Response ID ANON-Z596-YZA3-5

Submitted to AML/CFT Act review
Submitted on 2021-12-01 11:59:04

Tell us a bit about yourself

1 What age group are you in?

50-64

2 What is your ethnicity? (You can select more than one.)

NZ European

Please specify:

Not Answered

Please specify:

Not Answered

Please specify:

Not Answered

Please specify:

3 If you're responding on behalf of an organisation or particular interest group, please give details below:

Organisation or special interest group details:

I respond as a Solicitor in my own practice and as member of the New Zealand Law Society, but also as an individual with a personal interest in socio-cultural and socio-political environments both domestically and internationally.

4 If you would like to be contacted in the future about AML/CFT work, please include your email address below. (Note you are not required to provide your email address. You can provide your submission anonymously.)

Email address:
[redacted]@lawbox.co.nz

1. Institutional arrangements and stewardship

1.1 Are the purposes of the Act still appropriate for New Zealand's Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) regime?

No

If you answered 'no', what should be changed?:

I believe the Act is unlikely to be able to respond to the fast-changing and unexpected global environment New Zealand finds itself in.

If you think there are other purposes that should be added, please give details below::

I would need more time to respond in detail, but feel that its scope should be extended to enable a more broader approach to capture situations and events (particularly those associated with persons and countries in the international environment) that may not have been considered previously.

1.2 Should a purpose of the Act be that it seeks to actively prevent money laundering and terrorism financing, rather than simply deterring or detecting it?

Unsure

Please comment on your answer.:

The obligation and compliance responsibilities on law firms and practice management in particular, of which some 50% are sole practitioners nationally already places onerous management obligations in legal practice on a day to day basis. From an industry perspective, it is my view that the fact of the regime in place in the first place, and avenues for reporting suspicious transactions or activity (as is already the situation) already puts the steps in place to deter and detect. Shifting the regulatory environment to "active prevention" would have wide ranging implications for industries required to comply with the Act, and require substantial government policy and industry training for implementation. I believe "active prevention" would be a regulatory step too far for some industry sectors, but not necessarily for other sectors with the ability to fund a higher level of compliance.

1.3 If you answered 'yes' to Question 1.2, do you have any suggestions how this purpose should be reflected in the Act, including whether there need to be any additional or updated obligations for businesses?

Please share your comments below.:

1.4 Should a purpose of the Act be that it also seeks to counter the financing of proliferation of weapons of mass destruction?

Yes

Please comment on your answer.:

The definition of weapons of mass destruction is currently ambiguous. Vehicles can be weapons of mass destruction, and so can a virus as the present Covid-19 pandemic evidences. We find ourselves in the situation where subsidiary companies such as Air New Zealand and a subsidiary working on an aircraft or ship engine for a third party unaware of links to countries that perhaps shouldn't be and that work slips under the radar on 'sign-off' because of the value of the work. New Zealand has international obligations as a member of the UN, and we should be working on implementing regulatory and policy frameworks supporting other member countries in limiting the risk of proliferation financing.

1.5 If you answered 'yes' to Question 1.4, should the purpose be limited to proliferation financing risks emanating from Iran and the Democratic People's Republic of Korea?

No

Please give reasons for your answer.:

There are a number of other countries representing proliferation financing risks. These wax and wane over time, sometimes quickly and violently as recent events in Afghanistan, the Middle East, and various African nations attests. If the purpose of the Act is amended to limit risks from certain identified countries instead of more generally, the New Zealand Government exposes itself to being unprepared and unable to quickly adapt to unforeseen and unexpected risk arising.

In addition, gaps in our regulatory environment and obligations to the UN and member nations could unintentionally leave New Zealand politically embarrassed and inadvertently damage international ally relations if certain countries are singled out over others.

Yes

Please comment on your answer.:

Amending the purpose to combat proliferation financing more generally would ensure the New Zealand Government can adapt, be prepared for and actively manage future unexpected risk arising from countries or avenues that may not have been foreseen in earlier years.

Taking steps to address as many gaps as possible in our regulatory environment aids relationships with the UN and member nations and reduces risk of gaps causing political embarrassment and/or damaging international ally relations.

1.6 Should the Act support the implementation terrorism and proliferation financing targeted financial sanctions, required under the Terrorism Suppression Act 2002 and United Nations Act 1946?

Yes

Please comment on your answer.:

If the Act is not amended, the New Zealand Government exposes itself to being unable to quickly adapt to and manage unforseen and unexpected socio-political events and changes, leaving it unprepared. Gaps in our regulatory environment and our obligations to the UN and member nations could also leave New Zealand politically embarrassed and damage international relations

1.7 What could be improved about New Zealand's framework for sharing information to manage risks?

Please share your comments below.:

It is my view that while supervisors, agencies and policy analysts might consider concepts such as 'feedback loops' are in place and working for them, there is a disconnect in the collaborative 'loop' feeding down to those who are actually required to comply with the regime.

In terms of flow between business and government, this could be substantially improved. For example, business is overwhelmed by copious dry AML/CFT e-zine regulatory updates. Most completely miss the mark in conveying their message, FIU in particular. I don't read them, and suspect I am not alone. Marketing is key, and that's an aspect severally lacking in this space.

SME's are less financially able to meet compliance and reporting costs, yet other big businesses (eg: Westpac Bank, Sharesies, various money remitters and others reported in the media) who have far greater financial ability to ensure they meet their obligations are consistently failing at a high level in assessing their risk and understanding their AML/CFT obligations. There needs to be a substantial improvement in communication between business and government to help prevent and overcome these sorts of situations where possible. If big business with deep pockets can't even comply, where then is the hope for SME's?

Communications and updates from different regulatory/supervisory agencies within the regime (eg: FIU, DIA, FMA etc) could be more cohesive and

cross-collaborative. For example, from a grass-roots perspective there isn't enough training and CPD available to help business actually learn how to comply and consistently improve and upgrade their knowledge of the requirements and obligations under the Act - particularly for those in the provinces less able to travel to main centers without great expense. Agency cross-collaboration with interactive training, quizzes, webinars etc would greatly improve the ability for industry sectors and their staff to assess risk and understand obligations. A good example of an excellent approach in this regard is the type of training modules available online from the Office of the Privacy Commissioner.

1.8 Are the requirements in section 58 still appropriate?

Yes

Please comment on your answer.:

Without an appropriate written risk assessment in place, how would a business and its employees know what to do, how to do it and when to do it.

How could the government provide risk information to businesses so that it is more relevant and easily understood?:

I referred earlier to marketing and training. Improving cross-collaboration between supervisors and government agencies leading to ongoing AML bite [sized chunk] training and upskilling on an ongoing basis would help businesses access what is relevant when it is needed, helping with understanding of the Act, policy etc and compliance obligations overall. The Office of the Privacy Commissioner is

1.9 What is the right balance between prescriptive regulation compared with the risk-based approach?

Please share your comments below.:

The proportionate balance here is between what is an actual risk for an organisation operating under the regime vs a perceived risk for an organisation operating under the regime and how both of those fit on the spectrum between prescriptive and risk-based. There will always be new and different ways to conduct criminal offending, and no one approach will capture everything all of the time. There will also always be business that will never reach the level of compliance required and others who will do more than they need.

Does the Act currently achieve that balance, or is more (or less) prescription required?:

I believe the Act currently achieves the right balance between prescriptive and risk-based. The Act has rolled out into different sectors at different times and it still relatively new for some sectors. It would be difficult and confusing from both policy and compliance perspectives to move too far one way or the other in a way that different industry sectors and the general public would easily and readily understand.

1.10 Do some obligations require the government to set minimum standards?

Unsure

If you answered 'yes', please comment on how this could be done.:

What role should guidance play in providing further clarity?:

1.11 Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to?

Unsure

If you answered 'yes', please give reasons for your answer.:

1.12 Does the Act appropriately reflect the size and capacity of the businesses within the AML/CFT regime?

No

Please give reasons for your answer.:

The Act definitely does not differentiate between smaller and larger reporting entities. I am uncertain how this could be rectified. For example, the 2-year audit requirements of risk and policy assessments is an onerous obligation. Business were preyed upon at great expense by the plethora of assorted third party audit providers who appeared out of thin air, yet what do they know about the day to day operations of some industries and how we manage risk every day.

1.13 Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to and the size of the business?

Yes

If you answered 'yes', please share your suggestions::

I think there could be, but I am unsure what that might be.

1.14 Are exemptions still required for the regime to operate effectively?

If not, how can we ensure AML/CFT obligations are appropriate for low-risk businesses or activities?:

I personally don't think there should be any exemptions. For example, Barristers as a class, whom I understand are exempt. Barristers do not operate trust accounts. Barristers usually require fees paid in advance or tranches - presumably because if their client is convicted and goes to jail there is limited ability to recover fees. But under lawyers Trust Accounting regulations Barristers can only render an invoice for fees incurred, they can't hold fees in advance unless in a trust account. Any fees paid in advance then need to be held in a 'friendly' lawyer's trust account who take an admin fee for their trouble and pay the barrister's invoice as they are rendered. The Barrister's client isn't usually a client of the 'friendly law firm' directly, but becomes one via the barrister.

Take the scenario of someone charged with dealing or importing drugs or other similar criminal allegations. The advance fees from the alleged dealer are paid into the trust account of the 'friendly' law firm pending invoices being rendered by the Barrister as the matter progresses. Whether the alleged criminal is found guilty or not-guilty, the money gets cleaned by being deposited into the law firm trust account in the first instance, the Barrister gets paid either way, and any money left over goes back to the client. The money is laundered. I am aware of a law firm who provides such services. This cannot be an intended outcome of the Act.

No

1.15 Is the Minister of Justice the appropriate decision maker for exemptions under section 157?

No

If you answered 'no', should it be an operational decision maker such as the Secretary of Justice? Please comment below.:

Yes I believe exemptions should be made by an operational decision maker. Ministers may not having a deep enough understanding of the complexities in some operational matters (the Karel Sroubek immigration matter for example).

1.16 Are the factors set out in section 157(3) appropriate?

Unsure

If you answered 'no', please give reasons for your answer::

1.17 Should it be specified that exemptions can only be granted in instances of proven low risk?

Yes

Please give reasons for your answer.:

The key word here is 'proven', and what that may be defined as.

Should this be the risk of the exemption, or the risk of the business?:

Risk of the business.

1.18 Should the Act specify what applicants for exemptions under section 157 should provide?

Yes

Please give reasons for your answer.:

Specifying enables even-handedness between exemption applications and the parameters within which each is applying.

Should there be a simplified process when applying to renew an existing exemption?:

No.

1.19 Should there be other avenues beyond judicial review for applicants if the Minister decides not to grant an exemption?

Unsure

If you answered 'yes', what could these avenues look like?:

1.20 Are there any other improvements that we could make to the exemptions function?

Unsure

If you answered 'yes', please give details::

For example, should the process be more formalised with a linear documentary application process?:

1.21 Can the AML/CFT regime do more to mitigate its potential unintended consequences?

Yes

If you answered 'yes', please give details::

There are banks who have business rules that require full AML of executors even to provide information or a statement about deceased accounts. While this would be appropriate once the executor has elected what to do with bank accounts/shares etc, it is far to prohibitive to be requiring that level of information at the outset when all the executor is trying to do is establish what needs to be dealt with in the first instance.

1.22 How could the regime better protect the need for people to access banking services to properly participate in society?

Please share your comments below.:

1.23 Are there any other unintended consequences of the regime?

Yes

If you answered 'yes', what are they and how could we resolve them?:

The situations of deposits to law firm and real estate agency trust accounts is a massive anomaly in the Act and compliance. There are a number of law firms throughout the country who undertake work for developers and take deposits lodged to their trust accounts from non-client purchasers as part of that work. They are seemingly not required to conduct no due diligence from those purchasers. A partner of one large law firm in the Bay of Plenty told me that they had a firm policy in which they had simply decided not to do so because it would be administratively burdensome for them. Similarly, real estate agents are excessive with their due diligence of vendor property ownership and history and how those properties were acquired, yet there is no AML being conducted on non-client property purchasers paying their deposits to the agency trust accounts. This is because neither law firms or real estate agents are required to.

The DIA publishes guidelines for law firms. At para 52 is the following:

52. What obligations do I have in terms of CDD on non-clients using my trust accounts?
"DIA holds the view that lawyers and accountants are required to meet the usual CDD requirements and other obligations under the AML/CFT Act in relation to their own clients. They do not however have to conduct CDD on non-clients using their trust accounts. Lawyers and accountants will still be required to meet all broader obligations under the AML/CFT Act, these include:
• Account monitoring obligations in relation to funds received into a trust account from parties other than (but ultimately for) their client
• Enhanced CDD is required on those funds from the non-client if required – including wire transfers and SAR reporting (e.g. s22(1)(c), (d), (3), or s22A(1) of the Act)."

This means that law firms and real estate agencies are in effect able to launder substantial amounts of money in aggregate through their trust accounts for property purchases without having to conduct any due diligence on purchasers. This cannot be an intended outcome or consequence of the Act, and seemingly flies in the face of what the Act is trying to achieve and prevent.

1.24 Can the Act do more to enable private sector collaboration and coordination?

Unsure

If you answered 'yes', please give details::

1.25 What do you see as the ideal future for public and private sector cooperation?

Please share your comments below.:

Are there any barriers that prevent that future from being realised and if so, what are they?:

1.26 Should there be greater sharing of information from agencies to the private sector?

Not Answered

If you answered 'yes', would this enhance the operation of the regime?:

1.27 Should the Act require have a mechanism to enable feedback about the operation and performance of the Act on an ongoing basis?

Not Answered

If you answered 'yes', what is the mechanism and how could it work?:

1.28 Should the New Zealand Police Financial Intelligence Unit (FIU) be able to request information from businesses which are not reporting entities in certain circumstances (e.g. requesting information from travel agents or airlines relevant to analysing terrorism financing)?

Not Answered

Please give reasons for your answer.:

1.29 If the FIU had this power, under what circumstances should it be able to be used and should there be any constraints on using the power?

Please share your comments below.:

1.30 Should the FIU be able to request information from businesses on an ongoing basis?

Not Answered

Please explain your answer:

1.31 If the FIU had this power, what constraints are necessary to ensure that privacy and human rights are adequately protected?

What constraints are needed?:

1.32 Should the Act provide the FIU with a power to freeze, on a time limited basis, funds or transactions in order to prevent harm and victimisation?

Not Answered

If you answered 'yes', how could the power work and operate? In what circumstances could the power be used, and how could we ensure it is a proportionate and reasonable power? Please share your comments below.:

1.33 How can we avoid potentially tipping off suspected criminals when the power is used?

Please share your comments below.:

1.34 Should supervision of implementation of Targeted Financial Sanctions (TFS) fall within the scope of the AML/CFT regime?

Not Answered

Please give reasons for your answer.:

1.35 Which agency or agencies should be empowered to supervise, monitor, and enforce compliance with obligations to implement TFS?

Please describe below and give reasons for your answer.:

1.36 Are the secondary legislation making powers in the Act appropriate, or are there other aspects of the regime that could benefit from having regulation making powers created?

Please share your comments below.:

1.37 How could we better use secondary legislation making powers to ensure the regime is agile and responsive?

Please share your comments below.:

1.38 Are the three Ministers responsible for issuing Codes of Practice the appropriate decision makers, or should it be an operational decision maker such as the chief executives of the AML/CFT supervisors? Why or why not?

Please share your comments below and give reasons for your answer.:

1.39 Should the New Zealand Police also be able to issue Codes of Practice for some types of FIU issued guidance?

Not Answered

If you answered yes, what should the process be?:

1.40 Are Codes of Practice a useful tool for businesses?

Not Answered

If you answered 'yes', are there any additional topics that Codes of Practice should focus on? What enhancements could be made to Codes of Practice? Please share your comments below.:

1.41 Does the requirement for businesses to demonstrate they are complying through some equally effective means impact the ability for businesses to opt out of a Code of Practice?

Not Answered

If you answered 'yes', please give reasons for your answer.:

1.42 What status should be applied to explanatory notes to Codes of Practice? Are these a reasonable and useful tool?

Please share your comments below.:

1.43 Should operational decision makers within agencies be responsible for making or amending the format of reports and forms required by the Act?

Not Answered

Please give reasons for your answer.:

1.44 If you answered 'yes' to the previous question (question 1.43), which operational decision makers would be appropriate, and what could be the process for making the decision? For example, should the decision maker be required to consult with affected parties, and could the formats be modified for specific sectoral needs?

Please share your comments below.:

1.45 Would AML/CFT Rules (or similar) that prescribed how businesses should comply with obligations be a useful tool for business?

Not Answered

Please give reasons for your answer.:

1.46 If we allowed for AML/CFT Rules to be issued, what would they be used for, and who should be responsible for issuing them?

Please share your comments below.:

1.47 Would you support regulations being issued for a tightly constrained direct data access arrangement which enables specific government agencies to query intelligence the FIU holds?

Not Answered

Please give reasons for your answer.:

1.48 Are there any other privacy concerns that you think should be mitigated?

Not Answered

Please share your comments below.:

1.49 What, if any, potential impacts do you identify for businesses if information they share is then shared with other agencies? Could there be potential negative repercussions notwithstanding the protections within section 44?

Please share your comments below.:

1.50 Would you support the development of data-matching arrangements with FIU and other agencies to combat other financial offending, including trade-based money laundering and illicit trade?

Not Answered

Please give reasons for your answer.:

1.51 What concerns, privacy or otherwise, would we need to navigate and mitigate if we developed data-matching arrangements? For example, would allowing data-matching impact the likelihood of businesses being willing to file Suspicious Activity Reports (SARs)?

Please share your comments below.:

1.52 Should there be an AML/CFT-specific registration regime which complies with international requirements?

Not Answered

If you answered 'yes', how could it operate, and which agency or agencies would be responsible for its operation? Please share your comments below.:

1.53 If such a regime was established, what is the best way for it to navigate existing registration and licensing requirements?

Please share your comments below.:

1.54 Are there alternative options for how we can ensure proper visibility of which businesses require supervision and that all businesses are subject to appropriate fit-and-proper checks?

Not Answered

Please give reasons for your answer.:

1.55 Should there also be an AML/CFT licensing regime in addition to a registration regime?

Not Answered

Please give reasons for your answer.:

1.56 If we established an AML/CFT licensing regime, how should it operate? How could we ensure the costs involved are not disproportionate?

Please share your comments below.:

1.57 Should a regime only apply to sectors which have been identified as being highly vulnerable to money laundering and terrorism financing, but are not already required to be licensed?

Not Answered

Please give reasons for your answer.:

1.58 If such a regime was established, what is the best way for it to navigate existing licensing requirements?

Please share your comments below.:

1.59 Would requiring risky businesses to be licensed impact the willingness of other businesses to have them as customers? Can you think of any potential negative flow-on effects?

Please share your comments below.:

1.60 Would you support a levy being introduced for the AML/CFT regime to pay for the operating costs of an AML/CFT registration and/or licensing regime?

Please give reasons for your answer.:

Not Answered

1.61 If we developed a levy, who do you think should pay the levy (some or all reporting entities)?

Please share your comments below.:

1.62 Should all reporting entities pay the same amount, or should the amount be calculated based on, for example, the size of the business, their risk profile, how many reports they make, or some other factor?

Please share your comments below.:

1.63 Should the levy also cover some or all of the operating costs of the AML/CFT regime more broadly, and thereby enable the regime to be more flexible and responsive?

Not Answered

Please give reasons for your answer.:

1.64 If the levy paid for some or all of the operating costs, how would you want to see the regime's operation improved?

Please share your comments below.:

3. Supervision, regulation, and enforcement

3.1 Is the AML/CFT supervisory model fit for purpose or should we consider changing it?

Unsure

3.1 Please indicate why? :

3.2 If it were to change, what supervisory model do you think would be more effective in a New Zealand context?

Regulatory bodies as supervisors - eg. Law Society

3.2 Please provide context for your choice:

3.3 Do you think the Act appropriately ensures consistency in the application of the law between the three supervisors? If not, how could inconsistencies in the application of obligations be minimised?

Not Answered

3.3 Please provide options for how inconsistencies in the application of obligations could be minimised:

3.4 Does the Act achieve the appropriate balance between ensuring consistency and allowing supervisors to be responsive to sectoral needs? If not, what mechanisms could be included in legislation to achieve a more appropriate balance?

Not Answered

If not, what mechanisms could be included to achieve balance:

3.5 Are the statutory functions and powers of the supervisors appropriate or do they need amending? If so, why?

Not Answered

3.5 If so, why are the statutory functions and powers of the supervisors not appropriate:

3.5 What amendments are required:

3.6 Should AML/CFT Supervisors have the power to conduct onsite inspections of REs operating from a dwelling house? If so, what controls should be implemented to protect the rights of the occupants?

Not Answered

Please explain your answer:

What controls are required to protect the rights of occupants?:

3.7 What are some advantages or disadvantages of remote onsite inspections?

Please share your thoughts:

3.8 Would virtual inspection options make supervision more efficient? What mechanisms would be required to make virtual inspections work?

Not Answered

Please explain your answer:

What mechanisms would be required to make virtual inspections work?:

3.9 Is the process for forming a designated business group (DBG) appropriate? Are there any changes that could make the process more efficient?

Not Answered

Please expalin your answer:

Are there changes that could make the process more efficient?:

3.10 Should supervisors have an explicit role in approving or rejecting formation of a DBG? Why or why not?

Not Answered

Why or why not?:

3.11 Should explicit standards for audits and auditors be introduced? If so, what should those standards be and how could they be used to ensure audits are of higher quality?

No

If yes, what should the standards be?:

Introduction of AML/CFT compliance has already caused a plethora of 'AMLRUS'-type businesses set up to take advantage of the regulatory audit regime. Explicit standards preclude smaller law firms undertaking their own audits between them, and more regulation will only serve to add more compliance cost onto law firms than there is already.

How could standards be used to ensure audits are of higher quality?:

3.12 Who would be responsible for enforcing the standards of auditors?

Not Answered

If other, which agency/organisation would enforce the standards?:

Please explain your answer:

3.13 What impact would that have on cost for audits? What benefits would there be for businesses if we ensured higher quality audits?

Please share your thoughts:

Compliance and regulatory cost are already a massive business cost. Adding more cost onto smaller firms particularly would be prohibitive.

What benefits would there be for businesses if we ensured higher quality audits?:

3.14 Should there be any protections for businesses which rely on audits, or liability for auditors who do not provide a satisfactory audit?

Unsure

Please explain your answer:

If yes, what protections would you want? What should be the nature of the liability for auditors?:

3.15 Is it appropriate to specify the role of a consultant in legislation, including what obligations they should have? If so, what are appropriate obligations for consultants?

Unsure

Please explain your answer:

If a consultant's rule should be specified in legislation, what are the appropriate obligations?:

3.16 Do we need to specify what standards consultants should be held to? If so, what would it look like? Would it include specific standards that must be met before providing advice?

Unsure

Please explain your answer:

If yes, what should the standards look like?:

3.17 Who would be responsible for enforcing the standard of consultants?

Not Answered

If other, please indicate which agency/organisation you see having responsibility:

Please explain your answer:

3.18 Do you currently use agents to assist with your AML/CFT compliance obligations? If so, what do you use agents for?

No

What do you use agents for?:

3.19 Do you currently take any steps to ensure that only appropriate persons are able to act as your agent? What are those steps and why do you take them?

Not Answered

If yes, what are the steps you take to ensure only appropriate persons act as your agent?:

3.20 Should there be any additional measures in place to regulate the use of agents and third parties? For example, should we set out who can be an agent and in what circumstances they can be relied upon?

Not Answered

Please explain your answer:

3.20 If yes, what other additional measures would you like to regulate the use of agents and third parties? :

3.21 Does the existing penalty framework in the AML/CFT Act allow for effective, proportionate, and dissuasive sanctions to be applied in all circumstances, including for larger entities? Why or why not?

Not Answered

Please explain your answer:

3.22 Would additional enforcement interventions, such as fines for non-compliance or enabling the restriction, suspension, or removal of a license or registration enable more proportionate, effective, and responsive enforcement?

Not Answered

Please explain your answer:

3.23 Are there any other changes we could make to enhance the penalty framework in the Act?

Not Answered

Please provide further detail:

3.24 Should the Act allow for higher penalties at the top end of seriousness to ensure sufficiently dissuasive penalties can be imposed for large businesses? If so, what should the penalties be?

Not Answered

Please provide further information, including what the penalties could be:

3.25 Would broadening the scope of civil sanctions to include directors and senior management support compliance outcomes? Should this include other employees?

Not Answered

Please provide further detail:

3.26 If penalties could apply to senior managers and directors, what is the appropriate penalty amount?

Please share your thoughts:

3.27 Should compliance officers also be subject to sanctions or provided protection from sanctions when acting in good faith?

Please share your thoughts:

3.28 Should the Department of Internal Affairs (DIA) have the power to apply to liquidate a business to recover penalties and costs obtained in proceedings undertaken under the Act?

Not Answered

Please provide your comments in the box below:

3.29 Should we change the time limit by which prosecutions must be brought by? If so, what should we change the time limit to?

Not Answered

Please provide your thoughts:

If you answered yes, what should we change the time limit to?:

5. Other issues or topics

5.1 Should the AML/CFT Act define the point at which a movement of cash or other instruments becomes an import or export?

Yes

If you answered 'yes', please give reasons for your answer.:

Except in the instance of a deceased estate where the obligations to report to FIU are onerous

5.2 Should the timing of the requirement to complete a BCR be set to the time any Customs trade and/or mail declaration is made, before the item leaves New Zealand, for exports, and the time at which the item arrives in New Zealand, for imports?

Unsure

If you answered 'yes', please give reasons for your answer.:

5.3 Should there be instances where certain groups or categories of vessel are not required to complete a BCR (for example, cruise ships or other vessels with items on board, where those items are not coming off the vessel)?

Unsure

If you answered 'yes', please give reasons for your answer.:

5.4 How can we ensure the penalties for non-declared or falsely declared transportation of cash are effective, proportionate, and dissuasive?

Please share your suggestions below.:

5.5 Should the Act allow for Customs officers to detain cash even where it is declared appropriately through creating a power, similar to an unexplained wealth order that could be applied where people are attempting to move suspiciously large volumes of cash?

Not Answered

If you answered 'yes', please give reasons for your answer.:

5.6 If you answered 'yes' to the previous question (Question 5.5), how could we constrain this power to ensure it does not constitute an unreasonable search and seizure power?

Please share your suggestions below.:

5.7 Should BCRs 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?

Not Answered

If you answered 'yes', please give reasons for your answer.:

5.8 Does the AML/CFT Act properly balance its purposes with the need to protect people's information and other privacy concerns?

No

If you answered 'no', how could we better protect people's privacy?:

The effect of this provision means that financial institutions require much more information at an earlier stage than ever before. One example we are currently with is via a New Zealand bank who has a share securities division. A person held securities in their sole name, died, probate was granted and sent to the bank division asking for a statement of the deceased's holdings so the executor could make decisions about what to do with the holdings, followed by relevant form filling and meeting bank business rules re aml/cft when that process would become necessary. The service representative responded that before ANYinformation at all could be released about the holdings both myself as a solicitor acting in administration of an estate (not executor) and also the executor would be required to provide relevant identification etc to meet the bank's AML requirements. I responded that there was no problem with this at the state when we were transmitting or selling the shares, but that the request was far too early in the process for the bank not to release ANY information at all about the shareholdings when the already had probate and all that was being sought was detail about the holdings. This matter remains unresolved at the time of this survey.

5.9 Should we specify in the Act how long agencies can retain information, including financial intelligence held by the FIU?

Yes

Please give reasons for your answer.:

5.10 If you answered 'yes' to the previous question (Question 5.9), what types of information should have retention periods, and what should those periods be?

Please share your suggestions below.:

Unsure. Perhaps 3 years.

5.11 Does the Act appropriately protect the disclosure of legally privileged information?

Unsure

If you answered 'no', please give reasons for your answer.:

Are there other circumstances where people should be allowed not to disclose information if it is privileged?:

5.12 Is the process for testing assertions that a document or piece of information is privileged set out in section 159A appropriate?

Unsure

If you answered 'no', please give reasons for your answer.:

5.13 What challenges or barriers have you identified that prevent you from harnessing technology to improve efficiencies and effectiveness?

Please share your comments below.:

How can we overcome those challenges? Please share your suggestions below.:

5.14 What additional challenges or barriers may exist which would prevent the adoption of digital identity once the Digital Identity Trust Framework is established and operational?

Please share your comments below.:

How can we overcome those challenges?:

5.15 Should we achieve greater harmonisation with Australia's regulation?

Not Answered

If you answered yes, tell us why and any suggestions you have for how we could achieve this.:

5.16 How can we ensure the AML/CFT system is resilient to long- and short-term challenges?

Please share your suggestions below.: