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Subject: Westpac New Zealand - Submission on the Review of the AML/CFT Act
Attachments: 20211203 Submission to MOJ on the Review of the AML CFT Act.pdf

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Please see attached Westpac New Zealand's submission to the Ministry of Justice on the Review of the AML/CFT Act.

We would be grateful if you could please confirm receipt.

Our contact person for the submission is:

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Kind regards

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TOGETHER GREATER

Classification: PROTECTED

Westpac New Zealand Limited

Submission to the Ministry of Justice on

The Review of the AML/CFT Act

1. INTRODUCTION

1.1 This submission to the Ministry of Justice (**MOJ**) is made on behalf of Westpac New Zealand Limited (**Westpac**) in respect of the *Review of the AML/CFT Act (the **Act**) Consultation Document* (**Consultation Document**). Thank you for the opportunity to provide feedback on the proposals.

1.2 Westpac wishes to retain confidentiality of this information and requests that the MOJ contact Westpac before its release.

1.3 Westpac's contact for this submission is:

Mark Coxhead
Head of Financial Crime, AML / CFT Compliance Officer
Westpac New Zealand Limited
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(*Contact details provided separately*)

2. KEY SUBMISSIONS

2.1 Westpac is pleased to be given the opportunity to submit on Consultation Document. Westpac also acknowledges and appreciates the effort that the MOJ has put into this exercise, including the opportunity to attend the Industry Advisory Group workshops that have been organised as part of the consultation process.

2.2 We note that Westpac has chosen to provide feedback to those questions in the Consultation Document that Westpac considers the most relevant to its business.

3. RESPONSE TO CONSULTATION QUESTIONS

Question 1.4: Should a purpose of the Act be that it also seeks to counter the financing of proliferation of weapons of mass destruction? Why or why not?

3.1 Westpac considers that the current purpose of the Act is sufficient, and it should not be expanded as suggested. The intention of the Act is to prevent criminal misuse of New Zealand's financial system and it should be agnostic as to the predicate crime. As such the Act should not focus on specific predicate offences.

3.2 Westpac considers that the proliferation of weapons of mass destruction is generally addressed by the New Zealand Customs Service through the

Customs and Excise Act 2018 and the Ministry of Foreign Affairs and Trade through the United Nations Act 1946 and through New Zealand's membership of four international export control regimes, namely: the Wassenaar Arrangement, Missile Technology Control Regime, Nuclear Suppliers Group, and the Arms Trade Treaty. Accordingly,

3.3 Accordingly, it is not clear what additional benefit would be gained by introducing such a purpose into the Act.

3.4 Westpac considers that the current definitions of counter proliferation (**CP**) and weapons of mass destruction (**WMD**) may create ambiguity particularly whether this is a reference to CP of WMD (nuclear, biological, radiological and chemical (**NBRC**)) only or CP more generally which would also include proliferation of conventional weapons and dual use or strategic goods (subcomponents of WMD).

3.5 Westpac acknowledges that there is international pressure to align New Zealand's legislation with Financial Action Task Force (**FATF**) recommendations however, it's worth noting that the FATF is an international body staffed by member states, many of whom will have autonomous sanctions and are pursuing national agendas and any attempt at alignment should be considered in that light.

Question 1.5: If so, should the purpose be limited to proliferation financing risks emanating from Iran and the Democratic People's Republic of Korea (DPRK) or should the purpose be to combat proliferation financing (PF) more generally? Why?

3.6 While DPRK and Iran are the traditional focus of PF, the purpose of the Act should not be limited to the risks posed by these countries, as concern relating to the spread of WMD and related technology is not limited to those countries where UN regimes have been put in place, particularly as sanctions may expand beyond those countries.

3.7 According to Ministry of Foreign Affairs and Trade, the United Nations (**UN**) and New Zealand have a joint plan of action regarding Iran. New Zealand is set to follow the United Nation Security Council guidance and take close note of the United States of America (**US**) Sanctions framework.

3.8 Given that there are existing gaps between regulatory obligations and Sanction risk appetite, if Iran becomes a country of focus, there will be a risk that the New Zealand legislation leads to a position by banks that either directly supports or indirectly implies support for US foreign policy.

Question 1.6: Should the Act support the implementation of terrorism and proliferation financing targeted financial sanctions, required under the Terrorism Suppression Act 2002 and United Nations Act 1946? Why or why not?

3.9 Although Westpac does not support the expansion of purpose of the Act to include countering the financing of proliferation of weapons of mass destruction, there may be benefits to both the banking sector and the New Zealand Government in separating law enforcement objectives from foreign policy objectives (noting that terrorism is a crime).

3.10 This question also implies direct link between terrorism and proliferation that may or may not be correct depending on matters such as, what constitutes terrorism and/or proliferation, when considering the role of state versus non-state actors, and proliferation versus smuggling.

3.11 If the focus of the question relates to whether AML and CFT be subject to separate Acts, there is a possibility that the separation could be effective. However, given the current maturity of New Zealand's framework, Westpac considers that the better approach would be to refocus the Act to prevent abuse of the financial system.

Question 1.34: Should supervision of implementation of Targeted Financial Sanctions (TFS) fall within the scope of the AML/CFT regime? Why or why not?

3.12 In Westpac's view, the TFS should be a separate regime. The Act cannot support the TFS regime as sanctions do not always involve predicate crimes as defined by the Act.

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

3.13 Whilst we consider that AML/CFT and TFS should be subject to separate regimes, it should be supervised, monitored and enforced by the same regulatory body to ensure expectations are aligned.

Q1.47: Would you support regulations being issued for a tightly constrained direct data access arrangement which enables specific government agencies to query intelligence the Financial Crime Intelligence Unit (FIU) holds? Why or why not?

3.14 Westpac would, in principle, agree to such an arrangement provided that the arrangement is tightly constrained to address the significant privacy implications.

3.15 In Westpac's view, there are several matters that need to be worked through to gain a better understanding of what is contemplated by such an arrangement. Such matters would include:

(a) the nature and scope of the information that would be shared. It would be helpful to be provided with a list of instances where information could be used and to understand what might be done to limit any such

use to a pre-agreed purpose (e.g. documenting restrictions in a data sharing agreement);

(b) what agencies the information would be shared with and where relevant, considering matters such as restrictions on those agencies regarding the sharing/use of the information beyond their preapproved purpose.

(c) what the proposed purposes for use of the information is once shared with each agency; and

(d) what processes are in place for information security arrangements and matters such as retention and destruction of information.

Q1.48: Are there any other privacy concerns that you think should be mitigated?

3.16 The response above covers potential privacy concerns based on the high-level information provided in the consultation at paper. It is difficult to comment further in the absence of information about what is contemplated, for example, knowledge of what the information will be used for, who the agencies are that the information will be shared with.

Q1.49: 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?

3.17 As above, further detail would be useful in order for Westpac to comment appropriately on potential negative impacts. The consideration of negative repercussions extend beyond traditional considerations, such as prosecution, to encompass matters such as reputational damage, transparency, conduct considerations etc. Looking ahead, whilst such considerations might not be appropriate in legislation, these are matters that require further thought and discussion and, if relevant, addressing in a data sharing agreement.

Question 4.1: What challenges do you have with complying with your customer due diligence (CDD) obligations? How could these challenges be resolved?

3.18 Westpac experiences various challenges with CDD obligations. Holding a current and valid photo identification (**ID**) is becoming less common for some segments of the New Zealand community.

In Westpac's experience, the root cause of not having a current/valid ID is typically due to poverty, age, impairment, community affiliation, inability to drive, lack of overseas travel, illness and other health or COVID-19 related impacts. For SuperGold card holders and community service card holders may not have access to their own (no-cost) birth certificate. Customers may not have access to their own identity document in other circumstances, such as where they are

victims of domestic violence, children in foster care, un-recognised disabilities, 16 and 17-year-old children without parents.

The following situations are typically where Westpac have challenges in terms of CDD obligations:

(a) **Identity verification**

i. Mature (e.g. Kaumātua) / Vulnerable customers: changes to ID requirements in 2020 i.e., the removal of the ability to accept expired primary ID documents (such as Passport and New Zealand driver's license) has made it more difficult to identify some of our most vulnerable customers. It is not uncommon for individuals (particularly Kaumātua) who live remotely, to have little or no access to internet and not be able to present at a branch. This causes ongoing issues when trying to identify them / obtain identification documentation.

ii. COVID-19: the issue above is further heightened by customers not renewing Passports due to travel restrictions.

Solution: Re-instatement of the ability to accept expired primary ID for mature / vulnerable customers and expired Passports (up to two years) for other customer segments.

iii. Acting on behalf: Persons Acting on Behalf (**AOB**), especially those looking after persons with impairments or needing (youth and elderly) care, have been challenging. Many of these individuals are New Zealand (**NZ**) government employees acting for a customer who is impaired. Ministry of Business, Innovation and Employment (**MBIE**) currently restricts NZ government employees from using EasyID and similar electronic ID platforms due to overseas cloud hosting.

Solution: These challenges could be solved by the Department of Internal Affairs (**DIA**) or the NZ Government providing Banks with access to a method for checking centralised or RealMe customer details. Or by having an agreement or a single form of low-cost identity for New Zealanders.

iv. Complex Structures: settlors of family trusts are deemed to be trust parties that we are required to identify. With older trusts it can be difficult to collect / obtain CDD documentation for these individuals e.g., customer is no longer in touch with this individual or the settlor is the previous solicitor or another professional and has retired / passed away.

Solution: Remove the need to collect and verify information from the settlor of a family trust (where the individual is not deemed to be a beneficial owner or beneficiary)

v. Registered Trusts / Charities / Incorporated Societies: There is a heavy reliance on information held online to CDD these entities. Information held via these online registers is not always up to date or easy to locate.

Solution: Refresh of online registers with ability to produce structure charts/trees. Increased requirements from these entities to update details as they change.

CDD requirements in the Act do not allow for situations like natural disasters, emergencies, pandemics which can make it difficult to meet normal CDD obligations. Without the Act addressing such events, reporting entities face increased risk of not being able to meet their obligations and therefore face the risk of penalties. **Solution:** The Act needs to include provisions that address reporting obligations in the event of natural disasters, emergencies and pandemics and how they may impact normal CDD obligations.

(b) **Verifying address details**

vi. The Act could benefit from further clarity to the meaning of documentation needing to be 'independent and reliable'. Reporting entities are left to determine their own policies in respect of what documents / level of electronic verification is acceptable, leading to inconsistencies between reporting entities.

Solution: More clarity in the Act around what is considered 'Independent and reliable'.

vii. Obtaining address verification is becoming increasingly difficult as letters received in the post are becoming less common. Furthermore, in our current housing market, many customers rent their homes, therefore it is very common that individuals move very often and this creates difficulties in verifying addresses

Solution: Remove requirement to verify physical address however still retain requirement to collect it physical address details.

Question 4.2: Have you experienced any situations where trying to identify the customer can be challenging or not straightforward? What were those situations and why was it challenging?

3.19 Generally, these difficulties occur where a transaction involves multiple parties where identifying the account holder is unclear. This issue is more prominent where accountants, lawyers and real estate agents are involved. For example: real estate agents conducting CDD may find it unclear who the customer is where a transaction includes multiple parties such as a purchaser/vendor.

3.20 As a general rule, when dealing with entities, they already have in place structures before approaching Westpac to set up accounts so identifying the

account holder / signatories / individuals acting on behalf of that entity is not a challenge.

3.21 However, the common challenge Westpac has in identifying a "customer" or "beneficial owner" is where there have been changes to the structure and personnel of such entities over time, and these changes have not been well documented. It can then be difficult to identify the individuals who have 'effective control' and the authority to act on behalf of the entity. It is also common for such entities to lose track of who is authorised to perform certain functions for that entity (for example authority to access bank accounts).

Question 4.3: Would a more prescriptive approach to the definition of a customer be helpful? For example, should we issue regulations to define who the customer is in various circumstances and when various services are provided?

3.22 Yes, this would be helpful, particularly for other reporting entities. Westpac considers that the current definition of customer in the Act could benefit from further clarity.

Question 4.4: If so, what are the situations where more prescription is required to define the customer?

3.23 Westpac considers that entities such as Māori trusts should be distinguished from other trusts such as charities and family trusts. Māori Land trusts and Māori Incorporations are registered and administered by Māori Land Court and pose less risk than other trust types.

3.24 Westpac would also welcome more clarity in respect of the following:

(a) who is caught by the source of funds and source of wealth requirements;

(b) the rights of minors to act on behalf of themselves (in the cases where minors are old enough to act on behalf of themselves and do not have parents or guardians);

(c) impaired or disabled persons and the criteria to have a caretaker act on behalf of them; and

(d) Legal obligation to obtain authority to act for impaired persons (for example a child of 16 years that do not have parent as signatory).

Question 4.5: Do you anticipate that there would be any benefits or additional challenges from a more prescriptive approach being taken?

3.25 Westpac would support a more prescriptive approach if such approach had fewer or more flexible *Identity Verification Code of Practice* (**IVCOP**) requirements on the customer.

Question 4.9: Are the prescribed points where CDD must be conducted clear and appropriate? If not, how could we improve them?

3.26 Westpac supports a review of the requirement that all trusts need to have Enhanced Customer Due Diligence (**ECDD**) performed. This presents a huge compliance burden with little benefit achieved in terms of suspicious activity being identified. Westpac considers that it would be more appropriate to have a risk-based approach in identifying which Trusts require ECDD.

3.27 For example, offshore trust(s) that involve an offshore party, Politically Exposed Person (PEP) or other higher risk individuals would warrant ECDD. However, the vast majority of trusts in NZ are family trusts holding property.

3.28 Clarity could be achieved through the issuance of guidelines to the IVCOP to define what would constitute a high-risk trust. This could be supported with a beneficial ownership register that includes NZ based trusts which would assist in identifying high risk parties.

Question 4.10. For enhanced CDD, is the trigger for unusual or complex transactions sufficiently clear?

3.29 The definition of "complex transaction" could benefit from further clarity. "unusually large" or "unusual patterns" of transactions are easily defined (by reference to limits or a change in pattern of activity) larger than or different pattern to previous account activity), however, what a "complex transaction" is can be subjective and dependent on the opinion of each person and their background.

Question 4.11: Should CDD be required in all instances where suspicions arise?

3.30 Westpac would support CDD for identification only as a requirement for all suspicious transactions. This can be built into the system steps and collected upfront to minimise the need to contact an occasional transactor. After a transaction has been completed, this may be more of a challenge for smaller reporting entities whose systems may be more manual.

Question 4.12: If so, what level of CDD should be required, and what should be the requirements regarding verification? Is there any information that businesses should not need to obtain or verify?

3.31 Please see response above. Westpac would support CDD for identification only as a requirement for all suspicious transactions.

Question 4.13: How can we ensure that this obligation does not put businesses in a position where they are likely to tip off the person?

3.32 In terms of the "tipping off" provisions in the Act, this is limited to disclosing the existence of a Suspicious Activity Report (**SAR**) to the subject and therefore requesting for identification should not do this, especially where the team

submitting a SAR to the Financial Intelligence Unit is not the team contacting the customer for identification.

3.33 Westpac would support an amendment to the current requirements under section 22A of the Act. This section requires the collection of ECDD in respect of a reported activity in **all** instances where a SAR is submitted. Westpac is of the view that this section be updated to require the collection of information to explain the suspicious activity and verification of source of wealth or funds using a risk-based approach.

Question 4.14: What money laundering risks are you seeing in relation to law firm trust accounts?

3.34 Law firm trust accounts are generally used to facilitate client transactions. As such, the banks who provide the trust accounts to these law firms do not have visibility of the underlying customer's details. This presents an anonymity risk from the bank's perspective.

3.35 Whilst law firms are reporting entity themselves and have a prescribed transaction reporting (**PTR**) obligation, certain details of the transactions through the trust account are not visible for the law firm to report, e.g. transaction message.

3.36 Therefore, there is a gap in information when reporting PTRs from both the bank and the law firm's perspective which may expose both banks and law firms to risks.

Question 4.15: Are there any specific AML/CFT requirements or controls that could be put in place to mitigate the risks? If so, what types of circumstances or transactions should they apply to and what should the AML/CFT requirements be?

3.37 Westpac would welcome a review of PTR obligations in respect of law firm trust accounts in light of the information gaps discussed above.

Question 4.16: Should this only apply to law firm trust accounts or to any Designated Non-Financial Businesses and Professions (DNFBP) that holds funds in its trust account?

Westpac would support CDD being conducted by a DNFBP before payments are made to a third party and to the requirements applying to any DNFBP and not just law firms.

Question 4.30: Have you encountered issues with the definition of a beneficial owner? If so, what about the definition was unclear or problematic?

Question 4.31: How can we improve the definition in the Act as well as in guidance to address those challenges?

3.38 Westpac would support the establishment of a beneficial ownership register, as this would assist with identifying beneficial owners especially when there are complex entity structures involved. This would also provide greater transparency. Westpac notes that this is also in line with FATF recommendations. Westpac would also support a review of whether the 25% or more threshold is an appropriate level for beneficial ownership noting that this is different from the threshold applied overseas (for example: some countries apply a 10% threshold).

3.39 Issues with identifying the beneficial ownership of trusts are common and while Westpac has processes and policies in place in this regard, it is of the view that this is not a 'one size fits all' issue. Westpac would support clarification in the Act in this regard and/or updating of the beneficial ownership guidelines to provide additional clarity.

Question 4.38: What process do you currently follow to identify who ultimately owns or controls a legal person, and to what extent is it consistent with the process set out in the FATF standards?

3.40 Under current policies and processes, Westpac identifies whether there are any entities/individuals who own more than 25% of a customer. Any individual would be automatically treated as a beneficial owner. For non-individuals, Westpac would continue to identify any other individuals that may own more than 25% of the customer for example through a holding company. As an example, if Company B owns 26% of Company A and individual C owns 100% of Company B, then individual C would be classified as a beneficial owner of Company A. If there are no individuals that own more than 25%, we revert to identifying the individual(s) who have effective control.

In the case of a company where there are more than four directors, the current guidance allows us to ask the customer who should be designated as the beneficial owners. However, this could allow a company to disguise the true beneficial ownership for example by directing the focus away from a beneficial owner who may be a PEP.

Question 4.39: Should we issue regulations or a Code of Practice which is consistent with the FATF standards for identifying the beneficial owner of a legal person?

3.41 Westpac would support the issue of regulations and/or an update to **IVCOP** to align these with FATF standards and to close any gaps.

Question 4.42: Should we issue regulations or a Code of Practice that allows businesses to satisfy their beneficial ownership obligations by identifying the settlor, the trustee(s), the protector and any other person exercising ultimate effective control over the trust or legal arrangement?

3.42 Westpac would support a Code of Practice to clarify beneficial ownership obligations for a trusts or other legal arrangements. There is currently inconsistency across the industry.

Question 4.45. Do you encounter any challenges with using IVCOP? If so, what are they, and how could they be resolved?

3.43 One of the largest challenges was a result of the changes to expired ID. This has driven the use of exceptions at a higher frequency, especially with the ongoing challenges presented by COVID-19. Westpac recommends the inclusion of more options, such as a foreign driver's license (or at a minimum, Australian driver's license for trans-Tasman banking and AML efficiencies). The more options that are available, the more options that can be offered to customers in difficult situations needing access to financial services.

3.44 It is also increasingly difficult to verify physical addresses due to the decrease of letters being sent in the post as well as a large number of customers who rent property and therefore are not at the same address for long periods of time. Westpac would support the removal of the requirement to verify the physical address for customers but support retaining the collection of physical address information.

Question 4.47. Should we amend or expand the IVCOP to include other AML/CFT verification requirements, e.g. verifying name and date of birth of high-risk customers verifying legal persons or arrangements, ongoing CDD, or sharing CDD information between businesses?

3.45 Westpac would support the issue of further guidance in the IVCOP where changes to beneficial ownership have occurred. For example, whilst any new beneficial owners should be subject to CDD, where CDD has already been conducted on beneficial owners but their ID document has since expired, Westpac would propose that there should be no requirement to obtain updated ID for low/medium risk customers.

Question 4.48. Are there any identity documents or other forms of identity verification that businesses should be able to use to verify a customer's identity?

3.46 Please see response in Question 4.45. Westpac recommends the inclusion of more options, such as a foreign driver's license (or at a minimum, Australian driver's license for trans-Tasman banking and AML efficiencies).

3.47 Westpac encourages further guidance on who can provide certification of documents. For example, allowing a NZ government agency to certify documents (such as Ministry of Social Development certifying a birth certificate) is not strictly permitted under the current wording of the IVCOP but would allow more marginalised/vulnerable communities with access to ID which meets the IVCOP standards and therefore promoting financial inclusion and access to bank accounts within these communities.

Question 4.49. Do you have any challenges in complying with Part 3 of IVCOP in relation to electronic verification (eIV)? What are those challenges and how could we address them?

3.48 There should be more options for eIV that are consistent and available other than just “RealMe” to allow for a consistent source in terms of biometrics.

Question 4.62. As part of ongoing CDD and account monitoring, do you consider whether and when CDD was last conducted and the adequacy of the information previously obtained?

3.49 Westpac’s OCDD process is conducted through its Prevention and Investigation team who review CDD on file as well as account activity to determine what further action needs to be taken (if any), for example by obtaining up to date and adequate CDD and submitting an SAR. Alerts are generated where there is a trigger event (such as change to customer data and/or risk rating). In Westpac’s view, the introduction of any regulations which would mandate a change to this process would result in a significant increase in compliance costs and burden.

Question 4.65. Should we mandate any other requirements for ongoing CDD (OCDD), e.g. frequently it needs to be conducted?

3.50 Westpac prioritises the highest risk customers for more regular reviews but having a timeframe attached to when CDD was last conducted would likely create a spike in the volume of work and take focus away from other higher risk tasks. Westpac recommends minimal change, if any, to the current requirements and would not support any mandated checks or prescribed timeframes through regulations and/or legislation.

Question 4.69. Do you currently review other information beyond what is required in the Act as part of account monitoring? If so, what information do you review and why?

3.51 Westpac currently reviews the following information beyond what is required in the Act:

(a) all information we hold on file for a customer together information on any related parties, associations, business entities etc; and

(b) open-source information to support any investigation. Whilst the Act does not specify what checks need to be conducted, it does mention checking account activity in line with what information we hold on a customer.

Question 4.70. Should we issue regulations requiring businesses to review other information where appropriate as part of account monitoring? If so, what information should regulations require businesses to regularly review?

Westpac does not support this change. Westpac maintains that account monitoring should follow a risk-based approach. More prescriptive requirements could lead to efforts being directed at information that adds no value to an investigation whilst missing more important and valuable information.

Question 4.78: Does the exemption from keeping records of the parties to a transaction where the transaction is outside a business relationship or below the occasional transaction threshold hinder reconstruction of transactions? If so, should the exemption be modified or removed?

3.52 Westpac is not supportive of changes to, or removal of this exemption. Westpac does not experience any difficulties in reconstructing transactions. The only information we are exempt from collecting relates to the parties to a transaction and not any other transaction details (which on their own allow reconstruction).

Question 4.79: Do you have any challenges with complying with the obligations regarding politically exposed persons? How could we address those challenges?

3.53 The biggest challenge currently experienced by Westpac is where a PEP is a beneficial owner of a customer (e.g. an entity) but not a customer itself. The Act effectively requires ECDD to be completed on the PEP themselves rather than the entity they are a beneficial owner of. A risk-based approach is naturally taken in terms of the level of CDD on the entity/related party itself, however, this does not remove the requirement to still obtain ECDD on a PEP with no individual relationship with a reporting entity.

3.54 Westpac would support a clarification on whether a customer who has a beneficial owner that is a PEP, is also subject to ECDD.

3.55 Another challenge faced by Westpac is the definition of PEP in the Act. When this is applied on a global scale and across many different structures (federal/state/military/judicial etc) it poses some ambiguity in identifying a PEP. The more specific the obligations/regulation the more Westpac can refine our alerts and reduce associated compliance costs.

Question 4.80: Do you take any additional steps to mitigate the risks of PEPs that are not required by the Act? What are those steps and why do you take them?

3.56 Westpac obtains senior management approval for onboarding where PEPs who are acting on behalf of a customer (even if they are not a customer or the beneficial owner of a customer). This is due to the enhanced risk posed by having a PEP responsible for controlling the funds of an entity that they act on behalf of. Furthermore, Westpac also requires senior management approval to onboard PEPs who are members of an international organisation and or are in roles that would not technically be covered by the current definition of a PEP under the Act. This is because Westpac has identified that these individuals and/or the roles that they perform pose a higher money laundering and terrorist financing risk, despite not being covered by legislation.

3.57 **Question 4.81: How do you currently treat customers who are domestic PEPs or PEPs from international organisations?**

3.58 Westpac treats PEPs from international organisations the same as foreign PEPs. All PEPs require senior management approval and ECDD to be conducted.

3.59 Westpac collects information on domestic PEPs when we are made aware of such, however, no further action is taken in respect of domestic PEPs.

Question 4.82: Should the definition of 'politically exposed persons' be expanded to include domestic PEPs and/or PEPs from international organisations? If so, what should the definitions be?

3.60 Westpac recommends that domestic PEPs and international organisation PEPs are included in the definition of "politically exposed persons".

3.61 The existing definition can be simply updated by replacing the wording "in any overseas country" in paragraph a) of the definition to "in any country". This would have the effect of expanding the scope of the definition to cover domestic PEPs.

3.62 In terms of including appropriate international organisations in the definition of "political exposed persons", Westpac suggests adding the following paragraph to the definition of "politically exposed persons":

"a) v(iii) any member of an international organisation who has a comparable level of influence as someone in one of the abovementioned functions."

Question 4.83: If we included domestic PEPs, should we also include political candidates and persons who receive party donations to improve the integrity of our electoral financing regime?

3.63 Westpac does not support the inclusion of political candidates or persons receiving party donations in the definition. This would present significant challenges in terms of identification. Westpac's current screening lists would not be able to support this and there are a limited number of providers for such a list. There would also be significant cost implications to Westpac. Furthermore, Westpac does not consider this type of function to require PEP approval if it was dealing with the offshore equivalent i.e. an offshore political party candidate would not require PEP approval under the current legislation.

Question 4.85: How do you currently treat customers who were once PEPs?

3.64 Westpac applies a risk-based approach to former PEPs. Westpac largely looks at the 12-month timeframe to assess risk, however, Westpac also considers other factors such as:

(a) the residual level of influence of that PEP;

(b) the type of PEP relationship;

For example, a customer who is a spouse of a PEP is also considered a PEP by association. If the PEP is deceased and the spouse (the customer who is PEP by association) is still heavily involved in politics, Westpac would not remove the spouse's PEP status.

3.65 If a customer is a PEP before establishing a relationship with Westpac and following application of a) and b) above, they are onboarded as a 'normal' customer and are risk rated accordingly. However, if a customer has an existing relationship with Westpac and is no longer a PEP then following consideration of a) and b) above their PEP status will be dropped, but they will still be rated as a "high risk" customer.

Question 4.86: Should we require a risk-based approach to determine whether a customer who no longer occupies a public function should still nonetheless be treated as a PEP?

3.66 Yes, Westpac would support a risk-based approach which would allow reporting entities the flexibility, to make the most appropriate decision relating to the risks posed their business.

Question 4.87: Would a risk-based approach to former PEPs impact compliance costs compared to the current prescriptive approach?

3.67 As noted above, Westpac is already applying a risk-based approach to former PEPs. Therefore, the impact on compliance costs to Westpac would be minimal, however, it could impose significant costs for reporting entities who do not currently use this approach.

Question 4.88: What steps do you take, proactive or otherwise, to determine whether a customer is a foreign PEP?

3.68 Westpac requires information in its onboarding process to assist frontline staff in identifying a potential PEP based on their occupation. If this is identified, the customer is not onboarded until appropriate approvals are obtained. Westpac also undertakes a daily batch screening of PEPs, to identify any changes to our customer database and any changes to the screening lists which triggers an alert for any matches that are identified.

Question 4.89: Do you consider 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? If not, how can we make it clearer?

3.69 The wording in the Act does not require reporting entities to proactively identify a PEP and it is not common industry practice to conduct screening prior to onboarding. If this is implemented, it would cause significant delays to customers obtaining accounts and place pressure on frontline and compliance teams.

Question 4.90: Should the Act clearly allow businesses to consider their level of exposure to foreign PEPs when determining the extent to which they need to take proactive steps?

3.70 This approach would allow reporting entities to apply processes to prohibit onboarding of PEPs that meet certain criteria before onboarding. Westpac already adopts this process. Any individual customer identified who is high risk requires ECDD to be completed and checked by an independent team before approval is provided for onboarding that customer, whether they are a PEP or not.

Question 4.91: Should the Act 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?

3.71 Westpac would not support this approach as there would be significant operational impact. However, if a new customer is identified as a PEP prior to opening accounts with Westpac (i.e. establishing a business relationship), senior manager approval would be required before the customer can conduct any transaction through their accounts (i.e. there is a hold on the account).

Question 4.100: Should businesses be required to assess their exposure to designated individuals or entities?

3.72 As a member of the United Nations the New Zealand government is bound by United Nations Security Council decisions and obliged to comply with United Nations multilateral sanctions. The relevant legislation in support of this is United Nations Act, the Terrorism Suppression Act and the AML/CFT Act.

3.73 Some countries also have their own autonomous sanctions regimes. New Zealand does not.

3.74 The multi-jurisdictional nature of sanctions means that compliance with New Zealand sanctions obligations is a necessary but not sufficient step in global compliance.

3.75 While it would be prudent for businesses with an international presence to conduct a sanction risk assessment (and many do) Westpac questions the merit of making it a mandatory exercise.

3.76 Westpac suggests further clarification to be required on:

(a) what would an assessment entail;

(b) individuals or entities designated by whom and for what purpose;

(c) which jurisdiction(s) would it be relevant to; and

(d) if only for New Zealand, clarification as to the purpose of the designation. Noting that there are a limited number of sanctioned entities within New Zealand.

3.77 This approach could potentially put businesses under a higher level of scrutiny. Westpac would welcome an assessment of sanction implications either by the New Zealand Government and or government departments.

Question 4.101: What support would businesses need to conduct this assessment?

3.78 Please see response above.

3.79 This would depend on the nature of the requirements and the footprint of the business. However, providing support to businesses might be difficult in the absence of a clearly articulated government position.

Question 4.102: If we require businesses to assess their proliferation financing risks, what should the requirement look like? Should this assessment be restricted to the risk of sanctions evasion (in line with FATF standards) or more generally consider proliferation financing risks?

3.80 Please see comments our response to questions 1.4-1.6 regarding proliferation.

3.81 This would be subject to confirmation of requirements of Ministry of Foreign Affairs & Trade Export Controls to provide guidance and assistance in this regard.

Question 4.103: Should legislation require businesses to include, as part of their AML/CFT programme, policies, procedures, and controls to implement TFS obligations without delay? How prescriptive should the requirement be?

3.82 There is some ambiguity about the relationship between AML and TFS obligations and potentially the role of the AML/CFT Act. AML/CFT sanctions are a subcomponent of larger sanctions obligations.

3.83 Westpac is of the view that is consistent with other jurisdictions, the extent of the TFS obligations should not be prescriptive. Given the wide range and size of industries that are subject to the Act, being prescriptive could have the result of being excessive for some businesses and inadequate for other larger organisations.

Question 4.104: What support would businesses need to develop such policies, procedures, and controls?

3.84 Businesses would require agreed government guidance and standards as to what a compliance program should look like and potentially assistance in setting this up (similar to the Office of Foreign Assets Control's *Five Essential Elements.*)

Question 4.105: How should businesses receive timely updates to sanctions lists?

3.85 As above, details on what sanctions lists and for what purpose would be required in order to effectively comply with obligations.

3.86 If it is only updates from the New Zealand Police, there would be little relevance in most cases.

Question 4.106: Do we need to amend the Act to ensure all businesses are receiving timely updates to sanctions lists? If so, what would such an obligation look like?

3.87 As noted above, details on what sanctions lists and for what purpose would be required to assist with effective compliance with these obligations.

Question 4.107: How can we support and enable businesses to identify associates and persons acting on behalf of designated persons or entities?

3.88 Please see response to questions 4.103 to 4.106 above.

3.89 In the absence of a Sanctions regulator, clarification on who would "we" be in this instance. Noting that the New Zealand Government are not necessarily unanimous on sanctions issues.

3.90 While ensuring receipt of sanctions information from the Government is an appropriate control for businesses, a prescriptive requirement in the Act could limit how a business sources their sanctions list. This would be particularly relevant for larger organisations who may have multiple sources and may also use bespoke services to do so rather than signing up to a service provided by the New Zealand Government.

3.91 In Westpac's view, the main area of focus would be that the New Zealand Government ensures that it provides a freely accessible resource for all business to access designated information on a timely basis.

Question 4.108: Do you currently screen for customers and transactions involving designated persons and entities? If so, what is the process that you follow?

3.92 Yes. Sanction screening is conducted by Westpac Group. Customer names are screened at onboarding and at trigger events. There is also a batch name screening that occurs weekly. Transactions are screened at trigger events which includes all details within the transaction. In terms of PEP screening, Westpac has a day one onboarding process and alerts are generated overnight and worked through within 14 days.

Question 4.109: How could the Act support businesses to screen customers and transactions to ensure they do not involve designated persons and entities? Are any obligations or safe harbours required?

3.93 Please see response in question 4.109 above.

3.94 In Westpac's view it would be challenging for an Act imposing complicated regulatory requirements with significant overheads to offer support to screen customers and transactions.

3.95 Westpac recommends that the Act could support businesses to meet sanctions obligations by ensuring the legislators are clear about the Act's intent.

Question 4.110: If we created obligations in the Act, how could we ensure that the obligations can be implemented efficiently and that we minimise compliance costs?

3.96 Westpac's concern with adding a requirement to screen in the Act is that it could limit the flexibility of controls that business can deploy to mitigate the risk of entering a relationship and/or taking a risk-based approach, which most jurisdictions allow for. An alternative to codifying obligations into regulations is by providing guidance on example of good and bad practices.

Question 4.111: How can we streamline current reporting obligations and ensure there is an appropriate notification process for property frozen in compliance with regulations issued under the United Nations Act?

3.97 The current reporting takes place through Suspicious Property Report (**SPR**), a subcomponent of the SAR and this appears to be functional. However, it is probably not widely used given the limited focus of the AML/CFT Act and New Zealand's terrorism landscape.

3.98 Westpac would suggest drawing a distinction between freezing assets and blocking a transaction. For assets to be frozen or for an existing customer to be designated or engaged with, a designated entity would be required in some way at which point in time, specific assets would be frozen.

3.99 The alternative scenario would include an inbound transaction being potentially blocked and rejected as opposed to frozen as it would not have entered the New Zealand financial sector.

3.100 Very few transactions get blocked for sanctions reasons and most of those that do, are blocked for sanctions risk appetite rather than due to legal obligations.

Question 4.112: If we included a new reporting obligation in the Act which complies with UN and FATF requirements, how could that obligation look? How could we ensure there is no duplication of reporting requirements?

3.101 Most (if not all) of the existing reporting requirements are already linked to UN and FATF obligations.

3.102 Most other jurisdictions have a template reporting form and dedicated address or portal for providing notification of frozen assets which would include appropriate information for the receiving authority to understand why, who and how much is being frozen.

3.103 This obligation could be limited to a requirement to promptly notify where such assets are identified, but it could be a useful tool to:

(a) facilitate the timely reporting; and

(b) to ensure that New Zealand authorities receive the required information that they need.

Question 4.113: Should the government provide assurance to businesses that have frozen assets that the actions taken are appropriate?

3.104 Yes, Westpac agrees that the Government should do so, or at least provide some sort of protection against prosecution when assets are frozen in good faith.

3.105 Westpac would recommend an appeal process and/or mechanism by which assets can be released after a designation has been removed.

Question 4.114: If so, what could that assurance look like and how would it work?

3.106 It is essential that any assurance carry appropriate weight and certainty. Westpac has previously relied on letters from Crown Law to provide assurances when sanctions positions were unclear.

Question 4.127: What risks with new products or technologies have you identified in your business or sector? What do you currently do with those risks?

3.107 **Risks identified for products:**

(a) ensuring products are in-scope or accurately captured to meet transaction monitoring (AML/CFT and fraud), sanctions, anti-bribery and corruption (ABC), PTR, Foreign Account Tax Compliance Act (**FATCA**), Common Reporting Standard (**CRS**) and AML/CFT annual reporting;

(b) risk assessment of products used for illicit means which can negatively impact the community or our brand (e.g. used to enable child exploitation, human trafficking, drugs etc); and

(c) inadequate controls and quality assurance measures to protect our customers and the wider community.

3.108 **Risks identified for technology**

(a) inability to automate/integrate new or developing technologies into legacy systems; or

(b) inability to modify new “off the shelf” technologies to meet specific requirements, resulting in manual input from staff leading to human error or reliance on judgement calls as well as work arounds/testing/troubleshooting/remediation required to ensure the solution is working and continues to work as desired;

(c) for bespoke offerings there is a risk that technologies are introduced that are retired and possibly become unsupported due to a lack of demand, resulting in customers needing to be off-boarded often with no alternative available;

(d) in addition, new technologies may not be as robust as some of the legacy items and may be targeted to exploit potential weaknesses;

(e) A lack of open banking offerings available in the market at this time has led to the in-house development of technologies to meet customer needs or regulatory obligations as opposed to the industry thinking collectively and collaborating to develop trusted technologies that can be relied on industry wide.

3.109 **What do you currently do with those risks?**

(a) Risks are identified through the Product and Services Lifecycle forum and addressed with relevant business stakeholders though conditions that must be satisfied prior to the launch of new product/technology. Training is provided to relevant staff and communications provided to relevant customers or details made available through public channels. Subsequent to launch, if a new risk develops or is identified through a control assessment or customer/staff observation (or any other channel) steps are taken to address the risk and escalate accordingly.

Question 4.128: Should we issue regulations to explicitly require businesses to assess risks in relation to the development of new products, new business practices (including new delivery mechanisms), and using new or developing technologies for both new and pre-existing products? Why or why not?

3.110 Yes, Westpac is supportive of regulations to require businesses to assess risks in relation to new products and business practices; and/or developing technologies for both new and pre-existing products. Consideration of risks should lead to better designed products, allow for appropriate controls to be implemented and ensure appropriate ongoing risk management.

Question 4.129: If so, should the risks be assessed prior to the launch or use of any new products or technologies?

3.111 Yes, Westpac agrees that consideration of risks should be assessed prior to the launch.

Question 4.130: What would be the cost implications of explicitly requiring businesses to assess the risks of new products or technologies?

3.112 It would be hard to estimate without understanding the processes and gaps for each business. However, in Westpac's case, the risks of new products or technologies are already assessed before launch.

Question 4.137: Should we issue regulations to declare that transfers of virtual assets to be cross-border wire transfers? Why or why not?

3.113 Westpac recommends that consideration be given to whether the Act was intended to capture all forms of cross-border movement of value as assets. This review should include consideration of intangible and non-standard assets including both wire transfers, hawala and any virtual assets with no clear ownership.

3.114 Clarification can then be sought as to whether to re-define these Virtual Assets as wire transfers and whether they are required to be reported to the FIU regardless of value, to ensure taxable income compliance and other requirements.

3.115 Westpac would support a separate category or classification for virtual assets.

Question 4.138: Would there be any challenges with taking this approach? How could we address those challenges?

3.116 There would need to be clear, robust qualifying criteria and use-cases would need to be established for a typical wire transfer and the transfer of virtual assets.

3.117 Some challenges include obtaining source of funds, determining acceptable documentation requirements and how this change would translate to PTR obligations.

3.118 Traditional payments are unlikely to be associated with the transfer of virtual assets. Changing the legislation to be outcome focused with a clear explanation of the intent will allow reporting entities more flexibility to be able to capture and report payment types.

Question 4.139: What challenges have you encountered with the definitions involved in a wire transfer, including international wire transfers?

3.119 In Westpac's view some of the definitions are vague and are not necessarily representative of actual payment practises.

3.120 For example, not all international payments are made by wire transfer, but the definition of "payments" seems to centre on a traditional Society for Worldwide Interbank Financial Telecommunication (**SWIFT**) payment. In some instances this may mean international payments are not being reported where they are a different type of international payment.

3.121 In addition, there are also SWIFT payments which are technically out of scope (such as trade payments) because they can be made by the reporting entity on behalf of the customer.

3.122 It is also currently not required to report all cross-border wire transfers. There is some debate about whether it would be easier to administer PTR compliance by simply reporting all wire transfers regardless of value, whether Westpac is an intermediary (despite being currently exempt) and the message type or types attributed to the transfers.

3.123 Furthermore, there is a huge amount of administrative cost involved in reporting institutional banking transactions (such as derivative products) that are trans-Tasman wire transfers.

Question 4.140: Do the definitions need to be modernised and amended to be better reflect business practices? If so, how?

3.124 Yes, Westpac supports the future proofing of definitions to capture any new and emerging payment types.

3.125 A clear understanding of how financial and non-financial institutions interact with each other in certain scenarios (for example, international wire transfers) would be beneficial in reviewing some definitions and/or qualifying criteria. A definition of virtual assets for all types should be included.

3.126 Westpac suggests aligning the current correspondent banking and wire transfer definitions with the PTR definitions. Westpac also recommends that the supervisors should also publish PTR desired regulatory outcomes as part of its Prudential Supervision Enforcement Strategy.

3.127 Westpac supports a change to the PTR definitions to include a definition of "Same Day Cleared Value domestic payments", and to clarify which reporting entity owns the PTR regulatory reporting responsibilities according to when that reporting entity is a participating member of the SWIFT network and owns a unique Business Identifier Code (**BIC**). This is an essential enhancement that we are requesting to ensure compliance with section 9 of the Act. To participate in SWIFT, a participant requires a BIC which is a unique identifier.

Question 4.141: Are there any other issues with the definitions that we have not identified?

3.128 In Westpac's view, the definitions do not fully appreciate the complex international payments environment and different possible ways of making a payment. Westpac suggests that qualifying criteria should be elaborated where possible.

3.129 Westpac recommends that a clarification be considered on whether PTR regulatory reporting is required irrespective of the message type or types attributed to the transfers.

3.130 Westpac recommends acknowledgement of the existence of further alternative international payment services outside of SWIFT, including cross-border transactions between credit card holders (VISA Original Credit Transaction (**OCT**) and Mastercard Moneysend). It is currently unclear if this type of transaction would constitute an international wire transfer as defined under the Act, specifically due to the exclusion of credit and debit card transactions. This should be clarified, particularly because debit and credit card holders can currently receive incoming cross-border credits but cannot send credits cross-border.

Question 4.142: What information, if any, do you currently provide when conducting wire transfers below New Zealand Dollars (NZD) 1000?

3.131 The same information is provided for a customer regardless of reporting thresholds. Customer ID and information on the beneficiary of the transaction.

3.132 Westpac only undertakes cross-border wire transfers for existing Westpac customers, and we prohibit non-customers and occasional transactions that are cross-border wire transfers. We authenticate the identity of our existing Westpac customers prior to undertaking a cross border wire transfer.

Question 4.143: Should we issue regulations requiring wire transfers below NZD 1000 to be accompanied with some information about the originator and beneficiary? Why or why not?

3.133 Westpac would be supportive of such regulation given it would add some depth in practise, to the intent of the Act, the result of which would be better reporting and enhanced financial intelligence.

Question 4.144: What would be the cost implications from requiring specific information be collected for and accompany wire transfers of less than NZD 1000?

3.134 It would be hard to estimate without understanding the extent of the change but it is possible that data management and development costs will apply.

3.135 This will depend on whether the scope of payments changes however changing the amount of payments processed should be a relatively simple technical change, with a medium degree of operational and customer impact (processes, procedures, training, communications etc).

3.136 Where products have not been standardised across acceptance/payments channel, these will have to be brought in line with the proposed changes.

3.137 For the most part, Westpac already collects pertinent information at onboarding regardless of transaction thresholds.

Question 4.145: How do you currently treat wire transfers which lack the required information about the originator or beneficiary, including below the NZD 1000 threshold?

3.138 The transaction is normally rejected if the information is missing. Information is obtained from the sender for the transaction to be completed.

Question 4.146: Should ordering institutions be explicitly prohibited from executing wire transfers in all circumstances where information about the parties is missing, including information about the beneficiary? Why or why not?

3.139 Ordering institutions should be responsible for ensuring the required information is captured when executing a wire transfer. This is the first point of interaction for transaction initiation and the most logical place to add a control to ensure that appropriate information is included. Consideration should be given to the extent/nature of beneficiary information required to ensure it is reasonably manageable. Otherwise there is a risk that the transactions could be completed and not reported or accurately reported.

Question 4.147: Would there be any impact on compliance costs if an explicit prohibition existed for ordering institutions?

3.140 Most likely yes, as controls would need to be implemented to further strengthen assurance programmes in this area. System changes may be required to

ensure automated controls are in place to support this requirement. Processes would need to be changed and new processes established to support the return of the payment.

Question 4.148: When acting as an intermediary institution, what do you currently do with information about the originator and beneficiary?

3.141 As an intermediary institution the information is passed from the ordering institution to the beneficiary. Westpac passes on the information to the ordering institution for our agency banking relationships.

Question 4.149: Should we amend the Act to mandate intermediary institutions to retain the information with the wire transfer? Why or why not?

3.142 There would need to be clear guidance as to the purpose for retaining this information as the Privacy Act prohibits the retention and storage of personally identifiable information without a specific purpose. Given there is no PTR obligation for an intermediary institution, there is no reason for an intermediary to retain the information.

Question 4.151: Should we issue regulations requiring intermediary institutions to take these steps, in line with the FATF standards? Why or why not?

3.143 Some of the FATF standards may be applicable. It is unclear however why an intermediary institution would need to retain relevant information when the core function is to receive and transmit a wire transfer on behalf of ordering and beneficiary institutions. The purpose and intent of any such regulations would need to be considered.

Question 4.152: What would be the cost implications from requiring intermediary institutions to take these steps?

3.144 There would be a reasonable amount of cost associated with this such as increased data management costs as well as development costs to ensure data being retained has a channel for that retention.

Question 4.153: Do you currently take any reasonable measures to identify international wire transfers that lack required information? If so, what are those measures and why do you take them?

3.145 Yes, Westpac has rules and alerts in place to identify payments lacking information.

Question 4.154: Should we issue regulations requiring beneficiary institutions to take reasonable measures, which may include post-event or real time monitoring, to identify international wire transfers that lack the required originator or beneficiary information?

3.146 Yes, this would avoid late return payments and would provide better reporting quality and transaction monitoring. Those reasonable measures would need to be justified and specific.

Question 4.155: What would be the cost implications from requiring beneficiary institutions to take these steps?

3.147 It would largely depend on what measures are deployed. Automated measures would be the seamless (and best) option but could be costly. Assurance programme uplift will be required.

Question 4.156: Are the prescribed transaction reporting requirements clear, fit-for-purpose, and relevant? If not, what improvements or changes do we need to make?

3.148 No, Westpac is of the view that:

- the requirements are too simplistic and do not consider the complex and evolving international payments environment;
- the legislation needs to clearly capture and describe the intent (i.e. to pass on reliable intelligence) and trust that the organisation will do what it can to ensure the intent is met with support from the Reserve Bank of New Zealand (**RBNZ**);
- more consideration should be given to standards established by governance bodies i.e., Payments New Zealand when setting these requirements and also ensuring alignment in payment type related definitions to the Act; and
- the supervisory team should be given greater freedom to provide clarification in writing where required to allow reporting entities to act accordingly.

Question 4.157: Have you encountered any challenges in complying with your PTR obligations? What are those challenges and how could we resolve them?

3.149 Yes. Payment arrangements other than those made by MT103 are difficult to report and may result in information being sent that is of limited practical value. Examples include low value payment arrangements where international payments to the underlying customer are not captured within the definition of an international payment. To resolve this and other issues that may come about as new payment types and technologies are introduced, Westpac considers that the legislation should be less prescriptive and instead focus on the intent of the Act. This will allow reporting entities to be more flexible in their approach to reporting of payments, ensuring that any payment that is in effect an international payment is captured and reported. It may also be worth considering the prevention of international payments that cannot be reported.

3.150 Return payments are also difficult to identify and report as these payments use the same rails as standard payment types and are not readily identifiable. The introduction of new ISO_20022 message formatting should resolve this issue. However it would be helpful to have some guidance from the RBNZ in relation to the new format and any changes and/or opportunities to improve reporting and the intelligence provided to the FIU.

Question 4.158: Should we issue regulations or a Code of Practice to provide more clarity about the sorts of transactions that require a PTR?

3.151 Yes, provided it works in harmony with the legislation requirements and intent.

Question 4.159: If so, what transactions have you identified where the PTR obligation is unclear? What makes the reporting obligation unclear, and how could we clarify the obligation?

3.152 **Automated Clearing House (ACH) and low value payments:**

These payments are a bulk international transaction however the cross-border element occurs between reporting entities and the underlying payment which is made using local clearing tools in the local currency is not captured. Westpac currently reports the bank-to-bank transaction which does not provide any additional intelligence results to the FIU. This model is also widely used by international payment providers.

3.153 **Foreign Exchange without a payment:**

Westpac includes some domestic foreign exchange transactions (i.e. foreign currency payments sent within New Zealand) within its PTR reporting. However, it is unclear whether these transactions are in scope of the PTR obligation.

3.154 **Trade Finance:**

There is no single cross border payment for a small number of large Institutional customers, and PTRs are not reported automatically. Westpac may:

(a) receive NZD in New Zealand and settle directly to the customer's nominated settlement account held in another jurisdiction with another bank from WBC NZ's Nostro account; or

(b) allow the customer to settle directly to WBC NZ's Nostro account and transfer the funds from an account in New Zealand to the customer's NZD account.

Clarification on whether this transaction would be captured for PTR obligation would be welcomed.

3.155 **Cryptocurrency / virtual assets:**

Cryptocurrency / virtual assets are currently not in scope for the definition of a "transaction" for PTR obligations. Further clarification and direction would be required.

Question 4.160: Should non-bank financial institutions (other than Money Value Transfer Services (MVTS) providers) and DNFBPs be required to report PTRs for international fund transfers?

3.156 No, Westpac is of the view that this would be redundant if these payments are already being or are expected to be captured and reported by banks. Doing so would create expense for DNFBPs as well as banks. It may be challenging (for banks in particular) to identify these payments as unique from other payments.

Question 4.161: If so, should the PTR obligations on non-bank financial institutions and DNFBPs be separate to those imposed on banks and MVTS providers?

3.157 Yes, Westpac is supportive of this initiative. Non-bank financial institutions and DNFBPs are different industries and have different administration and frameworks to banks and MVTS. Having the same obligation could result in application challenges across the two different industries.

Question 4.162: Are there any other options to ensure that New Zealand has a robust PTR obligation that maximises financial intelligence available to the FIU, while minimising the accompanying compliance burden across all reporting entities?

3.158 This topic requires further discussion. In Westpac's view:

(a) reporting entities should consider reporting everything and what this would mean;

(b) consideration should also be given to whether reporting thresholds and payment scenarios are fit for purpose in relation to the current climate;

(c) notwithstanding the reporting thresholds, a fair amount of subjectivity goes into determining whether certain transactions are in scope for PTR, given the vagueness of the requirements;

(d) increasing the reporting scope i.e., report everything.. This will allow the FIU to leverage more accurate financial intelligence given a large portion of that subjectivity will be removed and ambiguity addressed quickly; and

(e) consideration should be given to the scale of the FIU's ultimate objective and how successful the current programme has been.

Question 4.163: Should we amend the existing regulatory exemption for intermediary institutions so that it does not apply to MVTS providers?

3.159 MVTS should be in scope of all requirements.

Question 4.164: Are there any alternative options that we should consider which ensure that financial intelligence on international wire transfers is collected when multiple MVTS providers are involved in the transaction?

3.160 Requiring that all payments be traced to the original source or flagged as international and describing potential scenarios that should be considered international (i.e., any payment where the result is funds being moved either off-shore or on-shore). Another option could be considering "approved forms of international payment" to SWIFT based payments and low value payment models and specifically calling out requirements for each of these payment models.

Question 4.166: Are there situations you have encountered where submitting a PTR within the required 10 working days has been challenging? What was the cause of that situation and what would have been an appropriate timeframe?

3.161 In Westpac's experience, 10 working days in general is challenging especially when there is a dependency on automation or data systems. Depending on the nature and scale of an outage, a 10-day timeframe for PTR could present a problem. Balancing regulatory obligations and reputational damage is a delicate affair but can certainly be achieved by aligning the reporting timeframe or at least providing an exception to the timeframe for certain scenarios.

Considering the purpose of PTR is to gather financial intelligence, the short timeframe is understandable but does not align with the reality of systems dependency.

Question 4.168: Are there any practical issues not identified in this document that we should address before changing any PTR threshold?

3.162 Clarifying scope of international payments in the following instances:

(a) domestic foreign exchange;

(b) foreign exchange transactions without a cross border payment;

(c) ACH;

(d) merchant payments;

(e) card payments;

(f) trade finance; and

(g) cryptocurrency / virtual assets.

Question 4.169: How much would a change in reporting threshold impact your business?

3.163 It will depend entirely on what changes are made. The impact is loosely assessed as moderate. Consideration would need to be given to the operating models supporting PTR and the downstream impacts i.e. business processes currently embedded for PTR, education, system changes for both frontline and reporting feeds.

Question 4.170: How much time would you need to implement the change?

3.164 A minimum allowance of 18 - 24 months would be practical.

Question 4.179: Should we issue regulations to prescribe that overseas Designated Business Group (DBG) members must conduct CDD to the level required by our Act?

3.165 Westpac is supportive of this initiative; this will allow any overseas DBG member with lessor AML/CFT regime to meet New Zealand standards.

Question 4.180: Do we need to change existing eligibility criteria for forming DBGs? Why?

3.166 Yes, there is currently a discrepancy between the eligibility criteria for forming DBG in New Zealand and AUSTRAC's definition for DBG.

Question 4.181: Are there any other obligations that DBG members should be able to share?

3.167 Sharing information on SARs for the purpose of audits/assurance tasks and not only for reporting purposes.

Question 6.1: What are your views regarding the minor changes we have identified? Are there any that you do not support? Why? Are there any other minor changes that we should make to the Act or regulations?

3.168 ***Issue*****:** 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.

Proposal for change**:** Amend the regulation to obtain both the location of the account and the address of the sender to capture all relevant country information.

Westpac would support this change assuming the changes will be made in conjunction with the messaging protocols capability (SWIFT Message Types and ISO20022) and adequate time is provided for entities to cater for this, i.e. a period to attain compliance.

3.169 ***Issue*****:** 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.

***Proposal for change*:** Link the exemption more directly to the level of money laundering / terrorism financing risk associated with premium funding and clarify the intention (or not) to capture premium funding as an activity for the purposes of AML/CFT.

Westpac: CDD requirements are captured under s14 – 26. Exempt entities as outlined in s17(2) are exempt from completing CDD as outlined in s14 - 16 but are required to comply with s11 and 31.

Section 31 can only be fulfilled if obligations outlined in s14 - 26 are also met. Linking the exemption with the associated level of money laundering and terrorist financing risk seems logical if the intent is to continue to exempt these entities from s14 - 26.

The question that arises is whether consideration should be given to exempt these entities from portions of s31 in a more deliberate fashion to link the exemption more directly with the associated risk.

If these entities are exempt from the usual CDD requirements set out in regulation 17 (s14-26), the assumption is that transactions in scope from these entities would still be included in PTR give s27 does not form part of the current exemption.

3.170 ***Issue*:** Businesses are not required to keep records of prescribed transaction reports.

***Proposal for change*:** Issue regulation which requires businesses to keep records of prescribed transaction reports for five years.

Westpac: Westpac seeks clarification as to whether this pertains to reporting entities and their own PTRs.

3.171 ***Issue*:** There is no requirement that copies of records must be stored in New Zealand, particularly copies of customer identification documents.

***Proposal for change*:** Issue regulation which requires business to retain copies of records in New Zealand to ensure they can be easily accessible when required.

***Westpac*:** Westpac does not support this change. Some reporting entities have parent companies situated in offshore jurisdiction. In these cases, reporting entities may be required to use the data warehouse that their parent uses which can be located offshore.