submitters thought the definition of a SVI should be changed to future proof against new and emerging technologies,[283] while several submitters were unsure about the proposal.[284] **BNZ** thought the definition should include "any vehicle or technology that allows value to be stored", while **EasyCrypto** thought an expert FinTech or payments industry group should be established to advise on the proper definition and ensure unintended consequences are avoided.

Potential new activities

Acting as a secretary of a company or partner in a partnership

169. This section considered whether we should issue regulations to include businesses and people who act as secretaries for companies, partners in partnerships, or equivalent positions for other legal persons and arrangements in the Act and asked what the potential compliance costs may be.

170. The majority of submitters disagreed with the proposal,[285] with submitters noting capturing activities based on the title or description of a role is inconsistent with the activities-based nature of the regime,[286] while others noted that a 'company secretary' is not a position which commonly exists in New Zealand.[287] In addition, some submitters noted that there would be unreasonably high compliance costs resulting from this change.[288]

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[282] NZGIF, Trustees Executors Limited, Simpson Grierson, Cygnus Law, Russell McVeagh, Securities Industry Association and submitters 40, 58, 165

[283] Simpson Grierson, Russell McVeagh, BNZ, Boutique Investment Group, Ausfix Forex Brokers and submitters 40, 80, 188

[284] AuditsAML, 2compli, Easy Crypto and submitter 44

[285] Bridging Finance, Private Box, Kendons, 2compli, Simpson Grierson, BNZ, Deloitte, Cygnus Law, NZLS, RITANZ, Russell McVeagh, Boutique Investment Group, Dentons Kensington Swan and submitters 40, 71, 92, 95, 103, 161, 165

[286] Bridging Finance, CA ANZ, Deloitte, RITANZ, Calibre Partners

[287] Private Box, Cygnus Law, NZLS, Dentons Kensington Swan, and Pacific Lawyers Association and submitter 40

[288] Kendons and submitters 40, 71, 165

171. The minority of submitters supported the proposal,[289] but potentially only if the company secretary had a casting vote or final word or if the company was high risk.[290] Some submitters also noted that it is the level of authority, control, or influence that the person exercises which is important, and that the company secretary may already be captured under the definition of a beneficial owner.[291]

Criminal defence lawyers

172. This section considered whether criminal defence lawyers should have some AML/CFT obligations (e.g. to file SARs and report large cash transactions). An obligation to report SARs and large cash transactions would provide the FIU with further intelligence about how criminal proceeds are used. We noted that if we imposed obligations on criminal defence lawyers, we would need to carefully navigate questions of whether these obligations are proportionate as well as issues of legal privilege, rights to a fair trial, and lawyers' professional obligations under the Rules of Conduct and Client Care.

173. The majority of submitters were against criminal defence lawyers having some AML/CFT obligation.[292] Submitters who were opposed to AML/CFT obligations for criminal defence lawyers generally considered they would impinge on the duty of any lawyer to act as a trusted advisor to the client. In particular, **NZLS, Russell McVeagh** and **Dentons Kensington Swan** variously noted that the change would negatively impact legal professional privilege, fair trial rights, create a barrier to justice, and would be unjustly burdensome. While a small number of submitters supported the proposal,[293] most submitters also recognised the need to balance any obligations against a defendant's right to a fair trial and protection of privileged information.

Non-life insurance businesses

174. We asked whether non-life insurance businesses should have AML/CFT obligations given their potential ability to identify suspicious activity or behaviour, such as potential or actual frauds. We also noted that non-life insurance policies may be vulnerable to money laundering through refunds on premium payments or through insurance fraud. However, we noted that AML/CFT obligations could be tailored to the risks identified, for example by only requiring account monitoring or SARs.

175. The majority of submitters did not support non-life insurers having AML/CFT obligations,[294] while a smaller minority supported the proposal.[295] Submitters who were opposed to general insurance's inclusion generally considered the risks associated are so small due to the low monetary amounts involved and existing controls in place to detect and prevent fraud,

[289] AuditsAML, Aro Advisors, ICNZB, Ausfix Forex Brokers, Graeme White & Associates, VCFO Group and submitters 26, 58, 80, 113, 118, 167

[290] Richardsons and submitter 42

[291] Deloitte, Cygnus Law, Boutique Investment Group and submitter 167, 188

[292] Boutique Investment Group, Dentons Kensington Swan, New Zealand Law Society, Pacific Lawyers Association, Russell McVeagh, Kendons, Nolans, NZLS and submitters 44, 71, 85, 161, 165

[293] Aro Advisors, BNZ and submitters 40, 42, 92, 188

[294] Financial Services Council, Insurance Council of New Zealand, Boutique Investment Group, BNZ, FSF, Kendons, 2compli, Reserve Bank of New Zealand, Graeme White & Associates and submitters 40, 85, 92, 103, 164, 165, 188

[295] Aro Advisors, ICNZB, Kiwi Wealth, Richardsons, AuditsAML, Medical Assurance Society and submitters 44, 53, 58, 95, 113, 118, 161

including already referring fraudulent activity to the Police.[296] Several submitters noted that general insurers should only be included if there was demonstrated and well-evidenced risks in the sector, as opposed to theoretical risks.[297]

176. The **Insurance Council of New Zealand** also noted the negative impacts that would result from having AML/CFT obligations, such as diverting resources away from areas which pose significant harm, making onboarding and claims processing more cumbersome, and negatively impacting insurance uptake, affordability, and availability.

177. If general insurers were included, almost all supported tailored obligations for these businesses were commensurate with the risks posed.[298] Only **Private Box**, **Aro Advisors** and **Submitter 161** were supportive of general insurers having full obligations.

Combatting trade-based money laundering

Preparing or processing invoices

178. We noted that accountants, tax agents, or bookkeepers involved in preparing and processing invoices may have AML/CFT obligations for the activity in certain circumstances. However, we noted that this position is unclear, and asked whether the Act should be clarified in this regard. We also noted that we could adjust obligations for businesses which engage in this activity to ensure compliance costs are in proportion to the risks.

179. The majority of submitters did not consider that the Act is sufficiently clear,[299] with a large number of submitters also noting they were unsure as to whether the Act was clear.[300] Several submitters thought the Act was clear. [301] **Kendons** and **Submitter 188** thought the activity should be clarified, however other submitters queried whether the activity should be captured at all as it could result in effectively the whole accounting profession having obligations, increase the costs for the profession for marginal benefit, and potentially lead to unintended consequences.[302]

180. If we do clarify that the activity is captured, the majority of submitters considered that obligations should be clarified and in line with the risks associated,[303] for example by only requiring reporting of suspicious activities.[304] However, a small number thought there was no need to change or clarify obligations and that the normal range of obligations should apply to this activity,[305] while other submitters were unsure.[306]

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[296] Financial Services Council, Insurance Council of New Zealand, Boutique Investment Group, BNZ, FSF, Reserve Bank of New Zealand and submitter 188

[297] Insurance Council of New Zealand, Boutique Investment Group, Cygnus Law and submitter 40, 92, 165

[298] Kiwi Wealth, ICNZB, Richardsons, AuditsAML BNZ and submitters 40, 44, 53, 58, 80, 113, 118, 188

[299] Kendons, AuditsAML, BNZ, 2compli, Cleland Hancox, ATAINZ, ICNZB and submitters 40, 58, 85, 92, 95, 113, 165, 188

[300] Richardsons, Private Box, Nolans, VCFO Group and submitters 26, 42, 44, 53, 80, 103, 118

[301] Aro Advisors, Ausfix Forex Brokers, Graeme White & Associates and submitter 124

[302] CPA Australia, CA ANZ, BNZ, RITANZ, submitter Richardsons, Aro Advisors, Deloitte, Cleland Hancox, Boutique Investment Group and submitters 40, 165

[303] Private Box, Kendons, AuditsAML, 2compli, Cleland Hancox, ATAINZ, BNZ, ICNZB, Ausfix Forex Brokers and submitters 40, 44, 58, 80, 95, 113, 124, 165, 188

[304] ICNZB, AuditsAML, CPA Australia, ATAINZ

[305] Aro Advisors, BNZ, Deloitte and submitter 188

[306] Richardsons, Nolans, VCFO Group and submitters 26, 42, 53, 85, 103

Preparing annual accounts and tax statements

181. We noted that trade-based money laundering, fraud, tax evasion, and other criminal activity could be potentially detected by businesses which are involved in preparing accounts and tax statements. We asked whether this activity should attract obligations and, if so, what the appropriate obligations should be.

182. The majority of submitters did not consider that the activity should attract obligations for a variety of reasons,[307] including the disproportionate compliance costs and negligible benefit the activity would provide as there can be limited visibility of the underlying transactions when preparing statements. Submitters also noted that the change would result in a large number of businesses having obligations.[308] **Cygnus Law** thought that there should only be a captured activity if justified following a cost-benefit analysis and the **Privacy Commissioner** noted privacy concerns with the proposal.

183. However, a large minority of submitters supported the proposal and thought preparing accounts and tax statements should attract obligations.[309] **Trustees Executors Limited** thought the activity could be quite effective at detecting money laundering and terrorism financing, while **Submitter 134** and the **Securities Industry Association** similarly thought businesses could identify illicit activity through understanding cash flows within a business. Most submitters thought that the activity should attract only SAR obligations,[310] while others thought additional obligations should apply depending on the level of risk involved.[311]

Non-profit organisations vulnerable to terrorism financing

184. Some charities and non-profit organisations have been identified internationally as being vulnerable to being misused for terrorism financing. In New Zealand, the concern is with registered charities that operate overseas in high-risk jurisdictions, tax-exempt non-profits that are not registered charities, and non-resident tax charities. We asked whether we could use the AML/CFT regime to increase the monitoring and supervision of tax-exempt non-profits and non-resident tax charities given their vulnerabilities to being misused for terrorism financing and the lack of an existing framework.

185. Submitters were split, with slightly more than half of the submitters supporting the inclusion of these non-profit organisations within the AML/CFT regime, [312] with almost the same number of submitters opposed.[313] In addition, a large portion of submitters were unsure about the proposal.[314] The **Privacy Commissioner** noted concerns about the proposal.

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[307] Richardsons, Bridging Finance, Kendons, AuditsAML, CA ANZ, Aro Advisors, Nolans, Deloitte, Cleland Hancox, ATAINZ, Cygnus Law, RITANZ, ICNZB, Boutique Investment Group, Dentons Kensington Swan, Graeme White & Associates, VCFO Group and submitters 40, 71, 85, 91, 92, 103, 113, 114, 124, 165, 188

[308] Deloitte, CA ANZ, RITANZ, ICNZB, AuditsAML, Bridging Finance, Kendons, Dentons Kensington Swan, Aro Advisors, Deloitte, Cleland Hancox, ATAINZ, RITANZ, ICNZB, Boutique Investment Group, VCFO Group and submitters 85, 91, 92, 188

[309] Private Box, Trustees Executors Limited, 2compli, BNZ, Cygnus Law, Kiwi Wealth, Securities Industry Association, Ausfix Forex Brokers and submitters 42, 44, 53, 58, 80, 118, 134, 164

[310] Kiwi Wealth, Trustees Executors Limited, AuditsAML, 2compli, Aro Advisors, ATAINZ, ICNZB and submitter 188

[311] BNZ, Security Industries Association and submitter 134

[312] Richardsons, Private Box, 2compli, HSBC, Aro Advisors, Ausfix Forex Brokers, VCFO Group and submitters 42, 53, 58, 80, 92, 113, 134, 161

[313] Kendons, Nolans, BNZ, Cleland Hancox, Compliance Plus, Graeme White & Associates and submitters 40, 44, 71, 85, 160, 164, 165, 188

[314] AuditsAML, ICNZB and submitters 26, 95, 103, 118, 167

186. Submitters who were supportive thought that the proposal could help address the vulnerabilities identified,[315] while those who were opposed were concerned about the compliance costs and the risk that the proposal would cause non-profits to stop operating.[316] Submitters also noted that banks are typically involved in the transactions, and the proposal could lead to non-profit organisations being de-risked.[317] **NZBA** and **Submitter 160** thought that the vulnerability could be better addressed by Charities Services rather than the AML/CFT regime.

187. If non-profit organisations were included in the AML/CFT regime, submitters supported a range of options, such as reporting on funding sources, cross-border transactions, or suspicious activities, through to conducting CDD on clients or having full AML/CFT obligations.[318] By contrast, **HSBC** and **Submitter 134** thought they should have similar obligations to registered charities such as keeping a list of key controllers, purpose and beneficiaries, and financial record keeping requirements.

Currently exempt sectors or activities

188. This section considered whether there are any regulatory or class exemptions that need to be revisited, for instance, because they no longer reflect situations of proven low risk or because there are issues with their operation. We identified three exemptions that may need revisiting, specifically the exemptions for internet auctioneers and online marketplaces, special remittance cards, and non-finance businesses which transfer money or value.

Internet auctioneers and online marketplaces

189. Most submitters did not think this exemption should still apply, with submitters generally noting the risks associated with online marketplaces, particularly where high value, stolen, or non-existent goods are being bought or sold, and that the approach would ensure a consistent approach between in person and online transactions.[319] However, a minority of submitters thought the exemption should continue to apply to avoid unnecessary compliance costs and not stifle online commerce.[320]

190. Notwithstanding the above, submitters generally identified the need for further clarity about how the AML/CFT applies to online commerce, particularly with respect to international commerce platforms such as Amazon. **Submitter 169** thought further exemptions were needed to ensure online marketplaces can operate efficiently, while the **NZBA** thought that online marketplaces should have obligations only when they are involved in processing payments. The **Privacy Commissioner** also noted the need to consider the privacy impact of any changes with this exemption.

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[315] Aro Advisors, VCFO Group and submitters 42, 92

[316] AuditsAML, ICNZB, Nolans, Cleland Hancox, Compliance Plus and submitters 40, 71, 164, 165, 188

[317] BNZ, Dentons Kensington Swan, Cleland Hancox and submitter 85

[318] Private Box, AuditsAML, Aro Advisors, BNZ, ICNZB, Ausfix Forex Brokers, VCFO Group and submitters 80, 92, 113, 161

[319] NZBA, Richardsons, Kendons, AuditsAML, Privacy Commissioner, Dentons Kensington Swan, Ausfix Forex Brokers and submitters 40, 42, 53, 58,80, 113, 114, 118

[320] BNZ, FSF, Dentons Kensington Swan, Richardsons, Kendons, Simpson Grierson, Privacy Commissioner, FSF, NZBA, Graeme White & Associates and submitters 40, 85, 113, 160, 165

Special remittance card facilities

191. The majority of submitters stated that they did not rely on the exemption to issue special remittance cards,[321] and generally submitters were sceptical on whether the exemption properly mitigates the relevant risks or that it facilitates remittances to the Pacific.[322] **BNZ** considered the exemption should be revoked or revisited to ensure it works appropriately if it is required at all.

Non-finance businesses which transfer money or value

192. Most submitters supported amending this exemption to clarify its operation, including how it applies to DNFBPs.[323] In particular, submitters noted that the definition of a "non-finance business" is unclear and that it could include other businesses, such as travel agents, who are exposed to some risks.[324] **Submitter 160** suggested that the exemption should state that DNFBPs are not captured by the exemption unless the activity constitutes "managing client funds". However, a small number disagreed,[325] while other submitters were unsure about where changes are required.[326]

Workplace savings retirement schemes

193. Many workplace savings retirement schemes rely on the exemption contained in 20A of the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011 (Regulation 20A) for relevant services provided in respect of certain employer superannuation schemes.

194. Regulation 20A currently permits additional contributions through payroll, provided they are determined as a percentage of salary/wages on the trust deed. The maximum percentage on the trust deed is the maximum voluntary contribution that members can make. Many submitters agreed that the scope of Regulation 20A should be clarified to allow unlimited voluntary member contributions from their salary/payroll.[327] This does not increase the risk and supports the members' ability to save for retirement.

[321] Private Box, Kendons, Aro Advisors, BNZ, Nolans, Dentons Kensington Swan, Ausfix Forex Brokers, Graeme White & Associates and submitters 40, 42, 44, 58, 80, 92, 95, 103, 113, 160, 165

[322] Richardsons, AuditsAML Ausfix Forex Brokers, BNZ and submitters 26, 40, 44, 85, 92, 113, 165

[323] AuditsAML, Aro Advisors, Deloitte, ICNZB, Mainland Capital, Ausfix Forex Brokers and submitters 40, 58, 80, 95, 113, 160, 165, 188

[324] Richardsons, Simpson Grierson and submitter 165

[325] Kendons, Graeme White & Associates and submitter 103

[326] Richardsons, Private Box, Nolans VCFO Group and submitters 26, 44, 85, 92

[327] Financial Services Council, FireSuper Scheme, MISS Scheme, NZAS Retirement Fund Trustee Limited, Westpac NZ Staff Superannuation Scheme Trustee Limited, Dairy Industry Superannuation Scheme, UniSaver, Maritime Retirement Scheme

Potential new regulatory exemptions

195. This section considered whether we should issue any new regulatory exemptions for types of reporting entities that are captured by the Act but have a low ML/TF risk. A range of additional exemptions were suggested by submitters, in particular:[328]

- accountants with small client bases supporting small to medium enterprises
- Additional Tier 1 (AT1) Perpetual Preference Shares
- Banking facilities for remittance services
- bodies corporate and body corporate managers who are customers
- cash in transit services
- CDD requirements for bare trustees, deceased estates, Public Trust entities, and statutory court appointed entities
- dealing with customer correspondence
- financial advisors from certain CDD and PEP requirements
- financial market infrastructure businesses that operate clearing and settlement systems for securities and Central Securities Depositories
- general insurance
- in-app/in-game virtual currencies and reward schemes
- insolvency practitioners from some obligations such as CDD
- insurance premium funders
- lawyer to lawyer transactions and other low-risk activities
- low risk products such as KiwiSaver and other superannuation schemes
- low risk wire transfers from PTR obligations
- low value loans or social loans by authorities
- Pacific Island correspondent banking and remittance service
- payments by lawyers on behalf of clients in relation to a non-captured activity
- retirement village statutory supervisors
- security bonds taken by non-finance businesses
- tax transfers

196. In addition, the **Boutique Investment Group** and **Trustees Corporation Association** thought that the current 'managing intermediaries' class exemption should be fixed as a regulatory exemption.

[328] Dallas Woods, Lane Neave, Linfox Armagard Group, ICNZB, Gordon Morrison Gulf Accountants, AuditsAML, Insurance Council of New Zealand, Retirement Villages Association, Wealthpoint, ADLS, ATAINZ, NZBA, RITANZ, Calibre Partners, Dentons Kensington Swan, Simpson Grierson, FNZ, Medical Assurance Society Reuben Otto and submitter 160

Acting as a trustee or nominee

197. We noted that many DNFBPs that provide trustee or nominee services do so through establishing a separate company. Typically, the company is a wholly owned and controlled subsidiary of the DNFBP, but we noted that these companies will have obligations in their own right. We asked whether we should issue an exemption for these types of companies in certain situations, and if so, what that exemption could look like. We also asked whether submitters currently use separate companies for trustee or nominee services and the reasons for doing so.

198. Several submitters indicated they use companies to act as trustee or nominee, predominantly to act for a trust that is the DNFBP's client. Some submitters indicated they set up one company for various clients, while other submitters indicated they set up a company per trust client. Submitters indicated that the directors of the companies are generally, but not always, the directors of the DNFBP.[329] Submitters indicated that companies are used to ease the administration of the trust, manage risk, and allow for independent and professional governance.[330]

199. Most submitters supported the proposal to exempt trustee companies that are controlled by a parent DNFBP to reduce the duplication of compliance obligations,[331] with some suggesting that the trustee companies be included in the annual report.[332] **Aro Advisors** also noted that this would simplify the situation while **ADLS** noted this would reflect current practice. A small number of submitters did not support a regulatory exemption.[333]

Crown entities, Crown agents etc

200. Several Crown entities and Crown agents have become captured as reporting entities under the AML/CFT Act while it has operated, and a number have been granted Ministerial exemptions. We asked whether we should issue a regulatory exemption to exempt all Crown entities and Crown agents, and if so, what that exemption could look like.

201. Most submitters supported issuing an exemption for Crown entities and Crown agents, with submitters generally considering there are lower risks associated with these entities given their financial transparency requirements and the fact that the entities typically do not operate in retail markets.[334] However, a large number of submitters disagreed that an exemption should be issued as they considered that the entities may still be exposed to some risks.[335] **Submitter 165** also thought it would give government businesses a competitive advantage to be exempt when businesses cannot be.

[329] Private Box, Deloitte, Cleland Hancox, Trustees Executors Limited, Aro Advisors, Trustee Corporations Association of NZ, ADLS, NZLS, Buddle Findlay and submitters 92, 95, 103, 114, 161, 164, 167

[330] Trustee Corporations Association of NZ, Cleland Hancox, ADLS and submitters 114, 161, 167

[331] Private Box, AuditsAML, Trustee Corporations Association of NZ, Simpson Grierson, Deloitte, Cleland Hancox, Buddle Findlay, ICNZB, NZLS, CA ANZ, Aro Advisors, BNZ, Graeme White & Associates and submitters 40, 53, 80, 85, 92, 95, 103, 161, 164, 165, 173, 188

[332] Trustees Executors Limited, CA ANZ, ADLS and submitters 58, 80

[333] Richardsons, Graeme White & Associates and submitters 58, 113

[334] NZGIF, Richardsons, AuditsAML, Nolans, Boutique Investment Group, Dentons Kensington Swan, Ausfix Forex Brokers and submitters 40, 80, 85, 103, 118, 188

[335] Aro Advisors, BNZ, FSF, Kendons and submitters 42, 44, 58, 113, 164, 165

202. If an exemption was issued, **NZGIF** thought it should apply to all entities subject to the *Public Finance Act 1989* and other entities established through statute with public accountability. **Boutique Investment Group** went further and thought the exemption should also apply to 'quasi-NGOs', court-appointed administrators, and anyone in an official, delegated, or judicially enabled role. **Dentons Kensington Swan** suggested the exemption use a monetary threshold and require that the entity undertake the activity in the ordinary course of its business.

Low value loan providers

203. We noted that low-value loans can have a role in providing community support to communities in need, and the funds are typically provided by not-for-profit organisations and used to support community project and social outcomes. Given that a number of Ministerial exemptions have been provided to low value loan providers, we wanted to explore whether a regulatory exemption should be issued to exempt this activity entirely.

204. Overall submitters were supportive of the proposal, noting that the risks associated with loans is minimal and compliance costs can erode the benefit of providing the loans.[336] However, a minority of submitters disagreed with the proposed exemption out of concern that it would provide a loophole and create a vulnerability for money laundering to occur.[337] If an exemption was issued, some submitters suggested that all loans below a threshold should be exempt,[338] while others thought the lender would need to be a registered charity and loans provided for a charitable purpose to be exempt.[339] **Simpson Grierson** also noted the need to deal with repeat loans.

Territorial scope

205. Finally, we asked whether the AML/CFT Act should define its territorial scope and, if so, how it should define a business or activity to be within this scope. Almost all submitters supported the Act defining its territorial scope, with only two opposed to the proposal.[340] Several submitters made suggestions for how this could be done, such as:[341]

    - adopting the approach taken in the *Companies Act 1993*[342] or the *Financial Service Providers (Dispute and Resolution) Act 2008*[343]
    - adopting the criteria set out in guidelines published by AML/CFT supervisors[344]

[336] VPGam, Private Box, AuditsAML, Simpson Grierson, ICNZB, Unity, Ausfix Forex Brokers and submitters 42, 44, 54, 58, 80, 85, 92, 165, 188

[337] BNZ, FSF, Kendons, Dentons Kensington Swan and submitters 23, 113, 118

[338] Private Box, Simpson Grierson and submitters 42, 92

[339] Simpson Grierson, Unity and submitter 188

[340] Submitters 40, 80

[341] East Asia Transnational, Private Box, MinterEllisonRuddWatts, Anton Moiseienko, BNZ, Boutique Investment Group, Buddle Findlay, Compliance Plus, Cygnus Law, Dentons Kensington Swan, FSF, New Zealand Law Society, Russell McVeagh, Simpson Grierson, Ausfix Forex Brokers and submitters 85, 160, 165, 170

[342] Cygnus Law, Dentons Kensington Swan, New Zealand Law Society, Simpson Grierson

[343] Buddle Findlay, Compliance Plus, Dentons Kensington Swan, FSF, Russell McVeagh

[344] NZLS, submitter 160

- capturing any business which carries out services in New Zealand or have customers or derive revenue from activity in or associated with New Zealand; [345]
- including all New Zealand citizens and residents and legal persons incorporated in New Zealand;[346]
- ban businesses from non-complying countries from operating in New Zealand;[347]
- designate a monetary threshold for overseas businesses;[348]

206. **Anton Moiseienko** noted that careful consideration also needs to be given to enforce AML/CFT obligations against overseas businesses as part of considering the territorial scope of the Act as well as the extent to which overseas businesses impact New Zealand.

[345] Private Box, Boutique Investment Group, Simpson Grierson, MinterEllisonRuddWatts, Anton Moiseienko, Ausfix Forex Brokers BNZ and submitters 85, 165

[346] Simpson Grierson

[347] Submitter 8

[348] Anton Moiseienko

Supervision, regulation, and enforcement

Agency supervision model

207. This section considered whether the current supervisory model, consisting of three different agencies as AML/CFT supervisors, is working effectively or whether we should continue changing it.

208. Submitters were split over whether the supervisory model should be changed. A number of submitters thought the supervisory model should be changed[349] while others preferred the current arrangement[350] with some also noting the need for significant improvements.[351]

209. Submitters who preferred the status quo noted that it allows each supervisor to focus on specific sectors and build an awareness of how each sector operates.[352] However, a large number of submitters considered that the current model is slow, leads to inconsistent approaches and regulatory arbitrage, is not sufficiently risk-based, duplicates efforts, and does not foster sufficient collaboration between agencies as well as the private sector.[353] Some submitters also did not consider that supervisors are sufficiently resourced, which limits the extent to which supervisors can engage with and properly understand their sectors as well as take a strategic approach to the regime.[354]

210. In terms of how to change the supervisory model, most submitters supported having a single supervisor responsible for all entities with submitters considering this model would make the regime more consistent, clear, and efficient, and lead to higher quality supervision and guidance, provided the supervisor is sufficiently resourced.[355] **AML360** and **Submitters 24** and **171** also suggested embedding the FIU in the supervisor.

211. Instead of having a single supervisor, some submitters suggested retaining three supervisors but having an additional agency responsible for oversight, administration, and interpretation of the Act and the functions of the supervisors.[356] Alternatively, some thought that regulatory

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[349] Kendons, Maxima, AuditsAML, Aro Advisors, Cygnus Law, Kiwi Wealth, ICNZB, Compliance Plus and submitters 40, 44, 85, 160, 161, 165

[350] Reserve Bank of New Zealand, Richardsons, Private Box, 2compli, NZX Wealth Technologies, Russell McVeagh, Dentons Kensington Swan, NZBA, VCFO Group and submitters 58, 92, 95, 164, 173, 188

[351] Financial Services Council, Russell McVeagh, Trustees Executors Limited, BNZ

[352] Dentons Kensington Swan, NZX Wealth Technologies

[353] Financial Services Council, Russell McVeagh, Compliance Plus, NZGIF, Transparency International NZ, Trustees Executors Limited, Maxima, Kendons, Maxima, HSBC, Bitprime, Easy Crypto, NZLS, Cleland Hancox, Boutique Investment Group, HSBC, NZBA, Stephens Lawyers, FNZ, BNZ and submitters 40, 44, 118, 188

[354] AML360, NZLS, Deloitte, NZBA, Transparency International NZ, BitPrime, Alan Henwood, Michael Turner, Easy Crypto, Kiwi Wealth and submitters 118, 165, 188

[355] AML360, Bridging Finance, NZGIF, Lane Neave, Christian Savings Limited, HSBC, MinterEllisonRuddWatts, PwC, Aro Advisors, Easy Crypto, FNZ, Kiwi Wealth, Securities Industry Association, ASB, Mainland Capital, FSF, Compliance Plus, Dentons Kensington Swan, PwC, BNZ and submitters 44, 85, 92, 95, 97 113, 114, 118, 160, 164, 188

[356] Cygnus Law, Lane Neave, British High Commission

bodies, like the Law Society, should be supervisors,[357] but some were opposed to this suggestion.[358] Finally, **Boutique Investment Group** thought there should be two supervisors split between financial and non-financial businesses.

Mechanisms for ensuring consistency

212. This section considered whether the Act ensures the appropriate amount of consistency in how supervisors interpret and apply the law. We noted that there are currently limited mechanisms in the Act to ensure consistency between the supervising agencies.

213. Most submitters did not think the Act appropriately ensures consistency in the application of the law between the three supervisors, with submitters noting different approaches taken with respect to regulatory action, interpretation, and supervision of similar sectors.[359] However, a small number of submitters thought the Act appropriately ensures the supervisors apply it consistently.[360] while other submitters noted there are areas where a consistent approach is not appropriate when it is justified by the different sectoral needs.[361]

214. In terms of how to achieve more consistency across supervisors, submitters noted that having a single supervisor or having a single body responsible for guidance or interpretation would help achieve more consistency (see previous section).[362] However, if we retain a split supervisor model, submitters thought greater consistency could be achieved through a range of options, such as establishing an agency or committee which is responsible for reviewing the application of the law, more industry consultation, improving governance and developing joint supervision plans, more joint training, clarifying the law, developing a central AML/CFT hub, and using more exemptions.[363]

Powers and functions

215. This section considered whether the powers and functions of the supervisors are still appropriate and whether they need amending.

216. Most submitters thought the powers of the supervisors are still appropriate.[364] However, **Submitter 165** thought it was unclear what powers supervisors have. **Compliance Plus** also queried the extent to which supervisors can expect documents to be provided immediately, as this is not stated in the Act. They also did not consider that section 133 permits supervisors to conduct a search and compel the delivery of documents.

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[357] Dentons Kensington Swan, Private Box, Law Box and submitters 58, 103, 118, 161

[358] Deloitte and submitters 92, 95, 113

[359] AML360, Aro Advisors, BNZ, Cygnus Law, FSF, Kiwi Wealth, Mainland Capital, NZBA, Russell McVeagh, Securities Industry Association, 2compli, Nolans, Ausfix Forex Brokers and submitters 26, 40, 44, 80, 85, 113, 118, 165, 173

[360] AuditsAML, Dentons Kensington Swan, ICNZB, Richardsons, Private Box, Kendons and submitters 58, 95

[361] BNZ, Boutique Investment Group, and submitters 103, 217

[362] Securities Industry Association, 44, 85, Cygnus Law, Aro Advisors, AML360, ASB, Compliance Plus, FSF, Kiwi Wealth, NZGIF, 44, 85, Deloitte, 113, FSC, Aro Advisors

[363] Dentons Kensington Swan, British High Commission, BNZ, Cygnus Law, Compliance Plus, Private Box, Russell McVeagh, AML360, AuditsAML, ICNZB, Trustees Executors Limited, Security Industries Association, Reserve Bank of New Zealand submitters 40, 118, 160, 165

[364] Private Box, Kendons, AuditsAML, Deloitte, VCFO Group and submitters 26, 44, 58, 80, 85, 92, 95, 103, 113, 164

Inspection powers

Onsite inspections at dwelling houses

217. This section considered whether AML/CFT supervisors should have the power to conduct onsite inspections of reporting entities operating from dwelling houses, and if so, what controls should be implemented to protect the occupant's rights. We noted that some businesses, including some which are considered high-risk, can operate from dwelling houses.

218. Overall, submitters were largely in support of allowing onsite inspections, noting that this would ensure a consistent approach for all businesses.[365] Several submitters considered there would need to be restrictions on the power, such as only allow inspections during business hours, inspections being limited to office spaces, only allowing the power where the dwelling house is the registered address of the business, requiring consent of the occupant, or requiring a warrant.[366] A few submitters were not in support of allowing such inspections.[367]

Remote inspections

219. Some businesses operate entirely remotely and without a physical office, and there are no provisions in the Act for how to inspect these businesses remotely (e.g. video conferencing or remote testing). The COVID-19 pandemic has made this issue more pressing with social distancing requirements precluding onsite inspections. We asked whether allowing remote onsite inspections would be useful for the regime and if so, how they could work.

220. Overall, submitters were in support of allowing inspections to be carried out virtually. Submitters considered that remote inspections would be more efficient for supervisors and less disruptive for businesses and would allow inspections where travel restrictions are in place. Submitters also noted that remote inspections would potentially reduce costs for supervisors and reduce supervisor's carbon footprint.[368]

221. However, a large number of submitters expressed concerns about remote inspections, such as how administratively and logistically difficult they may be and whether businesses have sufficient technological resources to facilitate an effective inspection. Several submitters also noted privacy concerns and risks about damaging technology or data remotely. Submitters also noted that a remote inspection may not allow supervisors to gain the full picture of how the business operates and could allow businesses to fabricate documents or information more easily.[369]

Approving the formation of a Designated Business Group

222. This section considered whether the current process for forming a designated business group (DBG) is appropriate and, if not, what changes could be made to make it more efficient. It also

[365] Kendons, AuditsAML, BNZ, Deloitte, Boutique Investment Group, Compliance Plus, Dentons Kensington Swan, FSF, ICNZB, Mainland Capital, Ausfix Forex Brokers, VCFO Group and submitters 44, 92, 103, 113, 118, 161, 165, 188

[366] BNZ, Compliance Plus, Dentons Kensington Swan, ICNZB, Boutique Investment Group, Ausfix Forex Brokers and submitters 165, 188

[367] AML360, Privacy Commissioner and submitters 26, 85

[368] BNZ, Deloitte, Dentons Kensington Swan, HSBC, Sharesies, FSF, NZBA and submitters 95, 160, 161, 173, 188

[369], Private Box, AuditsAML, BNZ, Deloitte, Mainland Capital, HSBC, NZBA, Sharesies, Securities Industry Association, Ausfix Forex Brokers and submitters 44, 95, 165, 188

considered whether supervisors should have an explicit role in approving or rejecting the formation of a DBG.

223. Overall, submitters thought that the current process for forming a DBG is appropriate,[370] with some submitters suggesting areas for change or clarification, such as whether a new member can rely on CDD information collected before they joined, or whether the criteria should be relaxed for low-risk reporting entities.[371] Most submitters did not support supervisors having the ability to approve the formation of a DBG,[372] while a smaller number supported the proposal.[373] Submitters who supported the proposal thought the power would ensure DBGs are being formed in the spirit of the Act, while those opposed thought that the power may undermine the value of a DBG overall.

Regulating auditors, consultants, and agents

Regulating independent auditors

224. This section considered whether standards should be introduced for independent auditors to ensure high quality audits and who should enforce these standards. Submitters were asked what the impact would be on the cost of audits and the benefits of ensuring higher quality audits. We also asked whether protections should be in place for businesses who received unsatisfactory audits.

225. Most respondents agreed to introducing standards,[374] while a small number were unsure[375] or disagreed with the proposal.[376] Several submitters noted that auditor standards would achieve greater audit consistency, clarifying the role of auditors, and allow businesses to be more confident when relying on an audit.[377] However, submitters also noted that the introduction of standards may increase costs so some extent, and that those costs may be borne more by smaller entities than larger entities. Submitters also noted that standards may reduce supply in the short term as demand will still remain high.[378]

226. In terms of what auditor standards could look like, several submitters through there should be a licensing or registration regime, accreditation process, clear guidelines, or using CA ANZ or XRB standards.[379] Submitters also suggested AML/CFT Supervisors, the FIU, MOJ, XRB,

[370] BNZ, Kiwi Wealth and submitters 85, 160, 188

[371] Boutique Investment Group, Mainland Capital, Securities Industry Association

[372] Aro Advisors, Simpson Grierson, Boutique Investment Group, Dentons Kensington Swan, NZGIF and submitters 85, 160, 165, 188

[373] AuditsAML, BNZ, Deloitte, ICNZB, NZBA, Reserve Bank of New Zealand and submitter 118

[374] Richardsons, Bridging Finance, BNZ, Private Box, Kendons, AuditsAML, CPA Australia, Financial Services Council, HSBC, Risk Robin, SkyCity, Nolans Lawyers, Simpson Grierson, Easy Crypto, FNZ, Kiwi Wealth, Securities Industry Association, ICNZB, Financial Advice NZ, Mainland Capital, Dentons Kensington Swan, NZBA, Reserve Bank of New Zealand and submitters 26, 58, 85, 92, 103, 113, 118, 160, 161, 164, 165, 173, 188

[375] Calibre Partners and submitters 40, 44, 114

[376] Red Crayon, Lawbox, Aro Advisors, Deloitte

[377] BNZ, HSBC, FNZ, Securities Industry Association, Dentons Kensington Swan and submitters 160, 188

[378] Red Crayon, CPA Australia, HSBC, Aro Advisors, BNZ, FNZ, ICNZB, Mainland Capital, Compliance Plus, AML360, MinterEllisonRuddWatts, Russell McVeagh, Boutique Investment Group, Kendons, and submitters 40, 44, 134, 160, 188

[379] MinterEllisonRuddWatts, Risk Robin, FNZ, Kiwi Wealth, Financial Advice NZ, Boutique Investment Group, FSF, AML360, CA ANZ, AuditsAML, ADLS, ICNZB, Mainland Capital, Dentons Kensington Swan, Richardsons, Securities

FMA, ACAMS, NZICA, CPA, CA ANZ or other reporting entities should be responsible for enforcing auditor standards.[380] **Financial Services Council**, **Mainland Capital** and **Boutique Investment Group** also noted that the ability for regulators to ban or stand down an auditor should be considered.

Regulating consultants

227. Since the Act came into force, several consultants have supported REs with their AML/CFT obligations. We asked whether it would be appropriate to specify the role of a consultant in legislation, the appropriate obligations, how this would look and who should enforce these standards.

228. The majority of submitters disagreed that the role of the consultant should be provided for in legislation, with some submitters noting that this would go against the intent of the Act, add further complexity, and undermine the value that consultants can provide.[381] A large minority of submitters supported the proposal noting that consultants should have a responsibility for providing sound advice to clients,[382] however other submitters thought that the market should be responsible for ensuring consultants provide quality advice.[383]

229. Submitters were split on whether there should be a licensing, registration, or accreditation process for consultants, with half supporting the proposal[384] and half opposed[385]. Submitters who supported some form or registration or accreditation noted it would ensure consultants have the requisite AML/CFT knowledge and would provide greater control and supervision of consultants and foster greater confidence from businesses.[386] If standards were created, most submitters thought government agencies should be responsible for enforcement,[387] while **Aro Advisors** and **Submitter 134** thought the consumer should be responsible for enforcing standards against a consultant.

Regulating agents

230. As some businesses rely on and appoint agents to carry out some or all their obligations, this section considered whether reporting entities use agents to assist with their AML/CFT

Industry Association, NZBA, Kendons, Barfoot and Thompson, BNZ, ADLS and submitters 44, 85, 92, 113, 118, 134, 161, 164, 165, 173, 188

[380] Retail Commercial, AuditsAML, HSBC, Nolans Lawyers, ADLS, FNZ, RITANZ, Securities Industry Association, ICNZB, Dentons Kensington Swan, Aro Advisors, BNZ, Richardsons, Private Box, Kendons, CA ANZ, CPA Australia, Mainland Capital, Kiwi Wealth and submitters 26, 44, 58, 85, 92, 103, 113, 118, 160, 161, 164, 165, 170, 173, 188

[381] Snowball Effect, Cygnus Law, Kendons, Nolans Lawyers, Deloitte, HSBC, Aro Advisors, BNZ, FNZ, NZLS, Russell McVeagh, Mainland Capital, Boutique Investment Group, NZBA, Compliance Plus, AML360, Cygnus Law, Reserve Bank of New Zealand and submitters 40, 103, 134, 188

[382] MinterEllisonRuddWatts, Richardsons, AuditsAML, Risk Robin, FNZ, ICNZB, Dentons Kensington Swan, FSF, Ausfix Forex Brokers and submitters 85, 113, 118, 160, 161, 164, 165

[383] FNZ, NZLS, BNZ, Mainland Capital, Boutique Investment Group, AML360, Compliance Plus, Deloitte and submitter 134

[384] MinterEllisonRuddWatts, Easy Cypto, Securities Industry Association, ICNZB, Dentons Kensington Swan, CPA Australia, Risk Robin and submitters 160, 188

[385] Aro Advisors, BNZ, NZLS, Mainland Capital, Boutique Investment Group, Compliance Plus, AML360 and submitter 134

[386] MinterEllisonRuddWatts, Risk Robin, FSF, CPA Australia, Clyde Law, ICNZB

[387] ICNZB, Dentons Kensington Swan, Richardsons, MinterEllisonRuddWatts, Ausfix Forex Brokers and submitter 188

compliance obligations, for what purposes, the steps RE's take to ensure appropriate agents are selected and why. We also asked what additional measures should be in place for agents and third parties and whether we should set out who can be an agent.

231. A large number of submitters indicated that they use agents for a variety of purposes, such as auditing, training, and general compliance work, as well as conducting some or all of a business' CDD or PEP obligations.[388] A small number of submitters indicated that they perform some form of due diligence on the agent before engaging them, such as conducting CDD, requiring the agent to sign a declaration, or checking if the agent can meet a minimum standard of AML/CFT compliance requirements.[389]

232. Most submitters considered there is a lack of clarity around the definition of an agent, when the use of an agent is appropriate, and the standards that agents are held to.[390] However, submitters were split on whether there should be additional regulatory measures for agents such as a licensing scheme or minimum standards for agents.[391] **Submitter 62** thought that agents should be closely monitored to ensure they do not undermine the AML/CFT regime, and **NZBA** thought there would be benefit in regulating the steps a reporting entity must take to ensure an agent is fit to carry out the role. In comparison, **Kiwi Wealth** and **Submitter 217** said a guidance document or code of practice would benefit reporting entities to better understand how they can use an agent.

Offences and penalties

233. A comprehensive and effective offence and penalty regime is necessary for ensuring good regulatory outcomes and that businesses comply with their obligations. Supervisors need to be able to respond to non-compliance when it is detected and impose penalties that are proportionate and dissuasive to influence decision making within businesses. In particular, enforcement action should support compliance, and not be factored into the cost of doing business for non-compliant businesses.

234. We asked a range of questions about the offence and penalty regime in the AML/CFT Act which reflected on the FATF's criticisms about our framework. In particular, we asked whether we should allow for intermediary enforcement options, higher penalties at the top end of seriousness, and whether sanctions should be able to be applied to employees, directors, and senior managers.

Comprehensiveness of penalty regime

235. Overall, submitters were split on whether the existing regime is sufficiently comprehensive, with slightly more submitters indicating that it is not[392] versus those who thought it is.[393]

[388] Nolans, Richardsons, HSBC, Aro Advisors, BNZ, FNZ, Kiwi Wealth, Mainland Capital, Boutique Investment Group, NZBA, Miller Johnson, Deloitte and submitters 26, 92, 114, 118, 164, 173

[389] Aro Advisors, Kiwi Wealth, NZBA and submitters 118, 130

[390] ADLS, Mainland Capital, Boutique Investment Group, Dentons Kensington Swan, FSF and submitter 134

[391] MinterEllisonRuddWatts, HSBC, Risk Robin and submitter 188 were supportive while Aro Advisors, FNZ, Russell McVeagh and BNZ were opposed. Richardsons and ICNZB were unsure.

[392] Reserve Bank of New Zealand, AuditsAML, BNZ, HSBC, Aro Advisors, ICNZB, NZBA, Compliance Plus, AML360, Ausfix Forex Brokers and submitters 40, 80, 85, 113, 164, 165

[393] Richardsons, Kendons, 2compli, SkyCity, Deloitte, FNZ, Russell McVeagh, Sharesies, Dentons Kensington Swan, VCFO Group and submitters 26, 58, 160

Several submitters thought the regime should be more risk based and applied more proportionately, such as through prescribing mitigating and aggravating factors when determining a penalty or issuing guidance on how and when penalties may be used.[394] **Submitters 105** and **108** also noted that the penalty regime has led to some businesses being increasingly risk adverse.

Allowing for intermediary enforcement options

236. Submitters were similarly split on whether the regime should include additional intermediary enforcement options, with a slight majority opposing the proposal[395] compared to those who were supportive.[396] If we need additional options, submitters suggested reporting non-compliance to professional bodies and forcing businesses to cease business activity.[397] **BNZ** also noted that there would need to be monitoring for situations where there are an aggregation of fines as this could indicate more serious compliance deficiencies.

Allowing for higher penalties at the top end of seriousness

237. Most submitters were not supportive of increasing the penalties in the Act to account for serious breaches by bigger and more complex businesses.[398] **Submitter 85** and **217** noted that increasing the penalty has the potential to marginalise those groups who are already marginalised.

238. However, a minority of submitters thought higher penalties should be provided for,[399] and that the size of the businesses and annual turnover are important considerations when considering changes to penalty levels.[400] **BNZ** noted that the current penalty levels are not in alignment with international practice and unlikely to exceed the cost of compliance with the Act for some businesses.

Sanctions for employees, directors, and senior management

239. The majority of submitters were opposed to extending sanctions to include directors and senior managers and urged caution.[401] Submitters noted that this change would risk increasing the difficulty in finding people who are willing to be directors or senior managers and negatively impact insurance availability and affordability. Some submitters also indicated there are already sufficient incentives to comply such as avoiding reputational damage or existing director liability frameworks.[402]

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[394] Aro Advisors, Deloitte, ASB, Boutique Investment Group, NZBA and submitters 113, 160

[395] Richardsons, Kendons, Aro Advisors, Deloitte, FNZ, Russell McVeagh, Dentons Kensington Swan, FSF and submitters 26, 160, 164, 165

[396] AuditsAML BNZ, HSBC, Kiwi Wealth, ICNZB, Ausfix Forex Brokers and submitters 58, 80, 113, 188

[397] Aro Advisors and submitter 40

[398] Richardsons, Kendons, NZGIF, Barfoot and Thompson, Aro Advisors, SkyCity, Deloitte, FNZ, Mainland Capital, FSF, VCFO Group and submitters 26, 160, 164, 165

[399] AuditsAML, ICNZB, Ausfix Forex Brokers, BNZ and submitters 40, 44, 80, 85, 113

[400] Aro Advisors, Boutique Investment Group and submitters 85, 160, 164, 165, 188

[401] Trustees Executors Limited, Public Trust, 2compli, Financial Services Council, NZX Clearing, Trustee Corporations Association of NZ, Miller Johnson, Mainland Capital, FSF, NZBA, BNZ, Graeme White & Associates and submitters 26, 58, 92, 95, 103, 160, 164, 165, 188

[402] BNZ, Financial Services Council, NZX Clearing, Deloitte, Cygnus Law, Securities Industry Association, FSF, Insurance Council of New Zealand, Public Trust, Boutique Investment Group, Russell McVeagh and submitters 134, 165, 188

240. However, a minority of submitters thought sanctions should be extended to directors and senior managers.[403] Submitters thought that liability should only apply to the people who were ultimately responsible for making the decision and others thought penalties should only apply in instances of gross negligence rather than technical non-compliance.[404] In addition, submitters noted that insurance should be available or any restrictions on insurance or indemnification appropriately prescribed.[405] Most also thought that compliance officers should not be subject to sanctions or have protections when acting in good faith.[406] Only a small number thought compliance officers should be liable for breaches.[407]

Liquidation following non-payment of AML/CFT Penalties

241. Unlike RBNZ and FMA, DIA does not have the power to apply to a court to liquidate a business to recover penalties and costs obtained in proceedings undertaken under the Act. We asked whether DIA should have this power.

242. The majority of submitters supported the proposal,[408] with a small number opposed.[409] **Dentons Kensington Swan** commented that it must be tightly regulated if extended.

Time limit for prosecuting AML/CFT offences

243. Currently prosecutions must be brought within three years of the offence being committed. We asked whether the timeframe should be changed, and if so, what the time limit should be.

244. The majority of submitters supported changing the timeframe,[410] with most submitters noting the timeframe should align with other obligations such as record keeping obligations or tax legislation.[411] Other submitters suggested that the timeframe should be between 6 months or a year up to seven years.[412]

[403] Reserve Bank of New Zealand, AuditsAML, Aro Advisors, Simpson Grierson, ICNZB, Calibre Partners, Ausfix Forex Brokers and submitters 40, 80, 85, 113

[404] Reserve Bank of New Zealand, AuditsAML, Miller Johnson, Deloitte, ICNZB, Financial Services Council, Miller Johnson, Easy Crypto, Securities Industry Association, Sharesies, Dentons Kensington Swan and submitters 40, 134

[405] Sharesies, FSF, BNZ

[406] 2compli, Nolans, Simpson Grierson, FSF, NZBA, Kendons, ATAINZ, BNZ, Easy Crypto, Boutique Investment Group, VCFO Group and submitters 92, 103, 165, 113, 173

[407] Submitters 85, 104 and 113

[408] Kendons, AuditsAML, Aro Advisors, BNZ, Deloitte, ICNZB, FSF, NZBA, Ausfix Forex Brokers, VCFO Group and submitters 40, 58, 80, 85, 113, 161, 188

[409] Kendons, AuditsAML, Aro Advisors, ICNZB, Boutique Investment Group, FSF, Ausfix Forex Brokers, VCFO Group and submitters 40, 58, 85, 113, 164, 165

[410] Reserve Bank of New Zealand, Kendons, ICNZB, Boutique Investment Group, Dentons Kensington Swan, FSF and submitters 85, 188

[411] Kendons, ICNZB, Boutique Investment Group, Dentons Kensington Swan, FSF and submitters 85, 188

[412] AuditsAML, FSF, Kendons, Boutique Investment Group, ICNZB, Ausfix Forex Brokers, VCFO Group and submitters 40, 85, 115, 164, 165

Preventive measures

Customer due diligence

245. This section asked a wide range of questions about the customer due diligence (CDD) requirements in the Act. We noted that CDD is the foundation for an effective AML/CFT system, but also identified a range of ways in which our settings could be improved. We were also interested in generally understanding what challenges or frustrations people and businesses have faced with their CDD obligations.

Duplication of CDD

246. The primary challenge or frustration that submitters raised was regarding duplication of CDD verification across businesses for the same transaction.[413]

247. In terms of how to address the duplication, several submitters suggested increasing centralisation of identity verification, such as by creating a register or database that is accessible by all reporting entities with the consent of the customer,[414] or a national identity card.[415] However, the **NZLS** was opposed to centralising CDD information for privacy and security reasons.

248. In the submitters' views, centralising CDD verification would substantially reduce the costs of the AML/CFT regime overall and make the economy more efficient and provide greater assurance about security of the personal information stored.[416] **Mackenzies Agency** also noted that a centralised process would make it easier for the Government to share information about risky individuals, while **Westpac** also noted that this would assist when people are acting on behalf of others, such as when the other person is elderly or a child.

249. There were differences in views for how often information would need to be verified. **Elevate** suggested that verification only needs to be done once in a lifetime, or where a person has changed their name or sex, while **Property Brokers** suggested the verification should be valid for a year.

250. In a similar vein, several submitters also suggested that RealMe could be used to provide for centralised verification of identity, which would assist if businesses can easily and cheaply access RealMe or government databases (see further *Partnering in the fight against financial*

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[413] East Asia Transnational, Polson Higgs, Omega Commercial, Lyons Asset Brokerage Elevate (1), Harcourts Bay of Islands, VPGam, Tommys, Property Brokers, Ray White Whitianga (2), One Agency, Ray White Whitianga (3), CA ANZ, AG Kosoof & Co, Milford Asset Management, Wealthpoint, FNZ, NZLS, Securities Industry Association, Financial Advice NZ, Mainland Capital Public Trust, RITANZ, Tom Lyons, Deloitte and submitter 95

[414] East Asia Transnational, Polson Higgs, Omega Commercial, Lyons Asset Brokerage, Elevate (1), Harcourts Bay of Islands, VPGam, Tommys, Property Brokers, One Agency, CA ANZ, REINZ, Westpac, Securities Industry Association, Financial Advice NZ, Mainland Capital and submitter 92

[415] Submitter 165

[416] East Asia Transnational, Harcourts Bay of Islands and submitters 52, 87

crime).[417] **Akahu** also suggested that duplication could be reduced through a better reliance framework, better class exemptions, and better ability to use simplified due diligence.

Several other challenges were identified by submitters

251. Submitters also identified the following challenges with CDD beyond duplication:

- a risk-based approach cannot be taken for all CDD obligations which results in significant compliance obligations for small to medium practices;[418]
- customers being reluctant to provide information, potentially due to privacy concerns or where the customer has a long-standing relationship with the business which predates AML/CFT obligations;[419]
- conducting CDD on people who are minors, recent immigrants, ill, elderly, or who have lost capacity, particularly where people do not have sufficient proof of identification or are dependent on others to manage their affairs;[420]
- conducting CDD on insolvent companies can be difficult, particularly as beneficial owners are likely to be uncooperative in a formal insolvency context;[421]
- determining whether a business relationship exists and the nature and purpose of the relationship, particularly for DNFBPs, businesses which provide services only online, or where there are no ongoing transactions or investments;[422]
- determining the customer in complex transactions involving multiple parties or complex and/or offshore structures or trusts, particularly given the interpretation of New Zealand authorities that has resulted in underlying customers of intermediaries being treated as customers of the reporting entity;[423]
- **ADLS** and **Submitter 95** noted challenges with conducting CDD where urgent advice is asked for, such as in real estate transactions;
- **Mainland Capital** noted difficulties with terminating business relationships for non-redeeming investments or KiwiSaver schemes;

252. **Boutique Investment Group** thought it would be better for CDD to be conducted on fewer people where the customer is not a natural person, while **AG Kosoof & Co** noted that IRD numbers should be used for CDD. **FNZ** and **NZBA** both considered that New Zealand's laws

[417] Euan Mackenzie, Polson Higgs, VPGam, Akahu, One Agency, AG Kosoof & Co, REINZ, Mainland Capital Akahu, Snowball Effect, Cleland Hancox, Samoa Money Transfer, Retail Commercial, Private Box and submitter 95, 106

[418] CPA Australia and submitters 160, 95, 103, 114

[419] Retail Commercial, Private Box, Deloitte, Bridging Finance, Retail Commercial, VCFO Group and submitters 92, 113, 114, 165

[420] Dentons Kensington Swan, Kiwi Wealth, Aro Advisors, BNZ, Westpac, Bridging Finance, Miller Johnson and submitters 161, 164, 188

[421] RITANZ, Calibre Partners, Simpson Grierson, Deloitte

[422] ADLS, Easy Crypto, Mainland Capital, and Boutique Investment Group, AuditsAML Deloitte and submitters 113, 161, 164

[423] ADLS, Dentons Kensington Swan, NZBA, FNZ, Westpac, Simpson Grierson, BNZ

should be more aligned with Australia's requirements to ensure a consistent trans-Tasman approach to CDD requirements (see further *Harmonisation with Australian regulation*).

Definition of a customer

253. Identifying who the person is that meets the definition of a customer is not always clear, particularly where the transaction or relationship is complex, and many parties are involved. We asked a series of questions about what situations businesses have encountered which are not straightforward and whether a more prescriptive approach would be helpful, such as defining who the customer is in various circumstances.

254. Several submitters noted that the definition of customer is vague, unclear and would benefit from further refinement.[424] Several submitters identified situations where identifying the customer is challenging, such as when dealing with trusts, estates, dealing with complex structures or complex transactions.[425]

255. Most submitters were supportive of regulations prescribing who the customer is in certain situations to address challenges identified and ensure a consistent approach is taken across the industry.[426] In particular, submitters thought there should more prescription when dealing with corporate trustees, trusts, companies, partnerships, complex groups and structures, and when DFNBPs hold funds in trust for multiple parties in a transaction or there are multiple reporting entities involved in the transaction, and when dealing with insolvencies.[427] A significant minority submitters were opposed to the proposal.[428]

256. **Russell McVeagh, Bridging Finance** and **Submitter 58** suggested that New Zealand should take an approach similar to Australia and the United Kingdom, while **Public Trust** and **Trustee Corporations Association of New Zealand** submitted that the general approach should be to ensure that the reporting entity with the most direct relationship with the customer should have the relevant CDD obligation. Similarly, **NZBA** thought that any definition should be as simple as possible, while **ADLS** strongly recommended the Government engage in further consultation in developing any definition.

257. In terms of other changes that could be made, **Barfoot and Thompson** noted that the use of the word customer to cover both client and customer is confusing in the real estate context and suggested that this terminology should be replaced with seller and purchaser. Similarly, **Submitter 161** thought "customer" should be amended to "client" to achieve consistency with the *Lawyers and Conveyancers Act* 2008. The **Financial Services Council** also noted that there is no definition provided for "facility holder".

[424] Public Trust, Trustee Corporations Association of New Zealand, Barfoot and Thompson, Financial Services Council, Easy Crypto and submitter 85

[425] Trustees Executors Limited and submitter 106

[426] FSF, NZBA, Buddle Findlay, Private Box, AuditsAML, Simpson Grierson, Deloitte, Ausfix Forex Brokers, VCFO Group and submitters 58, 85, 103, 113, 164, 165, 188

[427] Public Trust, Trustee Corporations Association of New Zealand, FSF, ADLS, BNZ, Dentons Kensington Swan, FNZ, Buddle Findlay, ICNZB, Simpson Grierson, Deloitte and submitters 106, 164

[428] Aro Advisors, Mainland Capital, Bridging Finance, Kendons, and submitters 26, 58, 80, 92, 95, 160

Definition of a customer in real estate transactions

258. This section considered whether we should amend the regulation which defines a real estate's customer to require CDD on both the purchaser and the vendor. We noted that the FATF requires real estate to conduct CDD on both parties and also noted that the current requirement is not entirely aligned to where the risks associated with real estate transactions.

259. The majority of submitters were opposed to the proposal to require real estate agents to conduct CDD on both the purchase and vendor.[429] A range of reasons were advanced for opposing the proposal, including that it would result in disproportionate compliance costs and a waste of resources and effort, particularly for small businesses, delay transactions, and impact the ease of doing business in New Zealand.[430] Submitters also noted that other businesses are involved in a real estate transaction and may be more appropriate or beneficial for those businesses to conduct CDD and detect suspicious activity.[431]

260. Submitters also identified several practical issues with the proposal, such as:

- the vendor is typically the real estate agent's customer, not the purchaser, and there is no contractual relationship or service provided to the purchase which would compel the information being provided.[432]
- some types of real estate transactions may be extremely challenging for CDD to be conducted on the (prospective) purchaser, such as where there are multiple offers, tenders, or auctions.[433]
- trusts and nominees are commonly involved in transactions which can add additional complications and, in the case of nominees, significantly reduce the value of the CDD being conducted.[434]

[429] Select Realty Zindels, Polson Higgs, Harcourts Bay of Islands, Bridging Finance, Retail Commercial, Tommys, Howard & Co, Harcourts Gold Star, LJ Hooker Timaru, Axis Realty, ABC Business, Lynda Smyth, Property Brokers, Barfoot & Thompson, Harveys Warkworth, Ray White Whitianga (1), Ray White Whitianga (2), Bayleys Hawkes Bay, Ray White Tauranga, Richardsons Tairua, One Agency, Min Sarginson Real Estate, Ray White Whitianga (3), Barfoot and Thompson, Harcourts Hoverd & Co, Premium Real Estate, Harcourts Group, NZ Realtors, Property Brokers, REINZ, ReMAX, Richardson Real Estate, LJ Hooker MacKenzie Country, Bayleys Mangawhai, Mainland Capital, Dentons Kensington Swan, Grenadier Real Estate and submitters 44, 90, 92, 95, 164, 165

[430] Select Realty Tommys, Howard & Co, LJ Hooker Timaru, Property Brokers, Harveys Warkworth, Barfoot & Thompson, Min Sarginson Real Estate, Agent Commercial, Barfoot and Thompson, Harcourts Hoverd & Co, Harcourts Group, NZ Realtors, Property Brokers, REINZ, ReMAX, Richardson Real Estate, LJ Hooker MacKenzie Country, Bayleys Mangawhai, Dentons Kensington Swan, Axis Realty, Ray White Tauranga, Richardsons Tairua, One Agency, Harcourts Hoverd & Co, Premium Real Estate, Harcourts Group, NZ Realtors, LJ Hooker MacKenzie Country, Grenadier Real Estate and submitters 44, 69, 90, 92, 165

[431] Polson Higgs, Harcourts Bay of Islands, Bridging Finance, Retail Commercial, Tommys, Howard & Co, LJ Hooker Timaru, ABC Business, Ray White Whitianga (2), One Agency, Min Sarginson Real Estate, Ray White Whitianga (3), Barfoot and Thompson, Harcourts Hoverd & Co, Premium Real Estate, Harcourts Group, NZ Realtors, Property Brokers, ReMAX, Richardson Real Estate, Bayleys Mangawhai, Mainland Capital, Dentons Kensington Swan, Harveys Warkworth, Property Brokers and submitters 92, 164, 165

[432] ABC Business, Harcourts Hoverd & Co, Harcourts Group, NZ Realtors, Property Brokers, Richardson Real Estate, Mainland Capital, Grenadier Real Estate and submitters 65, 90, 164

[433] Retail Commercial, Howard & Co, Harcourts Gold Star, Harveys Warkworth, Ray White Whitianga (1), Ray White Whitianga (2), Bayleys Hawkes Bay, Ray White Tauranga, Richardsons Tairua, Barfoot and Thompson, Harcourts Group, NZ Realtors, ReMAX, Richardson Real Estate, LJ Hooker MacKenzie Country, Grenadier Real Estate and submitters 90, 164

[434] Howard & Co, Harcourts Gold Star, Property Brokers, Bayleys Hawkes Bay, One Agency, NZ Realtors, Richardson Real Estate and submitters 44, 90

- **Harcourts Group** and **REINZ** noted there would be a conflict of interest for the agent to act for both parties to the same transaction.

261. A small number of submitters were in favour of the proposal,[435] with **BNZ** and **Submitter 113** noting that this proposal would be more aligned to the risk associated with real estate transactions, while several submitters thought greater use of reliance and technology could address compliance cost issues (such as a centralised database such as RealMe).[436] Alternatively, **Lynda Smyth** suggested that the obligation for CDD on the vendors should be removed if the change is progressed with, effectively swapping the party upon which CDD is conducted.

Time at which real estate agents must conduct CDD

262. This section asked submitters for their thoughts on the appropriate time for CDD to be conducted on the vendor and purchaser in real estate transactions. We noted that CDD must currently be conducted when the agent enters into an agency agreement with their customer (typically the vendor). However, we noted this approach may not be appropriate for all types of real estate arrangements and would not work if CDD is required for the purchaser.

263. With respect to conducting CDD on the vendor, most submitters considered that the current approach is appropriate.[437] Several submitters thought that CDD should instead be carried out once the agreement is signed by before the property is listed, or as part of the listing process.[438] Others thought CDD should be required when contracts are signed,[439] with **Property Brokers** suggesting CDD should be required before the sale goes unconditional.

264. There was a broad range of views with respect to when CDD should be conducted on the purchaser (if this becomes a requirement). Several submitters thought that CDD should be required on purchasers when their offer has been successful,[440] or when an agent is first approached.[441] Most thought that CDD should be required when the agreement for sale and purchase is signed (and included as a condition of the contract) or when the offer goes unconditional.[442] However, a number of submitters also noted that the use of nominees could undermine any approach taken, as the real estate agent may never truly know the identity of the purchaser.[443]

[435] Kendons, AuditsAML, Aro Advisors. BNZ and submitters 53, 58, 80, 113

[436] AuditsAML Polson Higgs, One Agency, Premium Real Estate and submitters 80, 92, 129

[437] BNZ, Property Brokers, Bayleys Hawkes Bay, Harcourts Group, NZ Realtors and submitters 26, 85, 90, 92, 113, 164

[438] Tommys, Ray White Tauranga, Aro Advisors, Mainland Capital

[439] Retail Commercial, AuditsAML and submitters 80, 161

[440] BNZ, Tommys and submitters 44, 113

[441] VCFO Group and submitter 58

[442] Property Brokers, Kendons, Retail Commercial, Ray White Tauranga, AuditsAML, Aro Advisors, ICNZB and submitters 53, 63, 80, 106, 113, 161

[443] Premium Real Estate and submitters 44, 113, 129

When CDD must be conducted

265. The Act prescribes the various times at which the various types of CDD (simplified, standard, or enhanced) must be conducted. We asked whether these points are still appropriate or whether they need to be clarified or changed, including the trigger for enhanced CDD in unusual or complex transactions.

266. The majority of submitters considered that the current triggers are sufficiently clear and appropriate.[444] However, other submitters identified the following challenges:

- determining when a business relationship is "established", particularly where a relationship is established before a product or account is activated;[445]
- **Simpson Grierson** noted that instructions start as advice but evolve into a captured activity create uncertainties for DNFBPs as to when CDD is required;
- understanding when enhanced CDD is required in general,[446] but especially determining when a transaction is "unusual" or "complex" as a trigger for enhanced CDD;[447]
- **Financial Services Council** suggested CDD obligations for some businesses such as KiwiSaver providers are not aligned with the money laundering and terrorism financing risks, and CDD should be conducted when funds are first withdrawn rather than as part of onboarding.
- **Submitter 92** noted there is confusion around requirements regarding estate distributions and transacting on behalf of a customer, and whether there needs to be CDD conducted on beneficiaries.

267. Several submitters considered these challenges could be addressed through guidance, or through regulations provided they allow for a risk-based approach to be taken.[448] In addition, **Submitter 134** and **Bridging Finance** suggested that reporting entities should be required to define when they consider a business relationship is "established" and what constitutes a "complex" or "unusual" transaction as part of their compliance programme. They noted that this would allow businesses to take an approach that is in line with their risks, but also provide businesses with clarity regarding these triggers. However, **Submitter 161** noted this could result in customers facing different costs because of differences in risk appetites between businesses.

Conducting customer due diligence in all suspicious circumstances

268. Currently CDD is only required in suspicious circumstances where the transaction occurs outside a business relationship and the amounts involved do not meet the threshold for an occasional transaction. We noted this is not in line with the FATF standards and asked

[444] FSF, HSBC, Bridging Finance, Private Box, Kendons, AuditsAML, Deloitte, VCFO Group and submitters 26, 44, 58, 80, 85, 164

[445] Reserve Bank of New Zealand and submitters 134, 165

[446] Tim Brears, BitPrime

[447] Westpac, submitter SkyCity, Simpson Grierson and submitters 80, 85, 134, 160, 161, 164, 165

[448] Kendons, Simpson Grierson, Deloitte and submitters 80, 160

whether CDD should be required in all instances of suspicion, and if so, what level of CDD should be required.

269. Submitters were mixed on the proposal. Most submitters thought that standard or simplified CDD should be required in instances of suspicious activity which occur outside of a business relationship or below the occasional transaction threshold.[449] In general, submitters thought that a requirement of this nature would be consistent with the overall aim of strengthening the regime and preventing money laundering.[450] **Boutique Investment Group** thought the requirement would be appropriate if there was a commensurate reduction in CDD requirements elsewhere.

270. However, others were not supportive of the proposal,[451] noting there would be potentially significant practical challenges with complying. Submitters also noted that "suspicious" is inherently subjective and difficult to define,[452] and that suspicions can arise due to transaction monitoring processes sometime after the transaction has occurred.[453] **Russell McVeagh** and **Buddle Findlay** also noted there are limited incentives for the customer to complete CDD, particularly if the transaction has been completed. **Dentons Kensington Swan** also noted the potential for disproportionate compliance costs for businesses which offer high-risk products. The **Privacy Commissioner** generally noted concerns with this proposal.

271. The potential for tipping off the customer was identified by most submitters. Submitters who were opposed to the proposal thought there was a high chance of tipping off,[454] while those who supported the proposal disagreed and thought it was unlikely to tip off the customer, particularly if it was presented to the customer as a compliance obligation.[455]

272. As alternative options, **Dentons Kensington Swan** and **Simpson Grierson** suggested that any requirement should be to conduct CDD only to the extent that is possible without tipping off the customer. **Bridging Finance** and **Submitter 134** also suggested that businesses should be required to define their CDD decision-making processes in circumstances of suspicion in their AML/CFT programme rather than prescribing triggers in legislation to allow for businesses to make the decision on a case-by-case basis.

Managing funds in trust accounts

273. We have identified a number of risks and vulnerabilities associated with trust accounts and asked whether more needs to be done to mitigate these risks. We were particularly concerned about funds from third parties going through trust accounts, as well as the potential for customers to pay larger sums than was anticipated. However, we also sought input from submitters about any risks they have identified in relation to trust accounts.

[449] FSF, Kendons, AuditsAML, Simpson Grierson and submitters 44, 85, 92, 113, 161, 165. Deloitte and submitters 58, 80, 95, 103, Deloitte and VCFO Group supported enhanced CDD being conducted.

[450] FSF, Westpac, Kiwi Wealth, ICNZB, AuditsAML, Deloitte, and submitters 80, 85, 95, 160, 161, 170, 165

[451] Bridging Finance, Retail Commercial, Kendons, Simpson Grierson, and submitters 26, 90, 92, 103, 164, 165

[452] NZBA, Kendons and submitter 44

[453] SkyCity and submitter 188

[454] Mainland Capital, NZBA, Buddle Findlay and submitters 25, 92, 108, 113, 165, 188

[455] FSF, Westpac, submitters 160, 161

274. In terms of risks, submitters generally considered that there are the following risks associated with trust accounts:

- potential for third party misuse, such as payments from third parties for property purchases or refunds to third parties;[456]
- trust accounts are an anonymity risk for banks as there is limited, if any, visibility of the underlying parties to a transaction;[457]
- accounts can obscure the potentially criminal source of funds or provide a veneer of legitimacy, particularly if source of funds checks are not triggered when a customer makes a deposit;[458]

275. All submitters considered that these risks are associated with trust accounts in general. However, several submitters considered that there is a level of oversight and scrutiny of solicitor's trust account under the *Lawyers and Conveyancers (Trust Account) Regulations 2008* which provides sufficient protection from misuse.[459] **ADLS** and **CA ANZ** noted that the same is true for chartered accountants, but **ADLS** considered the biggest area of risk is the potential for TCSPs that are not lawyers or chartered accountants to operate a trust account with no additional oversight from a professional body.

276. To mitigate the risks identified, several submitters suggested that CDD should be conducted on third parties depositing funds, or before refunds are paid to a third party.[460] **Lane Neave** and the **ICNZB** similarly thought transfers or refunds to third parties should be prohibited in general, or if they were outside the nature and purpose of the business relationship with their customer. **Submitter 188** thought CDD should be required where an amount or transaction occurs that is outside the known profile of the client, while **BNZ** thought DNFBPs should be required to provide a structure chart for complex customers using trust accounts to the bank providing the account or facility. However, some submitters thought that guidance was sufficient, and that DNFBPs should be identifying controls in their risk assessments.[461]

277. **Dentons Kensington Swan** considered that the current CDD and PTR requirements are sufficient for lawyers but that further requirements could apply to sectors which can operate trust accounts without additional scrutiny or independent review. **Buddle Findlay** similarly noted that any additional controls could conflict with fiduciary or professional obligations in relation to the operation of a trust account. For example, rule 10.5.2 requires lawyers who receive funds to adhere strictly to any terms and disburse funds only in accordance with those terms. The **Privacy Commissioner** generally noted concerns with this proposal.

What information needs to be obtained and verified

278. The Act requires business to obtain (and verify) a range of information about the customer and their beneficial owner, depending on the level of CDD being conducted. We asked whether the

[456] Lane Neave, ICNZB, AuditsAML, Simpson Grierson, Law Box and submitter 95, 106

[457] Westpac, ADLS, BNZ

[458] BNZ, Dentons Kensington Swan and submitter 188

[459] NZLS, ADLS, Dentons Kensington Swan, Buddle Findlay and submitters 44, 164

[460] Lane Neave, Westpac, ICNZB, AuditsAML and submitters 103, 106

[461] Simpson Grierson, Deloitte and submitter 95

requirements are still appropriate or whether anything needs to be changed. We also identified three particular areas for potential reform, specifically the obligations regarding legal persons and arrangements, when the source of wealth should be verified versus the source of funds, and requirements regarding beneficiaries of life and other investment-related insurance.

Obligations for legal persons and legal arrangements

279. We noted that the FATF standards require businesses to obtain and verify specific information about customers which are legal persons and legal arrangements, specifically their legal form and proof of existence, ownership and control structure, and powers that bind and regulate (e.g., understanding voting rights or founding documents setting out how the legal person or arrangement can operate). The Act does not require this information to be obtained and we asked whether regulations should be issued to require this information to be collected. We also asked whether businesses are currently collecting some or all of this information, even though it is not explicitly required.

280. Submitters were split on the proposal, with roughly half supportive of the proposal[462] and half opposed to or concerned about the proposal.[463]

281. Several submitters indicated that some or all of this information is already collected as part of CDD, and that mandating its collection would ensure a consistent approach across industry and bring New Zealand in line the FATF standards.[464] **Submitter 134** also suggested that level of verification of this information should be risk-based to ensure proportionate compliance obligations and **illion** noted that technological solutions exist to automate the collection of the proposed information for most entity types in New Zealand.

282. Other submitters were largely concerned about the potential compliance costs as well a desire to reduce the level of prescription in the regime. **Submitter 160** also considered that the proposal would lead to increased de-risking and worsen financial inclusion for customers who are not natural persons due to the compliance costs involved. However, some submitters were only opposed to part of the proposal, such as obtaining information about ownership and control structure, powers that bind and regulate, or being required to verify the information.[465]

Source of wealth versus source of funds

283. The Act requires businesses to obtain and verify information about the customer's source of wealth (SoW) or source of funds (SoF), however it does not specify when it is more appropriate to verify the source of wealth instead of the source of funds, and vice versa. We asked whether we should issue regulations to provide further clarity to businesses as to when this verification should occur.

284. Several submitters noted challenges with completing SoW or SoF checks such as:

[462] FSF, NZBA, ICNZB, Dentons Kensington Swan, AuditsAML, BNZ, Miller Johnson, Simpson Grierson and submitters 26, 58, 80, 85, 113, 134, 188

[463] Financial Services Council, Aro Advisors, ADLS, Boutique Investment Group, Privacy Commissioner, Dentons Kensington Swan, Kendons, Bridging Finance and submitters 44, 92, 103, 160, 161, 164, 165

[464] FSF, NZBA, ICNZB, BNZ, Dentons Kensington Swan and submitters 85, 134, 188

[465] FNZ, Boutique Investment Group, Mainland Capital and submitter 188

- general uncertainty about when SoW is required versus when SoF is required and the value it provides;[466]
- trusts, particularly where the settlor has died, or the trust spans several generations as well as due to the requirement for the documentation needing to come from an independent source;[467]
- **Submitter 106** also noted that bank statements may not be sufficient to complete analysis of SoF, particularly for trusts, as statements may not distinguish between people depositing on their own account or as trustee of a trust;
- foreign customers or elderly customers, particularly where documents proving the source need to be translated or no longer exist;[468]
- how to conduct SoW/SoF checks for long-standing or legacy customers;[469]

285. Most submitters were supportive of providing further clarity and addressing some of these challenges through regulations.[470] However, a large number submitters were opposed to additional regulations or preferred that guidance be issued to assist with the completion of SoW/SoF. This guidance should include what documents can be used, how far back businesses are expected to go, and how SoW/SoF inquiries inform other controls such as transaction limits.[471]

286. Several submitters noted the need for a risk-based approach to SoW/SoF and when it is required, including submitting that the entity should determine how to approach SoW/SoF in proportion to the risk of the customer or transaction.[472] **Submitter 134** went further and suggested that businesses should be required to define this decision making in their AML/CFT programme. **illion** also noted that verification of the source of funds and wealth can be conducted automatically through open banking transaction data.

Beneficiaries of life and other investment-related insurance

287. We asked whether we should issue regulations to require businesses to obtain the name of any beneficiaries or classes of beneficiaries of life insurance policies and requiring businesses to consider the risk posed by the beneficiary when determining what level of CDD to conduct. We noted that while this would bring New Zealand in line with the FATF standards, no life insurers currently offer any products that would be considered risky.

288. Almost all submitters were not supportive of the proposal, noting that it could result in unnecessary and disproportionate compliance costs.[473] **Financial Services Council** noted

[466] Cygnus Law, FNZ, Kiwi Wealth, VCFO Group and submitters 134, 188

[467] FSF, Trustees Executors Limited, CPA Australia, Lucy Smythe, Clyde Law

[468] Tim Brears and submitter 188

[469] NZBA, Security Industry Association, Kendons

[470] FSF, Aro Advisors, Cygnus Law, Russell McVeagh, Kiwi Wealth, NZBA, AuditsAML, BNZ, Miller Johnson, Simspon Gierson, Deloitte, VCFO Group and submitters 58, 80, 85, 95, 103, 188

[471] FNZ, SkyCity, FNZ, BitPrime, Dentons Kensington Swan, Security Industry Association, Adyen, Bridging Finance, Kendons and submitters 44, 164, 165

[472] FSF, ICNZB, ATAINZ, Mainland Capital, Dentons Kensington Swan, Boutique Investment Group, Kiwi Wealth, Bridging Finance, AuditsAML VCFO Group and submitters 113, 160, 165

[473] Financial Serivces Council, Privacy Commissioner, BNZ, Dentons Kensington Swan, Bridging Finance, Kendons, and submitters 26, 85, 92, 95, 103, 164, 165

that there were already adequate controls in place to detect suspicious activity for life insurance policies.

289. However, only a few submitters supported the proposal, given it would achieve compliance with FATF's requirement and the recognised international risk posed by life insurance policies.[474] **Wealthpoint** submitted if there needs to be any coverage of certain life insurance policies the regulations or legislation must be very clear about what types of policies are captured and why they are considered higher risk.

Identifying the beneficial owner

290. Another core requirement of CDD is identifying and verifying the person who ultimately owns or controls a customer when the customer is a legal person or legal arrangement. This obligation helps ensure that criminals and terrorists do not use legal persons or arrangements in order to obscure their involvement in the transaction or activity. However, we noted a number of definitional and procedural issues with the current requirements which could make compliance a challenge and sought views about what we can do to improve the laws.

Definition of beneficial owner

291. This section generally asked whether submitters have encountered any issues with the definition of a beneficial owner, and how we could address those challenges.

292. While some submitters indicated they have not encountered any issues with the definition,[475] other submitters considered the approach is generally deficient and needs reconsidering.[476] Submitters identified the following challenges or areas for potential reform:

- determining "effective control", particularly in the absence of clear statutory provisions or guidance;[477]
- how "ownership" applies in the context of a trust or how to deal with corporate trustees;[478]
- whether the ownership threshold should be changed from "more than 25%" to "25% or more" or a lower threshold altogether;[479]
- the process for identifying beneficial owners is unclear and can be complex and time consuming, particularly as laypeople are unlikely to understand what is required and why;[480]

[474] ICNZB, AuditsAML and submitters 58, 80, 113

[475] Bridging Finance, Private Box, Kendons, Aro Advisors, Deloitte, Cleland Hancox, VCFO Group and submitters 90, 95, 103

[476] Financial Services Council, Cygnus Law, Simpson Grierson, AuditsAML and submitters 85, 92, 113, 161, 164, 165

[477] Trustees Executors Limited, Cygnus Law, AuditsAML and submitter 161

[478] submitters 92, 134

[479] Westpac, Simpson Grierson and submitters 85, 113, 147

[480] Boutique Investment Group, AuditsAML and submitters 44,106

293. Several submitters noted that the ambiguous requirements have increase compliance costs due to businesses taking a cautious and risk-averse approach and 'over' complying.[481]

294. In terms of potential solutions to challenges submitters identified, **ASB** and **Submitter 44** suggested that beneficial ownership should be defined for the purposes of all entity types, and also considered that verification should be risk-based. Others suggested that the definitions need to be simplified or amended,[482] or additional guidance provided.[483]

295. However, the most common solution advanced was the implementation of a register of beneficial ownership of legal persons and/or legal arrangements that would be accessible by reporting entities.[484] Submitters noted that a register would significantly reduce compliance costs, while the **British High Commissioner** noted that registers can provide general value to law enforcement by improving transparency of legal structures and making it harder to hide ill-gotten gains.

'Ultimate' ownership and control

296. We noted that one area where the Act's definition of beneficial ownership is deficient is that it does not require businesses to identify the 'ultimate' owner or controller of the customer. We noted that the Beneficial Ownership Guidelines make this expectation clear, but also noted that guidance is not enforceable. We asked whether we should issue an "avoidance of doubt" regulation which states that the focus should be on identifying the ultimate beneficial owner.

297. Most submitters were supportive of changes to ensure businesses focus on identifying the 'ultimate' beneficial owner.[485] Several submitters noted that they already focus on identifying the ultimate beneficial owner,[486] and **Submitter 134** considered this approach would ensure a consistent approach is taken by industry and that businesses are properly assessing the customer risks.

298. **Submitter 160** and **KiwiWealth** noted that guidance would be needed if this change is adopted, particularly for how to deal with beneficial owners who are not the 'ultimate' owner, and the extent to which they would need to be identified. **Trustees Executors Limited, ADLS** and **Dentons Kensington Swan** also noted that challenges often arise when trying to gather information about an offshore entity or beneficial owner and noted that any definition or guidance should enable an efficient approach to be taken.

299. There were mixed views on whether the change would impact compliance costs: some considered a change of this nature would have minimal impact or would decrease compliance costs,[487] while others thought the change would increase compliance costs.[488]

[481] Cygnus Law and submitter 106

[482] Simpson Grierson and submitters 113, 165

[483] Private Box, Deloitte and submitters 44, 113

[484] FSF, Westpac, HSBC, EasyCrypto, ASB, Mainland Capital and submitters 106, 113

[485] FSF, Trustees Executors Limited, Cygnus Law, Kiwi Wealth, ICNZB, BNZ, Dentons Kesington Swan, NZBA, ADLS, Private Box, AuditsAML and submitters 80, 113, 134, 164, 188

[486] Trustees Executors Limited, Aro Advisors, Cygnus Law, Dentons Kensington Swan, ICNZB, NZBA, ADLS, Kendons, AuditsAML, Simpson Grierson, Deloitte and submitters 44, 80, 85, 92, 95, 113, 164, 170

[487] FSF, BNZ, Kiwi Wealth, Mainland Capital, Private Box, Kendons, Deloitte and submitters 80, 95, 188

[488] ICNZB, AuditsAML, Bridging Finance and submitters 26, 44, 58, 85, 92, 103, 134, 161, 164, 165

300. Several submitters noted that costs could be minimised by leveraging off information already held in corporate registries or by creating a specific register of beneficial ownership information.[489] **Submitter 134** also noted that the costs could be mitigated by allowing businesses to obtain any additional information about the ultimate beneficial owners as part of ongoing CDD measures. **Russell McVeagh** suggested that simplified CDD should be extended to entities already subject to public disclosure requirements in New Zealand and other jurisdiction to reduce the compliance burden.

301. However, a large number of submitters were not supportive of focusing on the 'ultimate' beneficial owner or the proposal to issue regulations to encourage this approach.[490] The **Financial Services Council** noted that existing regulations are already complex, while **Boutique Investment Group** was not supportive of further prescription and rigidity. **FNZ** also noted that the change would lead to businesses gathering information about the company at the top of a corporate ownership chain, but which may not have a role at all in the transaction or activity in question. The **Privacy Commissioner** noted concerns with this proposal.

The 'person on whose behalf a transaction is conducted'

302. Another area the Act's definition is deficient is that it includes "the person on whose behalf a transaction is conducted" (the POWBATIC) in both limbs of the definition of beneficial owner. We noted that this has caused challenges for businesses and sought views about whether we should issue a regulation that states the circumstances in which a business should be looking at the person on whose behalf a transaction is being conducted for the purposes of CDD. We also asked whether a regulation of this nature would make two existing class and regulatory exemptions redundant.

303. Almost all submitters were supportive of the proposal and indicated that the change would reduce compliance costs and reduce duplication.[491] **HSBC** noted the regulation could apply in situations where power of attorney has been assigned. However, **Simpson Grierson** and **Submitter 165** were not supportive of the proposal.

304. **Russell McVeagh** did not think that regulations or guidance alone could address the issue and submitted that the best solution would be to repeal the references to the POWBATIC in the beneficial owner definition. The **Security Industry Association, NZBA and Deloitte** noted the need for further guidance, such as clarifying that 'indirect control' means control in the general sense, and not just in relation to a specific transaction.

305. Most submitters considered the existing exemptions would become redundant and could be removed,[492] however **HSBC** and **Buddle Findlay** considered that the licensed and specified managing intermediaries exemptions may continue to be useful. The **Security Industries Association** thought further consultation would be needed once the proposed change is finalised to confirm whether the exemptions are still needed. **Deloitte** and **Submitter 80** did not consider the exemptions would become unnecessary.

[489] Trustees Executors Limited

[490] Financial Services Council, Bridging Finance, Boutique Investment Group, FNZ, Kendons, VCFO Group and submitters 26, 58, 95, 103, 106, 165

[491] FSF, HSBC, Aro Advisors, BNZ, FNZ, Kiwi Wealth, Securities Industry Association, ICNZB, Ayden, Boutique Investment Group, Kendons, AuditsAML, Miller Johnson, Deloitte, VCFO Group and submitters 26, 58, 80, 113, 160, 161, 188

[492] FSF, BNZ, FNZ, NZBA, Buddle Findlay, Kendons and submitters 58, 113, 188

Process for identifying who ultimately owns or controls legal persons

306. We noted that the FATF prescribes a three-step process for how businesses should go about identifying the beneficial owners of a legal person. The process is to first look at ownership, then control, and then looking at a senior managing official of a customer if a beneficial owner cannot be identified through looking at ownership or control. We asked whether we should issue regulations or a code of practice to require this process to be followed and noted that existing guidance largely expects this process to be followed.

307. Almost all submitters were supportive of the proposal to issue regulations or a Code of Practice.[493] Several submitters indicated they already follow a broadly consistent approach, such as the process outlined in the *Beneficial Ownership Guideline*[494] or the FATF's process. **BNZ** did not consider that the third step of the FATF's process should be included as they considered it provided limited value, while **Boutique Investment Group** was generally reluctant to support more Codes or further prescription.

308. **Submitter 106** noted that the current requirements are particularly problematic for incorporated societies. **Submitter 160** noted that any regulations or guidance should make it clear the extent to which all Directors or C-level executives would need to be considered beneficial owners, while **Submitter 188** considered it would be helpful for further guidance outlining what "exercising control of a legal person by other means" looks like in practice.

Process for identifying who ultimately owns or controls legal arrangements

309. Similar to legal persons, the FATF also prescribes a particular approach for identifying the beneficial owner of a legal arrangement, which is to focus on identifying the settlor, trustee(s), protector, and any other person exercising ultimate effective control over the trust or legal arrangement. We asked whether regulations or a Code of Practice should be issued that requires this approach to be taken.

310. Almost all submitters supported regulations or a Code of Practice being issued to clarify how the beneficial owner of a legal arrangement is identified and ensure a consistent approach is taken across industry.[495] Several submitters identified additional challenges that could be addressed through this approach, such as clarifying any difference in obligations for different types of trusts, how to treat corporate trustees, and dealing with beneficiaries of a discretionary trust.[496]

311. Several submitters also noted that the proposal would result in minimal compliance costs as they already largely take the approach identified,[497] and **FSF** further noted that the requirements could be easily satisfied by obtaining a copy of the Trust Deed. However, others

[493] FSF, Westpac, ADLS, Kiwi Wealth, Security Industries Association, Mainland Capital, ICNZB, Dentons Kensington Swan

[494] BNZ, Westpac and submitters 160, 188

[495] FSF, Trustees Executors Limited, HSBC, Aro Advisors, BNZ, Westpac, Cygnus Law, EasyCrypto, FNZ, Kiwi Wealth, Security Industries Association, ICNZB, Dentons Kensington Swan, Private Box, Kendons, AuditsAML, Deloitte, Simpson Grierson, VCFO Group and submitters 26, 58, 80, 85, 92, 103, 113, 160, 161, 164, 188

[496] Trustees Executors Limited, HSBC, BNZ, EasyCrypto, FNZ, Mainland Capital, AuditsAML, Simpson Grierson and submitters 188

[497] Kiwi Wealth, Private Box, Kendons, BNZ, Deloitte and submitters 80, 92, 95, 113, 160, 161, 188

thought compliance costs would increase as there would be potentially significant process changes required to comply.[498]

312. **Boutique Investment Group** and **Submitter 106** did not support the proposal as they considered it would inhibit or undermine a risk-based approach being taken and were not supportive of more complex regulations being imposed.[499]

Reasonable steps to verify information obtained through CDD

313. Once information about a customer and their beneficial owner(s) has been obtained, the Act requires that businesses verify the information to ensure that it is "correct" or that the business is "satisfied that it knows who the beneficial owner is". We asked whether the verification requirements are clear and appropriate, or whether they need to be improved. In addition, we asked a range of questions about the Identity Verification Code of Practice (IVCOP) which provides a safe harbour for how businesses can comply with the verification requirement.

314. Several submitters considered that the requirements for verification are largely sound.[500] However, some submitters considered the requirements are not sound,[501] in that they are treated as a tick-box exercise, frequently unnecessarily burdensome, can provide nominal value in some situations, and divorced from real-world practices and technological solutions.[502] In particular, submitters identified the following challenges:

- the requirement for a 'reliable and independent source' can be challenging for documents which are privately held (e.g. trust deeds or company constitutions), and could be relaxed for low-risk customer or products;[503]
- the requirement to verify the relationship to the customer is unclear and causes confusion in that it is unclear what documents, if any, can be used which are independent from the customer;[504]

Identity Verification Code of Practice

315. This section considered whether the Identity Verification Code of Practice (IVCOP) is working appropriately and providing sufficient clarity for businesses in complying with their verification obligations. We asked generally what submitters thought of IVCOP and how it was working, but also identified some ways where the Code could be improved or amended.

316. Overall, submitters did not think IVCOP was working appropriately, with several submitters noting that it needs to be substantially and fundamentally reviewed or discarded entirely.[505] Submitters considered that the Code is impractical, too rigid and prescriptive, not technology friendly, not sufficiently risk based, and has resulted in unintended consequences as well as a

[498] Mainland Capital and submitters 26, 44, 58, 85, 103, 165

[499] Submitter 106

[500] Aro Advisors, Kendons, Deloitte, VCFO Group and submitters 58, 80, 85, 92, 95, 113, 160, 164

[501] Bridging Finance, Retail Commercial, AuditsAML, Simpson Grierson and submitters 26, 103, 161, 165

[502] Securities Industry Association, Boutique Investment Group, Financial Services Council and submitter 106

[503] Boutique Investment Group and submitters 103, 160

[504] HSBC

[505] ADLS, NZLS, Boutique Investment Group, Compliance Plus, submitter 106, 108

disproportionate and misplaced compliance burden.[506] **ADLS** also noted that the Code has not been updated in some time, while **NZLS** and **Dentons Kensington Swan** thought the Code was not workable for DNFBPs and a separate parallel code should be developed.

317. In addition, submitters identified the following specific issues with parts of the Code:

- **Electronic Identity Verification**: requirements for electronic identity verification are problematic, outdated, and unclear,[507] and should be in the Code rather than 'Explanatory Note' which has no legal basis.[508] Submitters considered there should be a clearer and more robust framework for electronic identity verification which goes beyond only identifying RealMe as the only option and is aligned with the Digital Identity Trust Framework;[509]
- **Types of documents which can be used:** submitters considered that more allowance should be provided for expired documents and overseas documents (such as foreign driver licenses), and that some documents, such as driver licenses, should be sufficient on their own;[510]
- **Overseas verification and certification:** submitters noted that requirements are inconsistent between New Zealand and overseas, and overseas customers can provide legitimately certified documents that do not meet New Zealand requirements;[511]
- **"Wet ink" certification:** considered no longer fit-for-purpose and inconsistent practices across industry, allowance should be provided for digital or virtual certification, noted that it causes significant delays and issues and effectively requires businesses to complete CDD "before" entering a business relationship;[512]
- **Trusted referees**: list of trusted referees should be amended, for example to include reporting entities or AML/CFT compliance officers or in-house counsel as it can be difficult to access a trusted referee, particularly when the customer is overseas;[513]
- **Equal treatment of non-bank reporting entities:** bank statements are considered authoritative and the Code should be amended to ensure that other reporting entities are also considered authoritative. Unclear why only banks are considered authoritative.[514]
- **Greater alignment with other requirements**: submitters considered there could be better alignment between AML/CFT and other requirements and guidelines, such as

[506] NZLS, ADLS, Securities Industry Association, Boutique Investment Group, Sharesies, NZBA, Compliance Plus, FNZ, and submitter 106, 108, 160, 173

[507] Illion, BitPrime, ADLS, Securities Industry Association, ASB, Private Box, and submitters 58, 85, 160, 161, 165,

[508] BNZ, NZGIF and submitter 188

[509] HSBC, illion, BitPrime, ADLS, Kiwi Wealth, Securities Industry Association, ASB, BNZ, Mainland Capital, Sharesies, Dentons Kensington Swan, FSF, NZBA, Compliance Plus, Deloitte, AuditsAML, MATTR and submitters 44, 80, 92, 95, 103, 106, 114, 160, 164

[510] HSBC, ADLS, ASB, BNZ, ICNZB, Boutique Investment Group, NZBA, Compliance Plus, AuditsAML, Bridging Finance, BlockchainNZ, Simpson Grierson and submitters 95, 106, 113, 160, 161, 165

[511] HSBC, NZBA, Daniel Pope, Simpson Grierson, Private Box and submitter 85, 113

[512] HSBC, ADLS, BNZ, Dentons Kensington Swan, Deloitte, Simpson Grierson, and submitters 106, 161, 165

[513] BNZ and submitters 106, 161, 188

[514] Submitters 106

LINZ guidelines, and *Fair and Accurate Credit Transactions Act* or Common Reporting Standard requirements.[515]

- **Clarity around exception handling procedures**: submitters noted it is unclear what an exception handling process would look like and when it should apply;[516]

318. As noted elsewhere, several submitters indicated that the best solution to improve verification would be to provide direct access to government sources for verification purposes (see further *Partnering in the fight against financial crime*).[517] Submitters were also broadly supportive of the Code covering high-risk customers, ongoing CDD, sharing CDD information, legal persons and arrangements, and customers who are minors or in vulnerable positions.[518]

Verifying the address of customers who are natural persons

319. We asked several questions about verifying the address of customers who natural persons are. We noted that, while there are some law enforcement benefits to verified address information, there were a number of issues with the requirement. We asked for input about challenges that submitters had with the current requirements, whether address information should be verified (if ever), and how we could resolve current challenges businesses are facing with the current requirements.

320. Submitters identified several challenges with the current requirement, with most submitters noting there is a lack of robust and reliable sources of address information that all people can access.[519] Submitters also noted that there is not standardised approach taken by industry which results in inconsistencies between businesses,[520] and that challenges are exacerbated with overseas customers.[521] Submitters also noted that address verification has a high failure rate[522] and is a cause of delays, friction, and frustration in onboarding processes which can result in lost customers and revenue.[523]

321. Several submitters considered that the purpose of address verification was unclear and that it has not proven to be materially useful from a law enforcement perspective or at preventing anonymity.[524] Submitters further noted that address verification is not required in many other

[515] Chrystall Law

[516] Deloitte, submitter 161

[517] Boutique Investment Group, FSF and submitters 44, 92, 95, 165

[518] BNZ, NZGIF, HSBC, Aro Advisors, ADLS, Securities Industry Association, ASB, Simpson Grierson, Private Box, Simpson Grierson, Deloitte, Kendons, AuditsAML and submitters 58, 103, 160, 188

[519] BNZ, Connect Legal, Dyson Smythe and Gladwell, Akahu, Private Box, Snowball Effect, Trustees Executors Limited, Lane Neave, AuditsAML, Digital Identity NZ, Public Trust, HSBC, Milford Asset Management, MinterEllisonRuddWatts, SkyCity, Cygnus Law, ADLS, Easy Crypto, FNZ, Russell McVeagh, Securities Industry Association, Akahu, Digital Identity New Zealand, Russell McVeagh, illion and submitters 44, 85, 92, 95, 103, 106, 113, 124, 134, 164, 165, 170, 188

[520] BNZ, Elevate (2), Wealthpoint and submitter 106

[521] HSBC and submitter 28

[522] Milford Asset Management, MinterEllisonRuddWatts and submitter 134

[523] Private Box, AuditsAML and submitters 103, 113, 160, 161, 165, 170

[524] Akahu, Law Box, Digital Identity NZ, Financial Services Council, HSBC, PwC, SkyCity, Wealthpoint, Deloitte, Easy Crypto, Russell McVeagh, Securities Industry Association and submitters 134, 160, 165

jurisdictions or the FATF standards,[525] and that the approach is not aligned with the risk-based approach inherent in the AML/CFT regime particularly in respect of low-risk products such as Kiwisaver.[526] Conversely, **Barfoot and Thompson** and **Property Brokers** considered that address verification can guide in assessing and understanding a customer's risk profile.

322. Accordingly, many submitters considered the benefits of the current address verification requirements are outweighed by the costs to businesses and consumers and therefore considered that verification should not be required and/or should be made optional,[527] or limited to only high-risk situations.[528] Submitters also suggested alternative approaches to verifying address information or verifying different information about a customer (e.g. their email address).[529] **Equifax** opposed the removal of address verification as they considered it is a crucial piece of information when detecting fraud.

323. If the requirement is not removed, several submitters urged the need for guidance or an amendment to the IVCOP to provide for a sanctioned process for verifying address information for reporting entities.[530]

Obligations in situations of higher and lower risk

Expanding the range of measures available to mitigate high-risk customers

324. The FATF identifies a range of measures that businesses can take to manage high-risk situations. One of these – obtaining SoW or SoF information – is currently required, but businesses are not required to take any of the other measures to deal with high-risk customers. We asked whether regulations or a Code of Practice should be issued which outline these additional measures, and also asked whether any of the measures should be mandated in any circumstances.

325. Submitters were broadly supportive of additional measures being identified, with most submitters supporting a Code of Practice or guidance rather than regulations to ensure a risk-based approach can properly be taken.[531] **FSF** suggested that there should be alignment with the *Credit Contracts and Consumer Finance Act* 2003, while **Submitter 134** submitted that businesses could be required to define if, when, and how each measure is used as part of their AML/CFT programme as an alternative approach.

326. **Cygnus Law** was opposed to regulations or a Code of Practice because of the potential for very significant compliance costs being imposed on businesses and customers for limited

[525] BNZ, NZGIF, SkyCity, Russell McVeagh, Securities Industry Association, Trustees Executors Limited, Lane Neave, Public Trust and submitters 44, 160

[526] Digital Identity NZ, Medical Assurance Society and submitter 127

[527] Bridging Finance, Akahu, NZGIF, Digital Identity NZ, Public Trust, CA ANZ, Financial Services Council, HSBC, Milford Asset Management, MinterEllisonRuddWatts, Westpac, Deloitte, ADLS, Easy Crypto, FNZ, RITANZ, Russell McVeagh, Securities Industry Association, Unity, ASB, ICNZB and submitters 44, 85, 92, 106, 124, 164, 188

[528] Freeman Accounting, Harcourts Gold Star, AuditsAML, PwC, SkyCity, Cygnus Law, Kiwi Wealth, ICNZB and submitters 44, 85, 103, 134, 160, 170

[529] Connect Legal, illion, Christian Savings Limited, ASB, BNZ

[530] AuditsAML, BNZ, Digital Identity NZ, Westpac and submitters 103, 108, 160

[531] Aro Advisors, BNZ, FNZ, Kiwi Wealth, ICNZB, Dentons Kensington Swan, FSF, Dentons Kensington Swan, Mainland Capital, NZBA, AuditsAML, Kendons, Miller Johnson, Deloitte and submitters 58, 80, 85, 92, 95, 103, 113, 134, 160, 161, 188

benefit. **Submitters 44** and **165** were also opposed to the proposal out of concerns that complexity would increase. The **Privacy Commissioner** also noted concerns with the proposal.

327. Several submitters indicated that they already take some or most of the steps identified by the FATF.[532] Submitters also identified other measures the take, such as adverse media searches, "watch listing" suspicious customers, and seeking additional information from intermediary businesses.[533]

328. Submitters were generally split on whether any measure should be mandatory, with most opposed to any being mandatory at all,[534] with others thinking that some or most measures should be mandatory.[535] **KiwiWealth** submitted that further consultation is required to determine whether any measure should be mandatory, while **Boutique Investment Group** noted caution in making any requirement mandatory as some businesses (such as KiwiSaver providers) cannot easily terminate relationships.

Conducting simplified CDD on persons acting on behalf of large organisations

329. This section considered how we can create more streamlined simplified CDD requirements in general, but particularly for customers who are large organisations where a person is acting on the organisation's behalf. As an option for streamlining the process, we asked whether we should issue regulations to allow employees acting on behalf of an organisation to be delegated by a senior manager in order to avoid CDD being triggered by each new employee.

330. Several submitters thought that simplified CDD can be generally streamlined further and noted the following challenges or potential changes:[536]

- submitters noted that the scope of a "person acting on behalf" is unclear, as are the obligations that apply to that person;[537]
- **NZBA** submitted that simplified CDD should be extended to all AML licensed or regulated entities in low-risk jurisdictions;
- **Boutique Investment Group** considered that large low-risk entities (e.g. trustee corporations, Court-appointed administrators) should not require CDD at all, and **Submitter 85** thought customers which are regulated overseas should also be exempt;
- **Public Trust** also considered that its employees should not be subject to CDD when operating accounts that Public Trust manages;
- **Simpson Grierson** noted the need for clarity as to how to treat directors on a large board;

[532] BNZ, Dentons Kensington Swan, NZBA, Simpson Grierson and submitters 26, 58, 161, 165, 188

[533] Boutique Investment Group

[534] Mainland Capital, Kendons, Bridging Finance, Private Box, Simpson Grierson, Deloitte and submitters 26, 44, 92, 103, 165,188

[535] ICNZB, AuditsAML BNZ and submitters 58, 161

[536] Bridging Finance, Kendons, AuditsAML, Simpson Grierson and submitters 44, 85, 92, 113, 164, 165, 106

[537] Russell McVeagh and submitters 134

331. Most submitters were supportive of the proposal outlined regarding delegating authority to act by a senior manager or requiring CDD to only be required for the main contact point at an organisation.[538] However, a small number were not supportive[539] with **BNZ** recommending that regulations should be issued clarifying when a person is considered a "person acting on behalf" and that CDD should continue to apply to that person.

332. **Trustees Executors Limited** suggested that the proposal should not be limited to 'large' customers or customers subject to simplified CDD. The **Security Industries Association** thought that the compliance officer should be able to verify the identity of the delegate, while **Submitter 106** considered it would be better to verify a person's authority to act rather than their identity. **Submitter 106** and **Dentons Kensington Swan** noted the need for conditions to mitigate against embezzlement and fraud risks and ensure the employee cannot act beyond the scope of their delegation.

Mandatory enhanced CDD for all trusts

333. This section considered whether we should amend or remove the mandatory requirement for enhanced CDD to be conducted on all customers which are trusts. We noted that this approach is inconsistent with the FATF standards as well as a risk-based approach as not all trusts are inherently high risk. We noted that removing the requirement would not preclude enhanced CDD from being conducted on a risky trust, but it would mean that standard CDD could be conducted where the risk is not elevated.

334. Almost all submitters were supportive of removing the mandatory requirement for enhanced CDD for trusts, which would result in enhanced CDD being conducted only where there are identified risks.[540] However, a handful of submitters supported maintaining the status quo position due to the inherent risks present in all trusts.[541] On a related point, **SIA** and **Simpson Grierson** submitted that "vehicle for holding personal assets" should be removed from enhanced CDD requirements given the recent changes to nominee directors and shareholders.

335. Submitters noted that enhanced CDD can be challenging and overly invasive for some trusts, particularly long-established family trusts, charitable trusts, specified commercial trusts, and Māori trusts, and that the requirements are not always proportionate to the risk posed by the trust and lead to misplaced resources.[542] While some trusts can be high risk, submitters considered that the majority of trusts they interact with are not high risk and are typically used

[538] Lane Neave, Aro Advisors, Trustee Corporations Association of New Zealand, NZGIF, ICNZB, Dentons Kensington Swan, FSF, Buddle Findlay, Simpson Grierson, AuditsAML Private Box and submitters 44, 58, 85, 92, 113, 161, 164, 165, 188

[539] BNZ, Bridging Finance and submitter 26

[540] Lane Neave, Public Trust, Financial Services Council, HSBC, CPA Australia, Aro Advisors, BNZ, Milford Asset Management, Derek Wallwork, Tom Lyons, Berry & Co, Christian Savings Limited, Wealthpoint, Westpac, Cygnus Law, Privacy Commissioner, ADLS, FNZ, ICNZB, Boutique Investment Group, FSF, NZBA, EasyCrypto, Russell McVeagh, Security Industries Association, Unity, ASB, Mainland Capital, Sharesies, Trustees Executors Limited, Bridging Finance, Retail Commercial, AuditsAML, Simpson Grierson, Deloitte, Cleland Hancox, MinterEllisonRuddWatts and submitters 44, 85, 95, 103, 106, 113, 160, 161, 164, 165, 178, 188

[541] Kiwi Wealth, Dentons Kensignton Swan, VCFO Group and submitters 26, 58, 92

[542] NZGIF, ICNZB, Westpac, CPA Australia, Wealthpoint, Privacy Commissioner, Berry & Co, BitPrime, Sharesies, AuditsAML, Simpson Grierson and submitters 106, 134

to own the family home.[543] **Submitter 178** and **Sharesies** also noted that the current requirements may reduce competition by making it harder for customers to change providers.

336. To ensure that enhanced CDD is conducted at the appropriate times, most submitters supported comprehensive guidance being issued on the characteristics or red flags that indicate higher risks, such as offshore parties, complex trust deeds, offshore bank accounts, involvement of a PEP, or being predominately settled by "recent" residents.[544] Several submitters thought that regulations could specify the types of trusts that are subject to enhanced CDD,[545] while other submitters were opposed to the suggestion and preferred guidance.[546]

Ongoing customer due diligence and account monitoring

337. This section considered the ongoing CDD and account monitoring requirements. We began by asking whether the requirements are clear and appropriate and whether there are any changes that should be made, before moving on to consider three issues we had identified with ongoing CDD.

338. While some submitters considered that the requirements are clear and appropriate,[547] a large number of submitters identified issues with the current requirements that should be clarified, including through guidance:[548]

- what a risk-based approach to ongoing CDD looks like in practice, including how entities should determine when and how frequently to review their customer's information;[549]
- what information needs to be updated, such as identity documentation (including where IDs have expired), and/or information about the nature and purpose of the business relationship;[550]
- the extent to which information can be inferred from transactional activity;[551]
- how technology such as AI can support ongoing CDD;[552]

339. **Cygnus Law** also noted that the current requirements conflate ongoing CDD with account monitoring and considered that the obligations should be split into separate sections. They and **Submitters 92, 103** and **161** also noted that account monitoring is not always relevant for

[543] Lane Neave, Public Trust, Milford Asset Management, Tom Lyons, Berry & Co, Cygnus Law, Unity, Bridging Finance and submitters 85, 103, 164

[544] Lane Neave, HSBC, Aro Advisors, BNZ, Milford Asset Management, Trustees Executors Limited, Westpac, NZGIF, ADLS, Boutique Investment Group, NZBA, Simpson Grierson, Deloitte, Cleland Hancox, Bridging Finance, AuditsAML Deloitte, Private Box and submitters 85, 92, 95, 103, 113, 160, 161, 164, 188

[545] ICNZB, NZBA, Private Box, AuditsAML, Deloitte and submitters 26, 44, 58, 85, 92, 113, 161, 164

[546] Boutique Investment Group, Bridging Finance, Kendons and submitters 103, 165

[547] FNZ, FSF, AuditsAML, VCFO Group and submitters 26, 58, 85, 95, 113, 188

[548] illion, NZBA, Bridging Finance, BNZ, Kendons, Deloitte and submitters 44, 92, 103, 134, 161, 164, 165, 188

[549] Financial Services Council, Wealthpoint, Mainland Capital, Boutique Investment Group, Dentons Kensington Swan, ATAINZ

[550] HSBC, NZGIF, Wealthpoint, ADLS, Kiwi Wealth, Mainland Capital, Sharesies, ICNZB, AuditsAML and submitters 103, 106, 134, 164, 165, 188

[551] HSBC

[552] HSBC, Sharesies

DNFBPs. **Submitter 188** similarly considered that the Act should require transaction monitoring as opposed to account monitoring.

340. **Submitter 134** suggested regulations which required businesses to articulate 'how' they determine whether transactions relating to the business relationship are consistent with their knowledge of the customer. This would ensure businesses turn their mind to how they will practically comply with their obligation. They also suggested clarifying through guidance that section 31(4) is to be conducted in accordance with the level of risk posed by the customers in question.

Considering whether and when customer due diligence was last conducted

341. We noted that the Act does not require businesses to consider whether and when CDD was last conducted as part of ongoing CDD and noted that this is a gap in our framework which presents a potential vulnerability, particularly for those businesses who have customers whose identities have not been adequately verified. We asked whether we should issue regulations to require businesses to consider these factors when conducting ongoing CDD and account monitoring.

342. Several submitters were supportive of the proposal,[553] with some also noting that they already consider whether and when CDD was last conducted.[554] However, most submitters were not supportive of a prescriptive approach out of concern that it would result in increased compliance costs and be contrary to a risk-based approach.[555] In addition, most submitters were opposed to any timeframes for or frequencies of reviews even if regulations were issued,[556] with only a few submitters supportive of mandatory timeframes for reviews.[557]

Ongoing CDD requirements where there are no financial transactions

343. We identified that the requirements for businesses to review "account activity and transaction behaviour" may not be particularly relevant for customers which do not engage in many transactions with the business, if any. We asked whether we should issue regulations to require businesses to review activities provided to a customer in addition to account activity and transaction behaviour.

344. Several submitters noted that ongoing CDD requirements where there are no financial transactions are unclear and should be clarified, especially for some sectors such as real estate where ongoing relationships do not typically exist.[558] However, most were not supportive of a prescriptive approach to this issue, preferring instead that businesses are able

[553] ASB, Kiwi Wealth, AuditsAML, BNZ, Miller Johnson and submitters 85, 95, 113, 188

[554] Dentons Kensington Swan, Bridging Finance, AuditsAML, BNZ, Miller Johnson, Simpson Grierson, Deloitte, Cleland Hancox and submitters 26, 44, 58, 85, 92, 95, 103, 113, 161, 165

[555] Aro Advisors, Wealthpoint, Westpac, FNZ, Mainland Capital, Boutique Investment Group, FSF, Deloitte, Kendons, Bridging Finance, VCFO Group and submitters 26, 44, 58, 103, 160, 161, 165

[556] FNZ, Kiwi Wealth, Bridging Finance, AuditsAML, Deloitte, Cleland Hancox and submitters 26, 44, 58, 92, 95, 103, 161, 164, 165, 188

[557] Kendons, Miller Johnson, VCFO Group and submitter 85

[558] Barfoot and Thompson, Trustees Executors Limited, Wealthpoint, Russell McVeagh, Private Box and submitters 113, 161

to apply a risk-based approach.[559] Only four submitters were supportive of the proposed regulations.[560]

Information that needs to be reviewed for account monitoring

345. We noted that the Act only requires businesses to review their customer's account activity and transaction behaviour. We asked whether we should issue regulations to require businesses to review any other information in order to ensure businesses are in a position to identify any suspicious activity.

346. On the whole, submitters were not supportive of a prescriptive approach which requires businesses to obtain additional information, even where businesses are already doing this.[561] The primary concern was that this approach would not be aligned with a risk-based approach and would result in potentially significant and unjustified compliance costs.[562] The **Privacy Commissioner** also noted concerns. As an alternative, some submitters suggested that businesses should be required to identify what information they need as part of their compliance programme,[563] or that additional guidance be issued.[564]

Conducting CDD on existing (pre-Act) customers

347. This section asked a range of questions regarding what obligations businesses should have to conduct CDD on customers they had before the Act came into force (known as "existing customers"). We noted that, despite the current obligations with respect to existing customers, some businesses have large portions of their customer base which may not have been subjected to sufficient CDD. We asked how we can ensure that existing (pre-Act) customers are subject to the appropriate level of CDD, but also identified three options that could result in existing customers being subject to CDD at an earlier stage.

348. Submitters agreed that the lack of sufficient CDD on existing customers can be a vulnerability for those businesses and the system overall, and that this should be addressed.[565] **illion** noted that conducting CDD on pre-Act customers ensures that all customers are known and removes the possibility that pre-Act customers are an AML risk. Some submitters also noted that the concepts of an existing customer or a material change are particularly challenging for some sectors, such as real estate and law firms.[566]

349. We identified three potential options which could address the vulnerability:

    - **Option 1: making the trigger an 'or' rather than an 'and'**, which would result in CDD where a business considers it has insufficient information about a customer.

[559] Trustees Executors Limited, ADLS, Aro Advisors, ICNZB, Dentons Kensington Swan, Bridging Finance, Kendons, AuditsAML, Miller Johnson, Deloitte and submitters 26, 44, 85, 95, 103, 161, 164, 165,

[560] Private Box, VCFO Groupand submitters 58, 113

[561] NZGIF, Westpac, ICNZB, FSF, ADLS, FNZ, Mainland Capital, Boutique Investment Group, Bridging Finance, AuditsAML, Deloitte, VCFO Group and submitters 26, 44, 80, 85, 92, 95, 103, 160, 164, 165, 188

[562] NZGIF, Westpac

[563] NZGIF and submitter 134

[564] Boutique Investment Group, NZBA

[565] ADLS, Russell McVeagh, ASB, NZBA, illion

[566] Submitters 103, 113, 161

- **Option 2: changing what is meant by a material change**, such as by removing 'material' from the definition or expanding the scope of what constitutes a change.
- **Option 3: introducing a timeframe or 'sinking lid'**, which would prescribe a timeframe by which customers need to have their CDD completed.

350. There were mixed views in terms of how to address the current vulnerability. Some generally considered the requirements should be more prescriptive,[567] with Option 3 receiving the most support (a number of submitters[568] were supportive, some[569] were opposed). Option 1 was the next preferred option for more prescription (some[570] submitters were supportive, some submitters[571] were opposed), while Option 2 was generally not supported (a few[572] submitters supportive, some submitters[573] were opposed).

351. Some submitters were opposed in general to further prescription and advocated for a risk-based approach or maintaining the status quo but with additional guidance.[574] The **Privacy Commissioner** also noted concerns with any additional prescription. Submitters who were opposed to a prescriptive approach were concerned for the potentially significant compliance costs (although **illion** notes these can be mitigated through technological solutions) and that the value of the approach from a risk mitigation perspective particularly where the customer is a natural person and well-known to the business.[575] **HSBC** also noted that conducting CDD on pre-Act customers can be challenging where customers do not respond as the relationship also cannot be terminated in those circumstances

352. Whichever approach is followed, several submitters noted the need for sufficient timeframes for implementation, appropriate transitional arrangements, and the need to avoid any retrospective effects for businesses.[576] A sufficient timeframe for any change would reduce the impact of the requirements on businesses' operations.

Avoiding tipping off

353. This section engaged with whether the Act is appropriately balancing the need to gather sufficient information about a person when suspicions arise against the importance of not inadvertently informing the person about the suspicions. We recognised that this balance can be a challenge for some businesses and asked whether there needs to be changes to the Act to shift the balance, such as defining "tipping off" or giving businesses the discretion to not conduct CDD or enhanced CDD.

PART 4

[567] Submitter 134

[568] HSBC, ADLS, BNZ, Dentons Kensington Swan, Kendons, MTF Finance Hamilton, Miller Johnson, VCFO Group and submitters 44, 58, 80, 85, 92, 95, 113, 134, 160

[569] Securities Industry Association, Mainland Capital, FSF, Bridging Finance and submitters Bridging Finance and submitters 103, 114, 164, 165

[570] Lane Neave, AML360, ADLS, FSF, Private Box and submitters 26, 58, 80, 114, 160

[571] Buddle Findlay, Bridging Finance and submitters Bridging Finance, 103, 134, 164, 165

[572] HSBC, ICNZB, AuditsAML and submitters 114, 161

[573] ADLS, Russell McVeagh, Securities Industry Association, Dentons Kensington Swan, FSF, Buddle Findlay, Bridging Finance and submitters Bridging Finance, 103, 164, 165

[574] Submitter 108, EasyCrypto, Kiwi Wealth, Mainland Capital, Boutique Investment Group, FSF, NZBA

[575] Mainland Capital, Boutique Investment Group, FSF, Bridging Finance, Deloitte and submitters 44, 103, 165, 188

[576] ADLS, Russell McVeagh, Miller Johnson, BNZ

354. Several submitters noted the challenges they have faced with trying to reconcile the obligation to conduct enhanced CDD following a SAR and not tipping off the customer, particularly where the transactions involved are low.[577] **FSF**, **ICNZB** and **Submitter 106** also noted that the requirement to conduct enhanced CDD can potentially impact the safety of staff by requiring them to interact with a high-risk and potentially dangerous individual, while others also noted additional challenges with terminating business relationships if CDD cannot be conducted.[578] **FNZ** and **ADLS** also queried the value of enhanced CDD following a SAR and whether it provides any additional value.

355. A number of submitters expressed the need for additional guidance about what constitutes tipping off and how to avoid it, as well as what is expected by conducting enhanced CDD "as soon as practicable" after filing a SAR.[579] Several submitters thought the Act should include a test to determine tipping off,[580] however some were opposed to the idea of a test due to the inherent complexity involved.[581] Submitters also considered that the Act should better articulate when businesses may be liable for tipping off, including when businesses try in good faith to obtain additional information.[582]

356. In addition, several submitters supported some relaxation of the requirement to conduct enhanced CDD after filing a SAR, such as:

- providing entities with the discretion to determine whether to conduct enhanced CDD, although **ASB** noted the need for this discretion to be able to be challenged by regulators or auditors[583]
- allowing businesses to determine the appropriate level of CDD in accordance with a risk-based approach, including how much information is collected and verified[584]
- allowing the FIU to request that enhanced CDD be conducted[585]
- not conducting enhanced CDD at all, or if the business relationship has not yet commenced or no CDD has been conducted (e.g. for an existing customer), or if a SAR is filed instead[586]

357. Finally, several submitters noted challenges in terminating a business relationship given the potential for tipping off. **NZBA** noted that it can be sometimes preferable to retain and monitor a customer rather than exit them, while **HSBC** considered that businesses should be allowed to terminate relationships if they determine the activity is not within their risk appetite.

[577] Financial Services Council, HSBC, SkyCity, ADLS, Mainland Capital, Boutique Investment Group, Dentons Kensington Swan, NZBA, BitPrime MinterEllisonRuddWatts and submitters 161, 188

[578] HSBC, MinterEllisonRuddWatts

[579] Financial Services Council, Aro Advisors, BNZ, NZGIF, Kiwi Wealth, ICNZB, Mainland Capital, Dentons Kensington Swan, NZBA, Deloitte, AuditsAML and submitter 161, 188

[580] ICNZB, Private Box, AuditsAML and submitters 58, 80, 85, 103, 106, 113, 161, 165

[581] FNZ, Bridging Finance, Kendons, Deloitte and submitters 26, 44, 164,

[582] NZGIF and submitter 160

[583] HSBC, Aro Advisors, BNZ, SkyCity, ICNZB, Mainland Capital, Dentons Kensington Swan, Financial Services Council, NZGIF, Bridging Finance, Private Box, Kendons, AuditsAML, Simpson Grierson, Deloitte and submitters 44, 58, 80, 85, 92, 103, 113, 160, 161, 165, 188

[584] FSF, Westpac, Mainland Capital submitter 106

[585] Boutique Investment Group, MinterEllisonRuddWatts

[586] Mainland Capital, Boutique Investment Group, ADLS, FSF, FNZ, Simpson Grierson

MinterEllisonRuddWatts recommended that businesses should only be required to take "all practical steps" to terminate a relationship.

Record keeping

358. This section examined whether the requirements for record keeping are still appropriate. Record keeping is a core obligation on businesses which enables businesses and law enforcement authorities to detect and identify suspicious activity and provide relevant evidence for prosecutions.

359. Submitters generally considered the record-keeping requirements sufficient and did not require further reform.[587] However, some submitters identified areas that could be clarified or refined:

- the extent to which legally privileged records can be requested, including by auditors[588]
- which (if any) records should be retained in a form enabling their "immediate" production[589]
- requirements regarding destruction of records[590]
- reconciling differences in legal requirements to keep the same record, such under the *Financial Markets Conduct Act 2013* and the *Privacy Act 2020* and the general statute of limitations[591]
- whether businesses are required to keep records of the document used to verify a person's identity, given the potential for identity theft and cyber-attacks[592]

360. Some submitters also noted that the time and effort to keep records can be a challenge, particularly if records are kept physically.[593] **Submitter 165** noted the importance of record keeping requirements enabling technological solutions that enable easier storage and access of information.

Transactions outside a business relationship

361. Businesses are currently exempt from keeping records of the parties to transactions where the transaction is outside of a business relationship or below the occasional transaction threshold. We asked whether this exemption has hindered the reconstruction of relevant transactions and, if so, whether the exemption should be removed.

[587] Aro Advisors, Kiwi Wealth, ICNZB, FSF, Bridging Finance, Kendons, AuditsAML, VCFO Group and submitters 26, 80, 95, 103, 113, 164

[588] ADLS, Dentons Kensington Swan

[589] Russell McVeagh, Compliance Plus

[590] BNZ

[591] ASB, Mainland Capital, Boutique Investment Group, NZBA

[592] Mainland Capital, Sharesies, Compliance Plus, Kendons

[593] Private Box, Deloitte and submitters 44, 85, 92, 161, 165

362. Only two submitters[594] indicated that the exemption has hindered the reconstruction of any transaction, and most submitters supported the exemption being kept.[595] **BNZ, Russell McVeagh** and **Submitters 113** and **161** supported removing the exemption.

Politically exposed persons

363. Due to their position and influence, Politically Exposed Persons (PEPs) pose potentially significant money laundering and terrorism financing vulnerabilities which businesses need to be aware of and manage. PEPs may have control or influence over government expenditure and can therefore be involved in corrupt activity, either of their own volition or because they have been targeted by criminal networks. PEPs may also be vulnerable to foreign interference, which is a growing concern globally and one to which New Zealand is not immune.

364. This section considered whether there are any challenges with complying with the obligations regarding politically exposed persons as well as how we could address those challenges in the AML/CFT Act.

365. A large number of submitters indicated they have experienced challenges complying with the current obligations relating to identifying PEPs.[596] For example, submitters identified challenges applying the PEP definition, understanding what to do where the PEP is the beneficial owner of the customer, how to appropriately screen for PEPs in a cost-efficient manner, and when a relationship with a PEP can or should be terminated.[597]

366. Generally, most submitters do not take additional steps other than those required by the Act to mitigate the risk of PEPs.[598] However, several submitters noted that they do take additional steps, including using a third-party source to carry out PEP check[599] and, obtaining senior management approval for on-boarding PEPs and PEPS acting on behalf of a customer.[600] Some submitters also noted that they either do not have any or have very little exposure to PEPs.

Definition of a politically exposed person

367. The definition of a PEP in the Act only focuses on international PEPs, i.e. people who hold (or held in the past 12 months) a prominent public function in any overseas country, as well as their immediate family members. This definition does not cover New Zealand PEPs, nor does it cover those entrusted with a prominent function by an international organisation. We asked how business currently treat domestic PEPs or PEPs from international organisations, and whether we should expand the definition of PEP to cover all categories of PEPs.

[594] Kendons and submitter 113

[595] Westpac, ICNZB, Boutique Investment Group, FSF, AuditsAML and submitter 165

[596] ICNZB Boutique Investment Group Compliance Plus, Private Box, Kendons, AuditsAML, Cleland Hancox, Westpac and submitters 80, 92, 103, 106, 113, 164, 165

[597] AuditsAML, ICNZB, Private Box, Westpac, Kendons, Cleland Hancox, Boutique Investment Group, ICNZB, FSF, Boutique Investment Group and submitters 44, 92, 103, 113, 134, 164

[598] ICNZB, Private Box, Kendons, AuditsAML, FSF and submitters 44, 58, 80, 85, 92, 95, 103, 164, 165

[599] BNZ, Westpac and submitters 26, 45 113, 160, 161

[600] Westpac and submitters 161, 188

368. About half of the submitters who commented on this section indicated that they treat domestic PEPs the same way that they treat international PEPs, [601] while half do not do more than is required by the Act. [602] **Submitters 85** and **159** indicated they hold information about domestic PEPs but do not apply the same controls that they do with international PEPs.

369. A slight majority of submitters were opposed to expanding the definition of a PEP to include domestic PEPs and/or PEPs from international organisations.[603] Submitters considered that the costs associated would outweigh the risks, particularly given the lower levels of corruption in New Zealand and the fact that New Zealand PEPs are already well known due to the size of the country. This change would also result in more false positives and increase the amount of work associated with screening, and several submitters preferred a risk-based approach to domestic PEPs, including looking at whether some businesses should be exempt from conducting PEP checks.[604]

370. That being said, a significant number of submitters supported including domestic PEPs and PEPs from international organisations within the definition of a PEP.[605] Submitters noted this would achieve greater consistency with international regimes, and the definition should include persons with any level of government influence and foreign political parties. [606] However, guidance would be needed to support business in implementing additional PEP obligations. [607] Most submitters did not think that political candidates should be included, largely due to challenges related to identifying candidates. [608]

371. Submitters generally agreed that there would be significant costs if domestic PEPs, international organisations and political candidates were included in the definition of PEPs.[609] This could be mitigated with other measures implemented by the government, for example issuing a government register of PEPs or additional training was provided.[610]

Time limitation of PEP definition

372. The Act prescribes that a person is no longer a PEP if they have not held a prominent function in the past 12 months. We noted that this approach is not consistent with the risks that PEPs present, as they can still maintain informal influence in a government or international organisation. We asked how businesses currently treat customers who were once PEPs and whether we should remove the time limitation in the definition.

[601] HSBC, ASB, BNZ and submitters 26, 58, 160, 165, 170

[602] Oak Park Chartered Accountants, AG Kosoof & Co, SkyCity Securities Industry Association, ICNZB, Deloitte and submitters 103, 161, 188

[603] Christian Savings Limited, Financial Services Council, NZX Wealth Technologies, SkyCity, Wealthpoint, ADLS, Kiwi Wealth, ICNZB, Mainland Capital, Boutique Investment Group, Dentons Kensington Swan, AuditsAML, ASB and submitters 44, 85, 103, 134, 165, 188

[604] AuditsAML, Wealthpoint, NZX Wealth Technologies, SkyCity, Securities Industry Association, Sharesies, Dentons Kensington Swan, ADLS, SkyCity, FSF, ASB, Wealthpoint and submitters 103, 134, 134

[605] Financial Services Council, HSBC, Aro Advisors, BNZ, Westpac, Kiwi Wealth, ASB, NZBA, Glasgow Harley, Deloitte, Westpac and submitters 80, 160

[606] BNZ and submitters 80, 161

[607] Kiwi Wealth, NZBA

[608] Westpac, FNZ,Kiwi Wealth, ASB, Dentons Kensington Swan, FSF, NZBA, Bridging Finance and submitters 44, 85, 95, 103, 160, 164, 165, 170 188

[609] ICNZB, NZBA, AuditsAML, Deloitte, FNZ and submitters 44, 85, 103, 160, 170, 188

[610] Kendons and submitters 113, 165

373. Broadly, there are two approaches that submitters indicated are taken to dealing with customers who are PEPs. Some strictly apply the definition of the Act and cease treating customers who are PEPs once 12 months have elapsed,[611] while others apply a risk-based approach to the customer at this point to determine whether the customer should be treated as low risk.[612]

374. Most submitters agreed that the time limitation should be removed from the definition of a PEP to allow businesses to determine the level of influence that the customer still retains and achieve greater consistency with the FATF standards and international practice.[613] **Submitter 134** suggested a hybrid of the two approaches, with retaining the 12-month limit in addition to requiring a risk-based approach. **Submitters 113** and **188** also noted that guidance and up-to-date risk information would need to be provided for businesses to effectively apply a risk-based approach (see further *Framework for sharing risk information*). A minority of submitters disagreed with the proposal, largely as they thought it would result in inconsistencies between businesses.[614]

375. Submitters were asked whether a risk-based approach to former PEPs would impact compliance costs compared to the current prescriptive approach. Overall submitters that there would be a significant impact on costs, such as monitoring costs or time involved with dealing with PEPs.[615] A small proportion of submitters thought that this would not impact compliance costs.[616]

Identifying whether a customer is a PEP

Foreign PEPs

376. This section asked submitters what steps they take, proactive or otherwise, to determine whether a customer is a foreign PEP. Most submitters carry out PEP check by screening all customers using a third-party screening provider.[617] Other methods include daily customer screening, conducting general media inquiries, and checking passport details.[618]

377. Submitters were asked whether the Act's use of "take reasonable steps" aligns with the FATF's expectations that businesses have risk management systems in place to enable proactive steps to be taken to identify whether a customer or beneficial owner is a foreign PEP. Overall submitters agreed with that this wording aligns with FATF's requirements.[619] However, some submitters disagreed and thought it would be helpful if 'reasonable steps' was

[611] BNZ, HSBC, Westpac and submitters 160, 188

[612] BNZ, Kiwi Wealth, Deloitte and submitter 161

[613] Aro Advisors, BNZ, SkyCity, Kiwi Wealth, ICNZB, Mainland Capital, FSF, NZBA, Westpac, Bridging Finance, AuditsAML, Simpson Grierson, Deloitte, VCFO Group and submitters 85, 103, 113, 130, 134, 161, 164

[614] FNZ and submitters 26, 44, 58, 75 85, 95, 160, 165,

[615] BNZ, HSBC, Aro Advisors, SkyCity, FNZ, ICNZB, AuditsAML, Westpac, Bridging Finance, Simpson Grierson, VCFO Group and submitters 26, 44, 58, 80, 95, 160, 161, 165 188

[616] Private Box, Kendons, Deloitte and submitters 85, 92, 113

[617] Aro Advisors, BNZ, Kiwi Wealth, ICNZB, Boutique Investment Group, Dentons Kensington Swan, NZBA, Private Box, Westpac, AuditsAML, Simpson Grierson, HSBC, Deloitte, VCFO Group, VCFO Group and submitters 44, 58, 85, 92, 95, 113, 160, 161,188

[618] Westpac, FSF, ICNZB, AuditsAML, Deloitte, VCFO Group and submitters 26, 92, 103

[619] Bridging Finance, Aro Advisors, Westpac, FSF, NZBA and submitters 26, 44, 58, 60, 85, 103, 160, 161, 164

further defined, including whether it was mandatory for businesses to use a third-party provider for PEP screening. [620] However, **Submitter 160** cautioned against further prescription as this would undermine a risk-based approach.

378. Most submitters were supportive of the proposal that businesses should consider their level of exposure to foreign PEPs when determining the extent to which they need to take proactive steps, given that most businesses do not have any exposure.[621] However, some submitters thought that all reporting entities should have the same obligations, and guidance would assist those reporting entities that don't commonly deal with foreign PEPs.[622]

379. The Act requires businesses to check whether a customer is a (foreign) PEP "as soon as practicable after establishing a business relationship or conducting an occasional transaction or activity". We noted that does not comply with the FATF standards, which require that businesses proactively take steps to identify whether a customer is a PEP *before* establishing a business relationship or conducting an occasional transaction or activity. We asked whether the Act should mandate that businesses undertake the necessary checks to determine whether the customer or beneficial owner is a foreign PEP *before* the relationship is established or occasional activity or transaction is conducted.

380. Overall submitters were split about the approach to take, with slightly more submitters preferring the current approach,[623] compared to those thinking that screening should occur before establishing a relationship.[624] Several submitters noted that a day two process is appropriate noting that the costs of PEP screening would greatly outweigh the benefits to the AML/CFT regime. In addition, requiring screening before the business relationship begins would have significant operational impact. **BNZ** thought that further actions, such as carrying out ECDD and Senior Management Approval should be allowed to be completed later in the process.

Domestic or international organisation PEPs

381. In contrast to foreign PEPs, the FATF allows businesses to take reasonable (rather than proactive) measures, based on the assessment of the level of risk, to determine whether the customer or beneficial owner is a domestic or international organisation PEP. This section asked how reporting entities currently deal with domestic PEPs or international organisation PEPs, noting that there are no explicit requirements in the Act for how to deal with these types of PEPs.

382. Most submitters indicated that they applied a risk-based approach to managing domestic and international organisation PEPs, while some indicated that they treat these PEPs the same as foreign PEPs. [625] A handful of submitters indicated that they follow the requirements of the Act

[620] BNZ, Kendons, AuditsAML, Deloitte, Kiwi Wealth, ICNZB, AuditsAML and submitters 80, 92, 95, 113, 165

[621] Aro Advisors, Kiwi Wealth, ICNZB, Dentons Kensington Swan, Cygnus Law, Westpac Private Box, AuditsAML, Deloitte, FSF and submitters 44, 58, 80, 85, 92, 103, 113, 164, 165, 160

[622] BNZ, Bridging Finance, VCFO Group and submitters 75, 161

[623] Bridging Finance, Private Box, FSF, AuditsAML, NZBA, Dentons Kensington Swan, Westpac and submitters 44, 58, 92, 160, 161, 164, 165

[624] Aro Advisors, ICNZB, Kendons, AuditsAML, Deloitte, VCFO Group and submitters 26, 80, 85, 113, 134, 188

[625] Kendons, Deloitte, Private Box and submitters 58, 80, 103, 113, 160, 161, 188

(i.e. do not apply any additional measures), [626] while **Aro Advisors** considered they have no exposure to domestic or international organisation PEPs.

383. Overall, submitters agreed that allowing businesses to take 'reasonable steps', in accordance with the level of risk involved, was sufficient to identify domestic PEPs and PEPs from international organisations if they are included in the definition of PEP.[627] A small number of submitters did not agree with the approach of taking reasonable steps and thought the requirements should be prescribed. [628]

384. We also asked what the cost implications would be of including domestic PEPs and PEPs from international organisations in the AML/CFT regime. Overall, submitters thought that costs would increase significantly by including these categories of people as PEPs.[629] However, the increase in costs would be felt most by those businesses which are not already implementing their own measures to deal with PEPs.[630]

Beneficiaries of life insurance policies

385. The FATF anticipates that, in relation to life insurance policies, business should take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. Although no life insurers offer risky life insurance policies, the lack of any requirements for determining whether a life insurance beneficiary is a PEP is a vulnerability that could be exploited.

386. We asked whether businesses should be required to take reasonable steps to determine whether the beneficiary of a life insurance policy is a PEP before any money is paid out. Five submitters agreed,[631] one highlighted that this could create a vulnerability that could be exploited.[632] Two submitters thought that this was going too far.[633]

Mitigating the risks of politically exposed persons

387. Once a PEP has been identified (whether foreign or otherwise), the FATF expects that businesses take appropriate steps to manage the risks that the PEP presents, such as conducting enhanced monitoring or obtaining additional approval before establishing the business relationship. We asked how businesses currently manage their PEP risks, and whether the Act should require additional mitigation measures to be taken by businesses who have PEPs as customers.

388. Submitters indicate they take a range of measures, such as checking whether the customer is a PEP before establishing a relationship or conducting a transaction or getting approval from

[626] AuditsAML and submitters 26, 44, 85, 114

[627] Aro Advisors, ICNZB, Private Box, AuditsAML, Deloitte, NZBA, Dentons Kensington Swan and submitters 26, 44, 58, 80, 92, 103, 113, 161, 164, 160, 188

[628] Boutique Investment Group, Kendons, FSF and submitter 165

[629] Aro Advisors, Dentons Kensington Swan, Boutique Investment Group, 165, 44, 58, 103, 161, 165

[630] BNZ, Private Box, Deloitte and submitters 160

[631] AuditsAML, ICNZB and submitters 44, 80, 103

[632] ICNZB

[633] Dentons Kensington Swan, Kiwi Wealth

the compliance officer or senior management before onboarding the PEP. [634] However, some submitters indicated that they do not take any additional steps beyond conducting CDD, [635] while others indicate they have no customers who are PEPs.[636]

389. Submitters generally thought the Act should be amended to require specific measures to mitigate the risks of PEPs,[637] while preferred not to mandate measures and instead take a risk-based approach[638] and some submitters suggested that government assistance should be provided in the form of a central database of PEPs and additional guidance.

Correspondent banking

390. This section considers the appropriateness of correspondent banking relationships as set out in section 29 of the AML/CFT Act. One gap that was identified by the FATF is that the definition of "correspondent banking relationship" does not cover relationships outside the banking sector. Relationships which are similar to correspondent banking may exist in other sectors. We asked the industry and public to consider whether these relationships exist to their knowledge, and whether the requirements for managing the risks of correspondent banking relationships need updating.

391. Several submitters noted areas where the requirements in section 29 could be clarified or amended. [639] Submitters noted that obligations could be updated to reflect industry practice, as well as clarify what is expected by the terms "adequate" and "effective" in section 29(2) and how businesses can practically assess the adequacy of a correspondent bank's controls. Submitters also noted that correspondent banks should be subject to ongoing monitoring, and that the section should be clarified to ensure that banks are not require to "know their customer's customer".[640] No submitters provided examples of correspondent relationships in other sectors.

Money or value transfer service providers

392. This section recognises that MVTS providers, such as remitters, are seen internationally and domestically as being particularly vulnerable to misuse for money laundering and terrorism financing. MVTS operators that do not operate through the formal financial system and operate 'informal' remittance systems are exposed to additional money laundering and terrorism financing risks. One way the ML/TF risk of MVTS can be addressed is by requiring MVTS providers and their agents to be licensed or registered specifically for AML/CFT purposes. This issue is discussed in other sections of the document.

393. This section considers maintaining a list of agents; ensuring agents comply with AML/CFT obligations and the multiple layers to agency relationships.

[634] Deloitte, Aro Advisors Kiwi Wealth and submitters 60, 134, 160, 161, 188

[635] BNZ, Kiwi Wealth, Bridging Finance, ICNZB and submitters 95, 134, 160

[636] AuditsAML, Dentons Kensington Swan and submitters 26, 44, 92, 165

[637] BNZ, Kiwi Wealth, ICNZB, FSF and submitters 26, 58, 188

[638] Submitters 44, 134, 160

[639] BNZ, Private Box, AuditsAML, HSBC, ASB, NZBA and submitters 26, 44, 134, 160

[640] BNZ, HSBC, Reserve Bank of New Zealand and submitters 134, 160

Maintaining a list of agents

394. Currently MVTS providers who use agents are under no explicit obligation to maintain a list of those agents. This section considered whether issuing regulations to require MVTS providers to maintain a list of agents that they are using as part of their compliance programme would reduce the risk of using agents as well as providing the supervisor with greater visibility. It could also provide greater consistency with the FATF standards.

395. A small number of submitters[641] were supportive of MVTS providers maintaining a list of the agents they use. **AuditsAML** and **ICNZB** noted that most MVTS providers they know already maintain a list of their agents. Only **Submitter 26** did not support MVTS providers maintaining a list of the agents they use. **Submitter 217** noted that if there is a list of agents, this should not be made public.

Ensuring agents comply with AML/CFT obligations

396. This section considered whether relying on the general law of agency, where the principal (i.e. the MVTS provider) is bound by the actions of their agents, is sufficient to ensure that agents of MVTS providers comply with AML/CFT obligations. The consultation considered options including amendment to the Act to explicitly state that MVTS providers are liable for the compliance of their agents, and whether legislative clarification on roles would help or whether some clarity could be achieved through regulation.

397. Overall, most submitters were supportive of the idea that the Act explicitly state that a MVTS provider is responsible and liable for AML/CFT compliance of any activities undertaken by its agents.[642] **BNZ** pointed out that MVTS providers have a distribution network that they should be responsible for, and the **ICNZB** noted that the agents are acting for the MVTS providers.

398. **Cygnus Law** commented that MVTS providers already have responsibility and that it is addressed in their risk assessment and, where relevant, their compliance programmes. They had concerns that making MVTS liable would likely have significant unintended consequences and, in turn, potentially further reduce access to money remittance services.

399. The question on issuing regulations had a majority of affirmative responses with **AuditsAML** and **ICNZB** indicating that although they were not sure what the wider sector is doing, the inclusion through regulations would reduce risk. **BNZ** noted that MVTS providers have a distribution network and therefore should be accountable and responsible for what occurs within that network.

Multiple layers to agency relationships

400. This section asked questions about the obligations of sub-agents in order to obtain feedback on who should be liable and responsible in MVTS multi-layer relationships. The questions asked considered where responsibility for ensuring a sub-agent complies with AML/CFT obligations should sit.

[641] BNZ, Reserve Bank of New Zealand, NZBA, ICNZB, AuditsAML, Kendons, and submitter 58

[642] BNZ, NZBA, ICNZB, AuditsAML, Kendons, and submitters 26, 58

401. **AuditsAML**, **ICNZB** and **BNZ** indicated that both the MVTS provider and the master agent should have responsibilities. Both **AuditsAML** and **ICNZB** went on to indicate that, rather than declaring master agents as reporting entities under their own right, they should be treated as DBGs. **BNZ** responded that regulations should be issued as they, as master agents, are responsible for overseeing a subset of branches and they provide further access to MVTS ecosystem. **Submitter 217** recommended that the different types of money transfer layers should be distinguished, in order to provide a clear line of responsibility. They also recommended that the remittance network provider is the sole reporter of PTRs and SARs.

New technologies

Understanding the risk of new products or technologies

402. This section considered whether we should issue regulations to explicitly require businesses to understand the risk of new products or technologies, e.g. requiring new technologies to be assessed when conducting a risk assessment under section 58. We also asked submitters to comment on costs of introducing this.

403. Overall, the submissions response was split with roughly half of submitters expressly supporting[643] or opposing the proposal.[644] Submitters who were supportive of the proposal thought that it would lead to better designed products and ensure appropriate controls are in place, while submitters who were opposed generally were concerned about the compliance burden associated with the risk assessment and would prefer an update to the relevant guidance.

Mitigating the risks of new products or technologies

404. This section considered whether we should introduce an explicit requirement for businesses to mitigate any risks identified with new products or technologies, or whether the existing requirements are sufficient.

405. Again, submitters were split on this proposal with half of submitters supportive[645] and the other half opposed.[646] **NZGIF** and **Submitter 160** were supportive of a separate requirement for risk mitigation as the logical next step after a risk assessment, while **Mainland Capital** noted that pre-existing Compliance Programme requirements are sufficient to mitigate the risks identified in the risk assessment. **NZLS** separately submitted that the requirements in section 30 are unrealistic and that the Government should prescribe clearer requirements that apply to the particular technology or provide clear guidance.

[643] BNZ, NZGIF, AuditsAML, Westpac, Unity, ICNZB, NZBA and submitters 160, 188

[644] ReMAX, Aro Advisors, NZLS, Mainland Capital, Boutique Investment Group, Sharesies, Dentons Kensington Swan ,FSF and submitters 103, 165

[645] BNZ, Bridging Finance, Private Box, NZGIF, AuditsAML, Aro Advisors, Westpac, Miller Johnson, Deloitte, NZLS, ICNZB, Mainland Capital, Dentons Kensington Swan, FSF, NZBA and submitters 44, 160, 165, 188

[646] Bridging Finance, Private Box, Aro Advisors, Miller Johnson, Deloitte, NZLS, Mainland Capital, Dentons Kensington Swan, FSF and submitters 44, 165

Wire transfers

406. This section considered the current settings for wire transfers, including the terminology involved in a wire transfer. We also looked at potential changes to obligations for ordering, intermediary, and beneficiary institutions.

Terminology involved in a wire transfer

407. This section considered the definitions involved in a wire transfer, including what challenges reporting entities have encountered with the definitions and how they can be improved to better reflect business practices.

408. Overall submitters agreed with the problems identified in the consultation paper. Submitters noted several areas where the current definitions are confusing, unclear or inadequate, [647] such as how they apply to DNFBPs and other non-bank financial institutions involved in transfers.[648] Submitters also did not consider that the current terminology adequately reflects the variety of ways that international payments are made, including with emerging technologies,[649] which in turn causes challenges with complying with PTR requirements.[650] Apart from generally suggesting fundamental reforms to the definitions of a wire transfer, submitters noted the need for a more nuanced approach to the definition that ensures that both banks and non-bank reporting entities have appropriate obligations.[651]

Ordering institutions

Wire transfers below the applicable threshold

409. Currently, there are no requirements for information to be collected and transmitted for wire transfers below NZD 1,000. This is not consistent with international requirements and presents a vulnerability, and we asked whether we should issue regulations requiring wire transfers below NZD 1,000 to be accompanied with some information about the originator and beneficiary.

410. Most submitters indicated that they already provide some information about the parties to the transaction for wire transfers below NZD 1,000, with some submitters indicating that they provide the same information regardless of the amount involved.[652] However, most submitters did not think that regulations should be issued to require wire transfers below the threshold to be accompanied with some information about the parties.[653] Submitters were broadly concerned that the requirement would not be effective from an AML perspective, would result in wire transfers becoming more burdensome and would be difficult to apply for some types of

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[647] NZGIF, AuditsAML, Public Trust, Cleland Hancox, Cygnus Law, ICNZB, NZBA and submitters 95, 103, 161, 165

[648] AuditsAML, NZGIF, Russell McVeagh, Westpac and submitters 161, 164

[649] BNZ, Westpac, EasyCrypto, ICNZB, Russell McVeagh, NZBA, AuditsAML, Public Trust, NZGIF, Westpac, Easy Crypto and submitters 92, 160, 161 165

[650] Easy Crypto, Westpac, BNZ

[651] AuditsAML, Aro Advisors, BNZ, Westpac, Cleland Hancox, Cygnus Law, Easy Crypto, ICNZB, NZBA, NZGIF, Cleland Hancox and submitters 80, 92, 160, 165, 161, 164

[652] Westpac, NZBA, BNZ

[653] Dentons Kensington Swan, Private Box, Deloitte and submitters 92, 95, 103, 160, 161, 164, 165

payment systems or with cryptocurrency transactions.[654] Submitters were also concerned about the potential compliance costs associated with the proposal.[655] A small number of submitters supported the proposal.[656]

Stopping wire transfers that lack the required information

411. This section considered whether we should explicitly prohibit ordering institutions from executing wire transfers that do not have the required information about the originator and beneficiary. We noted that the FATF standards require that ordering institutions should be prevented from executing wire transfers where information is missing and that there is no explicit prohibition in the Act that applies to this scenario. We also asked what businesses currently do with wire transfers that lack the required information.

412. Almost all submitters noted that wire transfers are stopped where some or all of the information is missing about the parties to the wire transfer.[657] However, despite this, submitters were split on whether there should be an explicit prohibition on executing incomplete wire transfers, with slightly more opposed[658] than in favour.[659] Submitters that were opposed were concerned about several points, such as the potential for a prohibition to stop legitimate transaction and stifle innovation regarding payment systems.[660] Submitters that were supportive of the proposal noted the risk associated with low value wire transfers and that it was most appropriate for ordering institutions to have this requirement given their role in the transaction chain.[661]

413. The majority of submitters considered that a prohibition would have an impact on compliance costs for ordering institutions.[662] **Westpac** noted that businesses would likely need to further strengthen assurance programmes to ensure they do not breach the prohibition, while **Submitter 160** noted there would need to be changes to their systems to ensure the information is collected for all payment methods. **FSF** noted the difficulties that non-bank financial institutions have in identifying international wire transfers.

Intermediary institutions

414. This section considered whether we should require intermediary institutions to retain the information about the originator and beneficiary with the wire transfer. We noted that intermediary institutions are only required to provide information about the parties to the transfer as soon as practicable, which is not in line with the FATF standards and risk information being lost about the parties. We also asked whether intermediary institutions should have additional requirements that reflect their role in the payment chain, such as

[654] NZBA and submitters 95, 103, 160, 165,

[655] AuditsAML, Deloitte and submitters 92, 95, 160, 164

[656]ICNZB, Westpac, Kendons, AuditsAML and submitters 58, 109

[657] BNZ, NZBA, Deloitte, Westpac and submitters 103, 160, 161

[658] Deloitte and submitters 26, 92, 103, 160 164, 165

[659] BNZ, Private Box, AuditsAML and submitters 80, 161

[660] Submitters 103, 160, 165

[661] AuditsAML, ICNZB, Westpac, BNZ

[662] AuditsAML, Westpac, ICNZB, NZBA and submitters 26, 80, 92, 103, 160, 164, 165

having reasonable measures to identify wire transfers with missing information or keeping records where information cannot be passed along to in the domestic leg of a wire transfer.

415. In terms of the requirements to retain information about the parties to the wire transfer, **Westpac, NZBA** and **BNZ** indicated that they or their members retain the information with the wire transfer, while **Submitter 171** complies with the requirements of section 27(6) to pass along information as soon as practicable after the funds are transferred. Most submitters thought it should be mandatory to retain information with the wire transfer to ensure better alignment with the FATF standards and ensure transparency of information for international funds transfers.[663] Two submitters did not think there should be a mandatory requirement.[664]

416. Most submitters also indicated that they also carry out some or all of the additional measures that the FATF expects intermediary institutions to be subject to, such as keeping appropriate records and having risk-based procedures in place to deal with wire transfers lacking the necessary information.[665] However, a slight majority of submitters were opposed to regulations being issued to require intermediary institutions to take additional measures,[666] with several submitters supportive.[667] Submitters noted the need to resolve challenges with extraterritoriality of any requirement, as well as ensuring that any additional requirements are appropriate in the New Zealand context.[668]

Beneficiary institutions

417. This section considered whether beneficiary institutions should be required to take reasonable measures to identify international wire transfers that lack the required information. We noted that beneficiary institutions are not explicitly required to take reasonable measures for these sorts of wire transfers, but that we could issue regulations to create the explicit obligation. We also asked whether businesses currently take any reasonable measures despite the lack of an obligation to do so.

418. Most submitters indicated that they take measures[669] to deal with wire transfers lacking the required information. Measures that submitters take include having rules and alerts in place to identify payments lacking information, such as wire transfers that have beneficiary names under a certain character limit. These wire transfers are then manually reviewed and either returned or corrected.[670]

419. Most submitters also supported regulations being issued,[671] but several submitters were opposed to the proposal.[672] Submitters who were supportive of regulations being issued noted this would ensure a consistent approach taken across the industry and improve alignment with

[663] AuditsAML, BNZ, ICNZB and submitters 58, 80

[664] Submitters 26, 160

[665] BNZ, Deloitte, Dentons Kensington Swan and submitters 26, 160

[666] Submitters 26, 80, 160, 165

[667] BNZ, Deloitte and submitter 58

[668] BNZ, Westpac, Privacy Commissioner, Harcourts, Gold Star

[669] BNZ, Westpac, Deloitte, NZBA and submitters 26, 58, 92, 161

[670] BNZ, Westpac, NZBA

[671] AuditsAML BNZ, Westpac, ICNZB, NZBA and submitters 58, 161

[672] Deloitte and submitters 26, 80, 103, 164

FATF standards.[673] Several submitters also noted that there would be no or minimal cost implications if regulations were issued.[674] Submitters who were opposed to the proposal were largely concerned about the implication for non-bank financial institutions or DNFBPs who are not directly involved in the wire transfer or thought that guidance was more appropriate.[675]

Prescribed transaction reports

420. This section considered whether improvements could be made to the PTR regime. Specifically, we asked submitters whether the prescribed transaction reporting requirements were clear, fit-for purpose, and relevant. We were also interested in any challenges submitters may have encountered since the introduction of PTRs in 2015.

Types of transactions requiring reports

421. This section of the document asked submitters to comment on the workability of the current PTR regime, specifically which transactions should be reported, and lack of clarity regarding the current reporting requirements and chain of reports. It is not always clear in every instance whether a transaction is an international wire transfer or a domestic physical cash transaction.

422. Submitters noted several issues with the various wire transfer definitions which cause challenges with PTRs (see further *Terminology involved in a wire transfer*). In addition, a number of topics were raised as needing clarification as to whether a report is required, such as:[676]

- instances where MT202s (or other similar message types) are used to facilitate funds transfers on behalf of an underlying customer.
- situations where financial institutions and DNFBPs are customers of other reporting entities and either initiate or receive funds on behalf of a third party.
- instances where one bank considers it is acting as an intermediary institution, whereas another bank considers the receipt of funds from that bank to be a domestic wire transfer with no intermediary institution

423. Several submitters noted the need for more clarity about the transactions requiring reporting, with some suggesting that a more risk-based approach to PTRs could be taken. For example, **Submitter 160** thought low risk transactions could be exempted from requiring PTRs, while other submitters noted the need for regulations, Codes of Practice, or guidance to provide clarity about PTR obligations.[677]

[673] NZBA, Westpac, AuditsAML, ICNZB

[674] NZBA, Westpac, Deloitte, BNZ

[675] Dentons Kensington Swan, FSF, Deloitte and submitter 92

[676] Alex Sinton, Trustees Executors Limited, AuditsAML, Financial Services Council, HSBC, MinterEllisonRuddWatts, NZX Wealth Technologies, Aro Advisors, Trustee Corporations Association of NZ, Westpac, Simpson Grierson, Deloitte, Cleland Hancox, BitPrime, Kiwi Wealth, RITANZ, Securities Industry Association, Unity, ASB.ICNZB, Dentons Kensington Swan, FSF, NZBA, Compliance Plus, Calibre Partners and submitters 44, 92, 95, 103, 134, 160, 161, 164, 170

[677] Trustees Executors Limited, HSBC, Westpac, Kiwi Wealth and submitter 134

Who is required to submit a report?

Non-bank financial institutions and DNFBPs

424. It is currently unclear whether DNFBPs or non-bank financial institutions are required to file a PTR when they transfer or receive funds internationally (for example into or out of their trust account) via the banking system on behalf of an underlying customer. In this section, we asked submitters to provide their views and current operating practices for this issue.

425. **MinterEllisonRuddWatts** noted their view is that the Act itself is clear and reflects the correct approach. The ordering/beneficiary institution in this type of situation is the NBFI or DNFBP, not the banks (which are intermediary institutions). They note that this properly reflects the roles of the reporting entities and who has the relationship with the payer or payee customer. Ultimately, this also aligns with the position of the FATF, which does not confine ordering/beneficiary institutions to only financial institutions. The submitter suggests more guidance rather than legislative change if entities are confused. By contrast, **Submitter 130** was supportive of a "First In, Last Out" approach to determining who should be required to submit a PTR.

426. The **FSC** indicated that their members have raised concerns regarding the potential multiple reporting of the same transactions when there is more than one entity in the supply chain or where an intermediary is involved. The **FSC** and its members seek clarification on circumstances where several providers collectively meet the reporting thresholds and suggest consideration of alignment with the Australian model in this space is appropriate.

427. Almost all submitters agree that it is unclear who is required to file a PTR when a non-bank financial institution or DNFBP is involved in the transaction. [678] Submitters noted the difference in interpretations about whether the non-bank financial institution or DNFBP is the ordering or beneficiary institution.[679] Overall, the consensus across the submitters was that the current regime on who is required to report is confusing and needs either a legislative change or clearer guidance in order to resolve the issue.

Intermediary institutions

428. We asked the public to consider whether we should amend the existing regulatory exemption for intermediary institutions so that it does not apply to MVTS providers. We additionally asked whether there should be any other intermediary institutions that should also be included in the exemption.

429. A range of responses were received on the question of intermediary exemptions and MVTS providers with many of the responses commenting specifically on the businesses that they engage with or manage. Most submitters who provided substantive responses believed that

[678] Private Box, NZGIF, Trustees Executors Limited, AuditsAML, HSBC, Medical Assurance Society, NZX Wealth Technologies, Aro Advisors, ReMAX, Deloitte, Privacy Commissioner, RITANZ, Unity, ICNZB, Adyen, Boutique Investment Group, FSF, FSF, NZBA and submitters 44, 103, 106, 134, 160, 161, 164, 165

[679] Cygnus Law, FSF, NZGIF, MinterEllisonRuddWatts

MVTS providers should be included in the scope of all relevant requirements.[680] However, **MinterEllisonRuddWatts** noted that the Act itself is clear and reflects the correct approach

430. **NZX Wealth Technologies** suggested that instead of amending the exemption so that it does not apply to MVTS providers, we should instead introduce the concept of 'approved entities,' and that additional entities such as those referenced above be included as such.

When reports must be made

431. This section considered the question of when reports are required to be made. Currently the Act requires PTRs to be made "as soon as practicable, but not later than 10 working days after the transaction occurs. We asked whether there are situations in which the industry has experienced challenges submitting in this time frame.

432. Several submitters indicated they had faced issues complying with the ten-day timeframe.[681] For example, **Submitter 159** indicated the timeframe can be challenging when automated systems that businesses rely on do not work properly. Similarly, **FSF** indicated that its members are often reliant on obtaining further required details from their bank, and it is sometimes not realistic or achievable for banks to provide the required information in time. **Submitter 160** considered that the timeframe should be stated in the Act itself.

Applicable threshold for reporting prescribed transactions

433. The section considered whether a lower threshold across domestic cash transactions and international wire transfers is more appropriate for New Zealand's risk environment, particularly given the increased threat that terrorism financing presents to the safety of New Zealand. In particular, we asked the public to consider whether it may be more appropriate to remove the threshold for international wire transfers, considering our risk environment and relationships with international partners.

434. Most submitters were not supportive of lowering the threshold for reporting either international wire transfers or cash transactions,[682] while a small number supported a lower threshold.[683] Submitters noted that a lower threshold for wire transfers would significantly increase the number of transactions that are reported, which would in turn create an operational burden for agencies to use those reports to generate actionable intelligence. The **FSF** also did not consider there to be sufficient evidence for a lower threshold that justifies any change, while the **NZBA** thought the threshold could be lowered but only after existing operational challenges with PTRs are resolved. The **Privacy Commissioner** noted concerns with potentially lowering either threshold or considers there needs to be sufficient policy rationale to justify the increased collection of personal information.

[680] AuditsAML, MinterEllisonRuddWatts,NZX Wealth Technologies, Westpac, Cygnus Law, ASB, ICNZB, FSF and submitter 44

[681] BNZ, Westpac, FSF, Easy Crypto, NZBA, submitter 20, 103, 161

[682] Miller Johnson, Deloitte, AuditsAML, SeniorLAW, Aro Advisors, BNZ, RITANZ, Unity, Adyen, Dentons Kensington Swan, FSF, Pacific Lawyers Association, Kiwi Wealth, ICNZB, NZBA, Privacy Commissioner and submitters 44, 92, 103, 147, 161, 164

[683] AuditsAML, BNZ, Kiwi Wealth, ICNZB, NZBA and submitter 164

Reliance on third parties

435. This section considered the current settings for the reliance provisions which allow businesses to reduce their compliance costs by relying on a third party to conduct CDD. As we noted in the consultation document, reliance is not without risks or vulnerabilities due to factors such as the greater distance between the business and the customer.

Effectiveness of reliance provisions

436. This section considered whether the provisions allowing reporting entities to rely on third parties are working effectively. We asked generally whether submitters make use of any of the reliance provisions in sections 32 to 34, and if there are any barriers to making greater use of reliance provisions.

437. Some submitters responded that either they or their members use the reliance provisions in the Act.[684] Of the submitters that did use the provisions, the majority had relied on another reporting entity in New Zealand or a person in another country (section 33), or an agent (section 34).[685] For example, **Securities Industry Association** commented that when purchasing a business that is a reporting entity, it is common for the purchaser to rely under section 33 on the vendor's previously undertaken CDD.[686] A few submitters[687] commented that they, or their members, rely on a member of a DBG (section 32). **Kiwi Wealth** responded that they are part of a DBG.

438. Almost all submitters considered that there were barriers to them or their members using reliance to the extent they would like to,[688] which leads to unnecessary duplication and can be a barrier to competition (see further *Duplication of CDD*). [689] For example:

- for section 33 reliance, the requirement that the reporting entity ensures the third party carries out CDD correctly dissuades businesses from using the provision. [690] In addition, **Submitter 106** noted there can challenges with sharing information between the third party and the business.
- for section 33(3A) reliance, several submitters noted that the regime has not been activated so cannot be used (see further below)[691]
- for section 34 reliance, submitters noted that the administrative burden associated with using this form of reliance can outweigh any efficiencies gained,[692] while **FSF** noted that the definition of an agent is unclear (see further *Regulating agents*).

[684] HSBC, Deloitte, Kiwi Wealth, Securities Industry Association and submitters 44, 58, 85, 92, 103, 113, 161

[685] BNZ, HSBC, Deloitte, FSF and submitter 92

[686] NZX Wealth Technologies, Kiwi Wealth, Dentons Kensington Swan, FSF and submitters 103, 161

[687] Deloitte, FSF

[688] BNZ, Simpson Grierson, Deloitte, Kiwi Wealth, Dentons Kensington Swan and submitters 44, 58, 92, 103, 113, 160, 161, 165

[689] MinterEllisonRuddWatts and submitter 106

[690] BNZ, Digital Identity NZ, MinterEllisonRuddWatts, Dentons Kensington Swan and submitters 106, 161

[691] Digital Identity NZ, MinterEllisonRuddWatts, Dentons Kensington Swan

[692] Digital Identity NZ, and submitter MinterEllisonRuddWatts

439. Submitters also noted that reliance can be challenging due to difference in risk assessments, different approaches or interpretations of requirements or obligations, and problems with the standard of CDD being undertaken by third parties or agents.[693] **Submitters 165** and **171** suggested that further guidance could be issued to provide clarity as to the process, while **Submitter 160** thought more could be done to allow PTR and SAR obligations to be outsourced outside of a DBG arrangement. Finally, several submitters made suggestions for changes that could be made to improve uptake of reliance, such as rephrasing some of the requirements, providing minimum standards for agents, and clarifying expectations around relying on historical CDD information.[694]

"Approved entities" and liability for reliance

440. This section considered whether we should continue to have an approved entity approach (section 33(3A)) which enables government to identify particular businesses can be relied on for CDD without reliant businesses being liable for the CDD that is conducted. We noted that the approach is inconsistent with FATF standards and no entities have been approved.

441. Overall, most submitters considered that we should continue to have an "approved entity" approach.[695] Submitters considered that the approach would allow for greater confidence with third party reliance arrangements, be more efficient, and remove duplication across the industry.[696] However, some submitters considered that we should not retain the approach as it has never been used and its inconsistency with FATF standards.[697]

442. Submitters provided their views on how section 33(3A) could work in practice. **Dentons Kensington Swan** suggested having regulations set out approved class of entities and the requirements that they must meet, **Submitter 160** suggested having incentives to encourage entities to become approved entities, **Submitter 165** recommended having a single government agency approve entities, and **BNZ** considered approved entities should be licensed and subject to ongoing monitoring.

443. Some submitters also provided examples of the types of entities that should be approved. **Boutique Investment Group** commented that low risk reporting entities should be approved as in most of these cases CDD is of little value. **Submitter 144** commented that LMIs or SMIs could be approved. **Submitter 171** saw merit in banks being approved, given their wide customer base.

444. Despite this, most submitters responded that they would not want their business to be an approved entity.[698] Submitters considered that it would be a compliance burden and introduce risk to their organisation,[699] while other submitters commented that it was not a direction that

[693] FSF, AG Kosoof & Co, Kiwi Wealth and submitters 44, 103, 106, 113

[694] HSBC, Simpson Grierson, Deloitte, Kiwi Wealth, Mainland Capital, Boutique Investment Group and submitters 103, 160, 161, 165

[695] Boutique Investment Group, NZBA, MinterEllisonRuddWatts, NZX Wealth Technologies and submitters 58, 103, 160, 161, 164, 165

[696] Boutique Investment Group, MinterEllisonRuddWatts, NZX Wealth Technologies and submitter 160

[697] ICNZB, FSF, AuditsAML, ICNZB, BNZ, Dentons Kensington Swan, Digital Identity, FSF, ICNZB, NZBA AuditsAML, Digital Identity, ICNZB, NZBA and submitters 26, 44, 104, 188

[698] ICNZB, AuditsAML, Aro Advisors, Deloitte and submitters 26, 44, 92, 160, 161, 188

[699] Deloitte and submitters 92, 160, 188

was relevant to their business.[700] Only a small number of submitters responded that they would want their business to be an approved entity.[701] **BNZ** responded that it would depend on the process and costs involved.

445. Most submitters did not consider that there were any alternative approaches we should consider that would enable liability to be shared during reliance.[702] A small number of submitters made suggestions, such as having a centralised national identity source for CDD or access to government identity databases (see further *Duplication of CDD*),[703] and **BNZ** and **Submitter 169** raising the Digital Identity Trust Framework (see further *Enabling the adoption of digital identity*). **Deloitte** considered that regulation could confirm that due diligence could be completed in tandem by reporting entities involved in the same transaction.

Designated business group reliance

446. This section considered a range of potential changes that could be made to improve how DBGs operate. In the short term, we asked whether regulations should be issued to allow other types of businesses to form DBGs and to prescribe the standard to which overseas DBG members must conduct CDD. In the longer term, we asked whether the eligibility criteria in the Act should be changed and whether there are any other obligations that could be shared among DBG members.

447. A small number of submitters thought regulations should be issued to enable groups of businesses (e.g. law and accounting firms) to rely on each other, as well as allowing limited partnerships being included.[704] The majority of submitters were in support of requiring overseas DBG members to conduct CDD to the level required by the Act, as this would ensure consistency and better protection of reporting entities in New Zealand.[705] A small number of submitters did not think there should be such regulations.[706]

448. A small number of submitters also thought the eligibility criteria should be changed in the long term.[707] **Westpac** suggested that the criteria should be harmonised with Australia's criteria, while **ICNZB** thought the criteria should be changed to allow smaller entities providing the same service to form a DBG to keep compliance costs down. Some submitters did not think the criteria should be changed.[708]

449. Finally, submitters thought that DBG members should be able to share CDD processes, compliance officers, information on suspicious activities, and be able to prepare an annual report on behalf of the whole group.[709]

[700] Submitters 44, 160, 161

[701] Dentons Kensington Swan and submitters 58, 164

[702] ICNZB, AuditsAML and submitters 26, 44, 58, 188

[703] BNZ, FSF, Simpson Grierson and submitter 161

[704] BNZ, FSF and submitters 85, 92, 165

[705] AuditsAML, Aro Advisors, BNZ, ICNZB, Westpac and submitters 85, 92, 160, 188

[706] Bridging Finance, Deloitte, Boutique Investment Group, Reserve Bank of New Zealand and submitter 165

[707] AuditsAML, Digital Identity New Zealand, ICNZB, Westpac, BNZ

[708] Aro Advisors, Deloitte and submitters 85, 165, 188

[709] AuditsAML, ICNZB, Westpac, Mainland Capital

Third party reliance

450. This section considered whether we should issue regulations to explicitly require businesses to take several steps before relying on a third party for CDD. These steps include:

- considering the level of country risk if the proposed third party is in another country,
- ensuring that copies of identification data and other relevant documentation will be made available upon request without delay, and
- ensuring that the third party has record keeping arrangements in place.

451. Most submitters supported regulations being issued to require businesses to take specific steps before relying on a third party for CDD.[710] Submitters were split on whether the regulations would impact their business, with about half saying there would be no impact[711] and the other half saying there would be an impact.[712]

452. This section also considered whether there are any other issues or improvements that could be made to third party reliance provisions. **Digital Identity NZ** noted that there is an administrative burden associated with using third party reliance that may outweigh any efficiencies gained by relying on another party. They also that businesses continue to be liable for CDD (discussed above) which is likely to dissuade businesses from engaging in third party reliance at scale.

453. In terms of other changes, **AuditsAML** and **ICNZB** indicated that the third party should be "qualified' in New Zealand legislation, especially if offshore. **Submitter 85** suggested that "high risk countries" should be defined more clearly. **Submitter 165** proposed that overseas third parties should be excluded entirely.

Potential other forms of reliance

454. This section considered whether there are other forms of reliance that should be enabled and, if so, how these reliance relationships would work. Submitters identified a range of other potential forms of reliance, such as smaller businesses relying on bigger businesses such as banks when receiving funds, relying on third parties for vetting, and relying on one business for CDD in transactions involving multiple businesses (e.g. property purchases).[713] Submitters noted that a risk-based approach should be taken to any other forms of reliance, including robust monitoring and information sharing frameworks to ensure all parties have full visibility of what is occurring.[714]

[710] AuditsAML, Aro Advisors, BNZ, Deloitte, Deloitte, Financial Advice New Zealand, FSF, ICNZB, New Zealand Law Society and submitters 106, 160, 188

[711] Bridging Finance and submitters 44, 85, 165

[712] Aro Advisors, BNZ, Kiwi Wealth and submitters 160, 188

[713] BNZ, Dentons Kensington Swan, AuditsAML Deloitte and submitters 44, 85, 160, 165, 188

[714] Dentons Kensington Swan, AuditsAML and submitters 160, 188

Internal policies, procedures, and controls

Compliance programme requirements

455. This section considered whether the minimum requirements for a business' compliance programme are still appropriate and whether there are other requirements that should be prescribed, or requirements that should be clarified. The current settings require that there are adequate policies, procedures, and controls in place for vetting and training staff, and complying with CDD, account monitoring, record keeping, and reporting obligations.

456. Overall, submitters agreed that the minimum requirements were still appropriate, [715] with **Compliance Plus** and **Submitter 165** indicating that significant changes should be made to ensure the requirements are clear, appropriate, and able to be easily and efficiently complied with. In a similar vein, **Calibre Partners, RITANZ** and **CA ANZ** consider that the current requirements are overly prescriptive and do not allow for a proper risk-based approach to be taken to complying with AML/CFT (see further *Balancing prescription with risk-based obligations*). **BNZ** thought transaction monitoring should be included in the minimum requirements, while **Boutique Investment Group** and **Financial Services Council** noted the need for more guidance and best practice examples for businesses to work from.

Compliance officers

457. This section considered whether the Act should mandate that compliance officers need to be at the senior management level of the business, in line with the FATF standard and whether the Act should clarify that compliance officers must be natural persons, to avoid legal persons being appointed as compliance officers.

458. The majority of submitters did not support the proposal that the Act should mandate that compliance officers are a senior manager.[716] Submitters noted that, depending on the size of the business, it is not always possible for the compliance officer to be a senior manager. For example, small businesses may only have a limited number of senior manager positions and may instead appoint an office manager to be the compliance officer.[717] The **Financial Services Council** considers that the existing requirement that the compliance officer report directly to senior management or the board mitigates any potential risks or concerns. However, a smaller number of submitters supported the proposal, [718] with **Submitter 161** noting this would ensure the compliance officer is senior enough to overcome any internal resistance to implementing AML/CFT controls. Almost all submitters agreed however that the compliance officer should be a natural rather than legal person.[719]

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[715] AuditsAML, Financial Services Council, Aro Advisors, Deloitte, ICNZB, FSF, NZBA, Simpson Grierson and submitters 44, 113, 160, 188

[716] AuditsAML, BNZ, Financial Services Council, Deloitte, ADLS, ICNZB, NZ Bankers Association, Dentons Kensington Swan, NZX Clearing, Simpson Grierson, New Zealand Law Society, Sharesies, Easy Crypto and submitters 160, 165

[717] AuditsAML, ICNZB, Mainland Capital, Deloitte, BNZ

[718] Aro Advisors, Miller Johnson, Kiwi Wealth, FSF, FNZ and submitters 44, 113, 161

[719] AuditsAML, Financial Services Council, Aro Advisors, Miller Johnson, Deloitte, ADLS, ICNZB, Mainland Capital, NZ Bankers Association, Dentons Kensington Swan, BNZ, FNZ and submitters Private Box and submitters 92, 113, 160, 161, 188

459. Several submitters noted that it is more important that the compliance officer has sufficient experience and resources to discharge their obligations than requiring the officer to be at a certain position within the business.[720] **Submitter 160** thought the Act should mandate that the compliance officer is a manager (but not a senior manager), while **Boutique Investment Group** thought any appropriate natural person within the business should be able to be the compliance officer. Similarly, **Simpson Grierson** thought the Act should allow for a non-employee natural person to be a compliance officer where the entity lacks an appropriate employee. Irrespective of who the compliance officer is, both **ADLS** and **Deloitte** noted there should continue to be a clear line of reporting and accountability to senior management.

Group-wide programme requirements

460. This section considered whether we should mandate that groups of financial and non-financial businesses implement group-wide programmes to address the risks groups are exposed to. While businesses that are part of a wider group can form a DBG and share their compliance programme, there is no requirement for them to do so. We noted that this could mean that group-wide risks are not being properly addressed.

461. The majority of submitters agreed that groups of businesses should have group-wide programmes,[721] with **AuditsAML** noting this would ensure a common approach to common risks across the group. However, a small number of submitters were opposed to group wide programmes being required, out of concern that this requirement could discourage international businesses from entering New Zealand, increase compliance costs, and result in businesses being required to manage risks to which they are not exposed.[722] **Submitter 188** considered that a group-wide programme would only be effective if all members had similar risks.

Review and audit requirements

462. This section considered whether the legislation needs to clarify expectations regarding reviewing and keeping AML/CFT programmes up to date and, if so, how we should clarify what is required. It also considered whether the legislation should state that the purpose of independent audits is to test the effectiveness of a business's AML/CFT system and whether other improvement or changes could be made to the independent audit or review requirements to ensure the obligation is useful for businesses without imposing unnecessary compliance costs.

463. Submitters were split on whether expectations should be clarified about reviewing and keeping programmes up to date, with slightly more submitters indicating that clarity is needed[723] compared to those who thought the existing requirements were sufficiently clear.[724] Several noted the need for programmes to be dynamic, with **NZBA, Deloitte** and **ADLS** suggesting that guidance could be used to clarify expectations.

[720] NZBA, Boutique Investment Group and submitter 160

[721] AuditsAML, Aro Advisors, ICNZB, FSF and submitters Private Box and submitter 113

[722] BNZ and submitters 160, 164, 188

[723] Deloitte, ADLS, ICNZB, AuditsAML and submitters 44, 113, 161, 164, 188

[724] Aro Advisors, BNZ, Miller Johnson, Mainland Capital and submitter 160

464. The majority of submitters agreed that the Act should state that the purpose of an audit is to test the effectiveness of the business' systems.[725] **Financial Services Council** suggested that effectiveness should be achieved via general sampling and by focusing on material issues rather than granular findings, while **HSBC** and **Trustees Executors Limited** noted that agencies should identify core components that should be tested to ensure the system is tested as to its effectiveness and that a consistent approach is taken by auditors. By contrast, **Mainland Capital** thought the focus of the audit should be on assessing compliance with the Act.

465. A small number of submitters were opposed to any change which states the purpose of an audit,[726] mostly out of concern that this would lead to additional compliance costs. For example, **Cygnus Law** thought that testing the effectiveness of a business' system would require auditors to comprehensively review the entire programme and risk assessment. Some submitters who were supportive of stating the purpose also noted the potential for increased costs of audits, with **Submitter 160** noting that any move towards assessing 'effectiveness' would need to be accompanied by an accreditation process for auditors and more guidance about what constitutes effectiveness.

466. Several submitters thought that there could be other improvements made, such as:

- changes to how frequently audits occur: some submitters suggested a longer time frame, such as audits every five years, while others thought the timeframe for audits should be risk-based.[727]
- clearer expectations as to the level of assurance to be provided by an audit, or the scope of what an audit should cover.[728]
- ensuring auditors are appropriately qualified and able to deliver what is required, such as through licensing auditors (see further *Regulating independent auditors*).[729]

Higher-risk countries

Understanding and identifying risky countries

467. This section considered how we could better enable businesses to understand and mitigate the risks of the countries they deal with and determine whether countries have sufficient or insufficient AML/CFT systems and measures. We also asked whether a code of practice (rather than guidance) setting out the steps that businesses should take when considering country risk would be useful.

[725] AuditsAML, Financial Services Council, HSBC, Aro Advisors, BNZ, Deloitte, ADLS, Kiwi Wealth, ICNZB, FSF, NZ Bankers Association, Dentons Kensington Swan, Private Box and submitters 113, 161, 188

[726] BNZ, Reserve Bank of New Zealand, Miller Johnson, Cygnus Law and submitters 92, 164

[727] Clyde Law, Financial Services Council, Boutique Investment Group, Compliance Plus, BNZ

[728] AuditsAML, BNZ, ICNZB, Compliance Plus, Kiwi Wealth

[729] Mainland Capital, Kiwi Wealth, FSF, HSBC, Private Box and submitter 113

468. Several submitters suggested that a code of practice, containing options and steps for businesses, would be useful.[730] **Boutique Investment Group** commented that a code of practice would not be helpful, as it may be interpreted too rigidly.

469. Several submitters suggested that a central source/register containing information on a country's risk from a New Zealand perspective would be useful.[731] Similarly, several submitters suggested a list of countries be published by supervisors or regulators, containing information such as risk ratings, or which countries have been identified by the FATF as having strategic deficiencies.[732] This would allow for greater cohesion between risk ratings of different financial services providers. However, one submitter noted that mandating additional steps would likely discourage companies from completing full and frank jurisdictional risk assessments.

470. **NZBA** supported a risk-based approach in relation to high-risk countries and suggested that New Zealand should be guided by overseas approaches in relation to specific ECDD measures where high-risk countries are involved.

Imposing countermeasures where called for by the FATF

471. This section considered whether any changes should be made to how we impose countermeasures where called for by the FATF. We asked whether regulations should be issued that impose proportionate and appropriate countermeasures to mitigate the risk of countries on FATF's blacklist, and if so, what the appropriate measures should be.

472. Several submitters responded positively to the idea of issuing regulations to impose countermeasures against countries on the FATF's blacklist.[733] Suggestions included Limiting or prohibiting business relationships with persons in these countries[734] and requiring enhanced CDD or systematic reporting of transactions;[735]

473. However, **Submitter 160** noted that specific mandates may cause immigrants or refugees from those countries to be discriminated against and have additional issues with accessing financial services. Similarly, **Submitter 204** commented that issuing regulations to impose countermeasures may inadvertently capture businesses that are not reporting entities but have business relationships with these countries.

474. The majority of submitters thought the FATF blacklist is an appropriate starting point.[736] **BNZ** and **Submitter 44** saw it as an appropriate threshold in and of itself, while **Submitters 26** and **165** did not see it as a suitable threshold. **Boutique Investment Group** noted that it needs to be clear whether the blacklist supersedes domestic law and submitted that businesses should not be responsible for determining what action to take, especially when there is a conflict of laws.

[730] AuditsAML, BNZ, Deloitte, ICNZB and submitters 103, 188

[731] BNZ, East Asia Transnational, Private Box, Russell McVeagh and submitters 92, 113

[732] Boutique Investment Group, Dentons Kensington Swan, FSF and submitters 160, 161

[733] AuditsAML, ICNZB and submitters 44, 188

[734] AuditsAML, ICNZB

[735] AuditsAML, Kiwi Wealth, ICNZB

[736] AuditsAML, Deloitte, ICNZB and submitters 160, 188

Imposing sanctions on specific individuals or entities

475. This section considered whether and how we should impose countermeasures against individuals and entities involved in significant criminality where it is necessary to protect New Zealand from specific money laundering threats. We also asked how we can ensure the power to impose countermeasures is only used when appropriate, how we can protect the rights of bona fide third parties, and whether there should be a process for revocation of imposed countermeasures.

476. Some submitters were in favour of issuing regulations to impose proportionate and appropriate countermeasures to mitigate the risk posed by specific individuals or entities.[737] **Submitters 60** and **104** were unsure, while **Deloitte** was not in favour and commented that the AML/CFT regime should not be used as a de facto sanctions regime.

477. **FSF** agreed that parameters need to be set to ensure appropriateness and protect the rights of bona fide third parties. **BNZ** provided suggestions for controls on the exercise of the power, including: an approval process through the judiciary before going to the Governor General to ensure a judge would hear and balance all of the arguments; and limitations of the power should be specified and supported with sufficient evidence. **Deloitte** commented that it should not fall on reporting entities to protect third party rights.

478. Most submitters who commented on whether there should be a process in place to revoke countermeasures were supportive.[738] However, **Submitter 165** commented that decisions to impose countermeasures should be complete and final.

Suspicious activity reporting

Improving the quality of reports received

479. This section considered how to improve the quality of SARs being received by the New Zealand FIU. The FIU sometimes receives SARs with limited, or no useful intelligence. We asked how we can avoid low-quality and defensive reporting, as well as the barriers there may be for industry in providing high quality SARs.

480. Submitters made a number of comments as to what may be driving low quality SARs being submitted.[739] These include businesses submitting SARs defensively and focusing on technical compliance at the expense of effective reporting. Defensive reporting may be occurring because businesses are not confident in applying the 'reasonable grounds for suspicion test or due to regulatory action against businesses who have not submitters SARs.[740] Submitters thought these challenges could be resolved by more and better-quality

[737] Aro Advisors, BNZ, FSF and submitters 44, 165

[738] AuditsAML, Aro Advisors, BNZ, Deloitte, and submitter 44

[739]Private Box, NZGIF, Trustees Executors Limited, AuditsAML, BNZ, Barfoot and Thompson, CA ANZ, HSBC, Simpson Grierson, Deloitte, ADLS, Kiwi Wealth, RITANZ, Securities Industry Association, ASB, ICNZB, Boutique Investment Group, Dentons Kensington Swan, FSF, NZBA, Compliance Plus, Calibre Partners and submitters 44, 103, 113, 160, 161, 165, 188, 191

[740] Trustees Executors Limited and submitter 160

guidance from the FIU and supervisors, including when enforcement action will be taken against businesses related to SARs.[741]

481. Several submitters thought poor quality SARs are a result of the lack of timely feedback from the FIU about whether the SAR is useful or otherwise. **Boutique Investment Group** considers there is no clear picture of which SARs were not helpful to the FIU versus those that were escalated and/or led to enforcement action. Similarly, **NZBA** and **BNZ** thought more examples of quality and useful SARs would greatly assist in improving the quality of SARs.

482. Finally, several submitters also commented on their difficulties using goAML Submitters noted that the platform is not user friendly, unreliable, provides no feedback, and is not appropriately tailored for the variety of businesses within the regime. Submitters indicated there are challenges with submitting the SAR through goAML,[742] with **Clyde Law** considering that the platform is a major disincentive to businesses reporting and noted the need for it to be simplified and made user friendly. The **British High Commission** noted that the UK has been undertaking a transformation programme to ensure that the SAR submission process meets the needs for all sectors and is easy to use.

Sharing SARs or SAR information

483. This section considered the sharing of SARs or SAR information. We asked submitters whether we should expand circumstances in which SARs or SAR information can be shared and whether there should be specific conditions that need to be fulfilled before this information can be shared.

484. Most submitters thought there should be greater ability to share SARs or SAR information.[743] This could include being able to consult with other businesses or the regulator, auditors, and other entities in a multi-jurisdictional corporate group. As well as improving the number of high-quality SARs being submitted, greater information sharing would allow for businesses to be more aware of and better able to manage money laundering risks and threats.[744] A small number of submitters were opposed to greater information sharing,[745] while others noted the need for careful consideration of privacy and information sharing risks.[746] Most submitters also noted the need for specific conditions, such as obtaining the permission of the FIU or regulator before sharing information.[747]

[741] Boutique Investment Group, Trustees Executors Limited and submitter 160

[742] Falcon Advances, Clyde Law, Dentons Kensington Swan, AML360, BitPrime,

[743] AuditsAML, HSBC, Banking Ombudsman, BitPrime, Kiwi Wealth, ASB, ICNZB, Boutique Investment Group, FSF, NZBA and submitters 26, 58, 113, 160, 161, 165, 188

[744] Boutique Investment Group, HSBC, FSF, BitPrime, Kiwi Wealth, ASB, NZBA, AuditsAML, ICNZB, Banking Ombudsman and submitters 165, 161, 188

[745] Kendons, Aro Advisors and submitters 92, 164

[746] Deloitte, Privacy Commissioner, Dentons Kensington Swan and submitter 44

[747] HSBC, Aro Advisors and submitters 26, 44, 58, 160, 161, 188

SAR obligations for MVTS providers

485. This section considered if regulations should be issued for MVTS providers to consider both sides of a transaction. We also asked whether it should be explicitly stated that a SAR must be submitted in any jurisdiction where relevant.

486. **NZBA**, **AuditsAML** and **ICNZB** were supportive of aligning the Act with the FATF's requirement and requiring MVTS providers to explicitly consider whether a SAR is required in any jurisdiction where it is relevant. However, **Submitter 160** noted that our framework is not directly analogous to other jurisdictions and that this approach could cause unnecessary complexity. **BNZ** and **Submitter 165** thought the responsibility should be on the receiving country to ensure suspicions are shared.

Other issues or topics

Cross-border transportation of cash

When reports should be filed for unaccompanied cash

487. This section considered whether the AML/CFT Act should define the point at which a movement of cash or other instruments becomes an import or export. We asked whether the Act should define "import" and "export" to address existing challenges, whether the Act should define particular timeframes for completing BCRs, and whether there should instances where BCRs should not be required.

488. Most submitters were supportive of defining "import" and "export" in the Act, [748] with **Mainland Capital** and **Submitter 165** preferring the terms to be defined in other legislation, such as the Customs and Excise Act 2018.

Sanctions for falsely declared or undeclared cash

489. This section considered how we can ensure the penalties for non-declared or falsely declared transportation of cash are effective, proportionate, and dissuasive. The options we identified included increasing the overall penalty levels, explicitly linking the penalty to the amount of cash that has not been declared and replacing the current penalty regime (under section 113) with an infringement regime to increase the immediacy of the penalty.

490. Most submitters were supportive of the options we identified, specifically allowing for undeclared cash to be forfeited, generally increasing the penalties available, or allowing for non-New Zealanders to be deported.[749] **Submitter 92** suggested that the penalty should be a multiple of the cash that is not declared.

Powers to search and seize cash to investigate its origin

491. This section considered whether the Act could be expanded to include a power, similar to an unexplained wealth order, which requires a person moving suspiciously large volumes of cash to prove that the cash has a legitimate origin and for the cash to be detained in the interim.

492. Submitters were generally supportive of allowing Customs officers to search and seize cash to investigate its origins. [750] In addition, **AuditsAML, ICNZB** and **BNZ** noted that the Customs Officer should be required to have formed a reasonable suspicion before being able to exercise the power.

[748] Law Box, AuditsAML, BNZ

[749] BNZ and submitters 40, 44, 165

[750] AuditsAML, Aro Advisors, BNZ, ICNZB and submitters 92

Other forms of value movement

493. This section considered whether BCRs should be required for more than just physical currency and bearer-negotiable instruments and also include other forms of value movements such as stored value instruments, casino chips, and precious metals and stones. All submitters were largely supportive of the proposal.[751]

Privacy and protection of information

494. The Act requires businesses to collect a large amount of 'personal information' from their customers, particularly when the risks are high. Some of this information is required by the government automatically (for example, for a prescribed transaction report) or upon request by a government agency.

495. This section considered whether the AML/CFT Act properly balances its purposes with the need to protect people's information and other privacy concerns. Overall, submitters thought the Act does not properly balance these competing concerns.[752] Some of the reasons given include:

- **invasion of privacy**: For customers to be required to provide personal information is an invasion of privacy,[753] particularly as some of the information collected may not mitigate money laundering and terrorism financing.[754]
- **customer resistance:** There is a lot of resistance from clients who are concerned about their information being used for other purposes.[755] Clients from well-known NZ families do not want to disclose financial history.[756]
- **security:** Reporting entities cannot guarantee the security of personal information held by them.[757] Due to the type of information held, there is a heightened risk of identity fraud.[758] The digital landscape makes it almost impossible to get rid of data.[759]
- **Government sharing**: there are insufficient constraints on sharing between government agencies, and there are significant leaks in their systems (see further *Framework for sharing risk information* and *Information sharing*).[760]

[751] AuditsAML, BNZ, ICNZB and submitter 40

[752] David Harrison, Red Crayon, Polson Higgs, Clyde Law, VPGam, Linfox Armagard Group, Maxima, Digital Identity NZ, Financial Services Council, Privacy Commissioner, RITANZ, ASB, Mainland Capital, Boutique Investment Group, National Council of Women NZ, Private Box, Law Box, Simpson Grierson and submitters 40, 44, 92, 161, 164, 165

[753] Harcourts Gold Star, MTF Finance Hamilton, National Council of Women NZ and submitter 164

[754] NZGIF

[755] Red Crayon

[756] Submitter 167

[757] VPGam, Red Crayon, Boutique Investment Group, National Council of Women NZ, Law Box, David Harrison and submitter 40, 165, 106

[758] MTF Finance Hamilton, Polson Higgs

[759]Boutique Investment Group and submitter 40

[760] Maxima

- **third party AML/CFT compliance entities** hold significant amounts of personal information without special rules protecting this.[761]

496. Some submitters thought that the Act does properly balance privacy and the purposes of the Act.[762] **BNZ** noted that information sharing between agencies crucial to achieve outcomes of the Act.[763]

497. We also asked submitters how we could better the protect privacy of people who interact with the regime. They suggested:

    - **Central ID verification:** Create a central identity verification service run by the New Zealand Government,[764] increase access to RealMe (see further *Partnering in the fight against financial crime*).[765]
    - **Risk-based approach to collecting information**: Adopt a risk-based approach to ECDD (see further *Mandatory enhanced CDD for all trusts*).[766]
    - **Storage of personal information**: Reporting entities should be able to sight personal information only and not require expired identity documents (see further *Reasonable steps to verify information obtained through CDD*).[767] In addition, we could create stricter rules around the way data is collected and who may hold it to uphold privacy principles.[768]

498. Many reporting entities took the opportunity to comment that careful consideration is required when considering the balance between privacy concerns and the purpose of the Act.[769] In addition, there must be considerable consultation with the Privacy Commissioner.[770]

Requiring mandatory deletion of financial intelligence

499. There is no retention period specified in the Act for information held by government agencies. We considered whether we should include one for some types of information. For example, whether information provided to FIU through prescribed transaction reporting (which includes personal information related to cash transactions and international wire transfers) must be deleted after a certain period.

[761] Clyde Law and Deloitte

[762] Audits AML, Aro Advisors, Kiwi Wealth, ICNZB, FSF and submitters 6, 26, 58, 80, 85, 113, 188, 194

[763] BNZ

[764] Mainland Capital, Securities Industry Association, Simpson Grierson, Digital Identity NZ and submitters 92, 95, 169

[765] VPGam and submitter 44

[766] Financial Services Council

[767] NZGIF, Polson Higgs

[768] Law Box, Private Box and submitter 161

[769] Calibre Partners, Kiwi Wealth, ASB, BNZ

[770] Deloitte, Digital Identity NZ

500. Most submitters agreed that information should be subject to a retention period.[771] There was no consensus on how long the information should be retained for, with submitters suggesting between 3 and 10 years.[772] Some submitters thought information should be deleted once the purpose for collection is over.[773]

501. Some submitters thought that there did not need to be a retention period for this type of information.[774] Two submitters noted that it is virtually impossible to comply with a requirement to delete data.[775] **Nolans** noted that a requirement to delete data will require further monitoring and compliance and more requested from already exhausted clients.[776]

Legally privileged information

502. In various circumstances, the Act allows people to refuse to disclose information or documents on the ground that it contains privileged communication. This includes reporting suspicious activities, prescribed transactions, and providing information upon request from an AML/CFT supervisor or the FIU.

503. Overall submitters agreed that legally privileged information is adequately protected by the Act and that the process for testing assertions that a document/piece of information is privileged (set out in section 159A) is appropriate.[777]

504. The **NZLS** thought that the definition of 'privileged communication' in section 42 of the Act is consistent with general legal professional privilege. The exceptions contained in section 42(2) are also consistent with lawyers' legal obligations.

505. Some submitters thought that privileged information was not adequately protected and that the process in section 159A was not appropriate.[778] **Submitter 40** noted that there is no accountability for misused information and suggested that if the Act required less disclosure, this could minimise harm in this space.[779]The process for testing assumption is costly, legalised and ambiguous.

Harnessing technology to improve regulatory effectiveness

506. Innovative skills, methods, and processes, as well as innovative ways to use technology, can help regulators, supervisors, and businesses overcome many challenges associated with AML/CFT. Technology can facilitate data collection, processing, and analysis, and help

[771] FSF, Dentons Kensington Swan, BNZ, Private Box, Kendons, Law Box, AuditsAML, Deloitte and submitters 6, 26, 40, 44, 58, 80, 85, 95, 188

[772] Law Box, and submitters 60, 80, 95, 188

[773] Submitters 40, 44 and 60.

[774] Nolans and submitters 92, 113, 164, 165

[775] Submitters 92, 165.

[776] Nolans.

[777] ICNZB, BNZ, NZLS, Deloitte, VCFO Group and submitters 26, 58, 103

[778] Deloitte, Kendons and submitters 40, 92

[779] Submitter 40

businesses identify and manage money laundering and terrorism financing risks more accurately and quickly. Given that a wide range of products and solutions have been developed domestically and internationally, we wanted to understand what challenges and barriers people have faced in harnessing technology to improve efficiencies and effectiveness.

507. Submitters generally agreed that technology could be better utilised by government agencies as well as the private sector and that this would provide significant benefits and deliver improved outcomes.[780] In terms of what may be preventing wider adoption, submitters identified barriers such as:

    - uncertainty about whether a product is reputable and will meet a business' requirements, particularly in the absence of an approval or accreditation process by regulators;[781]
    - the financial and human resource cost of products can be prohibitive for New Zealand businesses, particularly smaller entities;[782]
    - the lack of a 'digital first' approach to the Act and regulations, particularly where requirements are rigidly prescribed and not risk-based;[783]
    - quality and availability of data, including government data;[784]

508. **BitPrime** considered the best (or perhaps only) way for businesses, customers, and regulators to deal effectively with technology is to start using it in safe and experimental settings. In addition, several submitters supported a centralised register of CDD, better adoption of RealMe for AML purposes, or enabling easier access to Government databases such as through APIs (see further *Partnering in the fight against financial crime*).[785] Finally, **RITANZ** and **Calibre Partners** both advocated for enhancing goAML as they considered the platform to not be user friendly and difficult to navigate and use (see further *Improving the quality of reports received*).

Enabling the adoption of digital identity

509. As part of the Government's Digital Identity Programme, Cabinet agreed to establish a Digital Identity Trust Framework. The Framework will set out the rules for how digital identity services can be delivered, including accreditation, legal enforcement, and governance, to enable the development of a secure and sustainable digital identity ecosystem. We asked whether people could identify any challenges or barriers which would prevent the adoption of a Digital Identity Trust Framework.

[780] illion, BitPrime, AML360, Western Union

[781] ICNZB, FSF, Sharesies, FSF, CA ANZ, AuditsAML and submitters 103, 160, 167, 188

[782] ICNZB, Boutique Investment Group, AuditsAML, and submitters 85, 188, Western Union

[783] HSBC, Boutique Investment Group, Sharesies, Deloitte and submitters 106, 165

[784] Boutique Investment Group, Securities Industry Association and submitters 80, 160, 188

[785] Mackenzies Real Estate, Polson Higgs, Lex Dean, Vigilance, Akahu, Snowball Effect, Christian Savings Limited, NZXWT, ACM, REINZ, Mainland Capital, Boutique Investment Group, Private Box and submitters 44, 167

510. Submitters indicated support for the Framework and agreed that it had the potential to significantly improve the functioning of the AML/CFT regime.[786] However, several submitters identified potential risks or barriers to the Framework's adoption, such as:

- ensuring that everyone is reasonably able to use the Framework and that it is accessible to all, including elderly and disabled persons;[787]
- ensuring that non-New Zealand ID holders are able to be verified;[788]
- AML/CFT settings, including IVCOP, reliance, and liability settings, will need to be aligned with the Framework to ensure consistency of language and expectations;[789]
- there will need to be sufficiently wide adoption across New Zealand to make it worthwhile for businesses and customers to use, and the Framework itself needs to be relatively frictionless;[790]
- there needs to be sufficient safety and fraud protection mechanisms for the end user;[791]

Harmonisation with Australian regulation

511. This section considered whether New Zealand should achieve greater harmonisation with Australia's AML/CFT regulation. We recognised that many businesses operate in both Australia and New Zealand, and harmonising obligations would achieve greater efficiencies for businesses and government. However, we also need to ensure that our regulation is fit for New Zealand's risk and context, which is similar to Australia's but not exactly the same.

512. Overall, submitters were supportive of achieving greater harmonisation with Australia's AML/CFT regulation.[792] Some submitters noted that more harmonised regulation could benefit businesses with entities in both Australia and New Zealand. [793] However, some submitters, while supportive of more harmonised regulation, cautioned against harmonisation where it may lead to increased compliance requirements.[794]

513. Some noted that the Australian Senate Legal and Constitutional Affairs References Committee has recently conducted an inquiry into the adequacy and effectiveness of the Australian regime and is due to report back in March 2022 and that monitoring the findings of the inquiry could be useful for identifying areas for harmonisation.[795]

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[786] Mainland capital, FSF, Snowball Effect, Boutique Investment Group and submitter 160

[787] BNZ, ICNZB, FSC, AuditsAML and submitters 40, 160

[788] Western Union

[789] ASB, Boutique Investment Group, NZBA, MATTR, Deloitte and submitter 165. See further *Identity Verification Code of Practice*

[790] BNZ, Boutique Investment Group, NZBA, Securities Industry Association, Private Box and submitters 44, 85

[791] NZBA, Securities Industry Association, Financial Services Council

[792] Aro Advisors, Boutique Investment Group, CA ANZ, Calibre Partners, Dentons Kensington Swan, Financial Services Council, FSF, FNZ, MATTR, NZBA, RITANZ Securities Industry Association, Private Box, AuditsAML, Financial Services Council, Deloitte and submitters 40, 44, 85, 103, 118, 188

[793] Dentons Kensington Swan, Financial Services Council, FSF, MATTR, NZBA

[794] Boutique Investment Group, Dentons Kensington Swan, FSF

[795] Calibre Partners, CA ANZ, NZLS, RITANZ

514. Some submitters were not supportive of achieving greater harmonisation with Australia's AML/CFT regulation.[796] **Kiwi Wealth** and **BNZ** stated that New Zealand needs regulation that focuses on achieving an effective outcome for New Zealand. **BNZ** also noted that New Zealand should be focusing on aligning with FATF standards.

Ensuring system resilience

515. AML/CFT agencies handled COVID-19 reasonably well and adjusted to the challenges to ensure the regime continued to operate. However, part of this may have been due to the relatively short lockdown periods in New Zealand. The AML/CFT system's resilience may have been pushed past breaking point had the lockdown periods been longer term. As such, we want to ensure that the system is resilient to challenges, both long and short term. We asked for ways we can ensure the AML/CFT system is resilient to long- and short-term challenges?

516. Many submitters stated that a more prescriptive AML/CFT approach would compromise the agility and resilience of the system and therefore a flexible risk-based approach in compliance processes would be desirable for both short-term and long-term resilience.[797]

517. A number of submitters advised embracing new technologies and digitisation would contribute to the AML/CFT system's resilience.[798] For example, **Dentons Kensington Swan** suggested a move away from strict reliance on hard copies of documents, while **MATTR** recommended fully integrating digital identities into the AML/CFT Act.

518. **Mainland Capital** and **Simpson Grierson** believed there needs to be a robust exemptions regime to allow for agility in responding to entities that are captured by broad regulations but do not warrant compliance because of very low risk. **FSF** and **BNZ** stated that maintaining or increasing the frequency of reviews of the AML/CFT Act and regulations would allow more resilience to developing risks.

[796] Kiwi Wealth, Mainland Capital, Kendons, and submitters 26, 58, 80, 165, 188, 217

[797] Aro Advisors, BNZ, BitPrime, Boutique Investment Group, Dentons Kensington Swan, FSF, ICNZB, MATTR, Mainland Capital, Securities Industry Association, Bridging Finance, AuditsAML, Christian Savings Limited, Nolans, Simpson Grierson, Deloitte and submitters 40, 44, 80, 85, 103, 165, 167

[798] Dentons Kensington Swan, Securities Industry Association, BitPrime and submitters 44, 80, 85

Minor changes

Definitions and terminology

Issue	Proposal for change	Comment received
Life insurer is not currently defined in the AML/CFT Act; however, the definition of life insurance policies is by cross reference to the Insurance (Prudential Supervision) Act 2010.	Define life insurer in the AML/CFT Act by reference to the Insurance (Prudential Supervision) Act 2010.	**BNZ** and **FSF** supported the proposed changes.
The meaning of the exclusion of "cheque deposits" in the definition of occasional transaction in section 5 of the AML/CFT Act is unclear. It is intended to apply to a deposit by cheque made at a bank or non-bank deposit taker, such that it does not trigger an occasional transaction by the person making the deposit with the bank. However, this is not specified.	Limit the exclusion of cheque deposits only to deposits made at a bank, non-bank deposit taker, or similar institution in line with the original policy intent.	**FSF** agreed with the proposed change.
The definition of a DBG allows a group of 'related' DNFBPs, and their subsidiaries, that are reporting entities (within the same sector), to form a DBG with each other. 'Related' is intentionally not defined and DIA as the supervisor has issued guidance to assist DNFBPs understand how this should be interpreted. The Act appears to currently require subsidiaries to also be reporting entities to join a DBG., which is not the policy intent.	Propose that a DBG may be formed amongst a group of related reporting entities within a DNFBP sector and may also include a subsidiary of one of those DNFBPs in New Zealand (that is not a reporting entity).	**BNZ** agreed with the proposed changes
Section 114 of the AML/CFT Act is intended to convey the importance of the functions under the Customs and Excise Act 2018 in supporting the AML/CFT system but the current drafting does not clarify how the functions operate together.	Clarify and tidy up the sections to ensure the functions can clearly operate together.	**BNZ** agreed with the proposed changes.

Information sharing

Issue	Proposal for change	Comment received
Several key Acts are currently not included under section 140 of the AML/CFT Act. This limits data and partnerships across agencies and is preventing full environment assessments. The key agencies responsible for the listed legislation have observed money laundering and other harms but are	Issue regulations to include additional Acts within the scope of section 140 to enable broader information sharing, such as: *Commerce Act 1986, Corrections Act 2004, Criminal Proceeds (Recovery) Act 2009, Defence Act 1990, Environment Act 1986, Immigration Act 2009, and Trust Act 2019.*	**BNZ** and **Submitter 209** supported this proposal. **Submitter 213** recommended further engagement with the Privacy Commissioner.

Issue	Proposal for change	Comment received
currently unable to share information with the AML/CFT agencies.		
Supervisors are empowered under section 48 to disclose personal information relating to employees or senior managers for law enforcement purposes and for the purpose of detecting, investigating, prosecuting any offence under specific Acts. Some Acts are not listed which limit the ability for some information that AML/CFT agencies hold to be shared for other regulatory purposes.	Add the following Acts to section 48(b) to improve clarity of the section and enable appropriate information sharing: *Financial Markets Conduct Act 2013, Non-bank Deposit Takers Act 2013, Insurance (Prudential Supervision) Act 2010.*	**BNZ** and **Submitter 209** were supportive of this proposal, **Compliance Plus** and **Submitter 200** recommended engagement with the Privacy Commissioner.
There are limited provisions explicitly allowing DIA to share information internally for law enforcement purposes (as defined in section 5). DIA administers other relevant legislation and it is not clear whether the AML/CFT function within DIA is able to share information with the teams responsible for the legislation listed above or vice versa.	Add further Acts to section 137(6) & (7) to clarify the ability for DIA to use information obtained as AML/CFT supervisor in other capacity and vice versa, e.g. *Passport Act 1992, Births, Deaths, Marriages and Relationship Registration Act 1995, Citizenship Act 1977.*	**BNZ** and **Submitter 209** were supportive of this proposal, **Compliance Plus** and **Submitter 200** recommended engagement with the Privacy Commissioner.
There is no explicit provision in the AML/CFT Act which allows supervisors to conduct enquiries on behalf of foreign counterparts. Section 132(2)(e) of the AML/CFT Act provides a general power to initiate and act on requests from overseas counterparts, but not specifically conduct enquiries.	Clarify that supervisors are empowered to conduct enquiries on behalf of overseas counterparts.	**BNZ** and **Submitter 209** supported the proposal. **Dentons Kensington Swan** noted that there should be constraints to protect against politically motivated investigations, while **Compliance Plus** thought the change should be made if are deficiencies in the framework that Police have to share information with foreign counterparts.

SARS and PTRS

Issue	Proposal for change	Comment received
No agency has the explicit function of ensuring compliance with SAR obligations. This function is not specifically listed as part of the functions of the AML/CFT Supervisors in section 130 (but supervisors are required to monitor for compliance more generally). Similarly, the Commissioner of Police is empowered to provide feedback to reporting entities on the quality and timing or their SARs and enforce the requirement to report.	Clarify which agencies are responsible for supervising compliance with SAR obligations.	Several submitters[799] commented on either or both of these minor SARs and PTRs issue. **FSF** supported the change and thought the agency responsible should be the supervisors.
The requirements set out in regulations for prescribed transaction reports made for international wire transfers are unclear about whether the country noted should be where the account is held or the country of the originator.	Amend the regulation to obtain both the location of the account and the address of the sender to capture all relevant country information.	**FSF** supported change, while **NZBA** opposed and disagreed that the change was minor as it could have significant compliance costs from an implementation perspective. **Submitter 217** noted that any amendment will have an impact on reporting, testing and compliance, and will require time for systems to be changed.

[799] HSBC, Westpac, FNZ, NZLS, FSF, NZBA, BNZ

Exemptions

Issue	Proposal for change	Comment received
Regulation 24AC of the AML/CFT (Exemptions) Regulations 2011 exempts reporting entities from certain sections obligations when subject to a production order or order issued under section 143(1)(a). However, reporting entities also receive orders under the Customs and Excise Act 2018 which may inadvertently lead to tipping off. In addition, in the process of complying with the relevant order, the reporting entity may form suspicions about associated persons. The exemption does not explicitly cover associates and therefore there is a risk that suspicious associates are tipped off.	Expand the exemption to also exempt reporting entities subject to an order issued under section 251 of the Customs and Excise Act 2018 as well as in respect of any suspicious associates who are identified in the process of complying with the relevant order.	**FSF** and **BNZ** supported the proposal.
Regulation 17 AML/CFT (Exemptions) Regulations 2011 exempts reporting entities that are not an insurance company who are providing a service under a premium funding agreement from section 14-26 of the AML/CFT Act but does not exempt them from the requirement to identify a customer under section 11. This means exempt reporting entities must conduct ongoing CDD and account monitoring under section 31, but as they have not conducted CDD they have nothing to review.	Link the exemption more directly to the level of ML/TF risk associated with premium funding and clarify intention (or not) to capture premium funding as an activity for the purposes of AML/CFT	**Westpac, FSF** and **BNZ** supported the proposal.
Regulation 22 of the AML/CFT (Exemptions) Regulation 2011 exempts debt collection services from the AML/CFT Act other than relating to suspicious activity reporting. Debt collection services are defined as "the collection of debt by a person other than the creditor to whom it is owed or, where it has been assigned, to whom it was originally owed". The scope of this definition is unclear.	Clarify that the definition of debt collection services only relates to the collection of unpaid debt rather than the collection of any funds owed by one person to another.	**FSF** and **BNZ** supported the proposal. Compliance Plus considered the proposal is unclear, as any funds owed from one person to another is 'unpaid debt'.
Regulation 9 of the AML/CFT (Exemptions) Regulations 2011 currently exempts currency exchange transactions performed in hotels that do not exceed NZD 1000 from most obligations in the Act, except obligations to file suspicious activity reports and keep records of any reports filed. However, the way this exemption operates may cause confusion for hotel operators which could be exploited by people seeking to launder money or	Clarify that the exemption applies to hotel providers which only undertake currency exchange transactions below NZD 1000.	**BNZ** supported the proposal.

Issue	Proposal for change	Comment received
finance terrorism. In particular, hotel operators may not be aware that they have full obligations for any currency exchange transaction that exceeds NZD 1000, irrespective of how regularly they engage in any large value currency exchange transaction.		
Section 158 states that the Minister of Justice must consult with the Ministers responsible for the AML/CFT supervisors and any other appropriate persons before deciding on a Ministerial exemption.	Specifically include the FIU NZ Police in the list of agencies/roles that the Minister must consult with when considering a Ministerial exemption.	**FSF** and **BNZ** supported the proposal.

Offences and Penalties

Issue	Proposal for change	Comment received
AML/CFT supervisors can issue a formal warning for failure to comply with AML/CFT requirements. However, calling these "formal warnings" does not necessarily carry the intended weight with the sector.	Replace "Formal warnings" with "Censure" to indicate the weight of the action. Censure is much more than a warning and includes a mandatory action plan.	**FSF** supported the proposal, while **FNZ** and **Dentons Kensington Swan** thought censure should be in addition to rather than instead of formal warnings.
There are two civil liability acts not explicitly included in section 78 of the Act. These are 1) failing to submit a suspicious activity report; 2) failures in respect of a risk assessment.800 It is also currently unclear whether 3) failing to submit an annual report to an AML/CFT supervisor is a civil liability act.	Amend section 78 to include these compliance breaches as civil liability acts.	**BNZ** and **Submitter 217** supported the proposal, and **HSBC** noted that it would be useful to clarify whether civil liability extends to late or inaccurate submissions as well.

Preventive measures

Issue	Proposal for change	Comment received
Businesses are required to "have regard" to the factors set out in section 58(2) when conducting a risk assessment. This includes any applicable guidance material produced by AML/CFT supervisors or the Police, such as the National Risk Assessment or the	Amend section 58(2) to ensure that a business' risk assessment reflect government advice about national and sectoral risks.	**BNZ** and **Submitters 194, 200, 209** supported the proposal while **Financial Services Council and Submitters 193** and **203**

[800] *Department of Internal Affairs v Ping An Finance Group New Zealand Company Limited* [2017] NZHC 2363, at [5]. *Department of Internal Affairs v Qian Duoduo Limited* [2018] NZHC 1887, at [3].

MINOR CHANGES

Issue	Proposal for change	Comment received
various sectoral risk assessments. However, the language of "have regard to" could allow businesses to consider, but ultimately reject, government advice about national or sectoral risks and therefore fail to implement appropriate controls.		did not support the proposal.
In various sections of the AML/CFT Act, where a requirement for CDD is triggered outside a business relationship, there is reference to a customer seeking to conduct an occasional transaction or occasional activity. A person (outside a business relationship) becomes a customer if they conduct or seek to conduct an occasional transaction or occasional activity.	Replacing the term 'customer' with 'person' in sections 14(1)(b), 18(1)(b), 22(1)(b), 22(1)(b)(ii), 22(2)(b), and 22(5)(b) to align with the definition of customer in section 5.	**BNZ** and **Submitter 209** supported the proposal.
Businesses do not have an explicit obligation to verify any new information obtained through ongoing CDD, except where enhanced CDD is triggered.	Issue a regulation which explicitly requires businesses to verify any new information obtained through ongoing CDD.	**BNZ** and **Submitters 84, 194, 209** supported the proposal. **Kiwi Wealth** thought this should not extend to address changes, and **ASB** thought it should be limited to where new information changes the risk profile of the customer. **Boutique Investment Group** did not support the proposal.
Regulation 10 of the AML/CFT (Requirements and Compliance) Regulations 2011 require reporting entities to obtain information about the existence and name of any nominee directors and nominee shareholders. However, the definition of "nominee director" can include situations where directors of subsidiary companies or joint venture companies are required or accustomed to follow the directions from the holding company or appointing shareholder. This arrangement was not intended to be captured by the additional requirements.	Amend the definition of nominee director to exclude instances where the director is required to accustomed to follow the directions of a holding company or appointing shareholder.	**BNZ** and **Submitter 209** supported the proposal.
Section 37 applies prohibitions if a reporting entity "is unable to" conduct CDD in accordance with the AML/CFT Act. One reading of this is that if a reporting entity can conduct CDD as required, but merely	Replace "is unable to" with "does not" in section 37 to ensure the prohibitions apply in all appropriate instances where CDD is not conducted.	**Submitters 200** and **209** supported the proposal. **BNZ** suggested using the words "is unable to or does not".

Issue	Proposal for change	Comment received
chooses not to, the prohibitions do not apply.		
Simplified CDD is intended to apply only in situations where there are proven lower risks. There is no explicit requirement for businesses to not apply simplified CDD measures where there are higher risks, including where there is a suspicion of money laundering or terrorism financing.	Issue a regulation which states that simplified CDD is not appropriate where money laundering or terrorism financing risks are high or if there is suspicion of ML/TF.	**BNZ** and **Submitters 200 and 209** supported the proposal. However, **NZGIF** thought simplified CDD should be still available where suspicion arises in a transaction rather than with the customer. **HSBC** thought the instances where this would apply should be specified.
Businesses are not required to keep records of prescribed transaction reports.	Issue a regulation which requires businesses to keep records of prescribed transaction reports for five years.	**BNZ** and **Submitter 209** supported the proposal.
Section 52 of the Act states that records must be kept in written form in English or in a form to make them readily available. This means, but does not explicitly state, that records must be available immediately, or upon request.[801]	Amend section 52 to clarify that records must be made available immediately (e.g. upon request from a supervisor).	**BNZ** and **Submitter 209** supported the proposal. **HSBC** thought the timeframe should be specified for when records must be made available, while **Compliance Plus** opposed the proposal.
The Act does not set out how long businesses should retain account files, business correspondence, and written findings.	Issue a regulation which requires businesses to retain account files, business correspondence, and written findings for five years.	**BNZ** and **Submitter 209** supported the proposal.
There is no requirement that copies of records must be stored in New Zealand, particularly copies of customer identification documents.	Issue a regulation which requires businesses to retain copies of records in New Zealand to ensure they can be easily accessible when required.	**Submitter 209** supported the proposal, while **BNZ, Financial Services Council and Submitters 194, 205, 208** and **211** did not.
There is currently no requirement for ordering institution to maintain records about beneficiary's account number or unique transaction reference number.	Require ordering institutions to keep records on beneficiary account number or unique transaction numbers.	**BNZ** and **Submitter 209** supported the proposal, and **HSBC** thought the timeframe for retention should be specified.

[801] *Department of Internal Affairs v OTT Trading Group Limited, Tonghui Qi and Lee Chon Woon* [2020] NZHC 1663, at [76], [77] and [78].

Issue	Proposal for change	Comment received
It is currently not clear that wire transfer obligations apply to an underlying customer for MVTS providers that use agents.	Issue a regulation stating that the originator or beneficiary of a wire transfer is the underlying customer, not the MVTS provider's agent.	**BNZ** supported the proposal.
There is a current Ministerial exemption in place that enables members of a DBG (that are reporting entities) to share a compliance officer, subject to certain conditions. The intent is to reduce compliance burden across members of a DBG.	Amend the Act to allow members of a DBG to share a compliance officer.	**BNZ** and **Submitters 194, 200, 205,** and **209** supported the proposal.

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