



AML/CFT consultation team  
Ministry of Justice  
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3 December 2021

**Statutory review of the Anti-Money Laundering and Countering Financing of Terrorism (“AML/CFT”) Act 2009 (the “Act”)**

Kia ora AML/CFT consultation team

Thank you for the opportunity to make a submission to you as part of the Government’s review of the AML/CFT Act. By way of background, PricewaterhouseCoopers:

- Provides a variety of services, some of which are captured by the Act; and
- Engages with New Zealand Reporting Entities regularly to deliver AML/CFT consulting and assurance services.

Our submission is made in our capacity as a provider of AML/CFT consulting and assurance services.

We have focused our feedback on those areas where we consider we can add the most value. Those areas are detailed below in Appendix 1.

Should you require any clarification of the matters in this submission, wish us to discuss our views in person, or are seeking further engagement on this review please let us know.

A handwritten signature in blue ink, appearing to read 'Stephen Drain', with a long horizontal flourish extending to the right.

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## Appendix 1

### Overall AML/CFT regime and framework

#### **A single AML/CFT supervisor via an agency supervision model**

Consideration should be given as to the current basis for having four agencies to administer the regulation of the Act. One supervisor would provide clarity, consistency and the ability to sharply focus on those areas where ML/FT risks are the greatest.

#### **Information sharing**

Extending information sharing for other law enforcement purposes should be carefully considered against the actual AML/CFT risk in some captured activities (for example, leasing of office equipment such as printers) to avoid a possible overreach of powers.

#### **AML/CFT Rules & Codes of Practice**

We support further clarity to the AML/CFT Act. We note that guidance documentation for reporting entities is useful in creating a level compliance playing field, but there are numerous examples in low risk products and services where the AML/CFT creates a compliance burden far in excess of the ML/FT risk (for example, small consumer finance loans, some inhouse superannuation schemes). Further guidance could bring to life the ability to reduce unnecessary compliance where the risk is low or negligible.

We also support the issuing of Codes of Practice and have observed that the current Code of Practice has provided Reporting Entities with direction and parameters within which to comply with the Act. Reporting Entities are challenged about what the Code has not provided - address verification for example - and has reduced the effectiveness of the Code as a tool to develop comprehensive CDD verification procedures. We expect the issuing of more Codes of Practice would be welcomed by Reporting Entities. Codes of Practice that would be of use could include in relation to politically exposed person screening, account and transaction monitoring, ongoing customer due diligence, and frameworks for managing and monitoring compliance with the requirements of the Act.

#### **Risk Based Approach**

In places, the Act records that certain AML/CFT compliance activities are to be completed 'according to the level of risk'. This created significant confusion on the introduction of the Act, and still does.

We suggest consideration is had to whether the Act is modified to prescribe:

1. the minimum requirements of the Act must be met in all circumstances, regardless of a reporting entities assessment of ML/TF risk;
2. a risk based approach may require additional requirements to be implemented above the minimum requirements of the Act where specified in the AML/CFT Programme (which is required to be based on, and assist in mitigating, ML/TF risks identified in the AML/CFT Risk Assessment); and
3. at section 57, a statement to the effect of 'When developing or maintaining an AML/CFT Programme, a reporting entity must:
  - a. establish and implement procedures, policies and controls that meet the minimum requirements of the Act; and
  - b. where money laundering and terrorism financing risks have been identified in the AML/CFT Risk Assessment prepared in accordance with section 58(3), establish and implement additional procedures and controls to respond to those risks'.



## **AML/CFT compliance matters**

### **Address verification**

We question whether the verification of a customer's address has much if any impact to suppress or combat ML/FT activities. The requirement may be better suited for Enhanced Customer Due Diligence only, if it could be justified.

### **Inspection of suspicious activity reports by AML/CFT auditors**

Section 46 of the Act does not appear to permit the Reporting Entity's AML/CFT Auditor to inspect Suspicious Activity Reports. This can create a difficulty for an Auditor to test the operational effectiveness of a Reporting Entity's Suspicious Activity Reporting processes and controls.

We recommend that the Act includes a Reporting Entity's AML/CFT Auditor in the list of those persons permitted to inspect Suspicious Activity Reports as part of an audit completed in connection with Section 59 of the Act. This could be achieved by inserting as Section 46(2)(f) wording to the effect of "the reporting entity's AML/CFT Auditor". We note we have submitted on this point previously (see attached Appendix 2).

We also recommend that Section 48C of the Act, as it relates to prescribed transactions, is also reviewed in the context of our above recommendation.

### **Terminating a business relationship**

The Act records at section 37 that a Reporting Entity must terminate an existing business relationship with a customer if it is unable to conduct customer due diligence in accordance with Part 2, subpart 1 of the Act. We note that there is limited to no guidance on how a customer exit process should be managed, nor a requirement for such a process to be included in the AML/CFT Programme.

We recommend that the Act is amended to unambiguously prescribe customer exit requirements, and include a requirement for an AML/CFT Programme to record adequate and effective procedures, policies and controls for terminating business relationships. Alternatively, we suggest a Code of Practice is established for how to handle circumstances where a business relationship should be terminated.

### **Exception handling procedures**

We recommend the Act is modified to prescribe a form and format a Reporting Entity for handling exemptions to comply with its Programme (for example, the records that should be kept, why an exemption is appropriate, how ML/TF risks have been mitigated). Such a change could be accompanied by recognition in the Act that use of exception handling should be in exceptional circumstances only and not in the ordinary course of business.

### **Vetting and training requirements**

We recommend the Act specifies the definition of an employee for vetting and training purposes, and includes within that definition contractors, and any other categories of employees the Act does not explicitly include.



## Appendix 2



The Secretariat  
Law and Order Committee  
Select Committee Services  
Parliament Buildings  
WELLINGTON 6160

20 April 2017

Dear Committee

***Submission to Law and Order Committee on Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill in relation to Suspicious Transaction Reports (called "Suspicious Activity Reports" in the Bill)***

1. We thank you for the opportunity to make a submission on the Anti-Money Laundering and Countering Financing of Terrorism Bill ("Bill").
2. Section 46 of the Act does not appear to permit the Reporting Entity's AML/CFT Auditor to inspect Suspicious Activity Reports. This can create a difficulty for an Auditor to test the operational effectiveness of a Reporting Entity's Suspicious Transaction Reporting processes.
3. We recommend that the Bill include a Reporting Entity's AML/CFT Auditor in the list of those persons permitted to inspect Suspicious Activity Reports. This could be achieved by adding in a new Section 46 (2) (g) to read "*the reporting entity's AML/CFT Auditor*".
4. Thank you for the opportunity to submit this Bill. Should you require any clarification of the matters in this submission or wish us to present our views in person to the Committee please contact us.

Yours sincerely

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