Phase 2 AML/CFT Reforms

Exposure draft amendment Bill

Information Paper

December 2016

MINISTRY OF JUSTICE
Tāhū o te Ture

New Zealand Government

About this paper

The Government is finalising details of how to implement Phase 2 of the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) law, and how the law will work in practice.

These details are set out in the exposure draft of the Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill (see Appendix 3).

Phase 1 of the AML/CFT laws came into effect in 2013, covering businesses such as banks, casinos, certain trust and company service providers and certain financial advisers, among others.

Phase 2 will extend the AML/CFT laws to cover real estate agents, conveyancers, many lawyers, accountants, and some additional gambling operators and some businesses that trade in high-value goods such as cars, boats, jewellery, bullion, art and antiquities. Evidence shows these businesses are at high risk of being targeted by criminals to launder money.[1] The AML/CFT law aims to put in place practical measures to protect businesses and make it harder for criminals to profit from and fund illegal activity.

While the focus is on issues related to Phase 2 sectors, some of the proposed reforms will also affect Phase 1 businesses.

The proposed changes set out in the exposure draft Bill aim to strike a balance between combating crime, minimising costs and enabling New Zealand to meet its international obligations. We have a responsibility to ensure that our country is not a weak link in international attempts to counter money laundering and the financing of terrorism. We need to be mindful of how our AML/CFT laws work both for New Zealand and within the international standards set by the Financial Action Task Force (FATF)[2] on which New Zealand sits as a member. Initial estimates suggested the maximum cost to business could be $1.6 billion[3] over 10 years. This estimate assumed that most Phase 2 businesses had to comply with the current AML/CFT Act.

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[1] NZ Police Financial Intelligence Unit. *National Risk Assessment on Anti-Money Laundering/Countering Financing of Terrorism.* 2010. See http://www.police.govt.nz/sites/default/files/publications/fiu-nra-2010-primary-document.pdf

[2] FATF is the international standard-setting and policy making body on combating money laundering and terrorist financing.

[3] Ernst & Young. *Draft Cost/Benefit Analysis: AML Phase II.* October 2016.

In terms of benefits, it is estimated that Phase 2 could disrupt up to $1.7 billion worth of illegal drugs and fraud [4] over 10 years and potentially prevent and deter many billions more in wider criminal activity. This will lessen the human toll these crimes take on victims, vulnerable people and communities.

Since the initial cost estimate was done, the Government has made decisions that would reduce the cost of compliance. We are now seeking input from sector groups on those options for businesses, and other ways to further reduce compliance costs.

Input from earlier consultation has helped inform the proposals outlined in this document.

Help us finalise the amendment Bill and reduce compliance costs

We wish to get your input on 3 key issues:

- Is the exposure draft of the AML/CFT Amendment Bill clear and does it accurately reflect the initial proposals outlined in this paper?
- Can businesses use provisions in the Bill to reduce compliance costs associated with Phase 2?
- What else can be done to help businesses reduce compliance costs associated with implementation of Phase 2?

Next year, there will be further opportunities to comment on and influence the shape of the proposed law reforms – refer next steps below for more detail.

How to have your say

Please read the chapters relevant to you. General information for businesses is also available at justice.govt.nz/aml-cft.

When you're ready to provide feedback, you can:

- give your feedback online at consultations.justice.govt.nz
- email a submission to aml@justice.govt.nz
- post a written submission to AML/CFT consultation team, Ministry of Justice, SX10088, Wellington, New Zealand

Please send us your views by **5pm, Friday 27 January 2017**.

[4] Ernst & Young. *Draft Cost/Benefit Analysis: AML Phase II.* October 2016.

Next steps

Your views will help us finalise the amendment Bill that is to be introduced to Parliament in early 2017. There will then be a select committee process where you will be able to make formal submission on the final shape of the legislation.

The Government intends to have the draft amendment Bill passed by mid-2017. After that, the extended Act will come into force in stages, sector by sector, beginning in early 2018.

Businesses will also be able to comment on the regulations that are developed and the guidance produced by the AML/CFT regulators (known as Supervisors), and participate in information roadshows and training.

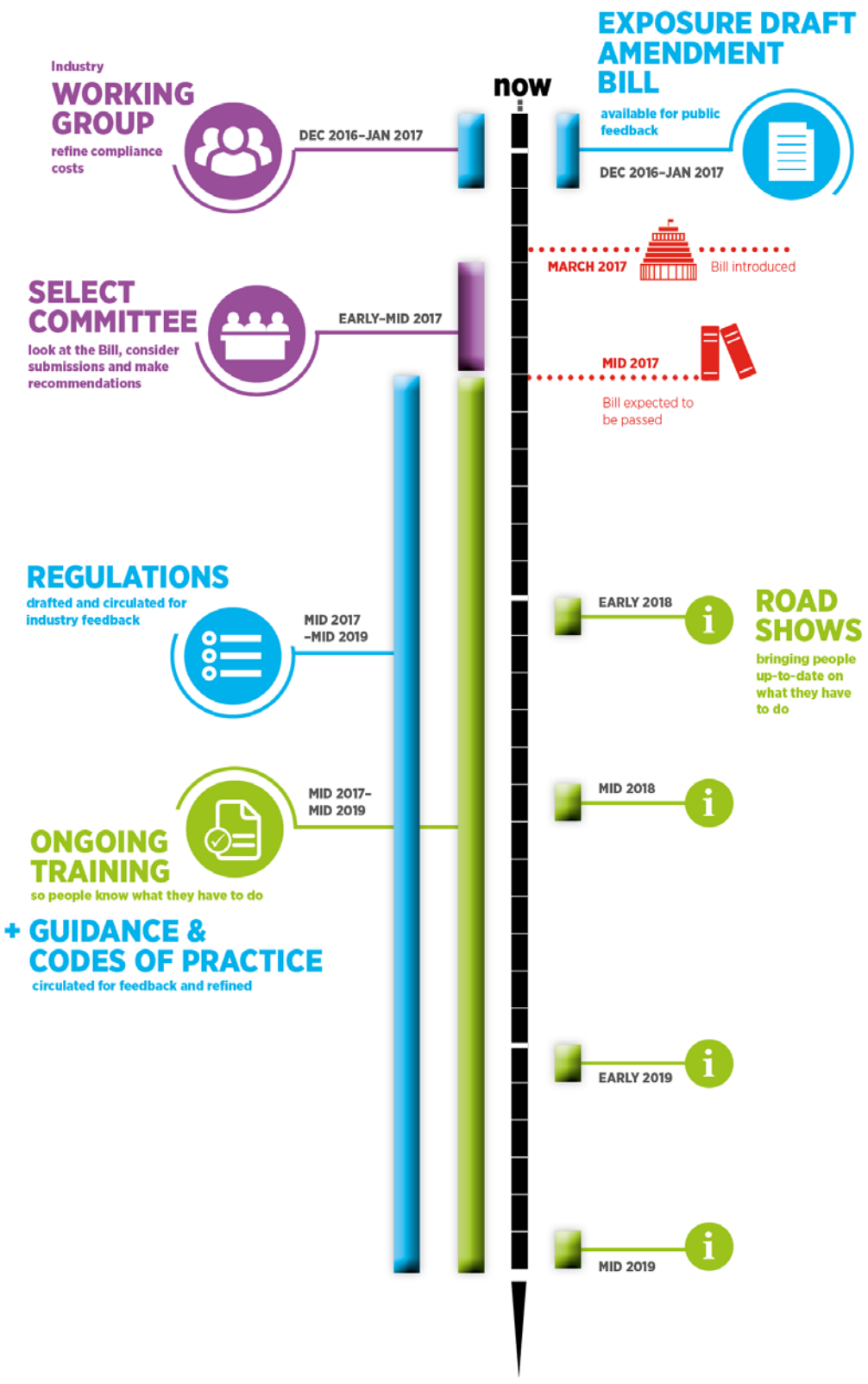
Personal information and confidentiality

We will hold your personal information in accordance with the Privacy Act 1993.

We accept submissions made in confidence or anonymously. Please clearly indicate if you want your submission to be treated as confidential.

We may be asked to release submissions in accordance with the Official Information Act 1982 and the Privacy Act 1993. These laws have provisions to protect sensitive information given in confidence but we can't guarantee the information can be withheld. However, we will not release individuals' contact details.

Diagram 1 Timeline for the second phase of reforms to the AML/CFT Act 2009



Contents

Chapter 1: Phase 2 businesses and professions - Who the AML/CFT regime would apply to and what they'd have to do

Phase 2 businesses and professions will have to comply with the AML/CFT Act ('the Act') if they provide certain services that criminals may use to launder money or finance terrorism.

This chapter sets out – sector by sector – which types of services would be covered by the Act. It also outlines what businesses and professionals that provide those services would have to do to deter and detect money laundering and financing of terrorism, and when they'd have to start complying.

General information for Phase 2 business is available at justice.govt.nz/aml-cft.

Once you have read the information and answered questions specific to your sector, please read chapters 2, 3 and 4 which will affect both Phase 1 and Phase 2 businesses and professions.

Lawyers and conveyancers

Services that would be covered by the Act

Lawyers and conveyancers would be covered by the Act if they carry out specific activities, namely:

- acting as a formation agent of legal persons or arrangements
- acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or arrangements
- providing a registered office or a business address, a correspondence address, or an administrative address for a company, a partnership, or any other legal person or arrangement
- managing or arranging client funds, accounts, securities, or other assets
- engaging in or giving instructions in relation to any conveyancing (with the meaning of section 6 of the Lawyers and Conveyancers Act 2006) on behalf of a customer in relation to the sale or purchase, or the proposed sale or purchase, of real estate
- engaging in or giving instructions in relation to transactions on behalf of any person in relation to the buying or selling of real estate or businesses
- engaging in or giving instructions in relation to transactions for customers related to creating, operating, and managing companies.

These activities are listed in clause 5 of the draft Bill. Accountants and trust and company service providers that carry out any of these activities would also be covered by the Act.

Evidence shows the above activities are at high risk of being used for money laundering and terrorist financing. Activities involving professional client accounts, the formation of trusts and companies and conveyancing services are particularly attractive avenues for criminals trying to legitimise the proceeds of crime.

AML/CFT obligations

Lawyers who are covered by the Act would need to comply with the full range of obligations currently in the Act, subject to the proposed changes in the draft Bill. These are listed in Appendix 1.

The obligations are risk-based. The greater the risk of your business, the more you must do to manage those risks. In practice, this means that a small law firm providing services to long-term local clients should find it easier to meet their obligations than a large firm which offers a broad range of services and has international clients, or a firm with many new or single transaction clients.

Please note that Chapter 2 provides information and asks questions about provisions in the draft Bill that will affect compliance costs.

Legal professional privilege

The current definition of 'privileged communication' will be more closely aligned with the definition set out in the Evidence Act. This is to ensure greater consistency in related areas of law and to cover litigation privilege.

It would include communications with legal advisors, preparatory materials for proceedings and settlement negotiations or mediation. Privileged communication is defined in clause 16 of the Bill.

Below are 2 examples where legal professional privilege would not apply because the information was created for dishonest or illegal purposes.

Example 1:

Jeremy advises his lawyer during a privileged discussion that he wants this transaction to be very low-key and avoid the attention of Inland Revenue. The lawyer reasonably suspects Jeremy is being dishonest and may be trying to evade tax obligations, so privilege doesn't apply. The lawyer should submit a suspicious activity report to the Police Financial Intelligence Unit (FIU).

Example 2:

Jenny is charged with drug offences and money laundering. Jenny's lawyer is called by the Police to give evidence against her regarding a transaction that is part of his preparatory materials (and therefore usually privileged). The Police advise him the transaction in question is the subject of the investigation. At that point, the lawyer knows the information isn't privileged because it's relevant to the commission of an offence.

When you would have to start complying

Lawyers and conveyancers would have to comply with the amendment Act 6 months after it's passed.

The Government is aware regulations may need to be prepared and put in place before this date. We'd work with you to meet this timeline. Regulations we intend to review and draft include those listed in Appendix 2.

Questions

1. Is the wording and structure of the draft amendment Bill clear about when and how lawyers and conveyancers are covered by the Act?
2. Could the wording in the draft amendment Bill create unintended consequences?

Accountants

Services that would be covered by the Act

Accountants would be covered by the Act if they carry out specific activities, namely:

- acting as a formation agent of legal persons or arrangements
- acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or arrangements
- providing a registered office or a business address, a correspondence address, or an administrative address for a company, a partnership, or any other legal person or arrangement
- managing or arranging client funds, accounts, securities, or other assets
- engaging in or giving instructions in relation to any conveyancing (with the meaning of section 6 of the Lawyers and Conveyancers Act 2006) on behalf of a customer in relation to the sale or purchase, or the proposed sale or purchase, of real estate
- engaging in or giving instructions in relation to transactions on behalf of any person in relation to the buying or selling of real estate or businesses
- engaging in or giving instructions in relation to transactions for customers related to creating, operating, and managing companies.

These activities are listed in clause 5 of the draft Bill. Lawyers, conveyancers, and trust and company service providers that carry out any of these activities would also be covered.

Evidence shows the above activities are at high risk of being used for money laundering and terrorist financing. Activities involving professional client accounts and the formation of trusts and companies are particularly attractive avenues for criminals trying to legitimise the proceeds of crime. Due to these risks, the option of not covering accountants who provide these services was not considered appropriate.

AML/CFT obligations

Accountants who are covered by the Act would need to comply with the full range of obligations currently in the Act, subject to the proposed changes in the draft Bill. These are listed in Appendix 1.

The obligations are risk-based. The greater the risk of your business, the more you must do to manage those risks. In practice, this means that a small accountancy firm providing services to long-term local clients should find it easier to meet their obligations than a large firm which offers a broad range of services and has international clients, or a firm with many new or single transaction clients.

Please note that Chapter 2 also provides information and asks questions about provisions in the draft Bill that will affect compliance costs.

When you would have to start complying

Accountants would have to comply with the amendment Act 12 months after it's passed.

The Government is aware regulations may need to be prepared and put in place before this date. We'd work with you to meet this timeline. Regulations we intend to review and draft include those listed in Appendix 2.

Questions

3. Is the wording and structure of the draft Bill clear about when and how accountants are covered by the Act?
4. Could the wording in the draft amendment Bill create unintended consequences?

Real estate

Services that would be covered by the Act

Real estate agents will be covered by the Act when they represent either a seller or buyer in the sale or purchase of real estate.

The way real estate agents will be covered is set out in clause 5 of the draft Bill.

AML/CFT obligations

Real estate agents would need to comply with the full range of obligations currently in the Act, subject to the proposed changes in the draft Bill. These are listed in Appendix 1.

The obligations are risk-based. The greater the risk of your business, the more you must do to manage those risks. In practice, this means that a small real estate firm providing services to long-term local clients should find it easier to meet their obligations than a large firm which offers a broad range of services and has international clients.

As part of their obligations, agents would be required to verify the identity of their customer (known as customer due diligence or CDD). We propose that real estate agents will only have to conduct CDD on their client, not the other party to the transaction, whose identity will be verified by a lawyer or conveyancer involved in the deal.

However, where an agent accepts a cash deposit of more than $10,000 from the purchaser, they'll have to conduct CDD on the person paying the deposit, even if they're not their client. We note that overseas buyers of real estate are already required to have an IRD number, which requires that person to have been subject to CDD by a reporting entity under the Act, or to hold a current New Zealand bank account.

In all transactions, where the client is a trust, the Act also requires agents to inquire into the trust's source of funds.

Please note that Chapter 2 also provides information and asks questions about provisions in the draft Bill that will affect compliance costs.

When to do customer due diligence

The draft Bill requires CDD to be done when you engage in transactions or give instructions on behalf of your client when buying or selling real estate (see clause 5 of the Bill). This wording is consistent with FATF[5] requirements.

When you would have to start complying

Real estate agents would have to comply with the amendment Act 18 months after it's passed.

The Government is aware regulations may need to be prepared and put in place before this date. We'd work with you to meet this timeline. Regulations we intend to review and draft include those listed in Appendix 2.

Questions

5. Is the wording and structure of the draft Bill clear about when and how real estate agents are covered by the Act?
6. Could the wording in the draft Bill create unintended consequences?

[5] Financial Action Task Force (FATF) is the international standard-setting and policy making body on combating money laundering and terrorist financing. New Zealand has been a member since 1996.

Gambling

Services that would be covered by the Act

Racing and sports betting is illegal in New Zealand unless offered by the New Zealand Racing Board under the Racing Act 2003.

The Board already has limited AML/CFT obligations under the Financial Transactions Reporting Act 1996. It currently has a ministerial exemption from the AML/CFT Act which will expire when Phase 2 comes into force.

The Board would be covered by the Act when it operates accounts on behalf of customers or carries out large cash transactions over $10,000.

It's proposed that AML/CFT obligations would apply to the Board for its activities related to betting, vouchers and accounts.

There's no intention to cover class 4 gaming services provided by the Board as they're not provided on account and have low stake limits and a maximum jackpot limit of $1000.

AML/CFT obligations

The Board would need to comply with the full range of obligations currently in the Act. These are listed in Appendix 1.

Please note that Chapter 2 also provides information and asks questions about provisions in the draft Bill that will affect compliance costs.

When the Board would have to start complying

The New Zealand Racing Board would have to comply with the amendment Act 18 months after it's passed.

The Government is aware regulations may need to be prepared and put in place before this date. We'd work with you to meet this timeline. Regulations we intend to review and draft include those listed in Appendix 2.

Questions

7. Is the wording and structure of the draft Bill clear about when and how the Board is covered by the Act?
8. Could the wording in the draft Bill create unintended consequences?

Businesses trading in high value goods

Services that would be covered

Businesses that trade in high value goods will only be covered by the Act if they:

- trade in jewellery, precious metals, precious stones, watches, motor vehicles, boats, art or antiquities, and
- accept cash of $15,000 or more for single transactions or a series of related transactions.

These requirements are listed in clause 5 of the draft Bill. The $15,000 cash threshold isn't specified in the draft Bill, as the intention is to set the threshold in Regulations.

If you decide you won't accept cash above this amount, you won't have any AML/CFT obligations. You could still accept electronic transactions of any amount.

The changes are intended to specifically target the illicit cash economy. Some crimes, such as those related to the illegal drug market or tax evasion, use cash to avoid checks in the financial sector.

High value goods are an easy way for criminals to transfer cash into assets that are easy to trade and difficult to trace, or to benefit from the proceeds of crimes. Based on assets seized by Police, high value goods such as those listed above are what money launderers are known to use in New Zealand.

AML/CFT obligations

The proposed obligations for high value dealers covered by the Act would address the risks specific to their sector. These obligations are to:

- verify customers' identities (that is, carry out customer due diligence or CDD) when they receive cash in single transaction (or a series of related transactions) of $15,000 or more
- report cash transactions of $15,000 or more to the Police Financial Intelligence Unit
- keep certain records, and
- if requested by an AML/CFT supervisor, audit its compliance obligations.

You may also choose to report suspicious transactions under the $15,000 cash threshold that appear to be clearly linked to money laundering and terrorist financing and aimed at avoiding detection.

These obligations will make it harder for criminals to move cash anonymously using high value goods and will provide financial intelligence to detect and investigate crime. The list of obligations is included in clause 6 of the draft Bill.

In most circumstances, dealers in high value goods have one-off transactions with customers. Imposing requirements such as ongoing CDD and transaction monitoring would impose an undue compliance burden relative to the risks outlined above.

When you would have to start complying

High value dealers would have to comply with the amendment Act 24 months after it''s passed.

The Government is aware regulations may need to be prepared and put in place before this date. We'd work with you to meet this timeline. Regulations we intend to review and draft include those listed in Appendix 2.

Questions

9. Is the wording and structure of the draft Bill clear about when and how high value dealers are covered by the Act?
10. Could the wording in the draft Bill create unintended consequences?
11. Would you continue to accept cash transactions over $15,000 if you have to put AML/CFT measures in place?

Chapter 2: Proposed changes that affect compliance costs

The draft Bill includes provisions that would affect compliance costs for both Phase 1 and Phase 2 sectors.

General information about these proposals is also available at justice.govt.nz/aml-cft.

Proposal to require suspicious activity reporting

The current suspicious transaction reporting requirement would be expanded to include 'suspicious activities' in line with one of the recommendations of the recent Shewan report.[6] This change will affect both Phase 1 and Phase 2 reporting entities.

Reporting of suspicious transactions is already part of the AML/CFT regime. However, there are limitations. Currently, important information isn't being reported to the Police Financial Intelligence Unit (FIU) because it's not directly related to a transaction. For example, a business may suspect a customer is seeking to establish trusts or company structures in order to launder money or evade tax. But if no underlying transaction has been carried out yet, currently the business doesn't have to report this to the FIU.

The draft amendments would require businesses to report suspicious activities related to the services covered by the AML/CFT laws. For example, where a business offers money remittance and is also a supermarket, it should only be required to report suspicious transactions or activities related to money remittance.

For more information, see Appendix 1. The relevant amendments are in clause 16 of the draft Bill.

Questions

12. Is the wording and structure of the draft Bill clear about this proposal?
13. Could the wording in the draft Bill create unintended consequences?

[6] John Shewan. *Government Inquiry into Foreign Trust Disclosure Rules.* New Zealand Government. June 2016.

Changes aimed at reducing compliance costs

There are also a number of proposals that enable businesses to reduce the cost of complying with AML/CFT obligations. The proposed changes to the existing Act and the way it will be implemented aim to strike an appropriate balance between combating crime and minimising costs.

Proposals to reduce compliance obligations include:

- Designated Business Groups (DBGs)
- reliance on another business
- existing customer due diligence (CDD)
- simplified due diligence
- streamlining the Ministerial exemptions process

Designated Business Groups (DBGs)

It's proposed the definition of a DBG will be expanded to include related Phase 2 businesses. This will allow businesses to share compliance obligations by forming a DBG with related entities such as businesses operating under the same brand or in a franchise. These changes are included in clause 5(2) of the draft Bill.

Reliance on another business

It's proposed the current customer due diligence reliance provision should be amended so that the documents used to undertake due diligence don't have to be provided unless requested. It's also proposed that an entity (entity A) wouldn't be liable if it relies on another reporting entity (entity B) where:

- reporting entity A is acting in good faith when relying on entity B, and
- entity A has reasonable cause to believe that entity B has conducted CDD to the appropriate standard, and
- entity B is an approved entity as prescribed in regulations, and
- entity A meets any other conditions in Regulations.

These changes are included in clause 13 of the draft Bill.

Existing customer due diligence

It's proposed Phase 2 businesses not be required to identify and verify existing customers, unless there's a material change in the service or circumstances. The change is included in clause 5(3) of the draft Bill.

Simplified Due Diligence

It's proposed simplified due diligence provisions will be extended to include state-owned enterprises and subsidiaries of publicly listed entities in countries with sufficient AML/CFT systems. It's also proposed the simplified due diligence rules will be brought from regulation into the Act. The changes are included in clause 8 of the draft Bill.

Streamlining the Ministerial exemptions process

With the introduction of Phase 2, it's likely there will be businesses that need to comply with the laws because they've been unintentionally captured. Unintended capture happens where a business has to comply because of the wording of the legislation but, for example, their level of risk is so low that the cost outweighs the benefit.

The ministerial exemption process provides a way these businesses can be excluded from either part or all of their obligations under the Act.

The proposal would increase the efficiency of the exemptions process and decrease the time it takes to get approval. Two changes set out in clause 45 of the draft amendment Bill are:

- delegating the power to make a decision about whether to grant an exemption to the Secretary for Justice;
- increasing the emphasis the decision-maker gives to the actual risk that a business poses of money laundering and terrorist financing.

Government agencies are also working to implement ways of reducing the processing time for exemptions. These are being explored as operational and administrative changes and don't require legislative change.

Questions

14. Which of these measures could you potentially use to reduce compliance costs?
15. Is the wording and structure of these provisions in the draft amendment Bill clear?
16. Could the wording in the draft Bill create unintended consequences?

Chapter 3: Other changes to the legislation

There are a number of other legislative changes proposed to the AML/CFT laws, including:

- information sharing
- supervision
- statutory review
- bringing existing regulations into the Act

Information sharing

The Act currently includes information sharing provisions but some key gaps have been identified. For example:

- there are limits on government agencies' ability to share personal information when it may be useful to disrupt criminal activity or implement regulation, unless it's for the investigation or prosecution of a criminal offence
- the purpose of information sharing is limited to law enforcement purposes, which constrains the flow of information and excludes, for instance, information that's relevant to AML/CFT supervision or other regulatory management, but not a crime
- There's uncertainty in the regime about what information is permitted to be shared, leading to risk aversion.

Information sharing provisions would be extended to allow information to be shared to all agencies and relevant bodies with an interest in the AML/CFT regime. To ensure future flexibility, but also sufficient controls, there would be an ability to develop information sharing agreements for greater sharing between government and industry regulators, government and reporting entities, and in limited cases, among reporting entities. The relevant provisions are included in clauses 32 to 34 of the draft Bill.

These individual information sharing arrangements would be done either by regulation, by agreement between relevant chief executives or by agreement between relevant ministers. Information sharing agreements could also be used to give government agencies access to databases held by the NZ Police Financial Intelligence Unit and other government agencies.

These proposals address the recommendations in the recent Shewan Report on foreign trusts, which included improving information sharing between Police, DIA and the IRD.

Supervision

An effective AML/CFT regime requires there to be a supervisor. The supervisor will monitor reporting entities, provide guidance to help them meet their obligations, and take action for non-compliance.

It's proposed to keep the current multi-supervisor model of government agencies – the Department of Internal Affairs (DIA), the Reserve Bank of New Zealand and the Financial Markets Authority – and that DIA would supervise Phase 2 businesses. This is included in clause 31 of the draft Bill.

Retaining the existing model supports consistent supervision by limiting the number of supervisors.

Cabinet proposed not to proceed with a single supervisor to cover all sectors. Establishing a new, single supervisor would be more costly in the short term and would require significant time to build the expertise, systems and structures required for effective supervision. This option would also not leverage the existing relationships the current supervisors have with their sectors.

Having multiple agency supervision by self-regulatory bodies isn't considered appropriate in New Zealand. Although self-regulatory bodies could utilise the existing relationships they have with their entities, they have no experience in AML/CFT supervision and would need to build capability to ensure effective, risk-based, proactive monitoring and enforcement. Establishing a wider group of supervisors also increases the risk of inconsistency across supervisors. This risk has been realised in the UK where such an approach has led to inconsistent levels of supervision between sectors. Finally, not all Phase 2 businesses are members of self-regulatory bodies.

It's recognised that industry bodies will play an important role to support their members in the implementation of the AML/CFT laws. There may be opportunities for the supervisor and these bodies to explore co-operative working arrangements and for them to help communicate and engage effectively with their members.

Statutory review

A statutory review of the AML/CFT Act would take place after New Zealand's Financial Action Task Force mutual evaluation, which is expected in 2020. The statutory review would consider the findings of the mutual evaluation and identify any early issues with the amendment Bill as passed. The relevant provision is included in clause 44 of the draft Bill, and more detail on this review will be provided closer to the time.

Bringing existing regulations into the Act

Other amendments bring existing obligations from Regulations into the AML/CFT Act. This will streamline and consolidate the requirements to help businesses understand what they need to do to comply. This will also remove the need to review the provisions in the regulations. The regulations proposed to be brought within the scope of the Act are:

In the AML/CFT (Requirements and Compliance) Regulations 2011:

- Regulation 4: Existing anonymous accounts: other circumstances (clause 7 of the draft Bill)
- Regulation 5: Entities that are customers for simplified due diligence purposes (clause 8)
- Regulation 6: Identity requirements: additional information about the beneficiaries of trusts (clause 9).

In the AML/CFT (Definitions) Regulations 2011:

- Regulation 7-9: Definition and conditions of a designated business group (clause 5).

Questions

17. Is the wording and structure of these provisions in the draft amendment Bill clear?
18. Could the wording in the draft amendment Bill create unintended consequences?

Chapter 4: Supporting implementation

Government agencies supporting implementation

There are a number of things government agencies could do to make it easier for businesses to comply with obligations. From the experience with Phase 1, these include:

- developing codes of practice and/or guidelines to help businesses understand their obligations, making it easier to comply.
- providing information road shows, training, and seminars, both before businesses have to comply with their obligations and on an ongoing basis.
- providing material to businesses to help them understand the money laundering and terrorist financing risks they face, and how criminals might misuse their services. This will help businesses to develop their own risk assessments.
- providing information for customers to help explain the purpose of AML/CFT laws and why they may be asked to provide for certain information or documents.

Other options include:

- reviewing the current guidance for businesses so it's also relevant to Phase 2 businesses
- providing additional guidance on specific obligations and how they work in practice
- providing training material to help businesses, particularly small businesses, train their staff in AML/CFT obligations
- rolling out a public information campaign in the lead up to implementation to help inform customers.

Other areas for operational improvement

Other areas identified where compliance costs could be reduced include:

- Annual report: The requirement to file an annual report with the supervisor could be made more efficient by reviewing the information required which is set in regulations.
- Audit: The requirement for businesses to have an independent audit carried out every 2 years may be too frequent for some lower risk businesses. While a minimum time period would be retained, there may be options that could be used to reduce the impact of the audit requirement without increasing risk.

- Staff vetting: Some Phase 2 sectors already have vetting of professionals in place, such as criminal records checks, through registration requirements or membership of a professional body. These could be used to reduce the vetting obligations in the AML/CFT Act.

Questions

19. What practical measures would help Phase 2 businesses and professions to meet their obligations?
20. What operational improvements could be made with a view to making the current requirements work better and reduce unnecessary compliance, while still retaining the integrity of a business's risk and compliance programme?

Appendix 1: Obligations under the AML/CFT Act and proposed changes

Current obligations under the Act that will apply to Phase 2 sectors (other than businesses that trade in high value goods)

The table below sets out a summary of the key obligations. General information for businesses is available at justice.govt.nz/aml-cft.

Bill	Act	Summary of key obligations
N/A	s56(2)	**Compliance Officer** – designate an employee as the AML/CFT Compliance Officer to administer and maintain the Programme.
N/A	s58	**Risk Assessment** – develop a risk assessment which considers: the nature, size complexity of your business; the products and services you offer; delivery channels (e.g. face-to-face or online); countries you deal with; and the institutions you deal with.
Clause 19	s57	**AML/CFT Programme** – develop risk-based policies and procedures for all of your AML/CFT obligations (e.g. a policy on how your business will identify and verify the identity of your customers).
N/A	s57(a)	**Employee vetting and training** – ensure that employees involved in AML/CFT duties and senior management are vetted (e.g. a criminal records check for new employees) and undergo training in their AML/CFT processes.
Clauses 7, 8, 9, 10, 11, 12, 13, 14, 15	ss10-25, 31	**Customer due diligence** (CDD) • Identify and verify the identity of new customers • The level of CDD that you carry out will vary according to the risk of money laundering or terrorist financing – where the risk is higher you will need to do more due diligence such as checking the customer's source of wealth or funds • Ongoing customer due diligence • Screening for politically exposed persons (e.g. foreign government officials that may pose a corruption risk)

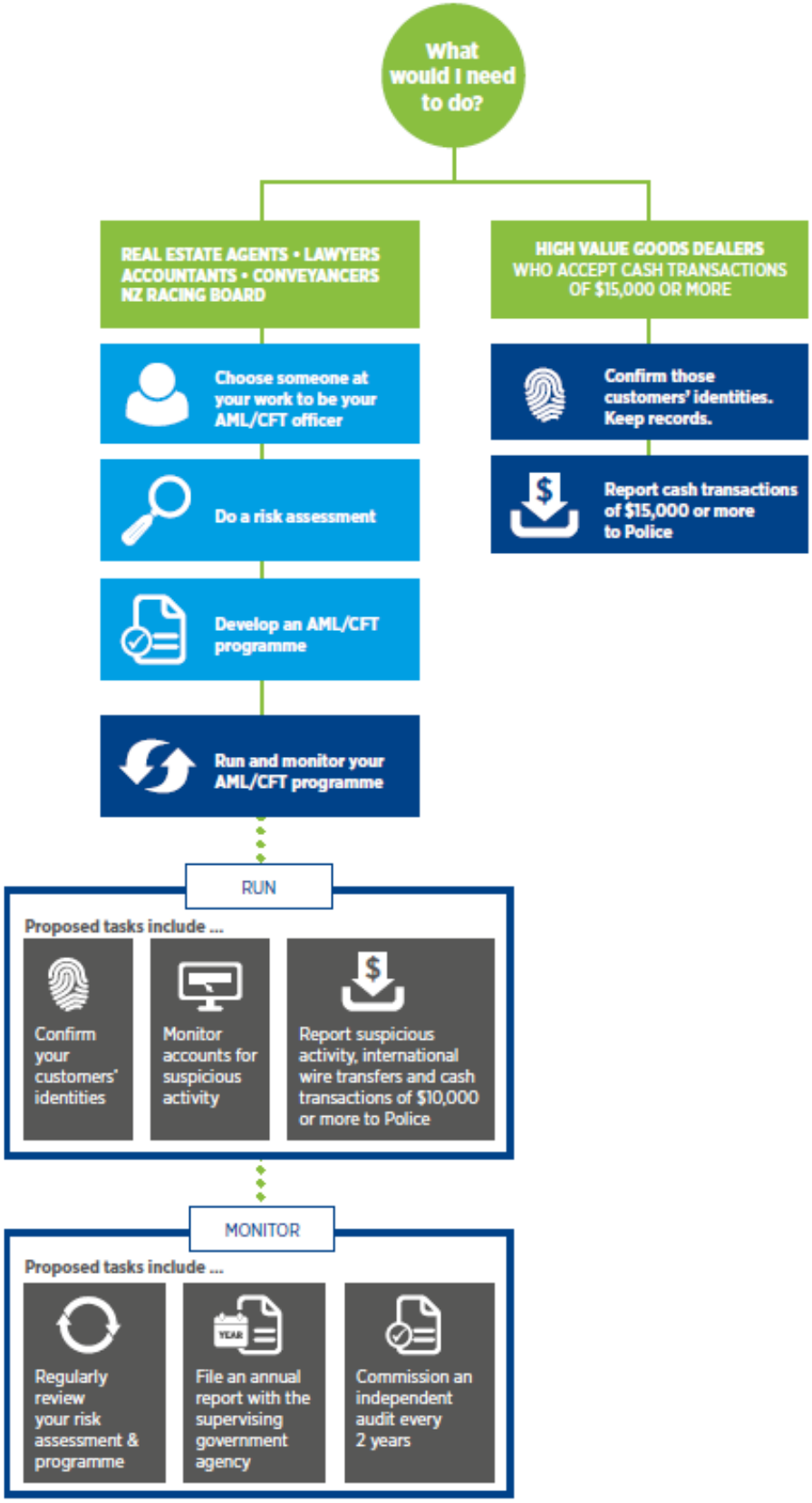
		• Identify parties involved in a wire transfer • In certain conditions, you may rely on third parties for CDD
Clause 11	s31 s57(g)(h)	**Transaction & account monitoring** – monitor customer accounts and transactions to identify suspicious transactions (e.g. unusual transactions that don't fit the customer profile and do not appear to have an economic or lawful purpose).
Clause 16	s40-s48A, 48B, 48C	**Transaction reporting** including: • Suspicious cash transactions over $15000 • Prescribed transactions (cash transactions over $10,000)
Clauses 17, 18	s49-55	**Record keeping** – keep records of customers, transactions and other related information.
N/A	s57(l)	**Monitoring compliance** – monitor your compliance with the AML/CFT obligations.
Clause 20	s59	**Review & audit** – regularly review your risk assessment and programme and have an audit carried out by an independent person every 2 years.
N/A	s60	**Annual report** – file an annual report with your AML/CFT supervisor.

Obligations that will apply to businesses trading in high value goods that accept cash transactions of $15,000 or more

General information is also available at justice.govt.nz/aml-cft.

Bill	Act	Summary of key obligations
Clause 6	s14(b), 15,16, 37	**Customer due diligence** – conduct standard customer due diligence on customers conducting cash transactions or series of related cash transactions equal to or above the applicable threshold; Not conduct the transaction if standard customer due diligence is not conducted when a cash transaction or a series of related transactions are equal to or above the applicable cash threshold
Clause 6 and 16, s 40(5),48A and 48B	s40, 44 and 46	**Reporting obligations** – • voluntarily report suspicious activities to the Commissioner of Police • report prescribed transactions equal to or above the applicable cash threshold
Clause 6 and 18, s49A	s50, 51	**Record keeping** • keep records of any suspicious activity reports • keep identity and verification records under section when standard customer due diligence is conducted; • keep records of any audits requested by an AML/CFT supervisor
Clause 6 and 20, s59A and 59B	N/A	**Audit** – audit its AML/CFT compliance obligations under section 59A if requested by an AML/CFT supervisor

Diagram 2 **Obligations that will apply**



Proposal to require suspicious activity reporting

General information on this topic is also available at justice.govt.nz/aml-cft.

Bill	Act	Proposed changes
Clause 16	s40-48	**Suspicious activity reporting** – it's proposed the suspicious transaction reporting requirements be expanded to include the reporting of suspicious activities, and commence 12 months after the Bill is passed.

Proposed changes aimed at reducing compliance costs

The proposals to amend the compliance obligations include the following measures. General information for businesses is also available at justice.govt.nz/aml-cft.

Bill	Act	Proposed changes
Clause 5(2)	s5, s32	**Designated business groups** (DBG) – It's proposed the definition of a DBG be expanded to include related Phase II businesses. This will reduce compliance costs by allowing businesses to share compliance obligations by forming a DBG with related entities such as businesses operating under the same brand or in a franchise.
Clause 13	s33	**Reliance on another business** – It's proposed the current customer due diligence reliance provision should be amended so that the documents used to undertake due diligence does not have to be provided unless requested. It is also proposed that an entity (entity A) would not be liable if it relies on another reporting entity (entity B) where: - the reporting entity A is acting in good faith when relying on entity B; and - entity A has reasonable cause to believe that entity B has conducted customer due diligence to the appropriate standard; and - entity B is an approved entity as prescribed in regulations; and - any other conditions prescribed by regulations are complied with.
Clause 5(3)	s5	**Definition of existing customers** – It's proposed Phase II businesses not be required to identify and verify existing customers, unless there is a material change in the service or circumstances.
Clause 8	s18(2)	**Simplified due diligence** – It's proposed the simplified due diligence provisions be extended to include state owned enterprises and subsidiaries of publicly listed entities in countries with sufficient AML/CFT systems. To provide greater clarity, it's also proposed the simplified due diligence rules be brought from regulation into the Act.

Technical amendments

With changes being made to the Act as a result of Phase 2, a number of technical amendments are proposed which will improve the operation of the Act and the proposals in the draft amendment Bill. These amendments aren't intended to change the existing requirements on reporting entities, but rather provide clarity and certainty to businesses to help them understand their obligations.

Some amendments provide clarity to businesses about existing obligations and ensure that the provisions operate as originally intended. These are to:

- repeal the Financial Transactions Reporting Act 1996 as Phase 2 businesses are brought within the scope of the AML/CFT Act (see clause 49 of the draft amendment Bill)
- clarify the time period for the keeping of records related to the risk assessment, programme and audit to be 5 years following the operation those documents (see clause 18 of the draft amendment Bill)
- ensure that reporting entities have regard to AML/CFT guidance when developing their compliance programmes, in a similar way to risk assessments (see clause 19 of the draft amendment Bill)
- clarify the nature of the regulation making powers to ensure implementation of the original policy intent, and to expand the regulation making powers in certain circumstances to provide greater flexibility (see clauses 42 and 43 of the draft amendment Bill)
- include a definition of non-bank deposit takers (see clause 5(1) of the draft amendment Bill) and
- revise the service of 'trading for the person's own account' in the definition of financial institution to ensure that it does not extend beyond the policy intent (see clause 5(4) of the draft amendment Bill).

Appendix 2: Regulations

A number of regulations will be reviewed or developed. These include:

Cash threshold for high value dealers

The cash threshold of $15,000 or more for when a high value dealer has obligations would be set out in regulations. This approach is consistent with other thresholds used in the AML/CFT regime.

Information sharing

Regulations would be made to implement the proposed changes to improve the information sharing provisions in the AML/CFT Act which are outlined in Part 2. For example, it's proposed information collected under the AML/CFT laws could be shared to help enforce related legislation which would be set out in these regulations.

Suspicious activity reports

The information required to be included in a suspicious transaction report is set out in regulations. These would be revised to align with the proposed changes to expand the reporting regime to include suspicious activities. Other regulations would also be reviewed to ensure consistency when referring to suspicious activity reports rather than suspicious transaction reports.

Reliance

Regulations could be made to provide 'safe harbour' conditions for when a business relies on another 'Approved Entity' for customer due diligence. The exposure draft bill proposes an amendment so that a reporting entity is not liable and is deemed to have met the required conditions when the reporting entity meets certain 'safe harbour' conditions. The change to the Act outlined above in Part 2.

These regulations would be developed in consultation with affected businesses to ensure that they strike an appropriate balance between an effective AML/CFT regime and the impact on business.

Appendix 3: Exposure Draft of the Anti-Money Laundering and Countering Financing of Terrorism Bill

The exposure draft of the AML/CFT Amendment Bill is available at justice.govt.nz/assets/Documents/Publications/exposure-draft-aml-cft-amendment-bill.pdf

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