

aml

From: [REDACTED]@aroadvisers.com>
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To: aml
Subject: Submission

Institutions and Scope of the Act

Is the Act working?

Since the implementation of the Act, has money laundering been extinguished? No. Adjusted, probably. For example, we know that illicit drug dealing is widespread in society, from rich to poor. Probably cash is used for the transactions. Certainly, that cash is been washed through the Banking system somehow, using money laundering techniques. How can that happen? Can it be for any other reason than the Bank's do not have adequate AML systems? Is preventing ML fraud really really hard, beyond even the scope of a well-resourced highly profitable Bank? If that is true, then what hope has our small accounting practice have in preventing ML?

An issue we see is that the well-resourced institutions, the Banks, where they have knowingly failed to comply with the Act, have had such a paltry penalty in comparison to the existential threat that small accountants suffer should they fail to comply. For example, the recent penalty on TSB Bank, seems at first glance to be substantial. But what penalty have those in governance positions really faced? The penalty imposed will be paid by the owner. There is a possibility that some in management positions may lose bonuses. Dealing with this decision by the Board will have occupied some time. In comparison, a small accountant would have possibly been obliged to spend all their productive time dealing with the issue, and any fine would have to come from their own resources. And does the regulator not have some serious questions here? How was it that the regulator was so light handed as to not know that TSB had done nothing to implement AML? What sanctions should apply to the regulator when they fail? The Crown has to step up to do its job, if you expect small business take these rules seriously. This feels like the Reserve Bank's failure with South Canterbury Finance. Repeated failure is with no consequence will not lead to a better outcome.

We submit that proportionality requires those in governance in the large organisations to suffer the same stress and penalty as small accountants. This could be done by having some scale of offending; say Australia Westpac Banks 10s of millions of offending a few years ago, had it happened in NZ, should render the entire Board ineligible to be Company Directors ever.

Why we say this is because we understand that it is the very largest organisations who are perhaps being manipulated but, in any case, facilitating, the money laundering. It is not the small accountants who are assisting the bulk of money laundering, but we are obliged to proportionally appear to do more than large organisations to comply with this law.

- 1.1 Expand the scope of the Act to include NZ's international Trade agreements: in general, we should not conclude a FTA with any other nation unless they have similar AML obligations to NZ. We should also target non-compliant other nations as part of our trade negotiations. Recently NZ has announced a Free Trade agreement with the UK. Yet the UK is a known money laundering centre. NZ can use its moral authority as we have with our anti-nuclear stance, to assist other jurisdictions to an acceptable level of compliance. We submit we should not conclude a Trade agreement with any other nation, unless they are committed to our level of compliance with AML, and that this be included in the scope of the Act. We submit this Act should bind the Crown for such negotiations.
- 1.2 Yes, we should prevent ML
- 1.3 Where a suspicious transaction is detected, a suspicious activity report should trigger a response from the relevant Crown entity, (say Police), to the financial institution (say a Bank), that the suspicious transaction is frozen in the institution until clearance from the Crown is received.
- 1.4 We support extending the Act to include proliferation financing, because that is the morally correct thing to do
- 1.5 Should extend to all nations as that is morally right
- 1.6 Sadly targeted sanctions seem to have been used for political purposes by some nations. It is possible to imagine the some future populist government misusing targeted sanctions. We do not support.

- 1.7 No comment
- 1.8 S58 works for us
- 1.9 Risk based approach works for us.
- 1.10 Guidance from the Crown has been poorly thought out. Specific scenarios do not seem to have been considered. Conflicts, particularly with Privacy obligations have not been thought through by the regulator. There must be a mandated obligation by the regulator, without exception, to report non-compliance to professional bodies. For example, an accountant who assists a client to avoid this legislation must not be able to bargain with the enforcement authorities about this, even where the accountant provides vital information for conviction. The impact of this morally corrupt behaviour by the Crown does not support the overwhelming majority of accountants who conduct a complaint business and have significant costs imposed on them by the Crown, and are left with the “bad apples” in the professional bodies. This is a real problem, as I have personal knowledge that a fraudster (now deceased) covered by a non-disclosure agreement because he repaid the funds, continued as a Chartered Accountant in public practice for many years, and later became a Board member of a professional organisation. This Crown practice has the same moral authority as a Church moving a known paedophile to another location.
- 1.11 Businesses that have custody of assets (such as a Bank), should have greater obligations than small accountants who are merely reporting on transactions.
- 1.12 The significant focus of AML needs to be on the handling of funds, and the facilitation of handling of funds, rather than on the recording of funds. The type of activity being undertaken and the monetary value should both have bearing on the focus of the Act. The difficulties in the traditional transfer of funds through a money transfer system to the Pacific Islands appears racist in nature. It is not clear how non “western” ways of transferring funds are dealt with. Nor is the Act looking forward at new forms of value transfer, such as digital currency.
- 1.13 One role that accountants and bookkeepers have had to take on more wasteful checking is in payment of wages. Where the transfer of funds is in NZ, and to a valid IRD number with a legitimate business, compliance requirements should be very slight.
- 1.14 0
- 1.15 0
- 1.16 0
- 1.17 0
- 1.18 0
- 1.19 0
- 1.20 0
- 1.21 0
- 1.22 0
- 1.23 0
- 1.24 0
- 1.25 0
- 1.26 Report the “bad apples” to the professional organisations. Require the professional bodies (lawyers, accountants, directors) to amend their ethics to exclude fraudsters including ML’s
- 1.27 Good idea. DIA advisory group should be formalised, and be required to prepare an annual report to the appropriate Select Committee.
- 1.28 Yes, FIU should have such powers if it is leaving “gaps” in the system.
- 1.29 Yes, subject to overview, perhaps by the Inspector General Intelligence and Security.
- 1.30 Yes, FIU should have such powers if it is leaving “gaps” in the system.
- 1.31 Within the framework for internal intelligence operations that the SIS operates
- 1.32 Yes, should have power to freeze. Say 3 working days. FIU would produce a statement to the Bank stating the requirement to freeze. A person who maliciously created such a freeze, say a disgruntled family member, should be liable for a significant fine and publicity. Victims would need counselling. Having worked in this space, victims do not want to see reality. And ultimately, if after counselling they want to continue to divest themselves of their assets, it is their choice.
- 1.33 Where the criminal is outside NZ, on a pragmatic basis, does that matter? How many fraudsters are ever dealt with internationally? Are there any resources from any NZ enforcement organisation put into international

fraud? My experience is that there are none. As to NZ based fraudsters, this also has a very low ranking for Police resources. My sad experience with NZ Police dealing with fraud is that it is too hard and too time consuming compared to arresting a petty thief. So tipping off is only a theoretical issue, as the enforcement agencies do not enforce.

1.34 0

1.35 0

1.36 0

1.37 0

1.38 Having clear guidance via a Code seems at first glance to be a good idea. But this area is so diverse, that as soon as a Code was issued, the “bad apples” will find a way around them, leaving the compliant to carry the burden.

1.39 0

1.40 0

1.41 0

1.42 0

1.43 If this makes the Act more effective, yes.

1.44 If there a was a DIA advisory group as suggested at 1.27, that group could be consulted

1.45 Certainty has a value and may be able to lower compliance cost. The rules issued under the Land Transport Act are educational however, where unsafe practices have for many years been tolerated. There is no point having rules if the only people who follow them are the law abiding and the regulator is not inclined to enforce.

1.46 The 3 Ministries could ask users what useful rules they wanted. And the “enforcers” could review their difficulties with enforcement and use those issues as the start place.

1.47 Would support, so long as it is tightly controlled, and the CEO of each organisation who has access has as one of the annual review matters the inappropriate access of data...we do not need another ACC secure files debacle, where the Board and CEO walk away undamaged.

1.48 0

1.49 If inappropriately managed, of course the potential for harm may arise. That is why the most senior leader’s reputation must be at risk.

1.50 The trend to data matching is inevitable and irresistible. Let’s regulate it, have some oversight to ensure it is not misused, and have the CEO reputationally at risk if it is used improperly.

1.51 0

1.52 Yes, DIA. Everyone fit and proper person would register, using a NZBN. That they were so registered would be publicly searchable and would be a requirement for other businesses to be aware of their status when opening a new account.

1.53 0

1.54 0

1.55 No, cost too much.

1.56 0

1.57 0

1.58 0

1.59 Of course, it would put you off dealing with them, but in an efficient market, presumably someone would take on that risk.

1.60 This is misguided – no complaint business wants to deal with ML’ while the “bad apples” will not comply with the law. All this does is impose a cost with zero net benefit.

1.61 No. No net benefits.

1.62 Large entities

1.63 Based on size and risk

1.64 The regimes operation is poor. I would not want to contribute to such an operation.

1

2

2.10 0

2.2 0

2.3 0

- 2.4 Yes, doing the activity is the key thing, not the structure
- 2.5 No
- 2.6 Yes. Level the playing field for everyone
- 2.7 No
- 2.8 Yes
- 2.9 No, only the organisations...simple
- 2.10 No problem for us
- 2.11 Not in practice
- 2.12 0
- 2.13 0
- 2.14 Yes, as it leaves a hole in the system
- 2.15 Less opportunity for ML to occur
- 2.16 Closing opportunities to escape the Act makes sense
- 2.17 Align the requirements of the other Act
- 2.18 Probably not...it will just bring in more transactions...what does the data that the FIU gathers say?
- 2.19 Cash would be less acceptable, impacting disadvantaged communities such as Pacific Island community.
- 2.20 No
- 2.21 0
- 2.22 Follow Australia?
- 2.23 Yes
- 2.24 Do not do this
- 2.25 Yes. Same as everyone else.
- 2.26 0
- 2.27 0
- 2.28 Yes
- 2.29 Full. Keep it simple.
- 2.30 0
- 2.31 Yes
- 2.32 0
- 2.33 Yes
- 2.34 No. Merely processing transactions should not as and in itself be captured. However, in course of that activity, if a suspicious activity is observed, then of course a SAR should be filed. It appears the regulator is so far removed from the reality of everyday small business requirements are that it should seriously consider its own competence.
- 2.35 No, merely preparing accounts and tax returns should not become a captured activity. Small businesses require a low-cost efficient service industry (bookkeepers, accountants and tax agents) to assist them to comply. We have no data at all from the regulator about how the accounting service industry becoming captured would remove some "window" for AML activities. We are conscious of the complete lack of any guidance from the regulator to the industry about real life ML activities and how the accounting industry might detect ML. Should a determined fraudster provide false information to an accountant when preparing accounts, what expectations does the regulator have? Recently IRD completed a huge shift in its IT platform. It took 4 years. The first year the consultation was one way traffic top down, and the ability for users such as our practice to be heard was low. By the time the last upgrade was rolled out, IRD had upgraded its consultation. One thing they have done well is to have a "bugs" reporting feature, which is transparent and provides guidance to the IRD on what is in practice broken. We suggest that DIA and the other regulators look at this and make it part of AML Guidance. If enough users ask, then the regulator should provide guidance. A classic question is the transfer of tax refunds; exactly where and when they become captured. The scenarios for this are simple but have caused the industry to waste a lot of time. This is not efficient.
- 2.36 This is not appropriate, so none, beyond of course, SAR.
- 2.37 Yes, should be included
- 2.38 Same as all other entities, else they will be misused.
- 2.39 0

- 2.40 No, exemptions should end
- 2.41 0
- 2.42 These laws must cover all
- 2.43 Same as all other entities
- 2.44 No
- 2.45 I understand that this has been difficult for a disadvantaged section of our society. Perhaps a higher monetary value would assist? Ask those communities.
- 2.46 The system must be tight, or it will be abused. But proportionality is required. If the regulator does not deal with the large Banks or professionals who commit offences in a much more vigorous manner, this simply looks like racism.
- 2.47 Yes
- 2.48 0
- 2.49 Yes. A separate company for each Trust. Ownership does not include our business.
- 2.50 Yes, that would simplify the situation
- 2.51 Requirement that actions taken as a Trustee are reported to the parent reporting entity
- 2.52 No
- 2.53 0
- 2.54 Only for social or charitable purposes
- 2.55 Monetary thresholds say \$5000
- 2.56 Probably useful
- 2.57 Anything that has a NZ "leg" to the transaction...recall the dreadful breach of UN conventions by North Korea using a NZ company.

3

- 3.2
- 3.3
- 3.4
- 3.5
- 3.6
- 3.7
- 3.8
- 3.9
- 3.10 consider changing
- 3.20 Australian model
- 3.30 Unlikely
- 3.40 One agency to have the final decision
- 3.50 Existing powers are ok
- 3.60 If you operate from a dwelling, then you have no additional rights
- 3.70 Remote seems sensible in the era of pandemics
- 3.80 Probably
- 3.90 Yes
- 3.10 No, it is simple to work this out now. Why do the regulators need to get involved?
- 3.11 No.
- 3.12 The regulator. Specifically, the accounting industry has not been good at self-regulation. It is an impossible situation. Look at how the legal professional body has dealt with serious sex offenses. They have not been able to expel a high-status individual. Self-regulation and no policing is unicorn thinking.
- 3.13 If you restrict the auditors to a class of persons, like the existing registered auditors, this will impose higher costs with minimal quality improvements
- 3.14 Of course
- 3.15 No
- 3.16 No. If the consultant does a poor job, they should be subject to legal liability. More regulations will just add to cost.
- 3.17 The consumer of the consultant service
- 3.18 Yes, 2Shakes

- 3.19 Of course. We consider the market and do due diligence.
- 3.20 No
- 3.21 No it is disproportionately used against small business and the poor.
- 3.22 I have no confidence that these will be used other than to reach some target by a manager for their performance. You should be looking at the big players, not the small fish. This is a complete distraction from you doing your core job of regulation ML.
- 3.23 Yes, make Directors and senior managers of large entities such as Banks, and the various professionals such as lawyers, cease to be "fit and proper persons", so that they must leave their job, because that is what you impose on the small accountants that are somehow caught up in this nightmare. Unless the "big" players suffer the same consequences, you are just window dressing. Presumably these large "players" get a large payoff by breaking the law, or the spirit of the law. The Crown must rebalance this, or the proportionality is wrongly placed on the smaller entities.
- 3.24 Yes. As above.
- 3.25 Yes
- 3.26 Yes, as above
- 3.27 If acting in good faith, of course not. But they need to be able to show that they were competent and did address the issue.
- 3.28 Yes
- 3.29 Extend the period as the "Justice" system is so slow. But also have some kind of "high embarrassment factor", career blighting, for failure by the regulator to crack on. For example, where the head of a department gives shelter to a fraudster, they must not be considered for another job in the civil service. From my perspective, the civil service needs exemplary ethical standards if they are to have any moral authority. Presently they seem to want the protections of being a Crown servant, with the moral compass of an entrepreneur. That is not compatible.

4

- 4.10 Not really. Some initially, but we have worked through those. There are difficulties with immigrants and records. The Crown could do more work at the time of granting residency, so that the migrant could later rely on that. Beneficial owners is not a problem for us.
- 4.20 Migrants. Proving the source of wealth in a manner that is familiar. Trusts have not been much of an issue.
- 4.30 No
- 4.40 0
- 4.50 More regulations inevitably mean more problems. Tell us the problem and the benefit before you do this.
- 4.60 Yes
- 4.70 Communicating to buyers that they need to do CDD. We imagine that this would be too hot a political potato to be allowed or would have so many exemptions that it would be valueless.
- 4.80 Vendors at listing. Buyers, after they have reached agreement to buy and paid the deposit, which would be forfeited if they fail CDD.
- 4.90 Yes, this works now
- 4.10 Yes
- 4.11 Maybe...but explain how
- 4.12 0
- 4.13 Pretty impossible
- 4.14 0
- 4.15 0
- 4.16 0
- 4.17 0
- 4.18 Yes
- 4.19 Yes
- 4.20 Yes
- 4.21 No
- 4.22 Existing is sufficient
- 4.23 We do our own due diligence before taking on a new customer. We need to know our client.
- 4.24 Just increase costs with zero benefit to us or the community.

4.25 Yes, clarity is helpful
4.26 No. Potentially. We do not want to act for ML's.
4.27 Inevitably.
4.28 0
4.29 0
4.30 No
4.31 0
4.32 Yes
4.33 That is our practice
4.34 Inevitably.
4.35 Sensible to align with FATF.
4.36 0
4.37 Does not seem to impact us
4.38 We make enquiries of the presenting customer and will not take them on until we are satisfied.
4.39 Yes
4.40 No
4.41 No
4.42 Clarity is good
4.43 Does not seem so
4.44 Yes
4.45 No
4.46 Yes
4.47 Sharing seems a good expansion
4.48 0
4.49 Presently no issues
4.50 This area is fraught with difficulties, inevitably the small and poor are disproportionately impacted.
4.51 For our own business purposes, we want to verify addresses. So at commencement of the relationship.
4.52 0
4.53 We go through a thorough know your client process as outlined. We can still be exploited by a determined fraudster. That is the nature of fraud.
4.54 Yes, guidance is helpful
4.55 No
4.56 Probably, so long as they are NZ based organisations
4.57 Probably reduce costs
4.58 Yes, reduce costs
4.59 Comprehensive guidance
4.60 Regulation. Financial Transactions.
4.61 Yes
4.62 No
4.63 Yes guidance helpful
4.64 Inevitable increase in costs. Need to understand the benefit.
4.65 Guidance useful
4.66 Review only financial transactions
4.67 How would we do that and how would we know?
4.68 Inevitably increase them
4.69 No
4.70 0
4.71 Inevitably an increase in costs
4.72 Guidance is good
4.73 Yes
4.74 Wherever it will result in tipping off
4.75 0
4.76 No

4.77 No
4.78 0
4.79 No
4.80 No
4.81 None
4.82 Yes
4.83 Yes
4.84 We have none
4.85 Ignore
4.86 Yes
4.87 Inevitably
4.88 Use 2Shakes
4.89 Yes
4.90 Yes
4.91 Yes
4.92 No
4.93 Yes
4.94 Inevitably increase costs
4.95 0
4.96 0
4.97 Senior management approval
4.98 Yes
4.99 Inevitably increase
4.100 No
4.101 0
4.102 The Crown needs to do this, not business
4.103 No
4.104 This is the Crown's responsibility
4.105 0
4.106 0
4.107 0
4.108 Use 2Shakes
4.109 0
4.110 0
4.111 0
4.112 0
4.113 0
4.114 0
4.115 0
4.116 0
4.117 0
4.118 0
4.119 0
4.120 0
4.121 0
4.122 0
4.123 0
4.124 0
4.125 0
4.126 0
4.127 Cryptocurrency educating ourselves and identifying customers who are using these
4.128 Not needed
4.129 Too slow

4.130 Inevitably increase costs, likely for no net benefit
4.131 Guidance is good
4.132 Of course
4.133 No
4.134 No
4.135 0
4.136 We have to address these matters as part of the business. Guidance is good.
4.137 Yes fits within a framework
4.138 0
4.139 None
4.140 Yes
4.141 0
4.142 0
4.143 0
4.144 0
4.145 0
4.146 0
4.147 0
4.148 0
4.149 0
4.150 0
4.151 0
4.152 0
4.153 0
4.154 0
4.155 0
4.156 Yes
4.157 No
4.158 Clarity is good
4.159 0
4.160 Yes
4.161 0
4.162 0
4.163 0
4.164 0
4.165 0
4.166 0
4.167 No
4.168 0
4.169 0
4.170 0
4.171 No
4.172 0
4.173 0
4.174 Yes
4.175 0
4.176 0
4.177 0
4.178 No
4.179 Yes
4.180 No
4.181 0
4.182 Yes

- 4.183 No
- 4.184 No
- 4.185 No
- 4.186 0
- 4.187 Yes
- 4.188 Yes
- 4.189 Yes
- 4.190 0
- 4.191 Yes
- 4.192 No
- 4.193 Yes
- 4.194 0
- 4.195 0
- 4.196 0
- 4.197 0
- 4.198 0
- 4.199 Yes
- 4.200 0
- 4.201 0
- 4.202 Always must be a process for review
- 4.203 0
- 4.204 0
- 4.205 0
- 4.206 No
- 4.207 Yes, approval from a regulator
- 4.208 0
- 4.209 0
- 4.210 Yes, as outlined
- 4.211 All
- 4.212 0

5

- 5.10 0
- 5.20 0
- 5.30 0
- 5.40 0
- 5.50 Yes
- 5.60 0
- 5.70 0
- 5.80 Yes
- 5.90 0
- 5.100 0
- 5.11 0
- 5.12 0
- 5.13 None
- 5.14 None
- 5.15 Yes, always sensible to stick around a similar economy
- 5.16 Review periodically

6

- 6.10 0
- 6.20 0

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AML – We are required to obtain more information from clients

Accountants are required to comply with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (Act). The changes mean we are required to obtain and verify identification from new and existing clients and, in some cases, source of wealth and source of funds. More information can be found at <http://www.edencitytax.co.nz/services/aml-requirements/>