## aml

**From:** [redacted]@fnz.co.nz>
**Sent:** Friday, 10 December 2021 4:08 pm
**To:** aml
**Cc:** [redacted]
**Subject:** RE: AML/CFT Review Submission
**Attachments:** Submission - AMLCFT Statutory Review - FNZ 101221 Final.docx

Kia ora team,

Please find the FNZ submission attached.

Please contact me or [redacted], Head of Risk & Compliance New Zealand, if you have any questions.

Kind regards,


[redacted]
Senior AML Specialist
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**From:** aml <aml@justice.govt.nz>
**Sent:** Friday, 3 December 2021 10:38 am
**To:** [redacted]@fnz.co.nz>
**Subject:** RE: AML/CFT Review Submission

Kia ora Amelia,

Many thanks for your email. More than happy to accommodate an extension for one week for FNZ until 10 December.

Please let us know if you have any further questions or need anything further.

Ngā mihi,

Nick


[redacted]
Kaitohu Tōmua | Senior Policy Advisor
Criminal Law | Policy Group
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*Mon Tues Wed Thur Fri*

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## Part 1 Institutional arrangements and stewardship

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?

**FNZ Submission:** The purposes are still appropriate, and do not require amendment.

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?

**FNZ Submission:** No. As noted in the Consultation Document, and among other things, a prevention focus "could mean that businesses are expected to actively stop transactions going through when there is a suspicion of money laundering or terrorism financing", rather than merely reporting those transactions. In FNZ's experience, a transaction can give rise to a suspicion but not, on further investigation, actually involve money laundering or terrorism financing. Requiring a reporting entity to stop a transaction based on only a suspicion could be hugely disruptive to legitimate business transactions

1.3. Not Answered.

1.4. Not Answered.

1.5. Not Answered.

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?

**FNZ Submission:** No. We consider the purposes of the Act are sufficiently broad ("detect and deter …the financing of terrorism"), and note the existing obligations on a reporting entity to consider the countries it deals with as part of its risk assessment (section 58(2)).

1.7. Not Answered.

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?

**FNZ Submission:** Yes, the requirements in section 58 are still appropriate. It might assist businesses if risk information could be consolidated into a single document, obtainable from a single source.

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?

**FNZ Submission:** FNZ agrees that prescription is appropriate where it relates to minimum standards to be met, or the precise steps to be taken when a suspicion of money laundering or the financing of terrorism arises. But otherwise, a genuine risk-based approach is appropriate. FNZ considers the current balance in the Act is appropriate – the Act should not be made more prescriptive.

FNZ's concern, though, is that while the Act seeks to enable businesses to take a risk-based approach to complying with their obligations, the AML/CFT supervisors appear **not** to consider a reporting entity's risk assessment, or the risks associated with a purported breach of an AML/CFT obligation, when carrying out their supervisory functions and apply instead a minimum standard to all reporting entity – requiring blanket "one-standard" compliance regardless of that businesses model, controls and compliance or an entities' own customers.

1.10. Do some obligations require the government to set minimum standards? How could this be done? What role should guidance play in providing further clarity?

**FNZ Submission:** Yes, some obligations require the government to set minimum standards – as is already the case in relation to the types of CDD, and the identity and address verification requirements. FNZ does not consider there are other obligations that require minimum standards to be imposed.

FNZ welcomes guidance materials where those provides clarity – but considers care must be taken to ensure guidance does only that, and does not add a "gloss" to the legislative requirements.

1.11. Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to?

**FNZ Submission:** Yes. By way of example, the Licensed Managing Intermediary regime (Schedule 1, Part 5 of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2018) was enacted because (among other reasons) the requirement for a reporting entity to conduct customer due diligence on all beneficial owners of a licensed managing intermediary "is out of proportion to

the risk of money laundering and terrorism financing posed by licensed managing intermediaries". Yet the conditions attaching to the exemption do not reflect the lower risk posed by LMIs, and the LMI exemption is so limited in scope (to CDD at onboarding only) as to be of extremely limited use.

In short, a reporting entity might carry out its risk assessment in compliance with all relevant guidance and reasonably conclude its business is low risk – but there is little in the Act that caters to a low risk business. To the contrary, the Act, including the Class Exemptions, and AML/CFT supervisors' approach, appear to proceed on the basis that no business is low risk.

1.12. Does the Act appropriately reflect the size and capacity of the businesses within the AML/CFT regime? Why or why not?

**FNZ Submission:** No – see 1.13.

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?

**FNZ Submission:** Yes. In addition to our submission at 1.11, FNZ considers that – in respect of the financial and custodial services sector – we need to take a step back to consider, within the sector:

(a) who is each reporting entity's customer; and
(b) the risk of that customer engaging in ML/FT,

and then ensure that the legislation places the AML/CFT obligations on the appropriate entity, and avoids duplication.

In FNZ's business, FNZ provides custodial services to wholesale customers – other (regulated) financial institutions, such as AMP, ANZ and BNZ – to enable those entities to provide custodial services to their customers (both wholesale and retail).

The question that arises is who is FNZ's customer for AML/CFT purposes – the "intermediary" financial institution? Or that institution's "end" customer? Logic would suggest that the end customer is the financial institution's customer, and the financial institution is FNZ's customer. Some years ago, in dialogue with FNZ, the FMA expressed sympathy for that view. More recently, though, the FMA has expressed the view that the end customer is also FNZ's customer for AML/CFT purposes. If that view is correct:

(a) AMP must conduct CDD on its end customer;
(b) FNZ must conduct CDD on AMP, and on AMP's end customer; and
(c) Both AMP and FNZ must conduct STM on the exact same series of transactions.

This particular issue could be addressed by following the Australian approach, which provides that end customers are not the custodian's customers for AML/CFT purposes. Schedule: Section 6(46), Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

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?

**FNZ Submission:** Yes – particularly the Licensed Managing Intermediary and Specified Managing Intermediary class exemptions (unless the Act is amended to clarify that customers of an LMI or SMI are not a custodian's customers at all). Indeed, these particular class exemptions need to be broadened if they are to achieve their stated purpose of avoiding duplication of obligations, in particular to include suspicious transaction monitoring.

1.15. Not Answered.

1.16. Not Answered.

1.17. Not Answered.

1.18. Not Answered.

1.19. Not Answered.

1.20. Not Answered.

1.21. Can the AML/CFT regime do more to mitigate its potential unintended consequences? If so, what could be done?

**FNZ Submission:** Yes – see 1.13 and 1.14.

1.22. Not Answered.

1.23. Not Answered.

1.24. Not Answered.

1.25. Not Answered.

1.26. Not Answered.

1.27. Not Answered.

1.28. Not Answered.

1.29. Not Answered.

1.30. Not Answered.

1.31. Not Answered.

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?

**FNZ Submission:** No. FNZ believes the FIU ought to focus on its role of collecting, analysing and disseminating information provided by external parties and reporting entities. There are other investigative and intelligence units within the New Zealand Police better placed to pursue any action based on that information. As noted earlier, a transaction can give rise to a suspicion but not, on further investigation, actually involve money laundering or terrorism financing. Permitting the FIU to stop a transaction – even temporarily – without the fuller information available to other investigative and intelligence units could be hugely disruptive to legitimate business transactions

1.33. Not Answered.

1.34. Should supervision of implementation of TFS fall within the scope of the AML/CFT regime? Why or why not?

**FNZ Submission:** Yes, provided that the Act is first amended to clarify that the responsibility for FNZ's financial institution customers' end customers rests with the intermediary financial institution, to avoid duplication.

1.35. Not Answered.

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?

**FNZ Submission:** We do not have an issue with the secondary legislation making powers in the Act – FNZ considers them to be appropriate – but we do have a real concern about guidance material produced by AML/CFT supervisors being treated as if it were binding.

FNZ notes that the Act requires, in places, a reporting entity to "have regard to any applicable guidance material produced by AML/CFT supervisors or the Commissioner". Given that the reporting entity is responsible for undertaking a risk assessment of the risk of money laundering and the financing of terrorism that it may reasonably expect to face in the course of its business, and to base its AML/CFT programme on that risk assessment, it should be free to "have regard to" guidance

material and, in doing so, to decide that elements of that guidance material are not appropriate for its business. FNZ is concerned that the AMLCFT supervisors' approach is, instead, that a reporting entity must comply with any and all guidance material.

1.37. Not Answered.

1.38. Not Answered.

1.39. Not Answered.

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?

**FNZ Submission:** Yes, Codes of Practice are a useful tool, and it is simpler to follow a Code of Practice than to seek to persuade the AML/CFT supervisor, or an AML/CFT auditor that the entity has complied through some equally effective means.

1.41. Not Answered.

1.42. What status should be applied to explanatory notes to Codes of Practice? Are these a reasonable and useful tool?

**FNZ Submission:** Explanatory notes are useful, but should have the status of guidance only.

1.43. Not Answered.

1.44. Not Answered.

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?

**FNZ Submission:** No. The Act already makes provision for Codes of Practice to be issued. As noted above at 1.9, we support the same or a lower level of prescription – the AML/CFT should remain risk-focussed and principle-based to allow a reporting entity to adopt appropriate practices for its business.

In fact, a frequent criticism of many risk assessments and compliance programmes is that the reporting entity has used a template, and not properly considered the risks of its own business, customer, sector etc and tailored its compliance programme accordingly. Prescribing rules that businesses must follow would tend to support the use of templates, as it treats businesses as homogenous.

1.46. Not Answered.

1.47. Not Answered.

1.48. Not Answered.

1.49. Not Answered.

1.50. Not Answered.

1.51. Not Answered.

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?

**FNZ Submission:** Only if it is simple. FNZ suggests registration as an AML/CFT reporting entity could become part of the FSP registration process.

1.53. If such a regime was established, what is the best way for it to navigate existing registration and licensing requirements?

**FNZ Submission:** FNZ suggests registration as an AML/CFT reporting entity could become part of the FSP registration process.

1.54. Not Answered.

1.55. Not Answered.

1.56. Not Answered.

1.57. Not Answered.

1.58. Not Answered.

1.59. Not Answered.

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?

**FNZ Submission:** Yes – for a registration regime only, and fees at a level commensurate with that regime.

1.61. If we developed a levy, who do you think should pay the levy (some or all reporting entities)?

**FNZ Submission:** All reporting entities.

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?

**FNZ Submission:** All reporting entities should pay the same (nominal) amount – it is to cover the costs of a registration scheme, so is not related to how many reports an entity makes or the size of its business.

1.63. Not Answered.

1.64. Not Answered.

## Part 2 Scope of the AML/CFT Act

FNZ does not wish to make a submission on section 2 of the Consultation Document.

## Part 3 Supervision, regulation and enforcement

3.1. Is the AML/CFT supervisory model fit-for-purpose or should we consider changing it?

**FNZ Submission:** There should be fewer regulators – ideally given the size of New Zealand financial market – one AML regulator.

3.2. If it were to change, what supervisory model do you think would be more effective in a New Zealand context?

**FNZ Submission:** Given the relatively small size of the New Zealand market, a A/NZ regulator model would offer both efficiency and consistency across the market.

3.3. Not Answered.

3.4. Not Answered.

3.5. Not Answered.

3.6. Not Answered.

3.7. Not Answered.

3.8. Not Answered.

3.9. Not Answered.

3.10. Not Answered.

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 ensureaudits are of higher quality?

**FNZ Submission:** Yes, as to setting explicit standards for auditors (but not audits – the Act sets out what is to be reviewed, and FNZ considers it should be for the licensed auditor to determine how it will carry out its audit). AML auditors should be required to meet minimum standards of knowledge and competence, and to be licensed. Further, conflicts of interest of any audit firm should be considered and monitored.

3.12. Who would be responsible for enforcing the standards of auditors?

**FNZ Submission:** The current AML/CFT supervisors.

3.13. What impact would that have on cost for audits? What benefits would there be for businesses if we ensured higher quality audits?

**FNZ Submission:** FNZ accepts this could increase the fees charged by auditors for AML/CFT audits – but at the same time there may be a cost saving in not having to educate an auditor about the legislative requirements and available exemptions relevant to the reporting entity. A better quality audit would also help the reporting entity to focus on improving its compliance overall, rather than focussing on the minutia of detail on which a less qualified auditor might focus.

3.14. Should there be any protections for businesses which rely on audits, or liability for auditors who do not provide a satisfactory audit?

**FNZ Submission:** FNZ considers the matter of liability of auditors who do not produce a satisfactory audit is best left to the parties' contract.

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?

**FNZ Submission:** No. AML/CFT consultants are no different to health and safety consultants, employment consultants and the many other types of consultants. The AML/CFT regime is statutory, and it should be a case of "buyer beware". If a reporting entity chooses to rely on a consultant rather than seek legal advice, that is its risk. Educating businesses as to the types of support and advice available is a better way forward – and ultimately, the market will weed out those consultants who are not competent.

3.16. Not Answered.

3.17. Not Answered.

3.18. Do you currently use agents to assist with your AML/CFT compliance obligations? If so, what do you use agents for?

**FNZ Submission:** Yes. FNZ has previously appointed its financial institution clients as its agent to carry out AML/CFT customer due diligence on their customers, because:

(a) The financial institution itself is already bound to carry out AML/CFT customer due diligence on its customers;

(b) While FNZ regards the financial institution as its customer for AML/CFT purposes, the AML supervisor has indicated it considers that the financial institution's end customer is also FNZ's customer for AML/CFT purposes;

(c) While the Licensed Managing Intermediary class exemption was intended to allow FNZ to rely on the customer due diligence carried out by the LMI in this scenario (to avoid duplication) it is too narrow in scope, and to bureaucratic, to offer any real benefit; and

(d) Accordingly, FNZ agrees with financial institutions willing to act as such that those financial institutions will be FNZ's agent for AML/CFT purposes.

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?

**FNZ Submission:** Yes. FNZ engages as its agent only other financial institutions that are themselves reporting entities (and either licensed managing intermediaries or specified managing intermediaries). We do this both because of our business model (where our contractual relationships are only with other financial institutions) and because it is critical to our operations that we comply with our statutory obligations.

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?

**FNZ Submission:** No. FNZ does not consider it necessary to regulate the use of agents and third parties

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?

**FNZ Submission:** Yes. For larger entities, their public reputation is critical and even the prospect of a public warning is an effective, proportionate, and dissuasive sanction.

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?

**FNZ Submission:** No. Those businesses that seek to comply are already aware of the sanctions that could apply for non-compliance.

3.23. Are there any other changes we could make to enhance the penalty framework in the Act?

**FNZ Submission:** No.

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?

**FNZ Submission:** No. Those businesses that seek to comply are already aware of the sanctions that could apply for non-compliance.

There should, for example, be a genuine belief that a SAR or STR will be investigated by the FIU and action taken. Instead, there is a perception that while SARs and STRs are filed, and processed and disseminated by the FIU, it is unlikely that action will result.

3.25. Would broadening the scope of civil sanctions to include directors and senior management support compliance outcomes? Should this include other employees?

**FNZ Submission:** For larger reporting entities, directors and officers are well aware of the reputational risk that could arise if the entity is found to have contravened its AML/CFT obligations, and do not take them lightly.

3.26. Not Answered.

3.27. Should compliance officers also be subject to sanctions or providedprotection from sanctions when acting in good faith?

**FNZ Submission:** Yes – it is entirely possible for a compliance officer to have done, in good faith, all that he or she could do, yet for the reporting entity nevertheless to have failed to comply in some respect. A compliance officer should not have liability where he or she has so acted.

3.28. Not Answered.

3.29. Not Answered.

## Part 4 Preventative measures

4.1. What challenges do you have with complying with your CDD obligations? How could these challenges be resolved?

**FNZ Submission:** As discussed elsewhere in this submission (at 1.11 and 1.13 and 3.18) the single most significant challenge FNZ faces arises from the definition of "customer" and the interpretation adopted in New Zealand that considers the end

customers of FNZ's financial institution customers also to be FNZ's customers.

This could be addressed by aligning our legislation to that of Australia, under which those end customers are not the customers of the custodian for AML/CFT purposes, Section 6(46) of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

Further, FNZ submits that demonstrably low risk products – such as investments in KiwiSaver and other superannuation schemes – should be exempt from ongoing transaction monitoring. While we accept there may be technically a small risk of money laundering via KiwiSaver [i.e., by an over 65-year old] the compliance burden across each and every reporting entity cannot be proportionate to this risk in either time, resource, or cost.

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

**FNZ Submission:** Except as noted in 4.1, no.

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?*

**FNZ Submission:** Yes, if it involved confirming that where FNZ provides custodial services to other financial institutions for the benefit of their end customers, that those customers are customers of the financial institution, and not the custodian.

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

**FNZ Submission:** See 4.3.

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

**FNZ Submission:** Yes – it would eliminate the duplication of effort currently required to be undertaken by a financial institution and by FNZ as custodian to carry out CDD on precisely the same customers.

4.6. Not Answered.

4.7. Not Answered.

4.8. Not Answered.

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

**FNZ Submission:** Yes.

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

**FNZ Submission:** Yes.

4.11. *Should CDD be required in all instances where suspicions arise?*

**FNZ Submission:** The requirement to perform EDD post submission of a STR very rarely enhances knowledge or understanding. FNZ would question its usefulness.

4.12. Not answered.

4.13. Not answered.

4.14. Not Answered.

4.15. Not Answered.

4.16. Not Answered.

4.17. Not Answered.

4.18. Is the information that the Act requires to be obtained and verified still appropriate? If not, what should be changed?

**FNZ Submission:** Yes.

4.19. Are the obligations to obtain and verify information clear?

**FNZ Submission:** Yes.

4.20. Is the information that businesses should obtain and verify about theircustomers still appropriate?

**FNZ Submission:** Yes.

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?

**FNZ Submission:** No.

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?*

**FNZ Submission:** As to the legal person or legal arrangement's form and proof of existence, yes, for clarity (although the reference in section 15(e) to "the person's company identifier or registration number" already contemplates the necessity to obtain and verify information about a legal person's form and proof of existence).

As to ownership and control structure and powers that bind and regulate, no. Would it then become incumbent on a reporting entity to know the contents of a legal entity's rules, and whether a transaction was in accordance with those rules? In FNZ's view this goes well beyond the scope of "knowing your customer" and should not be considered.

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?*

**FNZ Submission:** Yes – because of the obligation to obtain a person's identifier or registration number, FNZ already obtains information about the form of a customer (individual/joint/company/trust/partnership etc).

In addition, because of the obligation to identify the beneficial owner of a person, FNZ already obtains information about its ownership (e.g. shareholders) and control (e.g. directors).

4.24. *What do you estimate would be the impact on your compliance costs for your business if regulations explicitly required this information to beobtained and verified?*

**FNZ Submission:** Negligible if the regulations were limited to form, ownership and control. Extensive if regulations extended to "powers that bind and regulate".

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?*

**FNZ Submission:** No. There may be cases where source of wealth is sufficient for suspicious transaction.

4.26. Not Answered.

4.27. Not answered

4.28. Not Answered.

4.29. Not Answered.

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

**FNZ Submission:** No.

4.31. Not Answered.

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?*

**FNZ Submission:** No. Where there are a chain of companies, for example, that would necessitate identifying and verifying information about the company at the top of the chain, when that company may have no role at all in the transaction in question or with the activities of its subsidiary. The requirement is to know one's customer, including its beneficial owner – not an entity that could be well-removed from the customer.

4.33. Not Answered.

4.34. *Would there be any additional costs resulting from prescribing that businesses should focus on the 'ultimate' beneficial owner?*

**FNZ Submission:** Yes for reporting entities that are currently stopping at the first ownership or control layer.

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?*

**FNZ Submission:** The Consultation Document records that "Some businesses have customers in turn transact on behalf of their own underlying customers. As a result of how the definition has been interpreted, businesses in this position have been required to treat the customer of a customer as a beneficial owner and obtain and verify the underlying customer's identity."

This is precisely the issue faced by FNZ (and referred to in 1.11, 1.13, 3.18 and 4.1). FNZ would greatly welcome a regulation to clarify what is meant by the "person on whose behalf a transaction is conducted" in the definition of beneficial owner. In line with the FATF's guidance, this regulation could state that transactions being conducted on behalf of another person are only relevant when they imply that the other person is exercising indirect ownership or control. This would clarify the

obligation and ensure that businesses do not have a direct obligation to obtain and verify the identity of every underlying customer of their customer.

4.36. *Would this change make the "specified managing intermediaries" exemption or Regulation 24 of the AML/CFT (Exemption) Regulations2011 unnecessary? If so, should the exemptions be revoked?*

**FNZ Submission:** FNZ notes that the Consultation Document suggests the "specified managing intermediaries" exemption and Regulation 24 of the AML/CFT (Exemptions) Regulations 2011 could then be revoked as they would be unnecessary. In FNZ's view, the "licensing managing intermediaries" exemption could also be revoked for the same reason.

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?*

**FNZ Submission:** FNZ considers this change would reduce its compliance costs.

4.38. Not Answered.

4.39. Not Answered.

4.40. Not Answered.

4.41. Not Answered.

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?*

**FNZ Submission:** FNZ is comfortable with this proposal generally, but notes that often a settlor will do little more than settle the trust – the beneficial owners are more often the trustees.

4.43. Not Answered.

4.44. Not Answered.

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

**FNZ Submission:** We do not encounter challenges with using IVCOP, but find the focus of both auditors and supervisors on the minutia to be inconsistent with a risk-based approach.

4.46. *Is the approach in IVCOP clear and appropriate? If not, why?*

**FNZ Submission:** Yes.

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?*

**FNZ Submission:** No.

4.48. Not Answered.

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?*

**FNZ Submission:** No.

4.50. *What challenges have you faced with verification of address information? What have been the impacts of those challenges?*

**FNZ Submission:** FNZ agrees that challenges include customers not being able to provide evidence of an address to be verified for a variety of reasons, including:

(a) use of a PO Box;
(b) not being the account holder for any utility bills;
(c) recent changes of address; and
(d) utility bills going to an email address rather than a street address.

4.51. *In your view, when should address information be verified, and should that verification occur?*

**FNZ Submission:** No – a reporting entity should be required to obtain proof of address information, but not to have to further verify that information.

4.52. Not Answered.

4.53. Not Answered.

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?*

**FNZ Submission:** FNZ would be comfortable with Guidance in this area being issued, but would prefer not to see further regulations or a Code of Practice – the

AML/CFT regime should endeavour, as much as possible, to remain risk-based so that a reporting entity can adopt measures appropriate to it.

4.55. Not Answered.

4.56. Not Answered.

4.57. Not Answered.

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?

**FNZ Submission:** Yes, response may be determined by types of Trusts an entity has as clients. This level of prescription erodes any form of risk-based approach.

4.59. Not Answered.

4.60. Not Answered.

4.61. Are the ongoing CDD and account monitoring obligations in section 31 clear and appropriate, or are there changes we should consider making?

**FNZ Submission:** Yes.

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?*

**FNZ Submission:** Yes.

4.63. *Should we issue regulations to require businesses to consider these factors when conducting ongoing CDD and account monitoring? Why?*

**FNZ Submission:** No, because it risks the regime becoming overly prescriptive and losing sight of the risk-based approach. Section 31 already requires a reporting entity to have regard to the risk involved and the type of customer due diligence conducted when the business relationship with the customer was established, and to "regularly review" activity.

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?*

**FNZ Submission:** FNZ would not expect its compliance costs to increase if regulations to make this change were issued, as it already takes those matters into account in carrying out ongoing CDD.

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

**FNZ Submission:** No – frequency should be based on risk.

4.66. Not Answered.

4.67. Not Answered.

4.68. Not Answered.

4.69. Not Answered.

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 regularlyreview?*

**FNZ Submission:** No.

4.71. Not Answered.

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?

**FNZ Submission:** Given the variations of events this test is seeking to address – no.

4.73. Once suspicion has been formed, should reporting entities have the discretion not to conduct enhanced CDD to avoid tipping off?

**FNZ Submission:** Yes – an option would be to permit the reporting entity not to conduct enhanced CDD provided it immediately files a SAR.

4.74. Not Answered.

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?

**FNZ Submission:** There can be, currently, where FNZ does not have a direct relationship with the end customer. Where FNZ relies on its financial institution customer as its agent to carry out CDD on the end customer, FNZ would need to request the enhanced CDD information from its agent, but it is difficult to do so without tipping off, and because section 46 constrains to whom FNZ is permitted to disclose information about a SAR.

4.76. Not Answered.

4.77. Not Answered.

4.78. Not Answered.

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

**FNZ Submission:** It would be very useful if a database of PEPs could be centrally maintained – for example, by the Ministry of Foreign Affairs and Trade.

4.80. Not Answered.

4.81. Not Answered.

4.82. Not Answered.

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?

**FNZ Submission:** No. It is not a purpose of the AML/CFT regime to improve the integrity of our electoral financing regime, nor should it be. In addition, it would be very difficult to define when a person is or becomes a political candidate, and whether it includes national as well as local candidacies. FNZ notes that in the most recent election, almost 650 candidates stood for election to Parliament.

4.84. What would be the cost implications of such a measure for your business or sector?

**FNZ Submission:** Depending on how broadly "political candidate" was defined (e.g. if it was to include candidates for local and regional bodies) the cost implications for the sector would be extensive, and out of proportion to the benefit.

4.85. Not Answered.

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?

**FNZ Submission:** No.

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

**FNZ Submission:** Yes – a risk-based approach would likely increase compliance

costs due to the amount of intelligence gathering a reporting entity would have to do (or pay someone to do) about the activities of the former PEP. Given the dearth of information available about PEPs, a time-based prescriptive approach is preferred.

4.88. Not Answered.

4.89. Not Answered.

4.90. Not Answered.

4.91. Not Answered.

4.92. Not Answered.

4.93. Not Answered.

4.94. Not Answered.

4.95. Not Answered.

4.96. Not Answered.

4.97. Not Answered.

4.98. Not Answered.

4.99. Not Answered.

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

**FNZ Submission:** Yes.

4.101. What support would businesses need to conduct this assessment?

**FNZ Submission:** In FNZ's view, it would be simpler to assess our exposure to designated individuals or entities than to PEPs because there are published lists of those that are subject to sanctions.

4.102. Not Answered.

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?

**FNZ Submission:** No. We consider the purposes of the Act are sufficiently broad ("detect and deter …the financing of terrorism"), and note the existing obligations on a reporting entity to consider the countries it deals with as part of its risk assessment (section 58(2)).

4.104. Not Answered.

4.105. Not Answered.

4.106. Not Answered.

4.107. Not Answered.

4.108. Not Answered.

4.109. Not Answered.

4.110. Not Answered.

4.111. Not Answered.

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4.185. Not Answered.

4.186. Not Answered.

4.187. Not Answered.

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?

**FNZ Submission:** Yes. AMLCO should be required to be at senior management level.

4.189. Should the Act clarify that compliance officers must be natural persons, to avoid legal persons being appointed as complianceofficers?

**FNZ Submission:** Yes.

4.190. Not Answered.

4.191. Not Answered.

4.192. Not Answered.

4.193. Not Answered.

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4.211. Not Answered.

4.212. Not Answered.

**Part 5 Other issues or topics**

5.1. Not Answered.

5.2. Not Answered.

5.3. Not Answered.

5.4. Not Answered.

5.5. Not Answered.

5.6. Not Answered.

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5.10. Not Answered.

5.11. Not Answered.

5.12. Not Answered.

5.13. Not Answered.

5.14. Not Answered.

5.15. Should we achieve greater harmonisation with Australia's regulation? If so, why and how?

**FNZ Submission:** Yes. Definition of customer - align to Australian model whereby end investors are not the customers of a custodian. See also 4.1.

5.16. Not Answered.

# SARs and PTRs

| Issue | Proposal for change |
|---|---|
| No agency has the explicit function of ensuring compliance with SAR obligations. This function is not specifically listed as part of the functions of the AML/CFT Supervisors in section 130 (but supervisors are required to monitor for compliance more generally). Similarly, the Commissioner of Police is empowered to provide feedback to reporting entities on the quality and timing or their SARs and enforce the requirement to report. | Clarify which agencies are responsible for supervising compliance with SAR obligations.<br><br>FNZ agrees it would be better for consistency to have an agency responsible – it should be the relevant AML/CFT supervisor |

# Offences and penalties

| Issue | Proposal for change |
|---|---|
| AML/CFT supervisors can issue a formal warning for failure to comply with AML/CFT requirements. However, calling these "formal warnings" does not necessarily carry the intended weight with the sector. | Replace "Formal warnings" with "Censure" to indicate the weight of the action. Censure is much more than a warning and includes a mandatory action plan.<br>FNZ considers a new category could be added, rather than renaming the existing category. A "censure" could be one step up from a "formal warning". |

# Preventive Measures

| Issue | Proposal for change |
|---|---|
| Businesses are required to "have regard" to the factors set out in section 58(2) when conducting a risk assessment. This includes any applicable guidance material produced by AML/CFT supervisors or the Police, such as the National Risk Assessment or the various sectoral risk assessments. However, the language of "have regard to" could allow businesses to consider, but ultimately reject, government advice about national or sectoral risks and therefore fail to implement appropriate controls. | Amend section 58(2) to ensure that a business' risk assessment reflect government advice about national and sectoral risks.<br>FNZ's sector is Brokers and Custodians, but many of the risks in the FMA Sector Risk Assessment are only relevant to Brokers. FNZ would prefer the "have regard to" language to remain, so that it can adopt what is appropriate for its business |