

## Kokay, Nick

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**From:** [REDACTED]@privacy.org.nz>  
**Sent:** Monday, 6 December 2021 2:00 pm  
**To:** aml  
**Cc:** [REDACTED]  
**Subject:** RE: PLACEHOLDER - AMLCFT Stat Review + Office of the Privacy Commissioner  
**Attachments:** 2021-12-06 AML CFT review submission from the Privacy Commissioner.pdf

Teena koutou

Please find **attached** the Commissioner's submission on the AML CFT review consultation document. If you need any further information please contact me.

Ngaa mihi

[REDACTED]  
[REDACTED]  
Policy Adviser

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**From:** [REDACTED]@justice.govt.nz>  
**Sent:** Thursday, 2 December 2021 10:42 am  
**To:** [REDACTED]@privacy.org.nz>  
**Subject:** RE: PLACEHOLDER - AMLCFT Stat Review + Office of the Privacy Commissioner

Kia ora [REDACTED] – absolutely! Let me know if you need any further time too, happy to accommodate.

Ngā mihi,

Nick



[REDACTED]  
Kaitohu Tōmua | Senior Policy Adviser  
Criminal Law | Policy Group  
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Mon Tues Wed Thur Fri



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**From:** [REDACTED]@privacy.org.nz>  
**Sent:** Thursday, 2 December 2021 10:34 am  
**To:** [REDACTED]@justice.govt.nz>  
**Subject:** RE: PLACEHOLDER - AMLCFT Stat Review + Office of the Privacy Commissioner

Hey [REDACTED]

We're just discussing some points about the consultation document internally which will determine how we do our sub – would you mind if we had our submission in to you Monday the 6<sup>th</sup> rather than tomorrow? I'd be super grateful if so 😊

Many thanks

[REDACTED]

[REDACTED]

Policy Adviser



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## Privacy Commissioner's submission to the Ministry of Justice on the Review of the AML/CFT Act Consultation Document

### Introduction

1. The Ministry of Justice (“**the Ministry**”) commenced a review of the Anti-Money Laundering and Countering Financing of Terrorism (“**AML/CFT**”) Act 2009 (“**Act**”) on 1 July 2021. The review was required by s 156A of the Act and requires two questions to be answered–
  - 1.1. how has the Act operated and performed since 2017; and
  - 1.2. whether any amendments to this Act are necessary or desirable.
2. Officials have produced the ‘*Review of the AML/CFT Act Consultation Document*’ (“**Consultation Document**”) which contains numerous proposals and targeted questions. This submission sets out my expectations that privacy is properly considered, and that the Ministry continues to consult with my Office as it develops policy from the issues and proposals raised in the Consultation Document.
3. Individual privacy should be a key factor when the Ministry is considering “necessity” and “desirability” for the purposes of s 156A of the Act.

### Commissioner's mandate

4. The Privacy Act 2020 (“**Privacy Act**”) governs agencies' collection, retention, use and disclosure of individuals' personal information. Under the Privacy Act, one of my functions as Privacy Commissioner is to examine and comment on proposed policy that may affect individuals' privacy. I hope the following comments will assist Ministry officials to properly consider the privacy impacts of the AML/CFT proposals in the Consultation Document.

### Key privacy considerations

5. I would thank Ministry officials for their positive engagement with my Office to date. It will be important for officials of both agencies to continue this dialogue to draw out the privacy impacts of pertinent proposals. This will help the Ministry to properly consider people's privacy when deciding how best to, or indeed whether to, develop policy from a specific proposal.
6. Ministry officials have identified numerous privacy issues, as they consider them to be, arising from the Consultation Document proposals. This is encouraging. Nonetheless, my Office will want to see that–
  - 6.1. there is a clear justification for each proposal that has privacy impacts based on real harm or reasonable and realistic projections of the risk of harm, and not merely theoretical vulnerabilities;
  - 6.2. any privacy impacts are proportionate to a real harm or reasonable and realistic projections of the risk of harm;
  - 6.3. proposals relating to Financial Action Taskforce (“**FATF**”) standards that also have privacy impacts are both appropriate and necessary for New Zealand;
  - 6.4. proposals to increase the collection of personal information by widening regulatory perimeters or lowering thresholds are not based on

- unsupported notions that more useful information lies beyond the current perimeters or thresholds;
- 6.5. proposals requiring agencies to collect, store, use, disclose, and retain more personal information do not overwhelm agencies such that their ability to comply with the IPPs becomes unrealistic or infeasible; and
  - 6.6. personal information can *always* be adequately protected for privacy purposes.

### **Specific issues/proposals**

7. Without derogating from the importance of other privacy issues the Consultation Document raises, the following issues/proposals are of particular interest or concern—
  - 7.1. Enabling other agencies to directly access some data that the Financial Intelligence Unit holds and generally increasing the FIU's role and mandate (p 14);
  - 7.2. Creating a registration and licensing framework for reporting entities (p 16);
  - 7.3. Lowering the cash transaction threshold for high-value dealers (p 24);
  - 7.4. Making the preparation of annual account and tax statements a captured activity (p 29);
  - 7.5. Including tax-exempt non-profits and non-resident tax charities within the scope of the Act (p 29);
  - 7.6. Reconsidering the internet auctioneers exemption (p 31) ;
  - 7.7. Considering further regulating around special remittance card facilities (p 31);
  - 7.8. Defining territorial scope (p 34);
  - 7.9. Explicitly creating the power to conduct onsite inspections at dwellinghouses (p 39);
  - 7.10. Requiring customer due diligence (“**CDD**”) in all suspicious circumstances (p 50);
  - 7.11. Requiring CDD when managing/moving funds in trust accounts (p 51);
  - 7.12. Requiring and expanding CDD obligations for legal persons and legal arrangements (p 52);
  - 7.13. Requiring the identification of beneficiaries of life and other investment-related insurance (p 53);
  - 7.14. Creating regulations that require identification of the ultimate beneficial ownership pursuant to FATF standards (pp 54-57);
  - 7.15. Expanding the range of measures available to mitigate high-risk customers (p 60);
  - 7.16. Requiring businesses to collect/review “other” information with respect to their customers (p 63);
  - 7.17. Introducing an obligation to investigate/conduct CDD on pre-Act customers (p 64);
  - 7.18. Setting a threshold for virtual assets service providers occasional transactions (p 81);
  - 7.19. Declaring all virtual asset transfers to be international wire transfers (p 82);
  - 7.20. Issuing regulations to require the collection of information for wire transfers below \$1000 (p 83);

- 7.21. Issuing regulations to mandate record-keeping for intermediary institutions (p 85);
  - 7.22. Clarifying the reporting obligations for prescribed transaction reporting (“**PTR**”) (pp 86-87);
  - 7.23. Lowering the threshold for PTR (p 89);
  - 7.24. Widening the circumstances in which and the agencies with whom suspicious activity reports (“**SAR**”) or SAR information may be shared (p 99);
  - 7.25. Aligning high value dealer obligations with those of other reporting entities (p 100).
8. These proposals/issues will be the focus of my Office in ongoing engagement with the Ministry, including other agencies as necessary (but particularly the FIU).

### **Mandatory enhanced CDD for all trusts**

9. Section 22 of the Act currently requires enhanced CDD for all customers that are trusts or another vehicle for holding personal assets.
10. I support the removal of the requirement for enhanced CDD to be conducted for all trusts or vehicles for holding assets (see p 62). The Consultation Document identifies that the requirement is inconsistent with FATF standards and with a risk-based approach as not all trusts are inherently high risk. Since not all trusts are inherently high risk, the requirement for enhanced CDD for all trusts or vehicles for holding assets is necessarily disproportionate. That is, agencies are being made to over-collect unnecessary personal information that can be sensitive and touches on private family affairs.

### **Overarching considerations**

11. My Office keeps a close eye on ‘data hungry’ regimes and their relationship with people’s privacy rights. An important overarching question is whether the existing rules, together with the proposals if brought into effect, would allow for excessive scrutiny that may lead to unintended consequences. For instance, some people may be discouraged from engaging in certain types of social or economic activity, not because they have done anything wrong, but because they value their privacy. They might simply be uncomfortable with their personal information being collected by agencies and or the AML CFT regulators.
12. The increasing demands of law enforcement for more data creates a growing burden on reporting entities which may not be able to cope with the influx of information as it is. The burden has corresponding risks like hacks and leaks, the harm of which will be experienced by people.

### **Conclusion**

13. Again, thank you to the Ministry for their positive engagement with my Office. I trust that this submission will be useful to the Ministry in its considerations and for ongoing discussions with my Office.

14. Please contact [REDACTED] at [REDACTED] [@privacy.org.nz](mailto:[REDACTED]@privacy.org.nz) at the first instance if you want to discuss matters further.



**John Edwards**  
**Privacy Commissioner**

6 December 2021