

## Response ID ANON-Z596-YZXV-Y

Submitted to AML/CFT Act review  
Submitted on 2021-10-10 10:19:28

### Tell us a bit about yourself

1 What age group are you in?

50-64

2 What is your ethnicity? (You can select more than one.)

NZ European, Māori

Please specify:

Not Answered

Please specify:

Not Answered

Please specify:

Not Answered

Please specify:

3 If you're responding on behalf of an organisation or particular interest group, please give details below:

Organisation or special interest group details:

No

4 If you would like to be contacted in the future about AML/CFT work, please include your email address below. (Note you are not required to provide your email address. You can provide your submission anonymously.)

Email address:

kerrifergusson@gmail.com

### 1. Institutional arrangements and stewardship

1.1 Are the purposes of the Act still appropriate for New Zealand's Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) regime?

Yes

If you answered 'no', what should be changed?:

If you think there are other purposes that should be added, please give details below.:

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

Please comment on your answer.:

Prevention goes a bit further though. For eg more education and more deterrence can also help with prevention from both ends of the spectrum. There has been a lot of money laundering found but how many prosecutions? Hardly any. Also consider a fine regimen for businesses that are deliberately ignoring or avoiding the regulations. More Intel sharing internationally may also help.

1.3 If you answered 'yes' to Question 1.2, 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?

Please share your comments below.:

Introduce a tiered instant fine regimen for businesses that are not quite criminal but not compliant. Introduce more than just Real Me that once someone is registered and verified this can be used by a code sent to them to bring up all relevant identifying documents they need to share with the company to save doing it time and again

1.4 Should a purpose of the Act be that it also seeks to counter the financing of proliferation of weapons of mass destruction?

Yes

Please comment on your answer.:

Keep with the times. Don't make it narrow. These countries can get others to be a cover for them from either sympathisers or bullying vulnerable third world countries to circumvent the law

1.5 If you answered 'yes' to Question 1.4, should the purpose be limited to proliferation financing risks emanating from Iran and the Democratic People's Republic of Korea?

No

Please give reasons for your answer.:

As above. They can hide behind others

Yes

Please comment on your answer.:

It is important as apart from them hiding behind others, you may get other countries merge as a high risk if all eyes are only pointing in one direction

1.6 Should the Act support the implementation terrorism and proliferation financing targeted financial sanctions, required under the Terrorism Suppression Act 2002 and United Nations Act 1946?

Yes

Please comment on your answer.:

For all the reasons outlined in the attachment and we as signatory to UN should follow their recommendations

1.7 What could be improved about New Zealand's framework for sharing information to manage risks?

Please share your comments below.:

The risks may be written and reported in but NZ is not responding well to investigations of breaches. We need to see more prosecutions. Look how long it took us to prosecute for trafficking in persons when it's been going on for ages. High risk should always report between National and international agencies easier. But you need to ensure you have the right people trained, educated and have the ability to investigate these crimes to identify and then act otherwise the legislation is weak, pointless and NZ will be a bigger target for criminals.

1.8 Are the requirements in section 58 still appropriate?

No

Please comment on your answer.:

58(2)(a, g, h) are too ambiguous. The size of a business may be a factor but a small business can launder money to then finance terrorism. Gangs have gotten very smart about how the launder money. Immigration needs to work harder not to let international gang members into NZ. More agencies need to work together to assess these provisions.

How could the government provide risk information to businesses so that it is more relevant and easily understood?:

Decent robust training and monitoring that is more targeted than it currently is with organisations that know what they are doing. Having current organisations as the watch dogs may not work. Create a new one targeted to combat AML/CFT and employ people trained and experienced in this field.

1.9 What is the right balance between prescriptive regulation compared with the risk-based approach?

Please share your comments below.:

It just seems that NZ is going the bare minimum. For eg. The companies office is useless. They have been told about and seen shell companies but do nothing. DIA and FMA are useless at investigating and monitoring AML/CFT activity and crimes.

Does the Act currently achieve that balance, or is more (or less) prescription required?:

Very prescriptive but doesn't allow the joint risk based response to happen easily in this country.

1.10 Do some obligations require the government to set minimum standards?

Yes

If you answered 'yes', please comment on how this could be done.:

Obviously. And that's what's been done. It doesn't mean we have to investigate from the same minimum standard

What role should guidance play in providing further clarity?:

A lot but from experienced and educated people from the field.

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

Yes

If you answered 'yes', please give reasons for your answer.:

More Intel may be required to understand this but most businesses just got through the motions. I doubt they would know AML even if it slapped them in the face.

1.12 Does the Act appropriately reflect the size and capacity of the businesses within the AML/CFT regime?

Yes

Please give reasons for your answer.:

This is true and hard for small businesses so perhaps more support and education is required for them. They can't afford a compliance officer for eg

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?

Yes

If you answered 'yes', please share your suggestions.:

Education to start with. Closer monitoring for another

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?:

Take away the exemptions but allocate cost of legislative review proportional to the size of the business.

Unsure

1.15 Is the Minister of Justice the appropriate decision maker for exemptions under section 157?

Unsure

If you answered 'no', should it be an operational decision maker such as the Secretary of Justice? Please comment below.:

Unsure

1.16 Are the factors set out in section 157(3) appropriate?

Unsure

If you answered 'no', please give reasons for your answer.:

Needs review and comparison to other countries

1.17 Should it be specified that exemptions can only be granted in instances of proven low risk?

Yes

Please give reasons for your answer.:

Probably yes

Should this be the risk of the exemption, or the risk of the business?:

Unsure

1.18 Should the Act specify what applicants for exemptions under section 157 should provide?

Yes

Please give reasons for your answer.:

Always to be clear

Should there be a simplified process when applying to renew an existing exemption?:

Yes. Make it easy for people to comply not hard

1.19 Should there be other avenues beyond judicial review for applicants if the Minister decides not to grant an exemption?

Yes

If you answered 'yes', what could these avenues look like?:

Judicial review is a bit harsh and most won't be able to afford the process.

1.20 Are there any other improvements that we could make to the exemptions function?

Unsure

If you answered 'yes', please give details::

For example, should the process be more formalised with a linear documentary application process?:

As long as it's not hard to use or follow

1.21 Can the AML/CFT regime do more to mitigate its potential unintended consequences?

Yes

If you answered 'yes', please give details::

But think about what. A lot of nationalities sending money overseas is from tax evasion, exploitation, other related crimes so this is just as important to consider. Depending on the situation ie Tongan community may need support from their gift to provide a pass for eg to ensure the money was legitimately obtained then they get better rates than those that can't. NZ is not Thursday world. If people are here and can send warnings offshore they can surely prove its legitimate. I am a bit sick of NZ being blind to this.

1.22 How could the regime better protect the need for people to access banking services to properly participate in society?

Please share your comments below.:

Make it easier for banks to do the transfer at limited cost. It's probably better to have a known and trusted organisation doing this transaction than a dodgy hole in the wall money Laundering set up.

1.23 Are there any other unintended consequences of the regime?

Yes

If you answered 'yes', what are they and how could we resolve them?:

Tax evasion. Money not staying here to help our economy. Victims of exploitation or trafficking remaining unidentified. Other crimes linked to legitimate transfers off shore.

1.24 Can the Act do more to enable private sector collaboration and coordination?

Yes

If you answered 'yes', please give details::

I think this is a great idea. NZ tends to be too PC with crime and needs to understand this happens here so do all we can to make it harder to do it here or from to to this country

1.25 What do you see as the ideal future for public and private sector cooperation?

Please share your comments below.:

Expand the group a bit further perhaps to include other representatives ie Deloitte and PWC, MBIE

Are there any barriers that prevent that future from being realised and if so, what are they?:

Privacy laws and concerns about sharing info

1.26 Should there be greater sharing of information from agencies to the private sector?

Yes

If you answered 'yes', would this enhance the operation of the regime?:

If the risk is real and identify then yes

1.27 Should the Act require have a mechanism to enable feedback about the operation and performance of the Act on an ongoing basis?

Yes

If you answered 'yes', what is the mechanism and how could it work?:

Always. We should do this more across all legislation

1.28 Should the New Zealand Police Financial Intelligence Unit (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)?

Yes

Please give reasons for your answer.:

Any high risk businesses should not be an exception

1.29 If the FIU had this power, under what circumstances should it be able to be used and should there be any constraints on using the power?

Please share your comments below.:

The same as it does with banks. Suspicion and activity and real maintenance of the law identified

1.30 Should the FIU be able to request information from businesses on an ongoing basis?

Yes

Please explain your answer:

Especially if concerned about their operations

1.31 If the FIU had this power, what constraints are necessary to ensure that privacy and human rights are adequately protected?

What constraints are needed?:

The privacy maintained and the oversight or auditing by a third party to ensure no abuse of the system

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?

Unsure

If you answered 'yes', 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? Please share your comments below.:

Probably only in real high risk situation to avoid being sued

1.33 How can we avoid potentially tipping off suspected criminals when the power is used?

Please share your comments below.:

That's a hard one but sometimes it's a good thing if they know!

1.34 Should supervision of implementation of Targeted Financial Sanctions (TFS) fall within the scope of the AML/CFT regime?

Yes

Please give reasons for your answer.:

Probably makes sense

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

Please describe below and give reasons for your answer.:

Create one dedicated to investigations of this type

1.36 Are the secondary legislation making powers in the Act appropriate, or are there other aspects of the regime that could benefit from having regulation making powers created?

Please share your comments below.:

It's an ever changing world so need to be able to change with it

1.37 How could we better use secondary legislation making powers to ensure the regime is agile and responsive?

Please share your comments below.:

Unsure

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?

Please share your comments below and give reasons for your answer.:

I think you should have one specialised org that deals with this not three

1.39 Should the New Zealand Police also be able to issue Codes of Practice for some types of FIU issued guidance?

Yes

If you answered yes, what should the process be?:

They administer the law do yes

1.40 Are Codes of Practice a useful tool for businesses?

Unsure

If you answered 'yes', are there any additional topics that Codes of Practice should focus on? What enhancements could be made to Codes of Practice?

Please share your comments below.:

Possibly to put them on notice

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?

No

If you answered 'yes', please give reasons for your answer.:

I think this may open us to risk. Unless it's more frequent and can be cancelled at short notice if no longer compliant

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

Please share your comments below.:

Unsure

1.43 Should operational decision makers within agencies be responsible for making or amending the format of reports and forms required by the Act?

Yes

Please give reasons for your answer.:

Good idea

1.44 If you answered 'yes' to the previous question (question 1.43), 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?

Please share your comments below.:

Consultation is as important as transparency so yes

1.45 Would AML/CFT Rules (or similar) that prescribed how businesses should comply with obligations be a useful tool for business?

Yes

Please give reasons for your answer.:

Anything to help

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?

Please share your comments below.:

Unsure

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?

Yes

Please give reasons for your answer.:

Some info the FIU has is helpful for other agencies to use but regulations of their sharing doesn't help others

1.48 Are there any other privacy concerns that you think should be mitigated?

Unsure

Please share your comments below.:

1.49 What, if any, potential impacts do you identify for businesses if information they share is then shared with other agencies? Could there be potential negative repercussions notwithstanding the protections within section 44?

Please share your comments below.:

Yes there could be. Change the rules so the info cannot be shared once removed

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?

Yes

Please give reasons for your answer.:

Absolutely. This is hard to identify so anything to help as it's a newer emerging trend in AM that is hard to identify and investigate

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 Suspicious Activity Reports (SARs)?

Please share your comments below.:

It shouldn't. If so I would be concerned about that company

1.52 Should there be an AML/CFT-specific registration regime which complies with international requirements?

Yes

If you answered 'yes', how could it operate, and which agency or agencies would be responsible for its operation? Please share your comments below.:

Always

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

Please share your comments below.:

Unsure

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?

Yes

Please give reasons for your answer.:

Have one agency investigating this area

1.55 Should there also be an AML/CFT licensing regime in addition to a registration regime?

Unsure

Please give reasons for your answer.:

1.56 If we established an AML/CFT licensing regime, how should it operate? How could we ensure the costs involved are not disproportionate?

Please share your comments below.:

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?

No

Please give reasons for your answer.:

All or nothing

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

Please share your comments below.:

Unsure

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?

Please share your comments below.:

No

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?

Please give reasons for your answer.:

Yes

Yes

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

Please share your comments below.:

All

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?

Please share your comments below.:

Based on business size

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?

Unsure

Please give reasons for your answer.:

Some not all

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?

Please share your comments below.:

Better investigations