

# Response ID ANON-Z596-YZNK-A

Submitted to AML/CFT Act review  
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## 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?:

Needs to include the intent to enhance New Zealand's reputation for ease of doing business.

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

As above. Perhaps as a proviso to the current purposes.

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.:

The law should not require banks etc to play vigilante. The duty to 'actively prevent' sits squarely with government. It is important that the law expressly requires government to do so.

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.:

It should be clear who is responsible for what. Banks etc should be detecting issues and government should be preventing and policing.

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

Unsure

Please comment on your answer.:

I would be cautious about opening the floodgates to causes beyond AML/CFT - not just proliferation, but also slavery and other worthy causes. Still, provided it doesn't impact the ease of business transactions (eg no added ID requirements), I have no issue.

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?

Unsure

Please give reasons for your answer.:

For the reasons above, I'm not sure I would expand the scope of the Act, unless it does not make business transactions more difficult

Unsure

Please comment on your answer.:

See above.

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?

Unsure

Please comment on your answer.:

I was confused by the explanation. It sounds like other statutes already address this and it wasn't made clear how this could be improved upon.

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

Please share your comments below.:

1.8 Are the requirements in section 58 still appropriate?

Yes

Please comment on your answer.:

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.:

Risk based makes the most sense as to allocation of administrative burden (ie justifying that burden). The law should be as risk based as possible

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

More risk based needp

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

Unsure

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

Don't understand the question

What role should guidance play in providing further clarity?:

Ditto

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.:

Yes, absolutely. This is crucial to business efficiency and effective, but not cumbersome, regulation. This should be a primary focus of any reform.

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

Unsure

Please give reasons for your answer.:

I say unsure because I'm not entirely sure that size of organisation should be relevant to compliance.

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?

Unsure

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

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?

No

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

I would expect a non-political figure, with operational understanding, to make the decision. Secretary of Justice makes sense

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

Unsure

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

Don't know what they are

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.:

Yes, but application could apply to a number of businesses in the same sector. In other words, applications need not be on an individual basis. Exemptions could also be published or gazetted or passed by order to create exemptions that apply to a wide class of businesses

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

Risk of the exemption. It would be bad law to allow exemptions based of the business and could lead to to subjectivity and bias.

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

Yes

Please give reasons for your answer.:

It's always helpful to have a list and it helps to avoid judicial review where there is ambiguity

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

Unsure

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

No

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?

Unsure

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

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

That sounds like a good idea

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

Yes

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

The identification requirements etc for banks, lawyers etc are burdensome. Covid 19 made us realise how useful technology can be to help ease the inefficiencies created by AML/CFT requirements. The Government should be funding systems to streamline these requirements, perhaps leveraging off RealMe etc

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.:

I ran out of steam here. Less questions next time please!!

1.23 Are there any other unintended consequences of the regime?

Not Answered

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

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

Not Answered

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

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

Please share your comments below.:

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

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

Not Answered

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?

Not Answered

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

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)?

Not Answered

Please give reasons for your answer.:

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.:

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

Not Answered

Please explain your answer:

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.: