

Response ID ANON-Z596-YZYA-B

Submitted to AML/CFT Act review
Submitted on 2021-11-10 10:40:48

Tell us a bit about yourself

1 What age group are you in?

35-49

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

NZ European

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:

I am a property lawyer.

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:

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?

No

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

The third bullet should be removed, as if anything the regime undermines confidence in the financial system by making it less efficient.

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

Yes, there should also be a recognition in the purposes (and provision elsewhere in the Act) that any measures which are mandated by the regime are actually effective, and are also cost effective. The Act should not require anything which is not proven to actually reduce money laundering or financing of terrorism, nor should it mandate anything which is marginally effective but very expensive to implement (e.g. it should be cost effective)/

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?

No

Please comment on your answer.:

You may as well legislate for unicorns to exist.

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.:

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

No

Please comment on your answer.:

The last thing I want is the scope of this legislation increasing. The focus should be on reducing the dead weight burden for the 99.99% of people and transactions that have no evil intent behind them.

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?

Not Answered

Please give reasons for your answer.:

No

Please comment on your answer.:

Same as last comment.

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?

No

Please comment on your answer.:

Same as last comment.

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

Please share your comments below.:

See previous comments and answers.

1.8 Are the requirements in section 58 still appropriate?

No

Please comment on your answer.:

I don't consider even having the Act on the statute book is appropriate. I appreciate NZ was forced into it. The treaty though just has so many unnecessary requirements which stifle legitimate business. The money transfer reporting limit. The need to do CDD before commencing a business relationship rather than before actually handling money or creating an entity. The time periods for ID and address verification certifications before they expire. All of these things cause unnecessary issues. Can we either work to improve these things internationally, or use the limited scope we have to change our national regime to improve them just in NZ?

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

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

Please share your comments below.:

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

Much less prescription.

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

No

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

What role should guidance play in providing further clarity?:

None. The DIA seems reluctant to provide any guidance we can rely on when trying to understand how the US based wording of the regime applies to the particular issues in our country and particularly our sector (e.g. the fact we operate trust accounts, hold deposit moneys as stakeholder, etc). The only guidance we seem to get is suggestions that we need to do something that is not actually in the legislation. For example, where in the legislation does it say that beginning work/commencing a business relationship before completing CDD due to reasons of urgency should be an exceptional event?

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.:

I consider (on reasonable grounds in my opinion) from my client base there is NO risk of money laundering or financing of terrorism. Therefore every minute I spend on AML/CFT is a waste of time and money - mine and the clients. So a complete repeal would be nice, thanks!

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

No

Please give reasons for your answer.:

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.:

See last answer.

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

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

Yes

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

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

Unsure

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

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

No

Please give reasons for your answer.:

It should be based on a cost/benefit analysis.

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

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

No

Please give reasons for your answer.:

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

Absolutely - why doesn't the exemption run until the Minister advises otherwise.

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

Unsure

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

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

Yes

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

Actively seek out areas for exemption and do the running yourselves on your own volition.

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

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

Yes

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

See my earlier comments.

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.:

Drop address verification for a start.

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?:

Repeal the legislation would be best.

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

No

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

I am not interested in fighting financial crime. It is not my job. I am a lawyer, not a policeman. I didn't volunteer to help fight financial crime, you have compelled me to participate, and you don't pay for my time doing it.

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

Please share your comments below.:

The public sector stays out of our business as much as possible.

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

The nature of Government and any bureaucracy. They enjoy making rules because they like control and don't pay the costs of complying with them.

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?:

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?:

Something similar to what you are doing now seems sensible

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.:

I'd rather that the whole system was replaced with a request based system like this (plus the obligation for us to report suspicious activities). It still has the crime solving/proving outcomes we want but without the burden of unnecessary compliance for the 99.99% of cases where there is nothing untoward going on.

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.:

I'd support a very wide power if it meant being rid of current AML/CFT obligations besides reporting suspicious activities.

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

Yes

Please explain your answer:

Yes but only on the basis it is "instead of" rather than "in addition to" - as discussed above.

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?:

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?

Not Answered

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.:

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

Please share your comments below.:

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

Not Answered

Please give reasons for your answer.:

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.:

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.:

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

Please share your comments below.:

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.:

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

Not Answered

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

1.40 Are Codes of Practice a useful tool for businesses?

Not Answered

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.:

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?

Not Answered

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

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.:

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

Not Answered

Please give reasons for your answer.:

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.:

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

Not Answered

Please give reasons for your answer.:

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.:

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?

Not Answered

Please give reasons for your answer.:

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

Not Answered

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.:

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?

Not Answered

Please give reasons for your answer.:

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.:

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

Not Answered

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

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.:

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?

Not Answered

Please give reasons for your answer.:

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

Not Answered

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?

Not Answered

Please give reasons for your answer.:

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.:

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.:

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.:

Not Answered

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.:

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.:

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?

Not Answered

Please give reasons for your answer.:

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.: