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Cc: [redacted]; [redacted]; [redacted]
Subject: BNZ : Review of the AML/CFT Act submission
Attachments: AML_CFT Act Review - BNZ submission FINAL(467364.1).pdf

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Dear Sir/Madam

Please find attached BNZ's submission on the Review of the AML/CFT Act.

Thank you for the extension of time given to submit on this consultation.

Ngā mihi

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GM, Regulatory Affairs
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10 December 2021

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Dear Sir or Madam

Bank of New Zealand's submission on the AML/CFT Act Review

Bank of New Zealand ("**BNZ**") appreciates the opportunity to submit to the Ministry of Justice on the Review of the Anti-Money Laundering and Countering Financing of Terrorism Act ("**Act**") Consultation Document ("**Consultation Document**"). BNZ supports the review of the Act.

BNZ's submissions are set out in detail in the attached table with responses to each of the questions in the Consultation Document. At a high level, BNZ considers that there is a need for clearer obligations while maintaining a risk-based approach. BNZ's view is that any amendments to the Act should be supported by an enhanced suite of regulations and codes of practice.

BNZ also sees value in improved mechanisms for public private partnerships and appropriately designed information sharing framework to support the purposes of the Act. BNZ suggests that there is a Privacy and Data Ethics Impact Assessment process lead by the Ministry of Justice with contributions from reporting entities in order to identify the impacts on privacy of any new framework and explore opportunities to mitigate or avoid the risks identified.

All enquiries on this submission may be directed to Paul Hay, GM Regulatory Affairs at [redacted]@bnz.co.nz, or [redacted]

Yours sincerely

[redacted]

[redacted]
GM, Regulatory Affairs

BNZ's submissions on the Review of the AML/CFT Act Consultation Document

Part	Section	Sub-Section	No.	Questions	Comments
Institutional arrangements and stewardship	Purpose of the AML/CFT Act		1.1	Are the purposes of the Act still appropriate for New Zealand's AML/CFT regime or should they be changed? Are there any other purposes that should be included other than what is mentioned?	BNZ's view is that the purpose could be updated to include prevention of money laundering and terrorism financing and countering proliferation finance could be included to sit alongside AML and CFT. BNZ notes that measures to address terrorist financing have been strengthened by the amendments to the Terrorism Suppression Act, corresponding changes should be implemented within the AML/CFT Act to ensure stronger alignment on terrorist financing.
		Actively preventing money laundering and terrorism financing	1.2	Should a purpose of the Act be that it seeks to actively *prevent* money laundering and terrorism financing, rather than simply deterring or detecting it?	Yes, BNZ believes that an overarching purpose of the AML/CFT Act should be to prevent ML/TF from occurring and would support the purpose of prevention being included in the Act. However, any obligations relating to prevention should primarily be focused on actions that law enforcement agencies can undertake, with reporting entities supporting these agencies in achieving this outcome. BNZ's view is that this would primarily be through acting on production orders, warrants or any additional powers provided to law enforcement agencies through the review of the Act. It should not be a reporting entity's obligation to actively prevent as they do not necessarily have the skills and resources to achieve this objective, there may be liability issues in the event of an error, and it would involve significant compliance resource and system changes. Further, regulators and government agencies are better positioned to prevent given they receive information from multiple sources. Additionally, if reporting entities were required to actively prevent further consideration would need to be given to: • Safety of staff declining transactions. • How prevention inter-plays with tipping off provisions as they are currently worded. • Protections for reporting entities where prevention did not occur due to other concerns (such as safety or error in judgement). • Incomplete intelligence due to transactions not being processed. • How this may further cause de-risking/de-banking of high-risk customer types and further complicate the financial inclusion conversation.
			1.3	If so, do you have any suggestions how this purpose should be reflected in the Act, including whether there need to be any additional or updated obligations for businesses?	BNZ's view is that reporting entities should have an obligation to *support* authorities to prevent money laundering and terrorism financing and enhancement in tools available to law enforcement agencies to actively prevent ML/TF from occurring should be provided.
		Combatting proliferation financing	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?	Yes. Global trends are to incorporate proliferation finance as part of financial crime measures. BNZ considers that is it appropriate for New Zealand to amend its legislation to align with this trend. BNZ understands that FATF has undertaken work in relation to proliferation finance and a proliferation finance risk assessment is currently under consideration by NZ FIU. It is important for New Zealand to have the legal framework in place to ensure reporting entities support countering of proliferation finance efforts.
			1.5	If so, should the purpose be limited to proliferation financing risks emanating from Iran and the Democratic People's Republic of Korea or should the purpose be to combat proliferation financing more generally? Why?	BNZ's view is that the purpose should be to combat proliferation finance more generally, to future proof the legislation in case there are changes in proliferation finance risks globally.
		Supporting the implementation of targeted financial sanctions	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?	BNZ's view is that this should be covered by a separate piece of legislation and should not be brought into the remit of this Act. BNZ considers that additional legislation relating to the implementation of targeted financial sanctions would further support the stated outcomes in the Terrorism Suppression Act 2002 and United Nations Act 1946. In practice banks operating at a global scale already have a robust sanctions compliance programme in place that extend beyond the requirements of these two pieces of legislation.
	Risk-based approach to regulation	Understanding our risks	1.7	What could be improved about New Zealand's framework for sharing information to manage risks?	This is a critical aspect of New Zealand's AML/CFT regime. There is a need to explore improved and responsible information sharing: • Between regulators • Between reporting entities and regulators and • Between reporting entities.

					The limited information sharing between parties is viewed as a barrier to meeting the Act's objectives. We acknowledge however that there are increased privacy risks with increasing information flows (for example, inaccurate information could proliferate and result in individuals being improperly excluded from the banking system). BNZ suggests that there is a Privacy and Data Ethics Impact Assessment process lead by the Ministry of Justice with contributions from reporting entities in order to identify the impacts on privacy of any new framework and explore opportunities to mitigate or avoid the risks identified. In particular, potential areas of analysis could include: • The purposes for which the agencies could lawfully use and disclose personal information regulated by the Act. • What transparency obligations attach to the different types of agencies, and how these obligations should be met. • Appropriate technical and operational measures agencies must implement to ensure security of information regulated by the Act. • How high levels of data quality can be achieved, including the ability to correct inaccurate or out of date information. • Appropriate retention and disposal or de-identification of information regulated by the Act. • Appropriate cross-border information sharing. • Whether an Approved Information Sharing Agreement could be a viable part of any new framework. • Whether an information collection code might be appropriate in relation to regulator information collection powers (for example, the Ministry of Social Development must comply with a Code of Conduct when exercising certain information collection powers under the Social Security Act 2018). BNZ notes that other jurisdictions have achieved this outcome through the use of privacy enhancing tools.
			1.8	Are the requirements in section 58 still appropriate? How could the government provide risk information to businesses so that it is more relevant and easily understood?	BNZ has no material concerns in relation to the content of s58. BNZ considers that more targeted sector guidance on risks relevant to that specific sector would be beneficial. However, this would operate outside of the Act itself. Although not a specific concern with s58 itself, BNZ would welcome further clarity on the expectation to assess risk associated with institutions it deals with, whether in legislation, regulations, or guidance.
		Balancing prescription with risk-based obligations	1.9	What is the right balance between prescriptive regulation compared with the risk-based approach? Does the Act currently achieve that balance, or is more (or less) prescription required?	In general, BNZ considers that the Act achieves the right balance with the exception of certain areas where additional clarity could be provided as to the exact requirements of the legislation. For example, entities are required to assess the risk associated with institutions that they deal with, but no clarity is provided in the Act around what that assessment or risk mitigation should look like. Additionally, BNZ considers that the requirements around ongoing due diligence are confusing and lack clarity.
			1.10	Do some obligations require the government to set minimum standards? How could this be done? What role should guidance play in providing some further clarity?	BNZ's view is that guidance and legislation need to stay up to date with technological changes – for example, non-face to face onboarding. BNZ considers that digital processes are as good as, if not better than, traditional face to face onboarding and for identifying fraud in identity documents. However, the code of practice does not currently recognise this and requires further risk mitigation steps for non-face-to-face onboarding compared to face-to-face onboarding.
			1.11	Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to?	No, BNZ's view is that the legislation is appropriate in this regard and provides reporting entities with relevant flexibility to take a risk-based approach other than in certain specific areas BNZ has noted elsewhere in this submission such as requiring ECDD to be conducted on all trusts.
		Capacity of smaller and larger reporting entities	1.12	Does the Act appropriately reflect the size and capacity of the businesses within the AML/CFT regime? Why or why not?	Yes, BNZ considers that the Act currently reflects what must be done but how and the extent of that is largely left up the reporting entity to determine within the content of their programme.
			1.13	Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to and the size of the business? If so, what?	Yes, however BNZ considers that this is more in relation to education and risk assessments at an industry/sector perspective rather than a legislative change.
		Applying for exemptions from the Act	1.14	Are exemptions still required for the regime to operate effectively? If not, how can we ensure AML/CFT obligations are appropriate for low-risk businesses or activities?	Yes, BNZ considers that there will always be a need for exemptions to the requirements of the Act to reflect the complexity of the required responses to financial crime and the need for specific carve outs from time to time. In BNZ's view, the key consideration is to ensure that the exemptions are appropriate and considered, clear guidance is provided and well understood as to who would be eligible for an exemption and that the process is more streamlined.

			1.15	Is the Minister of Justice the appropriate decision maker for exemptions under section 157, or should it be an operational decision maker such as the Secretary of Justice? Why or why not?	If the exemptions are based on the level of money-laundering or terrorist financing risk within that sector BNZ considers that it may be more appropriate for a body with a greater understanding of the risks associated with the sector to assess the appropriateness of the exemption. For example, FIU as the body who is preparing the national risk assessment or the supervisor who is accountable for determining the risk associated with the sector.
			1.16	Are the factors set out in section 157(3) appropriate?	BNZ considers that the factors are appropriately set out. BNZ does however question the level of importance that may be placed on regulatory burden within the decision-making process. BNZ considers that regulatory burden should not be an overriding factor but merely one of many factors as it is documented in the Act.
			1.17	Should it be specified that exemptions can only be granted in instances of proven low risk? Should this be the risk of the exemption, or the risk of the business?	Yes, BNZ considers that this would be a good addition. BNZ considers that this assessment of risk should be in relation to the exemption's impact on the overall objective of the regime and not the risk of the entity.
			1.18	Should the Act specify what applicants for exemptions under section 157 should provide? Should there be a simplified process when applying to renew an existing exemption?	Yes, BNZ considers that additional clarity in this regard would be beneficial as well as a clear and simple process for reporting entities to follow. A simplified process for renewal would be useful.
			1.19	Should there be other avenues beyond judicial review for applicants if the Minister decides not to grant an exemption? If so, what could these avenues look like?	BNZ does not believe this is necessary.
			1.20	Are there any other improvements that we could make to the exemptions function? For example, should the process be more formalised with a linear documentary application process?	BNZ has no comment on this question.
	Mitigating unintended consequences	Financial inclusion or exclusion	1.21	Can the AML/CFT regime do more to mitigate its potential unintended consequences? If so, what could be done?	BNZ considers that defined alternative processes for CDD could help reduce the risk of vulnerable customers being excluded from receiving financial services. For example, this could be dealt with through a streamlined exemption process for customers in care. BNZ also notes that in relation to vulnerable customers, reporting entities may get it wrong sometimes. BNZ considers that supervisors should recognise this as part of a risk-based assessment and reporting entities trying to appropriately support certain customers/segments. BNZ considers that the Act could also provide clearer indications of where liability actually sits to mitigate the risk of unintended consequences (for example, if a remittance business is taken advantage of for money laundering then the liability sits with the remitter not its bank). A Privacy and Data Ethics Impact Assessment as suggested above in response to question 1.7 should also help identify and mitigate unintended consequences.
			1.22	How could the regime better protect the need for people to access banking services to properly participate in society?	BNZ considers that the regime could legislate the need for an exceptions process (noting this is currently only in the Code of Practice). Other measures discussed within the Consultation Document may also assist, such as the removal of address verification requirements. Additionally, reviewing the acceptable documentation for identity verification, in particular for traditional vulnerable sectors such as ex-prisoners and customers in care or foreign customers, could improve the ease of access to banking services. Further enhancements such as an appropriately designed digital identity that can be shared amongst reporting entities may also enhance access.
			1.23	Are there any other unintended consequences of the regime? If so, what are they and how could we resolve them?	BNZ's view is that the Act, in some areas, inhibits important innovation and entrepreneurship, for example, for the mobilisation of the FinTech sector with the significant compliance overhead for them, as well as banks. BNZ considers that another unintended consequence is change in transactional behaviours by criminal actors, which means reporting entities must adapt and react to the change in behaviour. BNZ's view is that the regime should be designed in a way that allows reporting entities sufficient flexibility to design their approach to mitigate the risks that are present within their business/sector. This would primarily be achieved by more regular and targeted guidance from the relevant supervisory body/FIU following ongoing engagement and consultation with the industry about risks and potential responses.

	The role of the private sector	Partnering in the fight against financial crime	1.24	Can the Act do more to enable private sector collaboration and coordination, and if so, what?	Yes, BNZ's view is that there needs to be an improvement, for example, there should be a way for banks to name check for certain high-risk individuals and high-risk transactions. BNZ would also support a substantial uplift in information sharing. An appropriate framework would need to be put in place to facilitate this type of information sharing. BNZ considers that FCPN is a good start but needs to improve as a public private partnership. A Privacy and Data Ethics Impact Assessment as suggested above in response to question 1.7 should help enable collaboration, in particular an exploration of an improved information sharing framework.
			1.25	What do you see as the ideal future for public and private sector cooperation? Are there any barriers that prevent that future from being realised and if so, what are they?	BNZ would support better engagement between the private sector, supervisors, the FIU and other relevant government agencies on the evolution of financial crime typologies. Barriers in the information sharing domain would be identified through a Privacy and Data Ethics Impact Assessment as suggested above in response to question 1.7.
			1.26	Should there be greater sharing of information from agencies to the private sector? Would this enhance the operation of the regime?	Yes. BNZ's view is that this should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7, in particular, attention should be given to the possibilities of an Approved Information Sharing Agreement, and / or an information gathering Code of Conduct issued by the Privacy Commissioner.
		Helping to ensure the system works effectively	1.27	Should the Act have a mechanism to enable feedback about the operation and performance of the Act on an ongoing basis? If so, what is the mechanism and how could it work?	BNZ considers that a more frequent review cycle of the AML/CFT Act would be beneficial to enable smaller more regular adjustments to the legislation/regulations to respond to the changing risk landscape. This would enable supervisors, law enforcement and private sector to provide regular feedback into the operational performance of the Act and also consider changes issued by FATF. It would be helpful to engage on the appropriate frequency for these reviews as a subsequent consultation if a decision is made to proceed with this given the impact on capacity and resources where the required amount of rigour is applied to such a review.
	Powers and functions of AML/CFT agencies	Powers of the Financial Intelligence Unit	1.28	Should the FIU be able to request information from businesses which are not reporting entities in certain circumstances (e.g., requesting information from travel agents or airlines relevant to analysing terrorism financing)? Why or why not?	BNZ considers that this is likely to improve the overall effectiveness of the legislation and the ability for the FIU to obtain relevant information to support their law enforcement efforts. Any enabling legislation should specify clearly in what circumstances they should be allowed to request this additional information.
			1.29	If the FIU had this power, under what circumstances should it be able to be used? Should there be any constraints on using the power?	Yes, BNZ considers that, in addition to the constraints suggested in the consultation document, such a power may be best limited to information about highly risky individuals engaging in what is 'reasonably likely' to be relevant to criminal investigations. The ability to request information from businesses should also be balanced against the FIU's ability to obtain the information from another government agency. The extra detail could be covered by an information gathering Code of Conduct issued by the Privacy Commissioner, or otherwise considered in a Privacy and Data Ethics Assessment.
		Providing for ongoing monitoring of transactions and accounts	1.30	Should the FIU be able to request information from businesses on an ongoing basis? Why or why not?	Yes, however, it is unclear why current tools available to the FIU should not be sufficient to achieve this purpose i.e., production orders and warrants. Although it is a burden on the reporting entity, in terms of outcomes it is significant, as it will enable the FIU to receive regular updates on a person of interest that they have identified through their internal networks or SARs to the FIU.
			1.31	If the FIU had this power, what constraints are necessary to ensure that privacy and human rights are adequately protected?	This should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7, for example whether a "proportionate and reasonable" test may be appropriate.
		Freezing or stopping transactions to prevent harm	1.32	Should the Act provide the FIU with a power to freeze, on a time limited basis, funds or transactions in order to prevent harm and victimisation? If so, how could the power work and operate? In what circumstances could the power be used, and how could we ensure it is a proportionate and reasonable power?	BNZ has no further comment on this question. BNZ has provided a response through the NZBA to a direct question on this from the FIU.
			1.33	How can we avoid potentially tipping off suspected criminals when the power is used?	BNZ has no further comment on this question. BNZ has provided a response through the NZBA in response to a direct question from the FIU.
		Supervising implementation of targeted financial sanctions	1.34	Should supervision of implementation of TFS fall within the scope of the AML/CFT regime? Why or why not?	No, BNZ's view is that TFS should be wider than AML/CFT reporting entities and by limiting it to AML/CFT regime it would not fully capture everything that is relevant from a TFS point of view, for example, logistic businesses, tech/IP transfer.

			1.35	Which agency or agencies should be empowered to supervise, monitor, and enforce compliance with obligations to implement TFS? Why?	BNZ's view is that the appropriate agency is Customs or MFAT. It cannot be one of the current supervisors for the reason noted in response to question 1.34 above. MFAT is largely a policy agency and would need to significantly improve the capability and operations for it. Customs currently does much of the import/export screening on behalf of MFAT and has intelligence and enforcement functions as well as experience working in the regulatory space.
	Secondary legislation making powers		1.36	Are the secondary legislation making powers in the Act appropriate, or are there other aspects of the regime that could benefit from further or amended powers?	Yes, the secondary legislation making powers are appropriate. BNZ submits that more consideration could be given to the way the powers are used in order to make them more effective. Additional supervisory resourcing may be required to support the development and greater use of secondary legislation making powers.
			1.37	How could we better use secondary legislation making powers to ensure the regime is agile and responsive?	BNZ has no further comment on this section.
		Codes of Practice	1.38	Are the three Ministers responsible for issuing Codes of Practice the appropriate decision makers, or should it be an operational decision maker such as the chief executives of the AML/CFT supervisors? Why or why not?	BNZ's view is that the Chief Executives of the AML/CFT supervisors may be more appropriate than the Ministers for issuing Codes of Practice, due to the depth of their operational knowledge and priorities.
			1.39	Should the New Zealand Police also be able to issue Codes of Practice for some types of FIU issued guidance? If so, what should the process be?	Yes, BNZ considers that this would be beneficial, in particular around transaction monitoring (TM), suspicious activity reports (SAR) and prescribed transaction reporting (PTR). However, BNZ considers that this should be limited in scope. BNZ submits that the approval or issuing of these Codes of Practice should follow the same process as the code of practice discussed in 1.38 as FMA, RBNZ and DIA have more understanding of the impacts on reporting entities and overall AML/CFT programmes.
			1.40	Are Codes of Practice a useful tool for businesses? If so, are there any additional topics that Codes of Practice should focus on? What enhancements could be made to Codes of Practice?	Yes, BNZ would find codes of practice on TM, SARs, the approach for assessment of risk, correspondent banking (section 29), PTR, ongoing customer due diligence and occasional transactions (OT) useful.
			1.41	Does the requirement for businesses to demonstrate they are complying through some equally effective means impact the ability for businesses to opt out of a Code of Practice?	BNZ considers that it does not affect their ability to opt out, however, clarity around how they demonstrate that their means is equally effective would be useful.
			1.42	What status should be applied to explanatory notes to Codes of Practice? Are these a reasonable and useful tool?	The changes suggested in response to question 1.38 above, would make the updating and issuing of Codes of Practice (CoP) much simpler and therefore BNZ's view is that explanatory notes should be included in the CoP itself, rather than issued as a separate document. However, if that is not possible, the additional information provided within explanatory notes remain beneficial.
			1.43	Should operational decision makers within agencies be responsible for making or amending the format of reports and forms required by the Act? Why or why not?	BNZ agrees, subject to the impact on reporting entities' processes being considered prior to a change being made.
		Forms and annual report making powers	1.44	If so, which operational decision makers would be appropriate, and what could be the process for making the decision? For example, should the decision maker be required to consult with affected parties, and could the formats be modified for specific sectoral needs?	BNZ's view is that the three supervisors and the FIU would be the appropriate decision makers. However, as noted in response to question 1.43 above, consultation should be undertaken with affected parties prior to undertaking any changes. BNZ believes the formats should be able to be modified for different sectoral needs. Alignment with the approach taken in 1.38 would be beneficial.
		AML/CFT Rules	1.45	Would AML/CFT Rules (or similar) that prescribed how businesses should comply with obligations be a useful tool for business? Why or why not?	No, BNZ considers that rules add complexity and would move the regime away from a risk-based approach.
			1.46	If we allowed for AML/CFT Rules to be issued, what would they be used for, and who should be responsible for issuing them?	BNZ considers that if rules come in then the Ministry of Justice should be responsible for issuing them and industry should be appropriately consulted. BNZ considers that rules would be utilised for similar purposes as is intended for CoP, with CoP remaining BNZ's preferred method of providing detailed guidance to reporting entities.
	Information sharing	Direct data access to FIU information for other agencies	1.47	Would you support regulations being issued for a tightly constrained direct data access arrangement which enables specific government agencies to query intelligence the FIU holds? Why or why not?	BNZ's view is that direct, rather than case-by-case access to the intelligence the FIU holds has significant privacy implications. In particular, there would be risks around over-disclosure by the FIU, over-collection by Government agencies, failure of security controls including access permissions, and governance challenges that would need to be mitigated. If there is clear value in direct data access, then the privacy implications will need to be worked through in a Privacy and Data Ethics Impact Assessment as suggested above in response to question 1.7.
			1.48	Are there any other privacy concerns that you think should be mitigated?	This should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7.
			1.49	What, if any, potential impacts do you identify for businesses if information they share is then shared with other agencies? Could	This should be explored in the Privacy and Data Ethics Impact Assessment as suggested above in response to question 1.7. Particular attention should be given to issues around data quality issues proliferating through the information sharing network.

				there be potential negative repercussions notwithstanding the protections within section 44?	
		Data matching to combat other offending	1.50	Would you support the development of data-matching arrangements with FIU and other agencies to combat other financial offending, including trade-based money laundering and illicit trade? Why or why not?	This should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7. In particular, whether an Approved Information Sharing Agreement might be suitable, or an information gathering Code of Conduct issued by the Privacy Commissioner. BNZ considers that the data matching could usefully give law enforcement agencies the ability to detect activity that may be difficult to identify in isolation such as the trade-based money laundering (TBML) example provided.
			1.51	What concerns, privacy or otherwise, would we need to navigate and mitigate if we developed data-matching arrangements? For example, would allowing data-matching impact the likelihood of businesses being willing to file SARs?	This should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7.
	Licensing and registration	Registration for all reporting entities	1.52	Should there be an AML/CFT-specific registration regime which complies with international requirements? If so, how could it operate, and which agency or agencies would be responsible for its operation?	Yes, BNZ's view is that mandatory registration should be required, and it should be managed by the supervisor responsible for the reporting entity. Attempts to align in FSPR and reporting entity lists has been problematic as they have different criteria so some form of definitional alignment may be required. Once that is settled, registration would be beneficial to allow DIA, for example, to access a list of the full population of reporting entities.
			1.53	If such a regime was established, what is the best way for it to navigate existing registration and licensing requirements?	BNZ considers that a new regime would not need to navigate existing registration and licensing requirements, as it would be better for this to be an additional registration that a reporting entity would need to hold alongside any existing ones.
			1.54	Are there alternative options for how we can ensure proper visibility of which businesses require supervision and that all businesses are subject to appropriate fit-and-proper checks?	BNZ is not aware of any alternative options.
		AML/CFT licensing for some reporting entities	1.55	Should there also be an AML/CFT licensing regime in addition to a registration regime? Why or why not?	BNZ considers that this would be appropriate for certain high risk reporting entity types. BNZ's view is that this would provide confidence that those reporting entities have the appropriate controls and processes in place and have the right maturity to manage their ML/TF risk. This provides other entities with confidence in partnering with those high-risk entities and is likely to improve financial inclusion outcomes.
			1.56	If we established an AML/CFT licensing regime, how should it operate? How could we ensure the costs involved are not disproportionate?	BNZ's view is that this should be a "user pays" regime and the sector supervisor should be responsible for issuing the licences.
			1.57	Should a regime only apply to sectors which have been identified as being highly vulnerable to money laundering and terrorism financing, but are not already required to be licensed?	Yes, BNZ considers that a licencing regime for all entities is disproportionate to the risk, noting a number of sectors within the regime are already subject to significant regulatory supervision and licensing regimes, meaning their compliance programmes and governance arrangements (often targeted within licensing for augmentation) are likely to be relatively robust compared to other sectors.
			1.58	If such a regime was established, what is the best way for it to navigate existing licensing requirements?	BNZ's view is that it would operate separately as a new licencing requirement.
			1.59	Would requiring risky businesses to be licensed impact the willingness of other businesses to have them as customers? Can you think of any potential negative flow-on effects?	BNZ considers that the impact would be positive i.e., BNZ would be more willing to bank risky businesses if they are licensed.
		Registration or licensing fee	1.60	Would you support a levy being introduced for the AML/CFT regime to pay for the operating costs of an AML/CFT registration and/or licensing regime? Why or why not?	BNZ would support a modest levy being introduced for registration to cover the costs of administration. We would also support a levy for licensing. BNZ considers that the overheard for registration would be relatively low from a supervisor perspective. Licencing requires assessment and BNZ considers that there should be a cost associated with that.
			1.61	If we developed a levy, who do you think should pay the levy (some or all reporting entities)?	BNZ's view is that the licensing fee should be paid by the entity applying to be licensed.
			1.62	Should all reporting entities pay the same amount, or should the amount be calculated based on, for example, the size of the business, their risk profile, how many reports they make, or some other factor?	BNZ suggests that a separate consultation is held on the proposed factors involved in setting any levy or fee that is introduced as a result of this review.
			1.63	Should the levy also cover some or all of the operating costs of the AML/CFT regime more broadly, and thereby enable the regime to be more flexible and responsive?	BNZ considers that the current funding model is appropriate, and any additional cost of licensing could be covered by a licensing fee as noted above.
			1.64	If the levy paid for some or all of the operating costs, how would you want to see the regime's operation improved?	BNZ submits that a modest levy might cover the reasonable costs of administration. If there was to be a broader and more expensive levy, which we do not consider would be justified, we believe this should be used to provide improved access to support and guidance, more resourcing and funding to the FIU to enable them to act on the intelligence more effectively, investment in Public Private Partnerships and tools. BNZ submits that this would ideally however, come from increased central funding given this should be seen as being core to the supervision and effective implementation of the AML/CFT regime.

Scope of the AML/CFT Act	Challenges with existing terminology	"In the ordinary course of business"	2.1	How should the Act determine whether an activity is captured, particularly for DNFBPs? Does the Act need to prescribe how businesses should determine when something is in the "ordinary course of business"?	BNZ's view is that further clarity regarding the definition of "in the ordinary course of business" would be useful and result in a more consistent approach being taken by reporting entities.
			2.2	If "ordinary course of business" was amended to provide greater clarity, particularly for DFNBPs, how should it be articulated?	BNZ suggests that relevant content in the existing Guidance should be incorporated into the legislation as a definition in the interpretation section of the Act.
			2.3	Should "ordinary" be removed, and if so, how could we provide some regulatory relief for businesses which provide activities infrequently? Are there unintended consequences that may result?	BNZ submits that if "ordinary" is removed, relief could be provided through the exemption process, however this may capture a large number of businesses into the scope of the Act and unnecessarily increase the need for exemptions.
		Businesses providing multiple types of activities	2.4	Should businesses be required to apply AML/CFT measures in respect of captured activities, irrespective of whether the business is a financial institution or a DNFBP? Why or why not?	Yes, an entity may not classify itself as a reporting entity under the Act but it may be carrying out the activity covered in the scope. This effectively limits the scope of the Act to DNFBPs where other entities may be undertaking the same activity but are not classifying themselves as a lawyer/accountant for example.
			2.5	If so, should we remove "only to the extent" from section 6(4)? Would anything else need to change, e.g. to ensure the application of the Act is not inadvertently expanded?	Yes, BNZ's view is that it should be removed. Entities undertaking similar activities as existing reporting entities should have the same obligations.
			2.6	Should we issue regulations to clarify that captured activities attract AML/CFT obligations irrespective of the type of reporting entity which provides those activities? Why or why not?	Yes, see 2.4.
		"Managing client funds"	2.7	Should we remove the overlap between "managing client funds" and other financial institution activities? If so, how could we best do this to avoid any obligations being duplicated for the same activity?	BNZ's view is that there is no need to remove the overlap. Removing it may create unintentional gaps in the regime and the overlap does not place additional burden on the reporting entity if managing client funds is intended to be a captured activity, which BNZ believes it should be.
		"Sums paid as fees for professional services"	2.8	Should we clarify what is meant by 'professional fees'? If so, what would be an appropriate definition?	Yes, clarity would be useful. BNZ considers that the DIA's interpretation within the consultation document would be appropriate.
			2.9	Should the fees of a third party be included within the scope of 'professional fees'? Why or why not?	No, as these are essentially the transactions of the DNFPB's customer and should therefore be monitored by the DNFPB.
		"Engaging in or giving instructions"	2.10	Does the current definition appropriately capture those businesses which are involved with a particular activity, including the operation and management of legal persons and arrangements? Why or why not? How could it be improved?	BNZ supports the suggested change.
			2.11	Have you faced any challenges with interpreting the activity of "engaging in or giving instructions"? What are those challenges and how could we address them?	Not applicable to BNZ.
		Definition of financial institution activities	2.12	Should the terminology in the definition of financial institution be better aligned with the meaning of financial service provided in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008? If so, how could we achieve this?	BNZ supports consistency between the two pieces of legislation by updating the definition to align as far as practical as it may result in confusion where a business may be deemed a financial institution under one piece of legislation and not the other. However, it may be appropriate for the purposes of the AML/CFT Act to carve out specific FIs that are not intended to be captured, such as some insurance businesses. This could be achieved through regulations/ general exemptions.
			2.13	Are there other elements of the definition of financial institution that cause uncertainty and confusion about the Act's operation?	No.
		Definition of "high-value dealer"	2.14	Should the definition of high-value dealer be amended so businesses which deal in high value articles are high-value dealers irrespective of how frequently they undertake relevant cash transactions? Why or why not? Can you think of any unintended consequences that might occur?	Yes, BNZ considers that the risk of the high-value dealer (HVD) is not only at placement but also at integration. Cash transactions only captures the risk of placement and not integration.
			2.15	What do you anticipate would be the compliance impact of this change?	Increase in number of entities, increase in compliance overhead for reporting entities and DIA. The impact assessment undertaken in 2017 to assess the impact of full AML/CFT responsibilities on HVDs indicated that this cost would not be immaterial to these businesses.

		Exemption for pawnbrokers	2.16	Should we revoke the exclusion for pawnbrokers to ensure they can manage their money laundering and terrorism financing risks? Why or why not?	Yes, BNZ's view is that there is no reason for pawnbrokers to be excluded.
			2.17	Given there is an existing regime for pawnbrokers, what obligations should we avoid duplicating to avoid unnecessary compliance costs?	BNZ does not believe an approach should be undertaken to carve out obligations for pawnbrokers even though these obligations are partially duplicated in the Secondhand Dealers and Pawnbrokers Act 2004. If the obligations are relatively similar the entity should adhere to the higher standard and duplicating obligations across legislation is unlikely to materially increase the compliance cost of the entity and will ensure no unintended coverage gaps in the regime occurs.
		Appropriate cash transaction threshold	2.18	Should we lower the applicable threshold for high value dealers to enable better intelligence about cash transactions? Why or why not?	BNZ's view is that the current threshold should drop and align to any changes to the large cash transaction (LCT) thresholds for PTR, with a decrease in the current LCT threshold supported by BNZ.
			2.19	If so, what would be the appropriate threshold? How many additional transactions would be captured? Would you stop using or accepting cash for these transactions to avoid AML/CFT obligations?	See response to question 2.18.
		Stored Value Instruments	2.20	Do you currently engage in any transactions involving stores of value that are not portable devices (e.g. digital stored value instruments)? What is the nature and value of those transactions?	No.
			2.21	What risks do you see with stored value instruments that do not use portable devices?	BNZ considers that the risks are anonymity, similar issues to cash and around ease of movement. It will depend on the nature of top up process.
			2.22	Should we amend the definition of "stored value instruments" to be neutral as to the technology involved? If so, how should we change the definition?	Yes, BNZ suggests the definition is amended to "any vehicle or technology that allows value to be stored".
	Potential new activities	Acting as a secretary of a company or partner in a partnership	2.23	Should acting as a secretary of a company, partner in a partnership, or equivalent position in other legal persons and arrangements attract AML/CFT obligations?	No.
			2.24	If you are a business which provides this type of activity, what do you estimate the potential compliance costs would be for your business if it attracted AML/CFT obligations? How many companies or partnerships do you provide these services for?	Not applicable to BNZ.
		Criminal defence lawyers	2.25	Should criminal defence lawyers have AML/CFT obligations? If so, what should those obligations be and why?	BNZ considers that the only obligation should be to report suspicious transactions if they suspect they are being paid by the proceeds of crime. This needs to be balanced with the defendant's right to a fair trial and the protection of any privileged information.
			2.26	If you are a criminal defence lawyer, have you noticed any potentially suspicious activities? Without breaching legal privilege, what were those activities and what did you do about them?	Not applicable to BNZ.
			2.27	Are there any unintended consequences that may arise from requiring criminal defence lawyers to have limited AML/CFT obligations, that we need to be aware of?	See response to question 2.25.
		Non-life insurance businesses	2.28	Should non-life insurance companies become reporting entities under the Act?	No, BNZ does not support non-life insurance companies becoming reporting entities under the Act.
			2.29	If so, should non-life insurance companies have full obligations, or should they be tailored to the specific risks we have identified?	If they do become reporting entities, BNZ's view is that their obligations should be tailored to specific risks identified within the sector as all obligations under the Act would not reflect a risk-based approach due to the nature of insurance products available within New Zealand.
			2.30	If you are a non-life insurance business, what do you estimate would be the costs of having AML/CFT obligations (including limited obligations)?	BNZ is not an insurance business but distributes third party owned general insurance products. BNZ has activities that are captured under the Act already so believes there would be limited impact/cost.

		Including all types of Virtual Asset Service Providers	2.31	Should we use regulations to ensure that all types of virtual asset service providers have AML/CFT obligations, including by declaring wallet providers which only provide safekeeping or administration are reporting entities? If so, how should we?	Yes, through the definition of what a VASP is and that they attract obligations under the Act. This should include entities that facilitate the trading of stable coins and central bank digital currencies in addition to traditional virtual assets such as Bitcoin or Ethereum.
			2.32	Would issuing regulations for this purpose change the scope of capture for virtual asset service providers which are currently captured by the AML/CFT regime?	Yes, BNZ understands that not all VASPs are currently captured by the Act, however businesses within this sector typically deem themselves as captured on a voluntary basis. Updating the definition to ensure full capture will provide additional clarity and a consistent approach across the sector.
		Combatting trade-based money laundering - Preparing or processing invoices	2.33	Is the Act sufficiently clear that preparing or processing invoices can be captured in certain circumstances?	No, BNZ considers that this should be clearer in the Act. However, careful consideration needs to be given to how this interplays with question 2.4 because the unintended consequence could mean that huge volumes of different entities are captured in the scope of the Act.
			2.34	If we clarified the activity, should we also clarify what obligations businesses should have? If so, what obligations would be appropriate?	Yes, BNZ's view is that it should be clarified that they have CDD, TM, and SARs obligations and that training, vetting, and record keeping are applicable but not PTR.
		Preparing annual accounts and tax statements	2.35	Should preparing accounts and tax statements attract AML/CFT obligations? Why or why not?	Yes, BNZ considers that there is no reason that this should be exempt. There is a risk that would push some of the activity into unregulated markets.
			2.36	If so, what would be the appropriate obligations for businesses which provide these services?	See response to question 2.34.
		Non-profit organisations vulnerable to terrorism financing	2.37	Should tax-exempt non-profits and non-resident tax charities be included within the scope of the AML/CFT Act given their vulnerabilities to being misused for terrorism financing?	No, BNZ considers that this should be the remit of the existing reporting entities acknowledging that these entities are high risk in nature, so the reporting entities are responsible for monitoring the transactions flowing through the accounts.
			2.38	If these non-profit organisations were included, what should their obligations be?	If they were included, BNZ's view is that their obligations should cover CDD on all donors, source of funds and wealth, record keeping, training, TM, and SARs.
	Currently exempt sectors or activities		2.39	Are there any other regulatory or class exemptions that need to be revisited, e.g. because they no longer reflect situations of proven low risk or because there are issues with their operation?	BNZ submits that the exemption on conducting CDD on a default KiwiSaver customer needs to be revisited. The exemption currently excludes nature and purpose (N&P) which should be included as part of the exemption. That exemption also creates challenges in relation to PTR obligations where the same customer deposits funds via wire transfer and triggers a PTR. BNZ also considers that the following exemptions need to be revoked or revisited: • *10. Relevant services provided in respect of certain remittance card facilities*- for certain typologies (like child exploitation and terrorist financing) the transactions are smaller in nature and this exempts these entities and would create a gap. BNZ proposes that this exemption should be revoked or revisited to ensure the risk of this activity occurring through these providers are appropriately addressed. • *15. Relevant services provided in respect of certain stored value instruments.* BNZ's submissions above in relation to relevant services provided in respect of certain remittance card facilities also apply to this exemption.
		Internet auctioneers and online marketplaces	2.40	Should the exemption for internet auctions still apply, and are the settings correct in terms of a wholesale exclusion of all activities?	No, BNZ considers that the exemption should be removed, and internet auctions should be included if sales conducted through the auction house are above a certain threshold (e.g., individual items for over $1,000 should be included).
			2.41	If it should continue to apply, should online marketplaces be within scope of the exemption?	If the exemption continues, BNZ's view is that online marketplaces like TradeMe and Facebook should be included for transactions over a certain threshold.
			2.42	What risks do you see involving internet marketplaces or internet auctions?	BNZ considers that the risks in internet marketplaces and internet auctions are facilitating the trade of stolen goods, non-arm's length transactions, and anonymity.
			2.43	If we were to no longer exclude online marketplaces or internet auction providers from the Act, what should the scope of their obligations be? What would be the cost and impact of that change?	BNZ's view is that the obligations should primarily be in relation to CDD, SARs and TM.

		Special remittance card facilities	2.44	Do you currently rely on this regulatory exemption to offer special remittance card facilities? If so, how many facilities do you offer to how many customers?	No, BNZ does not rely on it.
			2.45	Is the exemption workable or are changes needed to improve its operation? What would be the impact on compliance costs from those changes?	Please see the response to question 2.39.
			2.46	Do you consider the exemption properly mitigates any risks of money laundering or terrorism financing through its conditions?	No.
		Non-finance businesses which transfer money or value	2.47	Should we amend this regulatory exemption to clarify whether and how it applies to DNFBPs? If so, how?	No.
	Potential new regulatory exemptions		2.48	Should we issue any new regulatory exemptions? Are there any areas where Ministerial exemptions have been granted where a regulatory exemption should be issued instead?	BNZ has no comment on this question.
		Acting as a trustee or nominee	2.49	Do you currently use a company to provide trustee or nominee services? If so, why do you use them, and how many do you use? What is the ownership and control structure for those companies?	No, BNZ does not use a company to provide trustee or nominee services.
			2.50	Should we issue a new regulatory exemption to exempt legal or natural persons that act as trustee, nominee director, or nominee shareholder where there is a parent reporting entity involved that is responsible for discharging their AML/CFT obligations? Why or why not?	Yes, BNZ's view is that an exemption could be issued as long as it is clear that the parent's reporting entities obligations include those of the subsidiary.
			2.51	If so, what conditions should be attached to such an exemption to ensure it does not raise other money laundering or terrorism financing vulnerabilities?	See response to question 2.50.
		Crown entities, Crown agents etc	2.52	Should we issue a new regulatory exemption to exempt Crown entities, entities acting as agents of the Crown, community trusts, and any other similar entities from AML/CFT obligations?	No, BNZ's view is that if they are carrying out activities that are captured under the Act they should be subject to the same obligations.
			2.53	If so, what should be the scope of the exemption and possible conditions to ensure it does not raise other money laundering or terrorism financing vulnerabilities?	See response to question 2.53.
		Low value loan providers	2.54	Should we issue an exemption for all reporting entities providing low value loans, particularly where those loans are provided for social or charitable purposes?	No, although the risk of money laundering is relatively low, BNZ considers that there would be scenarios where terrorist financing would be a risk with these types of entities.
			2.55	If so, what conditions should be attached to such an exemption to ensure it does not raise other money laundering or terrorism financing vulnerabilities?	BNZ's view is that no exemption should be applied.
	Territorial scope		2.56	Should the AML/CFT Act define its territorial scope?	Yes, BNZ considers that the Act should define its territorial scope.
			2.57	If so, how should the Act define a business or activity to be within the Act's territorial scope?	BNZ's view is that the scope should be: if the entity is registered in New Zealand, or in the ordinary course of business it has customers that are New Zealand-based, or it derives revenue from activity in or associated with NZ.
Supervision, regulation, and enforcement	Agency supervision model		3.1	Is the AML/CFT supervisory model fit-for-purpose or should we consider changing it?	BNZ considers that the current supervisory model could be improved as it can result in different standards and outcomes for different sectors. Activity that is non-compliant and attracts adverse findings in one sector may be dealt with as only partial compliant and a recommendation for improvement in another. Compliance costs and expectations may not be consistently applied across the sectors due to different approaches by the three supervisors. In addition, triple branded guidance runs the risk of being negotiated to agreement between the three supervisors to the point where the guidance becomes too high level.
			3.2	If it were to change, what supervisory model do you think would be more effective in a New Zealand context?	BNZ would support a thorough re-assessment of the supervisory approach, to revalidate whether a single supervisory model that can drive consistency would be the best approach.

					Although a single supervisory model will have some benefits as described above, it could also pose challenges, with a particular focus on ensuring that larger and more complex sectors retain adequate access to their supervisors.
		Mechanisms for ensuring consistency	3.3	Do you think the Act appropriately ensures consistency in the application of the law between the three supervisors? If not, how could inconsistencies in the application of obligations be minimised?	No, see response to question 3.1. BNZ considers that inconsistencies could also be addressed by improved regulations, codes of practice and guidance.
			3.4	Does the Act achieve the appropriate balance between ensuring consistency and allowing supervisors to be responsive to sectoral needs? If not, what mechanisms could be included in legislation to achieve a more appropriate balance?	BNZ considers that reporting entities' compliance programmes should be driven by the Sector Risk Assessment and therefore provide the supervisors the ability to direct the content or risks that their reporting entities should be concerned about.
	Powers and functions		3.5	Are the statutory functions and powers of the supervisors appropriate or do they need amending? If so, why?	Yes, they are appropriate. However, BNZ would support administrative penalties to be included in the powers of the supervisors.
		Inspection powers	3.6	Should AML/CFT Supervisors have the power to conduct onsite inspections of reporting entities operating from a dwelling house? If so, what controls should be implemented to protect the rights of the occupants?	Yes, as more and more businesses are operated from home BNZ considers that supervisors may need this power. However, BNZ's view is that the power should only relate to a dwelling house that is a registered office or the only physical address associated with the business (not the home of an employee that works from home where there is another registered office/physical address). If the onsite inspection covers a dwelling house, then a supervisor could be required to give sufficient notice in writing.
			3.7	What are some advantages or disadvantages of remote onsite inspections?	BNZ's view is that the advantage would be that supervisors are able to undertake more inspections for less operational overhead. The disadvantage is likely to be that supervisors would not get as in-depth oversight of reporting entities.
			3.8	Would virtual inspection options make supervision more efficient? What mechanisms would be required to make virtual inspections work?	BNZ considers that it might be slightly more logistically challenging to share information as part of the inspection and some individuals may struggle to convey messages adequately on virtual calls as opposed to in person. On the other hand, inspections can take place from anywhere in the country, pooling resources without the need for travel.
		Approving the formation of a Designated Business Group	3.9	Is the process for forming a DBG appropriate? Are there any changes that could make the process more efficient?	BNZ has no suggested changes.
			3.10	Should supervisors have an explicit role in approving or rejecting the formation of a DBG? Why or why not?	Yes, BNZ considers that they should have play a role in approving a DBG.
	Regulating auditors, consultants and agents	Independent auditors	3.11	Should explicit standards for audits and auditors be introduced? If so, what should those standards be and how could they be used to ensure audits are of higher quality?	Yes, BNZ's view is that standards should be introduced to ensure consistency and that the same approach is applied for all reporting entities regardless of the size. Consideration should be given to the existing ISAEs, e.g., ISAE 3000.
			3.12	Who would be responsible for enforcing the standards of auditors?	BNZ's view is that CPA and CAANZ are the appropriate bodies to ensure the audits are carried out to the required standards.
			3.13	What impact would that have on cost for audits? What benefits would there be for businesses if we ensured higher quality audits?	BNZ considers that costs would increase generally for those who are not using a practitioner who adheres to those standards, the benefit would be that reporting entities would gain comfort that they are receiving a product that meets an international standard in terms of audit and that the right standards are being followed to provide a view on the effectiveness of their programme.
			3.14	Should there be any protections for businesses which rely on audits, or liability for auditors who do not provide a satisfactory audit?	Yes, BNZ's view is that there should be protections and liabilities similar to the provisions around statutory financial audits.
		Consultants	3.15	Is it appropriate to specify the role of a consultant in legislation, including what obligations they should have? If so, what are appropriate obligations for consultants?	No, BNZ does not consider that this is necessary.
			3.16	Do we need to specify what standards consultants should be held to? If so, what would it look like? Would it include specific standards that must be met before providing advice?	No, BNZ's view is that reporting entities should have the obligation to ensure the consultant they are using has the appropriate skills and knowledge to carry out the activity they are using them for.
			3.17	Who would be responsible for enforcing the standard of consultants?	See response to question 3.16 above.

		Agents	3.18	Do you currently use agents to assist with your AML/CFT compliance obligations? If so, what do you use agents for?	Yes, BNZ uses brokers, payment facilitators and businesses whose customers typically require asset finance, such as car dealerships to assist with some CDD obligations.
			3.19	Do you currently take any steps to ensure that only appropriate persons are able to act as your agent? What are those steps and why do you take them?	BNZ's use of agents is governed by legal arrangements and training is provided with significant checking of the quality of output of those agents.
			3.20	Should there be any additional measures in place to regulate the use of agents and third parties? For example, should we set out who can be an agent and in what circumstances they can be relied upon?	No, BNZ considers that it should be on a "user beware" basis.
		Comprehensiveness of penalty regime	3.21	Does the existing penalty framework in the AML/CFT Act allow for effective, proportionate, and dissuasive sanctions to be applied in all circumstances, including for larger entities? Why or why not?	No, BNZ's view is that it is unlikely that a penalty could exceed even the cost of compliance under the current provisions of the Act and the magnitude of fines able to be issued under the New Zealand legislation is not in alignment with the current global practice.
			3.22	Would additional enforcement interventions, such as fines for non-compliance or enabling the restriction, suspension, or removal of a licence or registration enable more proportionate, effective, and responsive enforcement?	Yes – the use of additional enforcement interventions should be considered as a means of enabling proportionate and graduated responses. BNZ considers that there also needs to be monitoring for situations where there is an aggregation of fines which could point to material deficiencies and warranting serious enforcement attention.
			3.23	Are there any other changes we could make to enhance the penalty framework in the Act?	No.
		Allowing for higher penalties at the top end of seriousness	3.24	Should the Act allow for higher penalties at the top end of seriousness to ensure sufficiently dissuasive penalties can be imposed for large businesses? If so, what should the penalties be?	Yes, BNZ's view is that the fine needs to be proportionate to the harm caused.
		Sanctions for employees, directors, and senior management	3.25	Would broadening the scope of civil sanctions to include directors and senior management support compliance outcomes? Should this include other employees?	BNZ notes that there was careful consideration given to the director and senior manager liability settings at the time the current AML/CFT regime was being developed and submits that these settings remain appropriate. We note in particular the risk of a chilling effect on the appetite for highly skilled and experienced professionals to take on directorships and senior management roles where individual liability may attach in some form, to a regime as comprehensive and complex as AML/CFT. The existing focus on entity liability is effective in our view, given the impacts of censure and regulatory action may ultimately reflect on those in governance positions, and the failures typically being on the entity in relation to its processes and procedures.
			3.26	If penalties could apply to senior managers and directors, what is the appropriate penalty amount?	As noted above, BNZ does not support the application of penalties and liability at a senior manager and director level.
			3.27	Should compliance officers also be subject to sanctions or provided protection from sanctions when acting in good faith?	As noted above, BNZ does not support the application of penalties and liability at a senior manager level, including compliance officers.
		Liquidation following non-payment of AML/CFT Penalties	3.28	Should DIA have the power to apply to a court to liquidate a business to recover penalties and costs obtained in proceedings undertaken under the Act?	Yes.
		Time limit for prosecuting AML/CFT offences	3.29	Should we change the time limit by which prosecutions must be brought by? If so, what should we change the time limit to?	Yes, BNZ's view is that this should ideally be aligned to the record keeping obligations of the reporting entities so as to support evidence-based prosecutions.
Preventive Measures	Customer Due Diligence		4.1	What challenges do you have with complying with your CDD obligations? How could these challenges be resolved?	BNZ notes the following challenges in relation to CDD obligations: • The definition of Customer is not clear. • Allowance for Simplified DD is not maintained in a single place in the legislation. If there is a removal of exemptions that do allow Simplified DD then BNZ submits that these need to be brought into the Act. • Address verification – there is a lack of clarity as to what is actually required (what is suitable or not). It is also not clear what the benefit/purpose of address verification is (FATF does not require it). • No clear definition for vehicle for holding assets. • Definition of Ultimate Beneficial Owner need to be clarified (more than 25% vs. 25% or more). • How to effectively identify beneficial owner in discretionary trusts and when.

					• The Australian AML/CFT Act helpfully identifies who the reporting entity's "customer" is for "designated services" that trigger CDD obligations. This approach removes ambiguity for the reporting entity and ensures the reporting entity conducts CDD on the right "person". BNZ suggest that New Zealand adopts a similar approach. • Definition of Beneficial Owner could be clarified to exclude customers who are the subject of a court order granted under the Personal Property Protection Act. BNZ also suggests consideration be given to excluding from the definition of beneficial owner other examples of beneficial owners who are not in "control" of their financial accounts.
		Definition of a customer	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?	BNZ notes that the following situations can be challenging: • Syndicated Lending – Multiple parties (identifying who is actually the customer). • Complex structures including those that involve large offshore private equity firms. • Vulnerable Customers – customers do not have standard CDD information, especially when they come through in bulk. • Identifying nominees & bearer shares. • Effective controllers when they are not identified through foundation documents.
			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?	Yes, BNZ would support a more prescriptive approach so that clarity can be provided, in particular where complex business relationships exist.
			4.4	If so, what are the situations where more prescription is required to define the customer?	BNZ considers that more prescription is required where there is a chain of reporting entities and complex structures.
			4.5	Do you anticipate that there would be any benefits or additional challenges from a more prescriptive approach being taken?	Yes. BNZ considers that there would be benefits in terms of clarity around who the customer is who CDD action needs to be taken on and it would remove subjectivity and potential for conducting more CDD than required. There may be unintended consequences such as over or under capture and it could potentially open the regime up to being gamed by bad actors.
		Definition of a customer in real estate transactions	4.6	Should we amend the existing regulations to require real estate agents to conduct CDD on both the purchaser and vendor?	Yes. BNZ considers that the risk lies within the purchasing of the property (integration) rather then who is selling the property. This amendment would assist to ensure it is an arms-length transaction between two independent parties.
			4.7	What challenges do you anticipate would occur if this was required? How might these be addressed? What do you estimate would be the costs of the change?	There may be some logistical challenges for some types of purchasing methods (e.g., auction) in terms of how and when CDD information is collected. Improved methods for sharing CDD information between reporting entities would reduce the compliance burden for real estate agents.
			4.8	When is the appropriate time for CDD on the vendor and purchaser to be conducted in real estate transactions?	BNZ considers that the appropriate time to conduct CDD on the vendor is at the time of contract being signed and for the purchaser before finalising the purchase agreement after acceptance of offer/bid.
		When CDD must be conducted	4.9	Are the prescribed points where CDD must be conducted clear and appropriate? If not, how could we improve them?	BNZ's view is that more clarity could be provided on when/where delayed CDD would be appropriate. BNZ also considers that further clarity is needed in terms of when ongoing CDD is required and what actions need to be undertaken to complete ongoing CDD. This clarity would be particularly useful for existing customers as defined in the Act.
			4.10	For enhanced CDD, is the trigger for unusual or complex transactions sufficiently clear?	Yes, however, BNZ considers that it could be clarified further (e.g., if a SAR is submitted, then ECDD is required).
			4.11	Should CDD be required in all instances where suspicions arise?	No. BNZ's view is that it should not be required where there is an active operation and ECDD may compromise the operation or minors/vulnerable customers are involved.
			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?	BNZ's view is that where there are no concerns as described in 4.11 above, ECDD should be conducted to the normal standard of the Act. Where situations described in response to question 4.11 arise, a desk based ECDD (the reporting entity does not reach out to customers) could be undertaken.
			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?	See response to question 4.12.
		Managing funds in trust accounts	4.14	What money laundering risks are you seeing in relation to law firm trust accounts?	BNZ has observed that the nature of trust accounts obscures the true source of funds or destination of funds and other reporting entities involved in the transaction.
			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?	BNZ considers that it would be helpful if lawyers were required to provide a structure chart for complex customers together with a solicitor's certificate confirming the chart is true and correct to the best of their knowledge after due and proper enquiry. This chart could also be prepared and/or certified by the customer's accountant or auditor.
			4.16	Should this only apply to law firm trust accounts or to any DNFBP that holds funds in its trust account?	BNZ's view is that this should apply to any DNFBP.

			4.17	What do you estimate would be the costs of any additional controls you have identified?	BNZ does not have a view of the potential costs.
		What information needs to be obtained and verified	4.18	Is the information that the Act requires to be obtained and verified still appropriate? If not, what should be changed?	BNZ considers that verification of address may no longer be a necessity given the improved identity information that can be obtained in an increasingly digital environment.
			4.19	Are the obligations to obtain and verify information clear?	No. BNZ considers that clarity could be provided on the verification required between a customer and a Person acting on behalf of (PAOB).
			4.20	Is the information that businesses should obtain and verify about their customers still appropriate?	BNZ's view is that the information is broadly appropriate. BNZ considers that further clarity is required on definition of Beneficial Ownership. BNZ considers that source of wealth (SOW) or source of funds (SOF) should be SOW and SOF. BNZ considers that clarity could be provided around the extent of SOW verification required. i.e., is the expectation to verify the customer's wealth being maintained with the reporting entity or a holistic verification on the customer's overall wealth across all reporting entities and jurisdictions.
			4.21	Is there any other information that the Act should require businesses to obtain or verify as part of CDD to better identify and manage a customer's risks?	BNZ's view is that the "nature & purpose" requirement should be more prescribed in the Act.
		Obligations for legal persons and legal arrangements	4.22	Should we issue regulations to require businesses to obtain and verify information about a legal person or legal arrangement's form and proof of existence, ownership and control structure, and powers that bind and regulate? Why?	Yes. BNZ considers that this requirement would assist in identifying and recording beneficial ownership and who sits behind a complex legal structure
			4.23	Do you already obtain some or all of this information, even though it is not explicitly required? If so, what information do you already obtain and why	BNZ obtains information on legal person/legal arrangement form and proof of existence, ownership structure.
			4.24	What do you estimate would be the impact on your compliance costs for your business if regulations explicitly required this information to be obtained and verified?	BNZ considers the impact on compliance costs for its business would be negligible.
		Source of wealth versus source of funds	4.25	Should we issue regulations to prescribe when information about a customer's source of wealth should be obtained and verified versus source of funds? If so, what should the requirements be for businesses?	No, BNZ's view is that SOW and SOF should be collected in all situations where ECDD is required. However, if both are not required in all situations, then specific regulations governing when SOW vs. SOF (or both) is required would be beneficial.
			4.26	Are there any instances where businesses should not be required to obtain this information? Are there any circumstances when source of funds and source of wealth should be obtained and verified?	BNZ's view is that SOF and SOW should be required where ECDD is required.
			4.27	Would there be any additional costs resulting from prescribing further requirements for source of wealth and source of funds?	BNZ considers that the additional costs would be negligible.
		Beneficiaries of life and other investment-related insurance	4.28	Should we issue regulations to require businesses to obtain information about the beneficiary/ies of a life insurance or investment-related insurance policy and prescribe the beneficiary/ies as a relevant risk factor when determining the appropriate level of CDD to conduct? Why or why not?	BNZ would not currently support issuing these regulations. BNZ considers that the compliance overhead is unnecessary if the Ministry has identified that these products are not currently available in New Zealand. BNZ considers that the risk profile of current insurance products in New Zealand is low and there would be limited benefit to capture them under the Act.
			4.29	If we required this approach to be taken regarding beneficiaries of life and other investment-related insurance policies, should the obligations only apply for moderate or high-risk insurance policies? Are there any other steps we could take to ensure compliance costs are proportionate to risks	See response to question 4.28 above.

		Identifying the beneficial owner - Definition of beneficial owner	4.30	Have you encountered issues with the definition of a beneficial owner? If so, what about the definition was unclear or problematic?	Yes. The definition relating to "person on whose behalf a transaction is conducted" (POWBATICS) is problematic and challenging to implement.
			4.31	How can we improve the definition in the Act as well as in guidance to address those challenges?	BNZ suggests the following changes: • "Beneficial Owner" should be defined as the owner of your customer, not the owner of the funds in the customer's account. • Further clarity should be given by including "Ultimate Beneficial Owner" in the definition. • "25% or more" should replace "more than 25%".
		'Ultimate' ownership and control	4.32	Should we issue a regulation which states that businesses should be focusing on identifying the 'ultimate' beneficial owner? If so, how could "ultimate" beneficial owner be defined?	Yes. BNZ suggests that the "ultimate beneficial owner" could be defined as "the individual who ultimately benefits from the operations or profits of the customer".
			4.33	To extent are you focusing beneficial ownership checks on the 'ultimate' beneficial owner, even though it is not strictly required?	BNZ applies the suggested definition provided in response to question 4.32 above.
			4.34	Would there be any additional costs resulting from prescribing that businesses should focus on the 'ultimate' beneficial owner?	BNZ considers that the additional costs would be negligible.
		The 'person on whose behalf a transaction is conducted'	4.35	Should we issue a regulation which states that for the purposes of the definition of beneficial owner, a person on whose behalf a transaction is conducted is restricted to a person with indirect ownership or control of the customer (to align with the FATF standards)? Why or why not?	Yes. BNZ considers that this would simplify the Beneficial Owner/customer identification process and remove duplication or the need for complicated and confusing exemptions.
			4.36	Would this change make the "specified managing intermediaries" exemption or Regulation 24 of the AML/CFT (Exemption) Regulations 2011 unnecessary? If so, should the exemptions be revoked?	Yes. BNZ considers that this change would make the "specified managing intermediaries" exemption and the exemption for Professional Services (Regulation 24) unnecessary and they should be removed. However, BNZ's view is that allowances for the simplified due diligence in these exemptions should remain and brought into the Act.
			4.37	Would there be any additional compliance costs or other consequences for your business from this change? If so, what steps could be taken to minimise theses costs or other consequences?	BNZ's view is that this change would result in a reduction in compliance cost.
		Process for identifying who ultimately owns or controls legal persons	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?	BNZ's internal process is consistent with Steps 1 and 2 of the FATF standards but not Step 3. BNZ's view is that there would be limited benefit to including Step 3.
			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?	Yes.
			4.40	Are there any aspects of the process the FATF has identified that not appropriate for New Zealand businesses?	As noted in response to question 4.38 above, BNZ's view is that Step 3 is not appropriate as it would add limited value.
			4.41	Would there be an impact on your compliance costs by mandating this process? If so, what would be the impact?	BNZ considers that the impact on its compliance costs would be negligible if step 3 is excluded. However, even with step 3 included, BNZ considers that the additional costs would not be significant.
		Process for identifying who ultimately owns or controls legal arrangements	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?	Yes. BNZ considers that this would be useful. BNZ's view is that language that defines what would be acceptable would be helpful for reporting entities and lawyers. For example, in relation to the settlor, BNZ's view is that nominal settlors should be excluded from the definition for the purposes of determining beneficial ownership.
			4.43	Would there be an impact on your compliance costs by mandating that this process be applied? If so, what is the impact?	BNZ considers that the impact on its compliance costs would be negligible.

		Reasonable steps to verify information obtained through CDD	4.44	Are the standards of verification and the basis by which verification of identity must be done clear and still appropriate? If not, how could they be improved?	Yes.
		Identity Verification Code of Practice	4.45	Do you encounter any challenges with using IVCOP? If so, what are they, and how could they be resolved?	If the address verification requirement is not removed, BNZ submits that IVCOP needs to be amended to consider address verification. BNZ's view is that IVCOP also needs to be amended to: • consider high-risk customers; • clarify how trusted referees can be utilised to verify documents; • clarify requirements for digital vs. hardcopy verification and appropriately assess the risks of both considering the tools currently available; and • bring the explanatory note into the IVCOP. These issues (and those raised in the subsequent identity related questions) should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7.
			4.46	Is the approach in IVCOP clear and appropriate? If not, why?	See the response to question 4.45.
			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?	Yes.
			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?	BNZ's view is that some of the additional measures considered in the explanatory notes are weak. A robust biometric solution should be adequate on its own without verification back to a Government database. IVCOP needs to anticipate a move towards a digital ID framework. Consideration also needs to be given to expanding suitable identity documentations to overseas customers.
			4.49	Do you have any challenges in complying with Part 3 of IVCOP in relation to electronic verification? What are those challenges and how could we address them?	See the response to question 4.48.
		Verifying the address of customers who are natural persons	4.50	What challenges have you faced with verification of address information? What have been the impacts of those challenges?	BNZ considers the challenges with address verification are the inability to confirm the legitimacy of the documents provided and that addresses are unable to be verified on an ongoing basis. Additionally, with more address verification documents only being available in a digital format verification is potentially challenging.
			4.51	In your view, when should address information be verified, and should that verification occur?	BNZ questions the need for address verification given a customer can move the next day without verification being required. BNZ would still support the requirement for address collection as this does provide some benefit. No information is passed externally from BNZ as to whether an address included in reporting is verified or not. BNZ notes that other jurisdictions do not require address verification.
			4.52	How could we address challenges with address verification while also ensuring law enforcement outcomes are not undermined? Are there any fixes we could make in the short term?	BNZ is unsure how address verification benefits law enforcement. For example, when a customer changes address after onboarding an old verified address seems unlikely to assist law enforcement. If the address is considered beneficial for law enforcement, BNZ submits that a potential solution could be for reporting entities to obtain and keep a history of all the addresses that customer has provided (but not verify them).
		Obligations in situations of higher and lower risk - Expanding the range of measures available to mitigate high-risk customers	4.53	Do you currently take any of the steps identified by the FATF standards to manage high-risk customers, transactions or activities? If so, what steps do you take and why?	Yes, BNZ takes most of the steps identified by the FATF standards.

			4.54	Should we issue regulations or a Code of Practice which outlines the additional measures that businesses can take as part of enhanced CDD?	Yes.
			4.55	Should any of the additional measures be mandatory? If so, how should they be mandated, and in what circumstances?	Yes. BNZ considers that most of the additional measures should be mandatory. However, BNZ's view is that senior management approval should be required only in certain circumstances, in line with a risk-based approach.
		Conducting simplified CDD on persons acting on behalf of large organisations	4.56	Are there ways we can enhance or streamline the operation of the simplified CDD obligations, in particular where the customer is a large organisation?	No. BNZ does not see this as an issue.
			4.57	Should we issue regulations to allow employees to be delegated by a senior manager without triggering CDD in each circumstance? Why?	No. BNZ's view is that the regulation should clarify who a PAOB is and what activity would constitute a person as a PAOB for the customer. Where the individual is deemed to be a PAOB, CDD should be conducted.
		Mandatory enhanced CDD for all trusts	4.58	Should we remove the requirement for enhanced CDD to be conducted for all trusts or vehicles for holding personal assets? Why or why not?	Yes. BNZ's view is that the requirement should be removed, and reporting entities should follow a risk-based approach. Reporting entities should be focusing on the higher-risk customers. A large number of trusts may not be high-risk in nature or in the activity that they undertake with the reporting entity. Additionally, recommendation 16 in the FATF Standards call out trusts as a high-risk factor along with other high-risk factors. However, trusts are the only one in the New Zealand Act that are considered to require ECDD in all situations. BNZ acknowledges that trusts are high-risk in nature but notes that New Zealand has a high proportion of trusts that are discretionary family trusts where the transactions are low value and/or limited in frequency. The AML "risk" represented by trusts should be assessed across all factors and not be pre-determined by the fact that the customer is a trust.
			4.59	If we removed this requirement, what further guidance would need to be provided to enable businesses to appropriately identify high risks trusts and conduct enhanced CDD?	BNZ submits that more clarification is needed around the actual requirements of ECDD. Guidance would be beneficial to assist reporting entities in identifying trusts that are actually high risk.
			4.60	Should high-risk categories of trusts which require enhanced CDD be identified in regulation or legislation? If so, what sorts of trusts would fall into this category?	No. However, BNZ would welcome guidance as to which type of trusts may be higher risk in nature. Trusts should be assessed on a case-by-case basis on the nature of the trust, nature and purpose of the relationship and intended activity to be undertaken by the trust through the reporting entity.
		Ongoing customer due diligence and account monitoring	4.61	Are the ongoing CDD and account monitoring obligations in section 31 clear and appropriate, or are there changes we should consider making?	BNZ would appreciate clarification around ongoing CDD (OCDD) requirements.
		Considering whether and when customer due diligence was last conducted	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?	Yes.
			4.63	Should we issue regulations to require businesses to consider these factors when conducting ongoing CDD and account monitoring? Why?	Yes, regulations mandating that these should be considered would be useful as provides additional clarity. A risk-based approach can still be adopted by a reporting entity with these considerations being mandated.
			4.64	What would be the impact on your compliance costs if we issued regulations to make this change? Would ongoing CDD be triggered more often?	BNZ considers that the impact on its compliance costs would be negligible. However, it may depend on the detail of the requirements. Further consultation would be encouraged once a view is formed on these requirements on the impact.
			4.65	Should we mandate any other requirements for ongoing CDD, e.g. frequently it needs to be conducted?	BNZ would recommend that a minimum standard for frequency is set and undertaken more frequently based on the level of risk presented by the customer. Additional clarity on the requirements/ expectations for existing customers would be beneficial as well as the standard that OCDD should be undertaken to.
		Ongoing CDD requirements where there are no financial transactions	4.66	If you are a DNFBP, how do you currently approach your ongoing CDD and account monitoring obligations where there are few or no financial transactions?	Not applicable to BNZ.
			4.67	Should we issue regulations to require businesses to review activities provided to the customer as well as account activity and	Not applicable to BNZ.

				transaction behaviour? What reviews would you consider to be appropriate?	
			4.68	What would be the impact on your compliance costs if we issued regulations to make this change	Not applicable to BNZ.
		Information that needs to be reviewed for account monitoring	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?	Yes. BNZ has targeted risk-based transaction monitoring scenarios outside customer risk rating.
			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?	BNZ's view is that the Act should require transaction monitoring as opposed to account monitoring. Additionally, BNZ considers that adverse media and specified designated national (SDN) screening should be included.
		Conducting CDD on existing (pre-Act) customers	4.71	How could we ensure that existing (pre-Act) customers are subject to the appropriate level of CDD? Are any of the options appropriate and are there any other options we have not identified? What would be the cost implications of the options?	BNZ supports the "sinking lid" approach, if it is accommodated with the appropriate timeframes. BNZ considers that the cost implications would be negligible if enough time is provided. However, there may be a larger impact at an industry level. This would ensure reporting entities have a complete picture of their customer base, beneficial owners, and effective controllers. Currently reporting entities may not have a clear view of this for a large number of their customers.
		Avoiding tipping off	4.72	Should the Act set out what can constitute tipping off and set out a test for businesses to apply to determine whether conducting CDD or enhanced CDD may tip off a customer?	Yes. However, BNZ considers that the test would need to be very clearly outlined.
			4.73	Once suspicion has been formed, should reporting entities have the discretion not to conduct enhanced CDD to avoid tipping off?	Yes, BNZ's view is that reporting entities should have this discretion in cases that meet the test proposed in question 4.72. Refer to 4.11 to specific circumstances where BNZ would encourage relief from ECDD requirements.
			4.74	If so, in what circumstances should this apply? For example, should it apply only to business relationships (rather than occasional transactions or activities)? Or should it only apply to certain types of business relationships where the customer holds a facility for the customer (such as a bank account)?	BNZ's view is that it should be applied to the situation and activity instead of the business relationship.
			4.75	Are there any other challenges with the existing requirements to conduct enhanced CDD as soon as practicable after becoming aware that a SAR must be reported? How could we address those challenges?	BNZ's view is that "as soon as practicable" should be clarified with specific timeframes and scenarios (e.g., a FCPN alert).
	Record keeping		4.76	Do you have any challenges with complying with your record keeping obligations? How could we address those challenges?	BNZ does not have challenges in regard to holding the records. However, complying with the destruction of records after the holding period is more challenging. BNZ does not consider that any amendments are required to the record keeping obligations. However, BNZ submits that clarification is required for "at least" in sections 49 - 51 and "as soon as practicable" in section 54. Retention and disposal issues should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7.
			4.77	Are there any other records we should require businesses to keep, depending on the nature of their business?	No.
		Transactions outside a business relationship	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?	Yes. BNZ's view is that the exemption should be removed.
	Politically exposed persons		4.79	Do you have any challenges with complying with the obligations regarding politically exposed persons? How could we address those challenges?	Yes, BNZ considers that the definition of politically exposed persons (PEPs) contains ambiguities around identifying "associated parties" Additionally BNZ would recommend the time period for an individual to be considered a PEP is reviewed and would encourage for this to be beyond 12 months, potentially based on the level of risk is presented by that relationship.

			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?	Yes. BNZ takes steps to identify and conduct ECDD on domestic PEPs, as per its risk- based approach and FATF guidance.
		Definition of a politically exposed person	4.81	How do you currently treat customers who are domestic PEPs or PEPs from international organisations?	BNZ's view is that the risk presented by a domestic PEP is not materially different to that presented by an international PEP from another low-risk jurisdiction (e.g., Australia) BNZ takes steps to identify and conduct ECDD on domestic PEPs and PEPs from international organisations. However, BNZ does not require Senior Manager approval for domestic PEPs.
			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?	Yes. BNZ's view is that the definitions should be consistent with FATF guidelines on definition of PEPs.
			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?	Yes. However, BNZ's view is that the definition of domestic PEPs should include political candidates but not "persons who receive party donations" unless a list is made available to reporting entities of such persons by a relevant agency/the political parties and limited to information that is readily publicly available.
			4.84	What would be the cost implications of such a measure for your business or sector?	BNZ anticipates that there would be some impact, but the extent of that impact would depend on the volume of the reporting entity's domestic PEP customers and the additional steps currently undertaken by a reporting entity. As BNZ already goes beyond the requirements of the Act we anticipate some increased cost, but this would not be material.
		Time limitation of PEP definition	4.85	How do you currently treat customers who were once PEPs?	BNZ applies a standard risk-rating to PEPs 12 months after they cease being classified as a PEP.
			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?	Yes.
			4.87	Would a risk-based approach to former PEPs impact compliance costs compared to the current prescriptive approach?	Yes.
		Identifying whether a customer is a PEP	4.88	What steps do you take, proactive or otherwise, to determine whether a customer is a foreign PEP?	BNZ conducts customer screening via third party sources.
			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?	No. BNZ's view is that the Act needs to be more prescriptive in relation to what "reasonable steps" are.
			4.90	Should the Act clearly allow business to consider their level of exposure to foreign PEPs when determining the extent to which they need to take proactive steps?	No. BNZ's view is that any relationship with a PEP should be treated equally in regard to due diligence.
			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?	Yes, identification of a PEP. However further actions such as ECDD and senior management approval should be allowed to be completed post the relationship being established. Requiring that this is completed prior to the relationship being established is operationally impractical.
		Domestic or international organisation PEPs	4.92	How do you currently deal with domestic PEPs or international organisation PEPs? For example, do you take risk-based measures to determine whether a customer is a domestic PEP, even though our law does not require this to be done?	BNZ reviews domestic PEPs in line with international PEPs (ECDD), with the exclusion of senior manager approval.
			4.93	If we include domestic PEPs and PEPs from international organisations within scope of the Act, should the Act allow for business to take reasonable steps, according to the level of risk involved, to determine whether a customer or beneficial owner is a domestic or international organisation PEP?	Yes.
			4.94	What would the cost implications of including domestic PEPs and PEPs from international organisations be for your business or sector?	See response to question 4.84 above.

		Beneficiaries of life insurance policies	4.95	Should businesses be required to take reasonable steps to determine whether the beneficiary (or beneficial owner of a beneficiary) of a life insurance policy is a PEP before any money is paid out?	Yes.
			4.96	What would be the cost implications of requiring life insurers to determine whether a beneficiary is a PEP?	Not applicable to BNZ.
		Mitigating the risks of politically exposed persons	4.97	What steps do you currently take to mitigate the risks of customers who are PEPs?	BNZ undertakes ECDD and OCDD as per the Act.
			4.98	Should the Act mandate businesses take the necessary mitigation steps the FATF expects for all foreign PEPs, and, if domestic or international organisation PEPs are included within scope, where they present higher risks?	Yes.
			4.99	What would be the cost implications of requiring businesses to take further steps to mitigate the risks of customers who are PEPs?	See response to question 4.84 above.
	Implementation of targeted financial sanctions	Assessing exposure to designated individuals or entities and sanctions evasion	4.100	Should businesses be required to assess their exposure to designated individuals or entities?	Yes.
			4.101	What support would businesses need to conduct this assessment?	BNZ's view is that reliable government information, clear guidance, and frequent insights would be needed.
			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?	BNZ considers that businesses should be required to consider broader proliferation financing risks. BNZ's view is that this should require a "risk-based" assessment of the exposure of the business to proliferation financing and what controls are required to mitigate the risk.
		Including TFS implementation in an AML/CFT programme	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?	BNZ's view is that this should not form part of the AML/CFT programme. TFS should have its own dedicated programme governed by separate legislation.
			4.104	What support would businesses need to develop such policies, procedures, and controls?	BNZ's view is that it will depend on the entity's maturity in the TFS regime. Clear legislation and guidance will be required.
		Prompt notification about designated persons and entities	4.105	How should businesses receive timely updates to sanctions lists?	BNZ would support a centralised government register, with an option to be added into the mailing list when list is updated.
			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?	No. As noted above in response to question 4.103, BNZ's view is that sanctions should have its own legislation. In that legislation, businesses should be responsible for managing their sanctions risk.
			4.107	How can we support and enable businesses to identify associates and persons acting on behalf of designated persons or entities?	BNZ's view is that guidance should be provided on where to obtain third party vendor information such as a list aggregator.
		Screening for designated persons and entities	4.108	Do you currently screen for customers and transactions involving designated persons and entities? If so, what is the process that you follow?	Yes. BNZ uses an aggregated list of SDNs and other risk associated lists obtained from a third-party source. This is updated into an automated screening solution. Customers are screened every working day and transactions are screened at all times.
			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?	BNZ's view is that, if TFS are included, obligations will need to clearly define the requirements for screening customers and transactions.

			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?	BNZ submits that obligations need to be as clear as possible and should be prescriptive in nature including what lists should be monitored against.
		Notification of actions taken	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?	BNZ's view is that a sufficiently resourced and knowledgeable regulator is needed. There should also be a defined reporting process and visibility of statistics from the reporting.
			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?	BNZ has no comment on this question as any reporting requirement is unlikely to be more onerous than the sanction regimes and reporting requirements that are already followed by BNZ.
		Providing assurance for ongoing freezing action	4.113	Should the government provide assurance to businesses that have frozen assets that the actions taken are appropriate?	Yes.
			4.114	If so, what could that assurance look like and how would it work?	BNZ considers that acknowledgement should be made, and advice given on next steps.
	Correspondent banking		4.115	Are the requirements for managing the risks of correspondent banking relationships set out in section 29 still fit-for-purpose or do they need updating?	BNZ considers that this section needs updating, as it is vague. In particular clarity is needed around what is expected in regard to "adequate" and "effective" in s29(2)(c) and the catch-all in s29(2)(g). BNZ notes that there are practical issues in assessing whether a correspondent bank's controls are effective against overseas AML legislation which New Zealand reporting entities are not necessarily familiar with. This leads to the risk of a reduction in correspondent banking relationships (de-risking) as a direct result of the cost and complexity of meeting the requirements in the legislation.
			4.116	Are you aware of any correspondent relationships in non-banking sectors? If so, do you consider those relationships to be risky and should the requirements in section 29 also apply to those correspondent relationships?	Non-bank customers have the ability to established RMA keys and obtain direct access to the SWIFT network, however this is just to facilitate transactions between a bank and a non-bank, and we are not aware of vostro/nostro accounts being provided.
	Money or value transfer service providers	Maintaining a list of agents	4.117	If you are an MVTS provider which uses agents, how do you currently maintain visibility of how many agents you have?	Not applicable to BNZ.
			4.118	Should a MVTS provider be required to maintain a current list of its agents as part of its AML/CFT programme?	Yes.
			4.119	Should a MVTS provider be explicitly required to monitor and manage its agents for compliance with its AML/CFT programme (including vetting and training obligations)?	Yes.
		Ensuring agents comply with AML/CFT obligations	4.120	Should the Act explicitly state that a MVTS provider is responsible and liable for AML/CFT compliance of any activities undertaken by its agent? Why or why not?	BNZ's view is that it should. MVTS providers have a distribution network. Therefore, they should be accountable and responsible for what is happening through their network.
			4.121	If you are an MVTS provider which uses agents, do you currently include your agents in your programme, and monitor them for compliance (including conducting vetting and training)? Why or why not?	Not applicable to BNZ.
			4.122	Should we issue regulations to explicitly require MVTS providers to monitor and manage its agents for compliance with its AML/CFT programme (including vetting and training obligations)? Why or why not?	Yes. Refer to response to question 4.120.
			4.123	What would be the cost implications of requiring MVTS providers to include agents in their programmes?	Not applicable to BNZ.

		Multiple layers to agency relationships	4.124	Who should be responsible for the AML/CFT compliance for sub-agents for MVTS providers which use a multi-layer approach? Should it be the MVTS provider, the master agent, or both?	BNZ's view is that it should be both.
			4.125	Should we issue regulations to declare that master agents are reporting entities under the Act in their own right? Why or why not?	Yes, BNZ considers that these regulations should be issued. They are responsible for overseeing a subset of branches. They provide further access to MVTS ecosystem.
			4.126	What would be the cost implications of requiring MVTS providers to include agents in their programmes?	Not applicable to BNZ.
	New technologies	Understanding the risk of new products or technologies	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?	BNZ notes that there are risks in terms of lack of understanding/transparency of new products/technologies (such as new/different ways entities are trying to transfer and store funds) and difficulties in identifying the ultimate parties. Examples of these include virtual assets, digital wallets, original credit transactions over card networks. Where there is a lack of understanding/transparency of the risk BNZ currently avoids the risk. Where relationships do exist, BNZ treats them as high risk.
			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?	Yes, BNZ considers that this would assist in ensuring that these products and technologies are not inadvertently de-risked. The compliance overhead due to lack of clarity or context of what is required could put these products and technologies beyond reporting entities' risk appetite. Consideration also needs to be given to customers of reporting entities who utilise or provide this technology or products and expose a reporting indirectly to these risks.
			4.129	If so, should the risks be assessed prior to the launch or use of any new products or technologies?	Yes.
			4.130	What would be the cost implications of explicitly requiring businesses to assess the risks of new products or technologies?	BNZ considers that the cost implications would be low to medium.
		Mitigating the risks of new products or technologies	4.131	Should we issue regulations to explicitly require businesses to mitigate risks identified with new products or technologies? Why or why not?	Yes, but the mitigation should be based on the level of risk presented by the new product/technology.
			4.132	Would there be any cost implications of explicitly requiring business to mitigate the risks of new products or technologies?	BNZ considers that the cost implications would be low to medium.
	Virtual asset service provider obligations		4.133	Are there any obligations we need to tailor for virtual asset service providers? Is there any further support that we should provide to assist them with complying with their obligations?	BNZ's view is that trading of virtual assets (VAs) needs to be considered as part of the definition of a wire transfer, this would include stable coins and central bank digital currencies in addition to traditional virtual assets such as Bitcoin and Ethereum.
		Threshold for occasional transactions	4.134	Should we set specific thresholds for occasional transactions for virtual asset service providers? Why or why not?	BNZ considers that thresholds for occasional transactions need to mirror the thresholds for PTR wire transfers because if the occasional transaction threshold is higher, then VASPs would struggle to meet their PTR obligations.
			4.135	If so, should the threshold be set at NZD 1,500 (in line with the FATF standards) or NZD 1,000 (in line with the Act's existing threshold for currency exchange and wire transfers)? Why?	See response to question 4.134.
			4.136	Are there any challenges that we would need to navigate in setting occasional transaction thresholds for virtual assets?	BNZ notes that if the PTR threshold drops lower (e.g., zero), then the concept of an occasional transaction should disappear.
		Declaring virtual asset transfers to be wire transfers	4.137	Should we issue regulations to declare that transfers of virtual assets to be cross-border wire transfers? Why or why not	Yes, BNZ's view is that a VA is borderless in nature and therefore needs to be captured as part of the wire transfer definition.
			4.138	Would there be any challenges with taking this approach? How could we address those challenges?	BNZ has no comment on this question.
		Terminology involved in a wire transfer	4.139	What challenges have you encountered with the definitions involved in a wire transfer, including international wire transfers?	The inclusion of an intermediary institution in the definition of international wire transfer creates a challenge for PTR reporting where transactions are technically captured as international wire transfers, where in substance they are domestic in nature. BNZ notes that with the development of new international payment methods, the exclusion in the definition of wire transfer (at (c)(ii)) of transactions that contain a card number means that not all international transfers are being captured by the legislation.

			4.140	Do the definitions need to be modernised and amended to be better reflect business practices? If so, how?	Yes. BNZ's view is that the definition of wire transfer needs to be established in a way that considers future changes in technology instead of just current technology.
			4.141	Are there any other issues with the definitions that we have not identified?	BNZ considers that a potential gap exists around monitoring wire transfers for intelligence purposes as payment technology becomes more borderless and enables non-financial institutions to initiate/receive wire transfers directly through an international network that may not have obligations within New Zealand.
		Ordering institutions - Wire transfers below the applicable threshold	4.142	What information, if any, do you currently provide when conducting wire transfers below NZD 1000?	BNZ provides the same information as for wire transfers above NZD 1000.
			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?	Yes. BNZ considers that there is monitoring and intelligence value in low value international wire transfers and if PTR thresholds are to be dropped, this information would be needed.
			4.144	What would be the cost implications from requiring specific information be collected for and accompany wire transfers of less than NZD 1000?	BNZ considers the cost implications to be negligible.
		Stopping wire transfers that lack the required information	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?	BNZ treats all transactions the same. Transactions without the required information are stopped and repaired prior to being processed.
			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?	Yes. BNZ's view is that this is key information for PTR as well as other uses (e.g., sanctions screening). Additionally, this should align with the global SWIFT Standards which financial institutions already adhere to.
			4.147	Would there be any impact on compliance costs if an explicit prohibition existed for ordering institutions?	BNZ considers that the compliance costs would be negligible.
		Intermediary institutions	4.148	When acting as an intermediary institution, what do you currently do with information about the originator and beneficiary?	BNZ passes this information on with the wire transfer.
			4.149	Should we amend the Act to mandate intermediary institutions to retain the information with the wire transfer? Why or why not?	Yes. BNZ's view is that this allows transparency of information from the originating institution to the final destination institution, where the appropriate level due diligence could be applied.
			4.150	If you act as an intermediary institution, do you do some or all of the following: • keep records where relevant information cannot be passed along in the domestic leg of a wire transfer where technical limitations prevent the information from being accompanied? • take reasonable measures to identify international wire transfers lacking the required information? • have risk-based policies in place for determining what to do with wire transfers lacking the required information?	As part of the SWIFT Standard, all messages are kept and are required to have the mandatory field.
			4.151	Should we issue regulations requiring intermediary institutions to take these steps, in line with the FATF standards? Why or why not?	Yes, BNZ considers that this would be appropriate as it complies with FATF Standards and is a good practice.
			4.152	What would be the cost implications from requiring intermediary institutions to take these steps?	BNZ considers that the cost of this would be negligible.
		Beneficiary institutions	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?	Yes. BNZ has rules in place to look for transactions that do not appear to have the required information as outlined by section 27 of the Act. They are either returned or repaired.
			4.154	Should we issue regulations requiring beneficiary institutions to take reasonable measures, which may include post-event or real	Yes.

				time monitoring, to identify international wire transfers that lack the required originator or beneficiary information?	
			4.155	What would be the cost implications from requiring beneficiary institutions to take these steps?	BNZ considers that the cost implications would be negligible.
	Prescribed transaction reports		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?	No. BNZ considers that PTR requirements could be simplified. In particular, clarification in the Act as to who the ordering, intermediary and beneficiary institutions are as the three supervisors cannot currently agree leaving the sectors in a challenging position. The Act needs to be amended to clarify who is responsible for submitting PTR and the portion of the transaction they are required to report. E.g., if a bank processes a transaction for an FI the bank should be responsible for the reporting the component of the transaction that they have visibility of, the FI's account to the destination account. The other FI should be responsible for reporting who the ultimate originator and beneficiary for the transaction is if the transaction is being conducted for one of their customers.
			4.157	Have you encountered any challenges in complying with your PTR obligations? What are those challenges and how could we resolve them?	Yes. BNZ considers that the regulations could be simpler and clearer, in particular in relation to: - What transactions are covered. - Who is responsible for reporting them. - What components of the transactions are required for reporting. - Inclusion of intermediary institution in the definition of wire transfer. - What information is required to be included in the PTR.
		Types of transactions requiring reporting	4.158	Should we issue regulations or a Code of Practice to provide more clarity about the sorts of transactions that require a PTR?	Yes.
			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?	BNZ has identified the following transactions where the reporting obligation is unclear: • FX transactions with customers where component is offshore in nature • Virtual Asset Transactions. • Transfers through non-traditional means (e.g., Visa Original Credit Transactions).
		Who is required to submit a report - Non-bank financial institutions and DNFBPs	4.160	Should non-bank financial institutions (other than MVTS providers) and DNFBPs be required to report PTRs for international fund transfers?	Yes.
			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?	No, BNZ's view is that they should be the same.
			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?	BNZ considers that one option is lower thresholds for cash deposits and international wire transfers.
		Intermediary institutions	4.163	Should we amend the existing regulatory exemption for intermediary institutions so that it does not apply to MVTS providers?	Yes, BNZ considers that the exemption should not apply because in practice these transactions are already being reported and it would provide a view as to which account the MVTS provider would use to facilitate international payments and where the MVTS provider is using a cash management strategy to facilitate offshore payments.
			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?	BNZ's view is that the obligation to report should be amended to the reporting entity reporting the component of the transactions that relate to their customer (e.g., money remitter reports who its customer is and who it is sending to / bank reports that money remitter is transferring funds from account A to account B, whether that is the end beneficiary or not).
			4.165	Are there any other intermediary institutions that should be included in the exemption?	BNZ considers that it may be better that the exemption is removed.
		When reports must be made	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?	Yes. BNZ has identified that where a PTR report would be required to be submitted for a default KiwiSaver customer it would be challenging to meet the 10-working day timeframe. In this situation reporting entities would have very limited information, due to the nature of how the relationship has been established and due to the exemption on conducting CDD. If the customer is offshore and the reporting entity is unable to get in touch with the customer to obtain the information, it would be very challenging to submit a PTR within the required 10 working days.

		Applicable threshold for reporting prescribed transactions	4.167	Do you consider that a lower threshold for PTRs to be more in line with New Zealand's risk and context? If so, what would be the appropriate threshold for reporting?	Yes. BNZ's view is that wire transfers should not have a threshold and cash should have a lower than $10,000 threshold. The cash threshold could be defined differently depending on the sector and take into consideration the normal levels of cash transactions for that sector.
			4.168	Are there any practical issues not identified in this document that we should address before changing any PTR threshold?	BNZ notes that changing PTR thresholds may impact TM typologies in relation to structuring.
			4.169	How much would a change in reporting threshold impact your business?	Lowering the cash threshold will potentially be a significant change to the programme of work for reporting entities to be able to report the required transactions. Additionally, a zero-dollar threshold for international wire transfers would mean that a large number of a reporting entity's manual solutions be no longer viable. However, the change to international wire transfer thresholds would not materially impact BNZ.
			4.170	How much time would you need to implement the change	This would be dependent on the level of changes made to the PTR regulations. BNZ's view is that the Ministry of Justice should consult separately on the revised PTR regulations once the policy decisions have been made.
	Reliance on third parties	Effectiveness of reliance provisions	4.171	Do you use any of the reliance provisions in the AML/CFT Act? If so, which provisions do you use?	Yes, BNZ uses section 34.
			4.172	Are there any barriers to you using reliance to the extent you would like to?	Yes. BNZ considers that the burden of liability remaining with the reporting entity who is placing reliance on third party is a barrier to using reliance.
			4.173	Are there any changes that could be made to the reliance provisions that would mean you used them more? If so, what?	No.
		"Approved entities" and liability for reliance	4.174	Given the "approved entities" approach is inconsistent with FATF standards and no entities have been approved, should we continue to have an "approved entities" approach?	No, BNZ considers that the "approved entities" approach should be removed.
			4.175	If so, how should the government approve an entity for third party reliance? What standards should an entity be required to meet to become approved?	BNZ submits that, if this provision remains, the entity who is an approved entity should be licensed to conduct CDD as an approved entity and there should be ongoing monitoring by the government agency to ensure standard remain consistent.
			4.176	If your business is a reporting entity, would you want to be an approved entity? Why or why not?	For BNZ, it would depend on what the licensing requirement costs are and what the processes are to become an approved entity.
			4.177	Are there any alternative approaches we should consider to enable liability to be shared during reliance?	BNZ's view is that consideration should be given to bringing in some of the principles discussed in regard to the Digital Identity Trust Framework that is currently under consultation.
		Designated business group reliance	4.178	Should we issue regulations to enable other types of businesses to form DBGs, if so, what are those types of businesses and why should they be eligible to form a DBG?	Yes. BNZ's view is that limited partnerships should be able to form a DBG.
			4.179	Should we issue regulations to prescribe that overseas DBG members must conduct CDD to the level required by our Act?	Yes, BNZ's view is that it should be to the highest standard of the jurisdictions involved.
			4.180	Do we need to change existing eligibility criteria for forming DBGs? Why?	Yes. BNZ notes that currently some entities are legally prohibited from being part of a DBG even though they are a reporting entity.
			4.181	Are there any other obligations that DBG members should be able to share?	BNZ submits that section 32 should also consider training and vetting processes.
		Third party reliance	4.182	Should we issue regulations to explicitly require business to do the following before relying on a third party for CDD: • consider the level of country risk when determining whether a third party in another country can be relied upon; • take steps to satisfy themselves that copies of identification data and other relevant documentation will be made available upon request without delay; and • be satisfied that the third party has record keeping arrangements in place.	Yes.
			4.183	Would doing so have an impact on compliance costs for your business? If so, what is the nature of that impact?	This would not have a cost impact on BNZ as these activities are already being undertaken.

			4.184	Are there any other issues or improvements that we can make to third party reliance provisions?	No
		Potential other forms of reliance	4.185	Are there other forms of reliance that we should enable? If so, how would those reliance relationships work?	BNZ submits that staff vetting should be able to be undertaken by a third party and reliance place on those vetting procedures.
			4.186	What conditions should be imposed to ensure we do not inadvertently increase money laundering and terrorism financing vulnerabilities by allowing for other forms of reliance?	BNZ does not believe that above recommendation (in response to question 4.185) will materially change New Zealand's ML/TF vulnerabilities.
	Internal policies, procedures and controls	Compliance programme requirements	4.187	Are the minimum requirements set out still appropriate? Are there other requirements that should be prescribed, or requirements that should be clarified?	BNZ's view is that the minimum requirements should explicitly outline transaction monitoring requirements.
		Compliance officers	4.188	Should the Act mandate that compliance officers need to be at the senior management level of the business, in line with the FATF standards?	BNZ's view is that this may be appropriate for smaller reporting entities, but may not be appropriate for larger entities, as a senior manager of a large reporting entity would not necessarily have the capacity to be across the level of detail to be an AML Compliance Officer. This would also be dependent on any changes made to the definition of "Senior Manager" in the Act.
			4.189	Should the Act clarify that compliance officers must be natural persons, to avoid legal persons being appointed as compliance officers?	Yes.
		Group-wide programme requirements	4.190	If you are a member of a financial or non-financial group, do you already implement a group-wide programme even though it is not required?	No. BNZ does not currently apply the NAB Programme.
			4.191	Should we mandate that groups of financial and non-financial businesses implement group-wide programmes to address the risks groups are exposed to?	No, BNZ's view is that the programme should be based on the risk presented within the jurisdiction and organisation. This may be different across different entities within a multi-national group.
		Review and audit requirements	4.192	Do we need to clarify expectations regarding reviewing and keeping AML/CFT programmes up to date? If so, how should we clarify what is required?	No.
			4.193	Should legislation state that the purpose of independent audits is to test the effectiveness of a business's AML/CFT system?	Yes.
			4.194	What other improvements or changes could we make to the independent audit or review requirements to ensure the obligation is useful for businesses without imposing unnecessary compliance costs?	BNZ's view is that clear guidance should be provided on the scope of the audit. Priority should be given to the current state of the programme as this is likely to be most useful for supervisors and the reporting entities to determine the current state of compliance. BNZ also considers that having targeted smaller audits throughout various years rather than one large audit every three years may be beneficial.
	Higher-risk countries	Understanding country risk and identifying countries with insufficient AML/CFT measures in place	4.195	How can we better enable businesses to understand and mitigate the risk of the countries they deal with, and determine whether countries have sufficient or insufficient AML/CFT systems and measures in place? For example, would a code of practice (rather than guidance) setting out the steps that businesses should take when considering country risk be useful?	Yes, BNZ agrees that a code of practice (rather than guidance) would be useful. Further, BNZ suggests that a centralised register of risk rated countries is developed as a standardised source for assessing risk of the jurisdictions.
		Imposing countermeasures where called for by the FATF	4.196	Should we issue regulations to impose proportionate and appropriate countermeasures to mitigate the risk of countries on FATF's blacklist?	BNZ's view is that if regulations are issued they must be clear and specific as to what "appropriate countermeasures" should be imposed. If not, BNZ suggests that information on suggested countermeasures should be issued as guidance.
			4.197	If so, what do you think would be appropriate measures to counter the risks these countries pose?	BNZ submits that countermeasures could include: • Limiting transactions in relation to these countries but allowing for exemptions such as for genuine humanitarian activities. • Enhance CDD for customers/transactions in relation to these countries.
			4.198	Is the FATF blacklist an appropriate threshold? If not, what threshold would you prefer?	Yes, BNZ considers that the FATF blacklist is an appropriate threshold. However, further reliable, and independent sources that include transparency and corruption measures would also be useful.

		Imposing sanctions on specific individuals or entities	4.199	Should we use section 155 to impose countermeasures against specific individuals and entities where it is necessary to protect New Zealand from specific money laundering threats?	Yes.
			4.200	If so, how can we ensure the power is only used when it is appropriate? What evidence would be required for the Governor-General to decide to impose a countermeasure?	BNZ's view is that: • There should be an approval process through the judiciary before it goes to the Governor-General. • Limitations of the power should be specified and must be supported with sufficient evidence when the power is being used. • Specific scenarios of when/what could be applied could be outlined. • A centralised register should be available for effective list and compliance management.
			4.201	How can we protect the rights of bona fide third parties?	BNZ's view is that a process through judiciary would ensure a judge would hear and balance all of the arguments.
			4.202	Should there be a process for affected parties to apply to revoke a countermeasure once made? If so, what could that process look like?	Yes. BNZ considers this could be achieved through the court system.
	Suspicious activity reporting	Improving the quality of reports received	4.203	How can we improve the quality of reports received by the FIU and avoid low-quality, defensive reporting?	BNZ considers that it would be helpful for FIU to provide guidance around what information they want to be reported and what information will add value to the Police from an investigative perspective. Additional guidance could also be provided around the level of due diligence required by the reporting entity prior to forming a suspicion.
			4.204	What barriers might you have to providing high quality reporting to the FIU?	BNZ considers that there is insufficient material available from law enforcement authorities on matters such as predicate crimes which acts as a barrier on what could usefully be reported.
			4.205	Should the threshold for reporting be amended to not capture low level offending?	No. See the above responses to questions 4.203 & 4.204.
		Sharing SARs or SAR information	4.206	Should we expand the circumstances in which SARs or SAR information can be shared? If so, in what circumstances should this information be able to be shared?	This should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7, however BNZ considers that there are benefits to improved information sharing.
			4.207	Should there be specific conditions that need to be fulfilled before this information can be shared? If so, what conditions should be imposed (e.g. application to the FIU)?	This should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7, For example, there may be risks around tipping off with increased information sharing.
		SAR obligations for MVTS providers	4.208	Should we issue regulations to state that a MVTS provider that controls both the ordering and beneficiary ends of a wire transfer is required to consider both sides of the transfer to determine whether a SAR is required? Why or why not?	Yes. BNZ's view is that the MVTS provider needs to consider and assess all information available to them in relation to the transaction to be able to make a determination that the activity is suspicious prior to submitting a SAR.
			4.209	If a SAR is required, should it be explicitly stated that it must be submitted in any jurisdiction where it is relevant?	Yes.
	High value dealer obligations		4.210	Should we extend additional AML/CFT obligations to high value dealers? Why or why not? If so, what should their obligations be?	Yes. BNZ's view is that high value dealers should have to comply with all the obligations in the Act as the current limited scope creates material gaps in the regime.
			4.211	Should all high value dealers have increased obligations, or only certain types, e.g., dealers in precious metals and stones, motor vehicle dealers?	Yes, BNZ considers that all high value dealers should have increased obligations. Clarification of the definition of high value dealers and creating registration requirements would also be beneficial.
			4.212	Are there any new risks in the high value dealer sector that you are seeing?	No. However, BNZ's view is that the implementation of phase two of the Act did not go far enough to address the known risk associated with high value dealers.
Other issues or topics	Cross-border transportation of cash	When reports should be filed for unaccompanied cash	5.1	Should the AML/CFT Act define the point at which a movement of cash or other instruments becomes an import or export?	Yes. BNZ considers that this would provide clarify the requirements of the Act.
			5.2	Should the timing of the requirement to complete a BCR be set to the time any Customs trade and/or mail declaration is made, before the item leaves New Zealand, for exports, and the time at which the item arrives in New Zealand, for imports?	BNZ's view is that the timing requirement should be at three business days from point of discovery.
			5.3	Should there be instances where certain groups or categories of vessel are not required to complete a BCR (for example, cruise	BNZ considers that a BCR should only be required for staff and passengers of the vessel, but not the company/ship operator.

				ships or other vessels with items on board, where those items are not coming off the vessel)?	
		Sanctions for falsely declared or undeclared cash	5.4	How can we ensure the penalties for non-declared or falsely declared transportation of cash are effective, proportionate, and dissuasive?	BNZ's view is that appropriate penalties could include forfeit of the undeclared cash over $10,000.00 and a fine not exceeding $20,000.00 (for an individual) or $100,000.00 (for a corporate).
		Powers to search and seize cash to investigate its origin	5.5	Should the Act allow for Customs officers to detain cash even where it is declared appropriately through creating a power, similar to an unexplained wealth order that could be applied where people are attempting to move suspiciously large volumes of cash?	Yes.
			5.6	If so, how could we constrain this power to ensure it does not constitute an unreasonable search and seizure power?	BNZ's view is that structured guidance and a suspicion threshold should be put in place. Evidence should also be retained of reasonable suspicion.
		Other forms of value movement	5.7	Should BCRs be required for more than just physical currency and bearer-negotiable instruments and also include other forms of value movements such as stored value instruments, casino chips, and precious metals and stones?	Yes.
	Privacy and protection of information		5.8	Does the AML/CFT Act properly balance its purposes with the need to protect people's information and other privacy concerns? If not, how could we better protect people's privacy?	Privacy should not be seen as being in opposition to the purposes of the AML/CFT Act. For example, high information quality (a concern of privacy) will support the detection and deterrence of money laundering and terrorism financing, and transparency (another concern of privacy) will help contribute to public confidence in the financial system. Concerns about how individuals' privacy can best be protected should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7 while allowing information to be more readily shared across private and public sector agencies to achieve the outcome of the Act.
		Requiring mandatory deletion of financial intelligence	5.9	Should we specify in the Act how long agencies can retain information, including financial intelligence held by the FIU?	This should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7
			5.10	If so, what types of information should have retention periods, and what should those periods be?	Refer to the response to question 5.9.
		Legally privileged information	5.11	Does the Act appropriately protect the disclosure of legally privileged information? Are there other circumstances where people should be allowed not to disclose information if it is privileged?	BNZ considers that the current settings for privilege are appropriate.
			5.12	Is the process for testing assertions that a document or piece of information is privileged set out in section 159A appropriate?	Yes.
	Harnessing technology to improve regulatory effectiveness		5.13	What challenges or barriers have you identified that prevent you from harnessing technology to improve efficiencies and effectiveness? How can we overcome those challenges?	BNZ considers that the requirements for electronic identity verification (EIV) do not give enough credit for the advantages of technology that can be used to mitigate human error or biases. The current requirement when conducting EIV to verify the information back to the government source limits the ability to implement an effective EIV solution that can accommodate a global customer base. BNZ considers that sufficient technology exists that would make that check redundant or surplus and it goes over and above the expectation for face-to-face onboarding.
		Enabling the adoption of digital identity	5.14	What additional challenges or barriers may exist which would prevent the adoption of digital identity once the Digital Identity Trust Framework is established and operational? How can we overcome those challenges?	BNZ considers that the following challenges or barriers may exist: • Reliance on others – e.g., if an account is already opened at another bank can we rely on their process? • Accredited / non-accredited provider – it is not clear as to what an accredited provider can do vs. what a non-accredited provider can do. • It is not clear what the accreditation process is and who authorises the accreditation. • Where would the liability sit if it was determined that CDD is deficient? • What ongoing assurance will be provided to ensure that an accredited provider will remain at the required standard? • The Digital Identity Trust Framework will need to be widely adopted by NZ Inc in order for it to succeed where RealMe has not. Registration will need to be easy and accessible by all eligible persons. These issues should be explored in the Privacy and Data Ethics Impact Assessment suggested above in response to question 1.7.

	Harmonisation with Australian regulation		5.15	Should we achieve greater harmonisation with Australia's regulation? If so, why and how?	No. BNZ's view is that Australian legislation has its own challenges and failings. BNZ considers that New Zealand should not be aligning with Australia's legislation but focusing on how the Act can best align with the FATF standard and achieve an effective outcome for New Zealand.
	Ensuring system resilience		5.16	How can we ensure the AML/CFT system is resilient to long- and short-term challenges?	BNZ's view is that the legislation needs to be principles-based with clearer definitions, obligations and requirements in the regulations and codes of practice. BNZ submits that allowance needs to be made for evolution in criminal typologies. Reviews of the Act and/or regulations could be more frequent in line with the developing risks.
Minor changes			6.1	What are your views regarding the minor changes we have identified? Are there any that you do not support? Why?	BNZ's submissions are set out below in the order of the tables starting on page 109 of the Consultation Document: • Definitions and terminology: 1. Agree 2. BNZ has no comment on this change as it longer accepts cheque deposits. 3. Agree 4. Agree • Information sharing: 1. Agree 2. Agree 3. Agree 4. Agree • SARs and PTRs: 1. Agree 2. Potentially, however, information is not always available in SWIFT messages which could create complexities for PTR. • Exemptions: 1. Agree 2. Agree 3. Agree 4. Agree 5. Agree • Offences and penalties: 1. Agree 2. Agree • Preventive Measures: 1. Agree 2. Agree 3. Agree, but need to consider what this could mean for address verification. 4. Agree 5. BNZ suggests that the wording is changed to "unable to or doesn't". 6. Agree 7. Agree 8. Agree 9. Agree 10. No, because some cloud services are not based in New Zealand. 11. Agree 12. Agree 13. Agree
			6.2	Are there any other minor changes that we should make to the Act or regulations?	No