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Improving New Zealand's ability to tackle money laundering and terrorist financing

Summary of submissions on Phase Two of the AML/CFT reforms

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Executive summary

In September 2016, the Ministry of Justice sought feedback about proposed changes to improve New Zealand's ability to tackle money laundering and terrorist financing. A total of **62** organisations and individuals made a submission on Phase Two of the AML/CFT reforms.

There is broad support for Phase Two of the AML/CFT reforms, which will extend to cover more businesses and professions that pose a high risk of being misused by criminals to conduct financial transactions or purchase assets.

Sector-specific issues and questions

Legal

Most submitters who responded to questions on lawyers supported the inclusion of lawyers in Phase Two of the reforms, although several stated there is a need to amend and clarify the proposed activities. These submitters supported the inclusion of lawyers, as they felt it is a logical progression from Phase One of the reforms, and is consistent with the intention of the regime.

Submitters felt the main activities that pose AML/CFT risk are the misuse of lawyers' trust accounts and when lawyers are involved in setting up trusts. Submitters generally supported the exclusion of legal advice and representation in litigation in Phase Two, as there is low risk of money laundering and terrorist financing and this would be consistent with international best practice.

While some submitters agreed with the proposed activities listed in the consultation paper, many others felt that proposed list is too broad, and needed to be amended and clarified so that the activities included are commensurate with risk.

Several submitters noted that the existing mechanism that protects legal professional privilege is not appropriate for responding to money laundering and terrorist financing.

Accounting

Most submitters who responded to questions on accountants supported the inclusion of accountants in Phase Two of the reforms. They noted that significant risks for money laundering and terrorist financing were accountants receiving money into trust accounts and establishing trusts and corporate structures for people who may use them for illegitimate purposes.

While some submitters agreed with the proposed activities listed in the consultation paper, many others felt that the proposed list is too broad, and stated that the activities should be narrowed down to activities that pose a risk of being used for money laundering and terrorist financing. They felt the principle risk is the movement of funds for or on behalf of a client and subsequently AML/CFT legislation should focus on this activity to ensure obligations are commensurate with risk.

Most submitters supported including accountants providing assurance and advisory services in Phase Two of the reforms.

Real estate and conveyancing

Most submitters who responded to questions on real estate and conveyancing generally supported capturing real estate agents and/or conveyancers in Phase Two of the reforms. Submitters felt that the main risk was agents and conveyancers receiving money into their trust accounts for property deposits and purchases.

Most submitters stated that the regime should specifically relate to buying and selling of real estate as this is consistent with the Financial Action Task Force recommendations, and regulatory approaches in Australia and the United Kingdom.

Most submitters were of the view that the real estate sector that engages in property development should also have obligations under the Act. Most agreed with the consultation paper that leasing and property management services provided by real estate agents should not be included in the regime, as the risk associated with these services is low.

Most submitters noted their support for including the activities in the consultation paper, and that they should apply to purchasers and/or vendors of residential and commercial property.

Submitters were divided in terms of when customer due diligence should occur. Some submitters stated that the appropriate time to conduct customer due diligence on the purchaser and/or vendor is when an offer is made, the vendor and buyer sign a sale and purchase agreement and the real estate agent receives a deposit. However, other submitters considered that the appropriate time to conduct customer due diligence on the purchaser and/or vendor is before an offer is made and money is deposited.

High-value goods

Most submitters who responded to questions on high-value goods supported the inclusion of high-value goods dealers in Phase Two of the reforms in principal. Of these submitters, most had a preference for Option 2 in the consultation paper: AML/CFT requirements should apply to dealers in all high-value goods, to counteract the risk of the displacement effect.

Most submitters considered $10,000 is an appropriate threshold for cash transactions to trigger AML/CFT customer due diligence and reporting requirements. The rationale for this figure was that it aligns with other prescribed thresholds and ensures consistency throughout the regime, and it limits the impact on businesses while addressing risk.

Gambling sector

Most submitters who responded to questions on gambling supported extending the Act to other gambling providers to ensure a level playing field. Submitters made specific comments on which business activities requirements should apply to, including vouchers, electronic betting, overseas betting, and junkets. They also made a number of comments regarding the need to ensure customer due diligence does not get in the way of customer enjoyment and business practices.

Most submitters considered $10,000 is an appropriate threshold for triggering AML/CFT obligations on occasional cash transactions. The rationale for this figure was that it aligns with the Financial Action Task Force and Australian regulations, and will be consistent with other sectors in New Zealand that comply with the AML/CFT Act.

Supervision

Most submitters who responded to questions on a suitable supervision model for Phase Two of the reforms, stated that a 'single supervisor' model would be more suitable. These submitters thought this alternative model should also be applied to businesses already covered by the regime (i.e. financial institutions and casinos). Submitters believe that a 'single supervisor' model would offer greater consistency, be more timely and responsive, and reduce duplication and costs for businesses and professions.

The remaining submitters were split in their preference for the current model, multi-agency supervision and the 'multiple agencies with self-regulated bodies' model.

Submitters who favoured the current model considered it is appropriate because it works well and supervisors have built up knowledge and experience in Phase One of the reforms. They also considered the current model would be more affordable, as there would not be the costs associated with setting up an alternative model.

Submitters who favoured the 'multiple agencies with self-regulated bodies' model considered it appropriate because self-regulatory bodies already regulate and supervise their sector and it would make logical sense for them to supervise AML/CFT activities as well. They also felt that existing supervisors do not have sufficient sector or technical expertise to supervise Phase Two businesses, and current supervisors are under resourced to supervise the volume and complexity of Phase Two businesses.

Submitters who preferred the 'single supervisor' and current model noted significant weaknesses with the 'multiple agencies with self- regulated bodies' model. They felt if this model was adopted it would result in an inconsistent approach to oversight and support.

Implementation period and costs

Most submitters who commented on implementation period and costs stated a two year implementation period is appropriate for Phase Two of the reforms. These submitters said that a two year implementation period would be required to develop risk assessment and compliance programmes, undertake customer due diligence, appoint a compliance officer and train staff, and to make IT and other system changes. These submitters noted that a two year implementation period would give supervisors, self-regulatory bodies and professional associations sufficient time to provide guidance and tools.

Enhancing the AML/CFT Act

Expanding suspicious transaction reporting

Most submitters who responded to questions on expanding suspicious transaction reporting favoured expansion. These submitters felt that the current definition of suspicious transaction reporting is too restrictive, and earlier and more widespread detection is needed to improve New Zealand's ability to tackle money laundering and terrorist financing, by providing the Financial Intelligence Unit with a greater pool of intelligence. They noted that expanding suspicious transaction reporting would align with Australia and other overseas jurisdictions. They also noted that in order for this expansion to be effective and not to unduly burden businesses, clear guidance and training will be needed on what to look for and what constitutes a suspicious activity.

Information sharing

Most submitters who responded to questions on information sharing felt information sharing with government agencies should be enhanced. However, they noted that enhanced information sharing should be accompanied by a number of restrictions and stipulations. They stated that information sharing should only occur when there is reasonable suspicion of criminal activity and for the purposes of the enforcement of the AML/CFT Act. They also noted that information sharing should only be with the agencies the information is pertinent to (e.g. Inland Revenue if the information is to combat tax evasion), and the need to put safeguards in place to protect individuals privacy as well as protecting reporting entities. Finally, submitters also noted that there needs to be clear guidance on the circumstances and scope of information sharing, and how government agencies should use information.

Reliance on third parties

Most submitters from the financial sector felt that the existing third party reliance provisions are appropriate in principle and should be preserved. They believe the existing provisions are sufficient and appropriate to assist a reporting entity to meet its AML/CFT obligations. However, most other submitters felt the provisions were too narrow, inefficient and/or onerous for businesses.

Some submitters suggested mechanisms to expedite customer due diligence. A few submissions proposed a central register be established to record recent AML/CFT checks. A few submitters also suggested that where a reporting entity is dealing with another reporting entity there should be the ability to share the information in the form of a letter of assurance or certificate.

Trust and company services

Most submitters who commented on the extension of the scope of trust and company services supported the extension. These submitters noted the high risk of trusts being used for money laundering and terrorist financing activities and felt the inclusion of all trust and company services providers was preferable. Submitters noted that the inclusion of all providers will limit the possibility of a displacement effect occurring when Phase Two of the reforms bring lawyers and accountants into the scope of the regime.

Simplified customer due diligence

Most submitters who responded to issues on simplifying customer due diligence supported extending it to State Owned Enterprises and majority-owned subsidiaries of publically traded entities in New Zealand and low risk overseas jurisdictions for the reasons outlined in the consultation paper. Namely, submitters considered these institutions low-risk because they are owned by the Government, or they have been subject to the same ownership and disclosure relationships as their parent companies.

Most of these submitters also thought Phase Two of the reforms should extend simplified customer due diligence to a number of other institutions, including regulated foreign financial institutions in low-risk foreign jurisdictions, as these organisations are generally considered to have more effective policies, procedures and controls.

Conclusion

There is broad support for Phase Two of the AML/CFT reforms, which will extend to cover more businesses and professions that pose a high risk of being misused by criminals to conduct financial transactions or purchase assets.

A number of cross-cutting themes emerged across the submissions. These are as follows:

1. Compliance must be commensurate with risk

Most submitters support a risk-based approach that ensures compliance obligations are commensurate with the risk of money laundering and terrorist financing. However, many submitters felt some of the proposed activities in the consultation paper were low risk, and require addressing.

2. Need for consistency and fairness

A cross-cutting theme across a large number of submissions was the need for consistency and fairness in relation to the businesses and professions captured by the regime, and how it is applied. Some submitters stated that many of the businesses and professions captured in Phase Two of the reforms are small and medium businesses. They noted that these businesses unlike large entities are under financed and under resourced, and will be unduly impacted by the regime, and that the Government should consider ways to ease the compliance burden for these businesses.

A further element of consistency and fairness is a consistent and even handed approach to supervision. Related to this theme was the preference for a 'single supervisor' model.

3. Need for guidance, education and training

A large number of submitters stated the need for practical and quality guidance, education and training on Phase Two of the AML/CFT reforms. Submitters stated the importance of clear definitions, guidance and examples on suspicious activity. Submitters felt that training is important to make sure they provide useful reports that can be acted upon.

Some submitters stated that guidance, education and training would help them to understand and comply with the regime. This would be particularly beneficial for reporting entities that do not have existing AML/CFT knowledge. It would also reduce the cost of compliance and the need for businesses to access AML consultants.

Some submitters also noted the importance of improving public awareness and understanding of AML/CFT requirements, such as customer due diligence. This would reduce the burden on reporting entities to explain policies and processes, and help create public willingness to comply with the Act.

4. Cost of compliance

A large number of submitters noted in their submissions that the regime would impose an unreasonable compliance burden and regulatory risk on reporting entities. As noted in cross-cutting theme two above, small and medium-sized businesses would carry an unreasonably large compliance burden.

Some submitters stressed the regime will be costly to implement and have a profound impact on their profitability, and their clients and customers would bear this burden. Some submitters noted overlap in reporting obligations with other reporting entities, which will contribute to compliance burden.

Some submitters also noted the need for the Government to be mindful of the compliance burden the regime will have on business.

Overview

Improving New Zealand's ability to tackle money laundering and terrorist financing

In September 2016, the Ministry of Justice sought feedback about proposed changes to improve New Zealand's ability to tackle money laundering and terrorist financing.

Money laundering and terrorist financing are significant problems both here and worldwide. They allow criminals to hide the proceeds of their illegal activities and to fund serious crimes such as drug offending, organised crime and tax evasion. It's hard to quantify how much money is laundered in New Zealand, but it's been estimated at about $1.5 billion each year.

To combat this issue, many countries around the world have adopted anti-money laundering and countering financing of terrorism regimes (AML/CFT). These regimes apply to business sectors that domestic and international evidence shows are at high risk of being misused by criminals.

The AML/CFT regime requires businesses to have measures in place that prevent criminals from channelling 'dirty' money through them. The regime also bolsters authorities' ability to detect and investigate serious crimes by following the money trail that such offences generate.

In 2013, New Zealand's Anti-Money Laundering and Countering Financing of Terrorism Act came into effect, with Phase One of the reforms placing obligations on financial institutions and casinos, and tasking government agencies with overseeing and enforcing the regime and helping businesses to comply with it.

In June 2016, the Prime Minister announced the Government will accelerate Phase Two of the AML/CFT reforms, which will extend it to more businesses and professions. The Government intends to introduce a Bill to Parliament later this year, and have it passed by July 2017.

This means:

- Many businesses in the following professions will have to put AML/CFT measures in place: lawyers, accountants, real estate agents, conveyancers, some additional parts of the gambling sector and some high-value goods dealers. Dealers of high-value goods that might be affected include auctioneers, bullion dealers, jewellers, precious metal and stone dealers, motor vehicle and boat dealers, antique and art dealers, pawnbrokers and second hand goods dealers, and any other business that accepts or provides large amounts of cash.
- There may be minor changes to aspects of the current AML/CFT regime, which will affect professions already subject to it, as well as those it's being extended to.

A total of 62 organisations and individuals made a submission on Phase Two of the AML/CFT reforms. These submitters are grouped as follows:

Table 1: Submitters on Phase Two of the AML/CFT reforms

Sector	Number of submitters
Legal	14
Financial institutions	13
High-value goods	7
Consulting	8
Accounting	6
Gambling	4
Real estate	1
Other submitters	7
Unspecified	2
TOTAL	**62**

Analysis of submissions

The following process was used to analyse submissions:

1. All submissions were analysed by two analysts.

2. A code frame was developed from the consultation questions and responses from ten complex and moderate submissions across the sectors.

3. All submissions were analysed and given one or more codes according to the code frame developed in step 2 above. All submissions were given equal weight i.e. an individual submitter was given the same consideration as large organisations or regulatory bodies.

4. Where submitters made comments that did not fit any of the codes, their comments were noted and analysed.

5. All coded submissions were entered into an excel database.

6. A separate analyst verified that submitters' codes had been correctly entered onto the database.

7. Pivot tables were developed for key codes.

8. A thematic report was prepared against the completed code frame.

Support for Phase Two

There is broad support for Phase Two of the AML/CFT reforms, which will extend to cover more businesses and professions that pose a high risk of being misused by criminals to conduct financial transactions or purchase assets. Their reasons for support are as follows:

- New Zealand has a responsibility to play an effective role in the global response to money laundering and terrorist financing, and extending the regime will bring us into line with international AML/CFT standards.

- New Zealand is not immune to the risk of money laundering and terrorist financing and the country could be seen as a soft target. Strengthening the AML/CFT regime will help maintain and enhance confidence in New Zealand's financial system and its international reputation.

- To be effective in our response to AML/CFT, New Zealand needs to capture a greater range of businesses and professions that have an inherently high risk of money laundering and terrorist financing.

No submitters disagreed with New Zealand's AML/CFT regime or the Government's decision to extend it to more businesses and professions. A submitter noted the importance of ensuring there is a clear primary policy objective.

Sector-specific issues and questions

It is intended that Phase Two of the reforms will apply to the following sectors that are currently exempt from it:

- Legal profession
- Accountants
- Real estate and conveyancing
- Some high-value goods dealers
- Some additional parts of the gambling sector

Views were sought on which activities provided by the above sectors should be subject to AML/CFT requirements under Phase Two of the reforms, and how these requirements should be applied given business structures and practices. Views were also sought about how to apply the AML/CFT requirements to high-value goods. Finally, views were sought on which gambling services should be subject to AML/CFT requirements under Phase Two, and how those requirements should be applied given business structures and practices.

Legal profession

The Ministry of Justice sought views on which activities provided by members of the legal profession should be subject to AML/CFT requirements under Phase Two of the reforms, and how those requirements should be applied, given business structures and practices.

The Ministry also sought specific feedback about the AML/CFT obligations and legal professional privilege.

Risks relating to legal services

Nineteen submitters responded to issues for consideration for legal services. These included twelve legal, three consultants, two financial, one gambling and one 'other category' organisation.

Seventeen of these nineteen submitters supported the inclusion of lawyers in Phase Two of the reforms, although several stated there is a need to amend and clarify the proposed activities. These submitters supported the inclusion of lawyers, as they felt it is a logical progression from Phase One of the reforms, and is consistent with the intention of the Act. A few submitters suggested that barristers sole and in-house lawyers should be excluded and that litigation lawyers who record dispute settlements, lawyer nominee companies, lawyers acting as real estate agents and those supplying safe custody for valuable items should be included in Phase Two of the reforms. One submitter noted the importance of including non-lawyers who provide legal services to reduce the occurrence of a displacement effect.

One submitter from the law sector did not support the inclusion of all lawyers, as they felt that the obligations and compliance burden were not commensurate with the risk of money laundering and terrorist financing for their practice. **One** submitter from the law sector did not comment on whether they supported the inclusion of lawyers in Phase Two of the reforms.

Which business activities should the requirements apply to?

While some submitters agreed with the proposed activities listed on pages 12 and 13 in the consultation paper, many others felt that proposed list is too broad, and reiterated the importance of a risk-based approach to the design and implementation of Phase Two of the reforms. Some submitters felt the main activities that pose AML/CFT risk are the misuse of lawyers' trust accounts and when lawyers are involved in setting up trusts.

One submitter raised the concern that there are a large number of lawyers who are sole practitioners, and therefore the Government must be mindful that AML/CFT obligations are commensurate with risk.

Submitters generally supported the exclusion of legal advice and representation in litigation in Phase Two, as there is low risk of money laundering and terrorist financing and this would be consistent with international best practice. Some submitters also generally supported the exemption of legal fees from the regime, while others supported fee inclusion.

Some submitters also noted the importance of consistency of activities included in the Act for lawyers, accountants and trust and company services to reduce the risks of regulatory arbitrage. Two submitters felt lawyers should be allowed to refuse instructions or terminate a relationship if a client does not meet the firms AML/CFT requirements.

Some submissions made extensive, specific comments about the inclusion and exclusion of proposed activities, which require separate consideration.

At what stage in a business relationship should checks, assessments and reports be done?

Some submitters felt that customer due diligence should be undertaken on the commencement of the business relationship. One submitter noted that sending the letter of engagement would be an appropriate time to undertake this work.

Other submitters felt it is more appropriate for customer due diligence to be conducted if a client required a lawyer to undertake a transaction or service that fell within the scope of the Act. These submitters felt that customer due diligence legislation should be streamlined to be more effective and reduce duplication.

Submitters supported Section 14(c) of the Act and noted the importance of ensuring it does not have a retrospective effect in terms of customer due diligence requirements for existing clients.

Submitters noted the importance of ensuring that customer due diligence does not interfere with clients' ability to access advice, representation and / or carry out legitimate business transactions in a timely manner.

Who should be responsible for doing checks, assessments and reports?

Very few submitters commented on who within legal practices should be responsible for doing checks, assessments and reports. One submitter suggested that the Compliance Officer should be a person with responsibility and seniority e.g. a Chief Executive or Partner.

AML/CFT obligations and legal privilege

Seventeen submitters commented on legal professional privilege in relation to the AML/CFT Act. These submitters included eleven legal, two consulting, two financial, one gambling and one 'other category'. Several submitters noted the importance of protecting legal professional privilege as a fundamental aspect of a fair justice system.

Is the legislative protection of legal professional privilege appropriate?

Nine submitters felt the current provisions for legal professional privilege are not appropriate. Seven of these submitters felt that several amendments were needed to ensure that the mechanisms for protecting legal professional privilege are appropriate. Two of these submitters felt the existing provisions were too broad and needed tightening to ensure that privilege is not a barrier to lawyers complying with their AML/CFT obligations.

The issues raised by submitters who felt the current provisions were inappropriate were:

- The Act does not contain protection for legal professional privilege in the circumstances where legal professional privilege should be available.
- The concept of 'privileged communication' is too narrow.

- The Act is inconsistent with the Evidence Act 2006 and the Search and Surveillance Act 2012.
- There needs to be careful consideration of the protection of legal professional privilege if onsite inspections of lawyer's offices are undertaken.
- There needs to be greater clarity on where the line between legal professional privilege and AML/CFT obligations lies.
- Section 42 is sufficient if the Act continues to require reporting entities to report suspicious transactions. However, the extension of the Act to require reporting entities to report suspicious activity is challenging as to break privilege there needs to be knowledge of the intention to commit a crime.

The submitters who did not feel the existing mechanisms were appropriate suggested several changes to the current provisions in the Act including:

- Amending the Act to include litigation privilege.
- Allowing lawyers to make suspicious transaction reports that contain some but not all information, as this would enable them to make the reports while protecting legal professional privilege.
- The term 'wrongful' is ambiguous and needs to be clarified to ensure consistent interpretation of the legislation.

Three of the seventeen submitters felt the existing mechanism that protects legal professional privilege is sufficient.

The submitters who felt the existing provisions were appropriate noted that within lawyers practicing rules their primary obligation is their duty as an officer of the court and therefore there is an obligation to report money laundering and terrorist financing activities. One submitter felt that the provisions for protecting legal professional privilege in Phase Two of the reforms are consistent with the Financial Transactions Reporting Act 1996.

Five submitters made comments about legal professional privilege but did not indicate their opinion on the current provisions in the Act. These submitters noted the importance of legal professional privilege and the importance of providing guidance on this issue. These submitters noted that Section 19 of the Financial Transactions Reporting Act 1996 deals with legal professional privilege appropriately and should form the basis for the provisions for legal professional privilege in Phase Two of the reforms.

Is there a need to consider addressing AML/CFT issues in practicing rules?

Submitters noted the importance of addressing AML/CFT obligations in practicing rules. Areas to address included the use of privacy waivers in terms of engagement to address any possible issues with the Privacy Act 1993 and non-disclosure and the requirements to make suspicious transactions reports.

One submitter noted the importance of exceptions to legal professional privilege being made by statute or regulation. They felt that amendments to practicing rules and guidelines alone are not sufficient to address the important issue of legal professional privilege in the Act.

Would supervisor or industry guidance be helpful?

Several submitters noted the need for supervisor and industry guidance. Submitters noted that guidance would be well received from the New Zealand Law Society. One submitter noted that the United Kingdom Law Society practice notes would be a suitable starting point for guidance on this issue in New Zealand.

Accounting

The Ministry of Justice sought views on which activities provided by members of the accounting profession should be subject to AML/CFT requirements under Phase Two of the reforms, and how those requirements should be applied given business structures and practices.

The Ministry also sought specific feedback about whether certain assurance and advisory services provided by accountants should be subject to AML/CFT requirements. This relates to accountants who provide tax advice, auditing and bookkeeping services.

Risks relating to accounting services

Thirteen submitters responded to issues for consideration for accounting services. These included four accounting, three consulting, two financial, one gambling, one legal and two 'other category' organisations.

Twelve of the thirteen submitters supported the inclusion of the accounting profession in Phase Two of the reforms. They noted that significant risks for money laundering and terrorist financing were accountants receiving money into trust accounts and establishing trusts and corporate structures for people who may use them for illegitimate purposes. They noted that accountants have a good picture of the source of their clients' funds and are well placed to assist with detecting money laundering and terrorist financing. **One** of the thirteen submitters commented on several aspects of the Act but felt they could not take a position, due to a lack of clarity around the proposed activities.

A few submitters noted the importance of including accountants with the other entities coming into Phase Two of the reforms to counteract the possibility of a displacement effect. Another submitter noted that the inclusion of accountants and lawyers in Phase Two of the reforms will make transactions involving entities included in Phase One of the reforms easier, as there will be increased awareness of the obligations and process that need to take place.

Which business activities should the requirements apply to?

Some submitters agreed with the inclusion of the proposed activities on page 17 of the consultation paper.

However, other submitters noted that the proposed activities are too widely defined and should be narrowed to activities that pose a risk of being used for money laundering and terrorist financing. They felt the principal risk is the movement of funds for or on behalf of a client and subsequently AML/CFT legislation should focus on this activity to ensure obligations are commensurate with risk.

A few submitters raised concerns about the impact of AML/CFT obligations for small businesses. One submitter suggested removing or modifying the obligations on small business to develop a risk assessment and compliance programme, be audited, and make annual reports to supervisory agencies to reduce the compliance burden.

A few submitters suggested extending the proposed activities. One submitter mentioned including trustee company services, escrow services, and preparing for or carrying out transactions relating to the acquisition of the ownership interest in a company. Another

submitter felt the activities should include transactions accountants become aware of when completing returns and accounts for their clients.

Two submitters noted the importance of being able to identify the individual or corporate entity that pays funds and the beneficial owner.

One submitter expressed frustration at current customer due diligence requirements when working with entities captured by Phase One of the reforms and felt there should be a central database available to use for verification purposes.

At what stage in a business relationship should checks, assessments and reports be done?

Some submitters stated that the commencement of a business relationship that may involve one or more transactions was the most appropriate time for accountants to undertake customer due diligence. One submitter noted a standard risk assessment checklist provided by the Ministry of Justice would be a helpful tool to facilitate this process and ensure a minimum standard is met.

A few submitters stated a need for flexibility of customer due diligence requirements for existing clients afforded by section 14(c) of the Act. One submitter felt there should also be flexibility to undertake identification and verification requirements when activities are to be completed.

Some submitters felt suspicious transaction reports should be filed when the accountant becomes aware of individuals setting up funds or structures for criminal use or to avoid AML/CFT detection. One submitter felt suspicious transaction reports should be made when a suspicion is formed in the preparation of corporate trusts, acting as a nominee or providing administrative services for companies.

A few submitters referred to thresholds in their submissions. The first submitter felt that financial thresholds should be put in place to ensure requirements are workable and minimise regulatory burden. The second submitter felt that the use of financial thresholds did not make sense in the accounting context.

Who should be responsible for doing checks, assessments and reports?

A few submitters commented on who should be responsible for doing checks, assessments and reports. One submitter felt that responsibility for complying with the AML/CFT Act should lie with senior management / partners while another submitter thought responsibility should lie with the individual responsible for the engagement.

Provision of advisory and assurance services

Eleven submitters responded to the issue of the provision of advisory and assurance services. These included four accounting, three consulting, one financial, one legal and two ‘other category’ organisations.

Eight of the eleven submitters supported including accountants providing assurance and advisory services in Phase Two of the reforms. One of these submitters also felt the Act

should extend to non-accountants providing these services. Submitters gave the following reasons for including these services in the Act:

- Although providers of these services do not often make transactions it is likely that money laundering or terrorist financing could be detected in the course of their work.
- Others rely on financial statements prepared or audited by providers of advisory and assurance services and their inclusion in the Act would help to ensure that this information could be relied on.
- Including these services was important to maintain an even playing field and to future proof the industry.
- Including these services aligns with Canada and the United Kingdom's anti-money laundering and counter terrorist financing regimes.

Three of the eleven submitters did not support including accountants providing assurance and advisory services in Phase Two of the reforms. These submitters all from the accounting profession felt that these are low risk services and activities and therefore their inclusion is not in line with the risk-based approach of the regime.

Real estate and conveyancing

The Ministry of Justice sought views on which services provided by real estate agents and conveyancers should be subject to AML/CFT requirements under Phase Two of the reforms, and how those requirements should be applied given business structures and practices.

The Ministry also sought specific feedback about the timing of the application of the Act – that is, the point at which a person becomes a customer and due diligence is conducted on them.

Risks related to real estate

Which business activities should the requirements apply to?

Fifteen submitters commented on which activities provided by the real estate agents and conveyancers should be subject to AML/CFT requirements, and how these should be applied, given business structures and practices. These included five legal, four consulting, three finance, one real estate, one gambling and one 'other category' submissions.

Fourteen of the submitters generally supported capturing real estate agents and/or conveyancers in Phase Two of the reforms, as there are money laundering and terrorist financing risks associated with real estate and conveyancing services. Submitters felt that the main risk was agents and conveyancers receiving money into their trust accounts for property deposits and purchases. **One** of the submitters stated that the focus on real estate transactions is not as important as other transactions, and there are already verification rules in place.

Most submitters stated that the regime should specifically relate to buying and selling of real estate as this is consistent with FATF recommendations, and regulatory approaches in Australia and the United Kingdom. They felt the term "carrying out real estate transactions" which is included in the consultation paper is significantly broader. One of these submitters stated it was difficult to see what risk exists in relation to ancillary real estate transactions, such as taking of a mortgage or the registration of a caveat, where there is no flow of funds.

Most submitters were of the view that the real estate sector that engages in property development should have obligations under the Act as well. Most also agreed with the consultation paper that leasing and property management services provided by real estate agents should not be included in the regime, as the risk associated with these services is low.

Most submitters noted their support for including activities on page 20 of the consultation paper, and that they should apply to purchasers and/or vendors of residential and commercial property. One submitter considered activities should be extended to capture circumstances where a transaction is made but not completed.

At what stage in a business relationship should checks, assessments and reports be done?

Some submitters stated that the appropriate time to conduct customer due diligence on the purchaser and/or vendor is when an offer is made, the vendor and buyer sign a sale and purchase agreement and the real estate agent receives a deposit. They felt that this level of burden would be commensurate with risk.

However, other submitters considered that the appropriate time to conduct customer due diligence on the purchaser and/or vendor is before an offer is made and money is deposited. These submitters felt that trying to obtain the necessary information when an offer has been accepted and funds have been deposited may hold up the steps in progressing a sale and could disadvantage the vendor. One submitter stated that customer due diligence should begin much earlier than the offer stage, for example:

- When carrying out a title search on the property to establish the legal owners.
- When ensuring that the ownership of the property on the title matches the owners listed on the agency agreement.
- Where the property is owned by a company establishing who the director(s) are.
- Where the property has more than one owner checking that all the owners that authorised the sale of the property and that the person they are dealing with has the written authorisation of the other owners to enter into an agency agreement on their behalf.

Who should be responsible for doing checks, assessments and reports?

A few submitters commented on who should be responsible for doing checks, assessments and reports as follows:

- The real estate submitter stated that care must be taken in how requirements are applied to real estate agents so that the administrative burden of complying with the Act is not unduly burdensome. This submitter considered that there are other entities who have a concurrent obligation to complete customer due diligence who are better placed to do this, such as lawyers and conveyancers.
- One legal submitter would prefer that customer due diligence is carried out by real estate agents before the agreement comes to a conveyancing solicitor. This submitter stated that conveyancing solicitors often find themselves provided with agreements by agents for clients they do not have a prior relationship with and do not meet, and that agents have a much more personal relationship with clients. This submitter said that conveyancing solicitors are often too busy and under pressure to complete settlement transactions and therefore would not have time to conduct checks.
- One consultant noted that identifying the reporting entity in the real estate sector is more difficult than in other sectors, because of the way many real estate companies operate their business model. Typically, the real estate company is identified as the real estate agent and the independent contractors who undertake the sales activity are known as salespeople. This submitter said AML/CFT liability should sit with independent contractors who deal with customers, as well as real estate companies.

High-value goods

The Ministry of Justice sought views on how the AML/CFT requirements should be applied to high-value goods dealers, and if the requirements should apply to dealers in particular high-risk goods (option 1 in the consultation paper) or to dealers in all high-value goods (option 2 in the consultation paper).

The Ministry also sought specific feedback on what is an appropriate threshold for cash transactions that would trigger AML/CFT customer due diligence and reporting requirements.

Dealers that AML/CFT requirements should apply to

Sixteen submitters responded to issues relating to which high-value goods dealers the AML/CFT requirements should apply to. These included six high-value goods, three consulting, two legal, two financial, one gambling, and two 'other category' submissions.

Fourteen of these submitters agreed that the AML/CFT Act should include high-value goods dealers in principal. **Two** of these submitters commented on aspects related to the inclusion of high-value goods but did not indicate if they did or did not support the inclusion of high-value goods in Phase Two of the reforms.

Preference for Option 1: AML/CFT requirements should apply to dealers in particularly high-risk goods

Three of the sixteen submitters supported the inclusion of some but not all high-value goods businesses in the Act. While they noted the importance of Phase Two of the reforms applying to high-value goods dealers they felt the obligations and burden of complying with the Act is not commensurate with the risk of money laundering and terrorist financing for some high-value goods dealers.

These submitters felt that operating practices and codes of ethics that were already in place were sufficient measures to combat money laundering and terrorist financing. One submitter suggested the high-value goods sector could be subject to a regime similar to the FTRA regime instead of the AML/CFT Act to reduce the burden of compliance on the sector while still assisting in the efforts to combat money laundering and terrorist financing.

Preference for Option 2: AML/CFT requirements should apply to dealers in all high-value goods

Eleven of the sixteen submitters supported the inclusion of all businesses that deal in high-value goods in Phase Two of the reforms. Several of these submitters noted the importance of including all high-value goods dealers to counteract the risk of the displacement effect. Some submitters noted that all high-value goods dealers are at high-risk of being used for money laundering and terrorist financing.

Appropriate threshold

Fourteen submitters responded to the question in the consultation paper regarding the appropriate threshold for cash transactions that would trigger AML/CFT customer due

diligence and reporting requirements. These included seven high-value goods, two consulting, two financial, one gambling, and two 'other category' submissions.

Nine of these submitters considered $10,000 an appropriate threshold for cash transactions to trigger AML/CFT customer due diligence and reporting requirements. The rationale for this figure was that:

- It aligns with other prescribed thresholds and ensures consistency throughout the regime.
- It is a significant amount of cash in a largely cashless society.
- That a threshold of $10,000 limits the impact of compliance on business while addressing the risks.

Three of these submitters felt a threshold of $10,000 was too low and it would cause undue compliance burden. They felt the threshold should be higher in line with FATF recommendations. One of these submitters thought that a threshold of $20,000 was appropriate as transactions below this size are considered small in their industry and a threshold lower than this would result in undue compliance burden. Another submitter noted that a threshold between $10,000 and 25,000 would be appropriate as long as cash thresholds in the AML/CFT Act are consistent, industry neutral and fair.

One of these submitters felt $5,000 was the appropriate threshold, as it would enable the capture of all significant cash transactions.

One submitter did not specify a threshold. However, they noted the importance of regularly reviewing thresholds to ensure that they are effective.

Other comments in relation to high-value goods

A number of submitters made other comments in relation to high-value goods, as follows.

- Some submitters noted that there is little to no existing AML/CFT knowledge in the sector and if high-value goods are to be included in the Act the sector will need education and guidance.
- Some submitters raised concerns about the possibility of the customer due diligence process damaging relationships. A few submitters noted the importance of educating the public about the AML/CFT Act to reduce the risk of relationship damage.
- Some submitters noted there is a need to have flexibility within the AML/CFT Act to add to and change the types of businesses subject to the regime as the money laundering and terrorist financing landscape changes.
- A few submitters stated that high-value goods dealers should undertake customer due diligence at the time of purchase, when they receive a deposit and in some circumstances at the point of enquiry. These submitters noted that suspicious transaction or activity reports should be filed at the point where red flags are raised.
- A few submitters from the motor vehicle industry noted that using existing data collection mechanisms such as sale and purchase agreements to monitor transactions would reduce the compliance burden. It was also noted that using sale and purchase agreements would capture private sales in addition to sales and purchases made through businesses.

Gambling sector

The Ministry of Justice sought views on which gambling services should be subject to AML/CFT requirements under Phase Two of the reforms, and how those requirements should be applied to the sector, given business structures and practices. As part of the proposal, it is intended that the New Zealand Racing Board and the New Zealand Lotteries Commissions should be subject to the regime.

The Ministry also sought specific views on whether AML/CFT obligations should apply to cash transactions worth more than a particular amount for customers that businesses do not have an account relationship with.

Which gambling services should be subject to AML/CFT

Eight submitters commented on which gambling services should be subject to AML/CFT requirements. These included four gambling, two consulting and two 'other category' submissions.

Seven of these submitters supported the inclusion of the gambling sector in the AML/CFT Act. They noted the importance of the gambling sector having the same responsibility to conduct checks, assessments and transaction reports as all other entities included in the Act. **One** submitter did not state a view on whether the gambling sector should be subject to AML/CFT requirements.

Which business activities should the requirements apply to?

Submitters made the following comments on the specific business activities AML/CFT requirements should apply to, or at which stage in a business relationship checks, assessments and reports should be done.

- Some submitters proposed that the activities of betting and using vouchers and accounts should be included in the Act.
- A few submitters noted the risks around electronic betting services.
- A few submitters stated that overseas betting poses AML/CFT risks. One submitter noted the importance of making regulations to ensure that foreign holdings accounts are not used for money laundering and terrorist financing.
- One submitter agreed that pokies in pubs and clubs should be exempt from the Act as they are a low risk activity. Another submitter felt that electronic gaming machines in pubs and clubs should be included as they pose the same risk as machines in other venues.
- One submitter thought junket operators should be captured by the Act to ensure consistent regulation whereas another submitter thought that junket operators should be excluded as casino operators are better placed to undertake AML/CFT activities.
- One submitter noted the importance for clients to be able to place cash bets at high speed and ensuring that AML/CFT requirements do not disrupt this.
- One submitter noted that the standard approach of verifying identity prior to establishing a business relationship may not be practicable for the gambling sector. They stated that provisions could be made or the Australian approach of allowing customer due diligence to be delayed for up to 90 days (while not allowing the

withdrawal of funds until this process is completed) to ensure customer due diligence requirements do not disrupt business as usual.

Inclusion of New Zealand Racing Board and the New Zealand Lotteries Commission

Four submitters stated that the New Zealand Racing Board and the New Zealand Lotteries Commission should be included in Phase Two of the reforms. The submitters rationale for the inclusion of these entities is that all providers of gambling services should be included in the regime to ensure an even playing field and align with international standards. **Two** submitters thought all or some of the New Zealand Racing Board and the New Zealand Lotteries Commissions activities should be exempt from the AML/CFT Act.

Appropriate threshold

Eight submitters responded to the issue of an appropriate threshold for triggering AML/CFT obligations on occasional cash transactions. These included three gambling, two consulting, one legal, one accounting and one 'other category' submission.

Five of these submitters stated that $10,000 was the appropriate threshold for triggering AML/CFT customer due diligence and reporting requirements on occasional cash transactions. The rationale for this figure was that:

- It aligns with the Financial Action Task Force recommendations and Australian regulations.
- It will be consistent with other sectors in New Zealand that comply with the AML/CFT Act.
- It will allow for high speed transactions while still having the ability to identify AML/CFT risk.

Some submitters stated stipulations around the $10,000 threshold. A few submitters noted that the $10,000 limit should apply to transfers of money into chips. One submitter stated that the limit should also apply to attempts to deposit into the casino bank. One submitter felt the limit should apply to attempts to gamble at the $10,000 threshold. One submitter stated that the $10,000 limit should be for singular transactions as cumulative transactions are not possible to track in certain environments e.g. live cash betting at a race track.

Two submitters stated that that a lower threshold was appropriate. The first considered the current $6,000 limit was appropriate. The second stated that anything over $1,000 should be recorded and the winners identity confirmed to prevent criminals abusing loopholes.

One submitter did not state a particular threshold for occasional cash transactions. However, they noted that the threshold needs to be consistent with the threshold for other gambling activities to reduce the risk of displacement effect.

Supervision

The Government is considering how businesses included in the Phase Two reforms of the AML/CFT should be supervised. Globally, many different AML/CFT supervisory models have been appointed. These include:

- Single supervisor. This is the current model in Australia
- Multi-agency supervision. This is the current model in New Zealand and the United States.
- Multiple agencies with self-regulatory bodies. This is the current model in the United Kingdom.

Views were sought on whether the current supervisory model is appropriate for Phase Two of the AML/CFT reforms.

Thirty two submitters commented on whether the current supervisory model is appropriate for Phase Two of the reforms.

Table 2: Preferred supervisory model

Preferred supervisory Model	Number of submitters	Submitter type
Current model: 'multi-agency supervision'	8	4 finance, 2 gambling and 2 consulting
Alternative 1: 'single supervisor' model	16	6 finance, 4 legal, 4 consulting, 1 accounting, 1 high-value goods
Alternative 2: 'multiple agencies with self-regulated bodies' model	8	5 legal, 1 accounting, 1 finance and 1 real estate
TOTAL	**32**	

Current model: multi-agency supervision

Eight submitters stated that the current model of 'multi-agency supervision' is appropriate.

Submitters considered the current supervisory model is appropriate because it works well and supervisors have built up knowledge and experience during Phase One of the reforms. They also considered the current model would be more affordable, as there would not be additional costs incurred by setting up an alternative model.

Some submitters felt the current supervisory model is appropriate because it is better than either of the alternatives (see below for commentary on alternatives).

Those who preferred the current model felt that the existing sector supervisors are appropriate agencies for the supervision of businesses included in Phase Two of the reforms. They considered that existing supervisors have built up a strong knowledge base and fit the New Zealand context.

Specifically, most submitters felt that the Department of Internal Affairs (DIA) was best placed to take on the new Phase Two entities, while some considered the Financial Markets Authority (FMA) should supervise Phase two entities, or share responsibility with DIA. **Two** submitters noted that the Reserve Bank of New Zealand is well placed to continue regulating banks.

Alternative 1: Single supervisor model

Sixteen submitters stated that a 'single supervisor' model would be more suitable for Phase Two of the AML/CFT reforms. These submitters thought this alternative model should also be applied to businesses already covered by the regime (i.e. financial institutions and casinos). Of these submitters, six were from finance, four were from legal, four were from consulting, one was from accounting, and one was from the high-value goods sector.

Most submitters who stated that a 'single supervisor' model is more suitable have experience with the current model. They believe that a 'single supervisor' model would offer greater consistency, be more timely and responsive, and reduce duplication and costs for businesses and professions.

Submitters also commented that a 'single supervisor' model would result in trans-Tasman consistency, as Australia has adopted this model.

On the whole submitters who preferred a 'single supervisor' model did not offer an opinion on who should be the supervisor. However, a few stated that DIA should supervise the legal sector, if the current supervision model is retained.

Submitters acknowledged that if a 'single supervisor' model is adopted in New Zealand there will be start-up costs. However, they considered that these costs would be offset by greater efficiencies in the medium to long-term.

Submitters who preferred the current model of supervision noted that a significant weakness of a 'single supervisor' model would be that a single supervisor would not have the depth and breadth of experience to supervise all businesses and professions. They also noted that this model would be costly to implement.

Alternative 2: multiple agencies with self-regulatory bodies

Eight submitters either specifically stated a preference for the 'multiple agencies with self-regulated bodies' model or a preference for self–regulatory bodies to supervise AML/CFT activities (e.g. the New Zealand Law Society, Charted Accountants Australia and New Zealand, and the Real Estate Agents Authority). Submitters felt that businesses without regulatory bodies should be regulated by existing supervisors e.g. gambling could be supervised by Department of Internal Affairs, and bullion dealers supervised by the Reserve Bank. Of these submitters, five were from the legal sector and one each was from the accounting, finance and real estate sectors.

Submitters gave the following reasons for the 'multiple agencies with self-regulated bodies' model and/or to be supervised by a regulatory body:

- Self-regulatory bodies already regulate and supervise their sector and it would make logical sense for them to supervise AML/CFT activities as well.

- Existing supervisors do not have sufficient sector or technical expertise to supervise Phase Two businesses.

- Current supervisors are under resourced to supervise the volume and complexity of Phase Two businesses.

Submitters who preferred the current model of supervision noted significant weaknesses with the ‘multiple agencies with self- regulated bodies’ model. They felt if this model was adopted it would result in an inconsistent approach to oversight and support, and that self-regulated bodies would have AML/CFT knowledge gaps.

Submitters who preferred the ‘single supervisor’ model also had considerable concerns with the ‘multiple agencies with self-regulated bodies’ model. They noted that if this model was adopted there would be potential for overlap and inconsistencies as evidenced in the United Kingdom where the model is used (some submitters referenced a Transparency International report which concluded that the United Kingdom experience resulted in inconsistent regulation). They also noted that it would be difficult for supervisors to all have the required AML/CFT expertise, and that there could be conflicts of interest with self-regulatory bodies supervising their own professions.

Other comments related to supervision

Submitters made a number of general comments on supervision as follows:

- There needs to be a review of current supervisors to assess their capability to supervise businesses include in Phase Two of the reforms.
- Supervisors need to be adequately resourced to perform their duties.
- Supervisors need to provide consistent oversight and support to businesses and professions.
- Supervisors need to have industry knowledge.
- Supervisors need to provide relevant and timely guidance and tools and a help desk.

Implementation period and costs

The Government recognises that in order to fully implement AML/CFT requirements, businesses will need time to develop risk assessments and programmes, put in place the associated procedures and controls, and train staff in the new procedures.

Views were sought on the appropriate implementation period for Phase Two of the reforms, and how long it will take businesses to develop and put in place the AML/CFT measures.

29 submitters gave feedback on the implementation period.

Table 3: Preferred implementation period

Implementation period	Number of submitters	Submitter type
Two years	13	7 legal, 3 finance, 1 accounting, 1 real estate, 1 gambling
Less than two years	11	4 high-value goods, 3 legal, 1 consultant and 3 other
More than two years	3	2 accounting, 1 gambling
Staged implementation	2	1 high-value goods, 1 consultant
TOTAL	**29**	

Two year implementation period

Thirteen submitters stated a two year implementation period is appropriate for Phase Two of the reforms. These submitters said that a two year implementation period would be required to develop risk assessment and compliance programmes, undertake customer due diligence, appoint a compliance officer and train staff, and to make IT and other system changes. These submitters noted that a two year implementation period would give supervisors, self-regulatory bodies and professional associations sufficient time to provide guidance and tools.

Less than two years implementation period

Eleven submitters stated that less than two years is an appropriate implementation period for Phase Two of the reforms. Most of these submitters stated a preference for 12-18 months for implementation. These submitters thought that this lead-in time would be sufficient to develop a risk assessment and compliance programme, undertake customer due diligence, and appoint a compliance officer and train staff, and to make IT and other system changes. Two submitters had direct experience in Phase One through another part of their business, and had built up knowledge and experience and developed systems.

More than two years implementation period

Three submitters stated a three or four year implementation period should be put in place for Phase Two. The first submitter said this timeframe would allow them to develop the

necessary processes, training and IT systems to conduct customer due diligence and transactional monitoring. The second and third submitters were uncertain over the extensiveness of compliance, and whether guidance and tools developed for Phase One will be suitable for their businesses and whether learnings from Phase One of the reforms will be passed on. These two submitters therefore felt a longer implementation period would seem reasonable.

Staged implementation

Two submitters suggested that a staged implementation approach is used for Phase Two of the reforms. One submitter commented that the implementation period should be 12 months for lawyers and accountants and two years for less formal sectors (i.e. high-value goods), as they will need more advice and support to set up systems and processes in order to comply with the regime. The second noted that staged implementation is in line with best practice.

Other comments

Submitters noted that implementation would be more challenging for small businesses, and less formalised sectors (e.g. high-value goods). They felt it would be challenging for these reporting entities to develop risk assessment and compliance programmes, put in place the associated procedures and controls, and train staff in the new procedures.

Submitters also stated that supervisors need to work closely with businesses throughout the implementation period and develop clear, user-friendly and practical guidelines and tools.

Enhancing the AML/CFT Act

The AML/CFT Act came into effect on 30 June 2013. Views were sought on several issues which could be reviewed to enhance the AML/CFT regime and help ensure it remains effective. These issues included:

- Whether suspicious transaction reporting should be expanded from a transaction-based model to an activity-based model – that is, whether suspicious activity should be reported, not just actual transactions.
- Should information sharing be enhanced and the circumstances and restrictions for information sharing.
- Whether current third party provisions are appropriate or whether they should be enhanced.
- Whether it is appropriate to extend the scope of trust and company service providers covered by the Act.
- Whether it is appropriate to expand the types of low-risk institutions that reporting entities are allowed to conduct simplified due diligence on.

Expanding suspicious transaction reporting

The Ministry of Justice sought views on the expansion of the current requirement to report suspicious transactions to include the reporting of suspicious activities.

Forty four submitters gave feedback on whether suspicious transaction reporting should be expanded from a transaction-based model to an activity-based model.

Table 4: Expanding suspicious transaction reporting

Implementation period	Number of submitters	Submitter type
Yes – expand suspicious reporting to an activity-based model	26	7 finance, 5 legal, 3 consultants, 1 high-value goods, 1 accounting, 4 consultants, 3 other and 2 unspecified
No – do not expand suspicious reporting to an activity-based model	12	3 law, 3 high-value goods, 2 gambling, 2 finance, 1 accounting, 1 real estate
Made a comment on expansion but did not state yes or no to expansion	6	2 high-value goods, 2 finance, 1 legal, 1 gambling
TOTAL	**44**	

Twenty six submitters stated that suspicious transaction reporting should be expanded from a transaction-based model to an activity based model. These submitters felt that the current definition of suspicious transaction reporting is too restrictive, and earlier and more wide spread detection is needed to improve New Zealand's ability to tackle money laundering and terrorist financing, by providing the Financial Intelligence Unit with a greater pool of intelligence. They noted that expanding suspicious transaction reporting would align with Australia and other overseas jurisdictions. They also noted that in order for this expansion to be effective and not to unduly burden businesses, clear guidance and training will be needed on what to look for and what constitutes a suspicious activity.

Twelve submitters did not support expanding suspicious transaction reporting from a transaction-based model to an activity-based model. These submitters believe the current model of reporting is sufficient to tackle money laundering and terrorist financing, and that compliance costs would outweigh any benefit. They felt that suspicious activity is highly subjective, and the expansion of reporting requirements would lead to inconsistent reporting that could decrease the quality of Financial Intelligence Unit investigations. Submissions from the legal sector also noted that expanding reporting would have implications for legal professional privilege and raised concerns over lawyer's liability if they are deceived by their clients or are otherwise unware of the activity.

Six submitters made comments in their submissions about whether suspicious transaction reporting should be expanded from a transaction-based model to an activity-based model, without making a call on expansion. These submitters stated a range of views and concerns including:

- That section 40(1)(a) of the AML/CFT Act is sufficient to capture suspicious transaction-based activities.
- That legislation should state the type and amount of information reporting entities would need to provide.

- That they would only support expansion if changes were in line with the Shewan report, e.g. changing the legislation to capture transactions that do not go ahead or that do not go through a local institution.

- The need for clear definition and guidelines for suspicious transaction reporting.

- The Ministry of Justice should engage with sectors to see what reporting is appropriate for them.

- That any expansion should result in no further compliance costs.

Information sharing

The Ministry of Justice sought views on how existing information sharing arrangements could be enhanced. The Ministry asked for feedback on the following proposed information sharing arrangements:

- Industry regulators sharing AML/CFT related information with government agencies.
- Supervisors sharing customers AML/CFT related personal information with government agencies.
- Financial Intelligence Unit sharing financial intelligence with government agencies and reporting entities.
- Restrictions that should be placed around information sharing.

Industry regulators sharing information with government agencies

Twenty four submitters (ten finance, three accounting, three high-value goods, two legal, one consulting, two unspecified and three 'other categories') commented on industry regulators sharing AML/CFT related information with government agencies.

Sixteen submitters supported industry regulators sharing AML/CFT-related information with government agencies.

These submitters considered that enhancing information sharing would improve collaboration and contribute to earlier detection and a cohesive system for combatting money laundering and terrorist financing.

Submitters noted that enhanced information sharing should be accompanied by a number of restrictions and stipulations. They noted that information sharing should only occur when there is reasonable suspicion of criminal activity and for the purposes of the enforcement of the AML/CFT Act. They also noted that information sharing should only be with the agencies the information is pertinent to (e.g. Inland Revenue if the information is to combat tax evasion), and the need to put safeguards in place to protect individuals privacy as well as protecting reporting entities.

Submitters also noted the need for clear guidance on the circumstances and scope of information sharing, and how government agencies use information.

Five submitters did not support or oppose industry regulators sharing AML/CFT-related information with government agencies. These submitters noted that there are significant concerns and issues around information sharing and that appropriate safeguards would need to be put in place. They also stated that information should only be shared for the investigation or enforcement of the AML/CFT Act. A submitter felt there was a need to consider more detailed proposals on information sharing before they could form an opinion.

Three submitters opposed industry regulators sharing AML/CFT-related information with government agencies. One submitter felt that sharing information with government agencies is a serious privacy issue that transcends AML/CFT regulation and it is inappropriate to allow this under an amendment in the Act. Another submitter felt that the risks of information that is protected by legal professional privilege being shared were greater than the benefits of

sharing information with government agencies. Another submitter noted that there are some institutions that hold large amounts of sensitive information and they did not support expanding information sharing further than current provisions allow.

Supervisors sharing customers AML/CFT related personal information with government agencies

Twenty two submitters (ten finance, three accounting, three high-value goods, two consultants, two unspecified and two 'other categories') commented on if AML/CFT supervisors should be able to share customers AML/CFT related personal information with government agencies.

Sixteen submitters supported AML/CFT supervisors sharing customers AML/CFT related personal information with government agencies. These submitters supported enhanced information sharing for the same reasons and purposes as above. A submitter felt that it is important for supervisors to have a supervisory role rather than an operational one and that supervisors should inform reporting entities before they make reports or disclose personal information.

Four submitters did not support or oppose AML/CFT supervisors sharing customers AML/CFT related personal information with government agencies. These submitters noted that information should only be shared for the purposes of combatting money laundering and terrorist financing and they sought further clarity on how sharing customers personal information aligned with this purpose. Another submitter noted that reporting entities should be informed before customer information is shared by supervisors. Two submitters raised similar concerns as for the previous question around protecting large quantities of personal information and the need for more detailed consultation.

Two submitters opposed AML/CFT supervisors sharing customers AML/CFT related personal information with government agencies. One submitter urged caution in expanding information sharing and noted that there are other Acts that allow the Financial Intelligence Unit and government agencies such as Inland Revenue to request information. Another submitter raised the same issues around legal professional privilege as in the previous question.

Expanding sharing to the Financial Intelligence Unit

Seventeen submitters commented on the appropriate circumstances under which the Financial Intelligence Unit can share financial intelligence with government agencies and reporting entities and the protections that should apply. These submitters were six finance, three legal, two accounting, one high-value goods, one gambling, one consultant and three 'other categories'.

Submitters stated that there is a need for clear parameters and guidance when expanding information sharing to the Financial Intelligence Unit and that there needed to be reasonable suspicion of money laundering and terrorist financing to justify information sharing. Submitters noted the importance of only sharing information with the appropriate agencies and only for the purpose it is collected for, the prevention and detection of money laundering and terrorist financing.

A few submitters supported the Financial Intelligence Unit sharing information with reporting entities as they felt this would allow them to be better informed of risks and trends. One submitter suggested cleansing data of identifying information before it is shared. Another submitter felt reporting entities should be able to approach Financial Intelligence

Unit for data on proposed customers to create a more cohesive response to money laundering and terrorist financing.

A few submitters felt that there is a need for increased data sharing powers to create an effective response to money laundering and terrorist financing. Other submitters felt that there are serious privacy concerns with the proposed information sharing arrangements and that these amendments should not go ahead under the Act. One submitter felt further consultation was needed on this issue.

Submitters felt that government agencies and the Financial Intelligence Unit should have the ability to inform supervisors if they feel a reporting entity is not meeting its AML/CFT obligations.

One submitter noted the current difficulties experienced when making suspicious transaction reports to the Financial Intelligence Unit and stated that this process needs to be easier and there should be some form of help desk to assist with reporting suspicious transactions and/ or activities. Another submitter felt that government agencies should be able to interrogate the Financial Intelligence Unit database for better capture of money laundering and terrorist financing activity.

Restrictions placed on information sharing

Twenty one submitters commented on the restrictions that should be placed around information sharing. These submitters were eight finance, four legal, two accounting, two gambling, three consultants, one high-value goods and one 'other categories'.

Some submitters supported expanding information sharing with relevant parties for the purposes of detecting and preventing money laundering and terrorist financing subject to appropriate checks and balances. Submitters felt there needed to be clear guidelines on the circumstances, scope, disclosure and parties with whom information is shared. Submitters noted the importance of sharing information in good faith.

Other submitters expressed hesitancy about expanding information sharing, particularly sharing individual's personal information.

Some submitters strongly opposed information sharing as they felt that this was a serious issue that transcended the AML/CFT regime and that it was inappropriate to make these provisions under the Act.

Submitters noted the importance of ensuring New Zealand's information sharing arrangements align with the recommendations in the Government Inquiry into Foreign Trust Disclosure Rules[1] and suggested aligning with the Australian regime.

A few submitters noted that allowing reporting entities to share information with each other would lead to more comprehensive and global AML/CFT prevention and detection. Submitters noted the need for appropriate protections for reporting entities who provide information to regulators and other agencies for the enforcement of the Act. A submitter felt

[1] Shewan, J. *Government Inquiry into Foreign Trust Disclosure*. Wellington: New Zealand Government, 2016.

that there should be systems in place to ensure that reporting entities are not unduly burdened with information requests from different supervisors and agencies.

A submitter noted the importance of providing clarity around the term ‘real time operational information’ on page 35 of the consultation paper. A submitter from the legal sector felt that it is important when on-site inspections and audits it was important that files were not copied or shared unless strict criteria is met to protect legal professional privilege.

Reliance on third parties

The Ministry of Justice sought views on whether current third party reliance provisions are appropriate on whether they should be enhanced. The Act currently includes three provisions for reporting entities to rely on third parties to meet their AML/CFT obligations:

- Reliance on a member of a designated business group (DBG)
- Reliance on other reporting entities or persons in another country
- Reliance on agents.

Are existing third party reliance provisions appropriate or should be enhanced?

Twenty six submitters responded to the issue of whether third party reliance provisions are appropriate or should be enhanced. These included ten finance, five legal, four accounting, three consulting, one real estate, one high-value goods, and two 'other' submitters.

Most submitters from the financial sector felt that in principle the existing third party reliance provisions are appropriate and should be preserved. They believe the existing provisions are sufficient and appropriate to assist a reporting entity to meet its AML/CFT obligations. However, most other submitters felt the provisions were too narrow, inefficient and and/or onerous for businesses. Examples of suggestions for enhancement are as follows:

- Small businesses could rely on the AML/CFT processes undertaken by banks.
- There should be the ability for customers to verify at least their identity to one business and other businesses can then rely on that third party to verify their customers.
- It would be more fair and logical to make the request to the reporting entity that holds the principal relationship with the client not from the third party providing an ancillary service.
- Reporting entities should be able to rely on third parties to meet their obligations, if due diligence has recently been carried out by a reporting entity on a customer involved in the same or similar transaction.

Some submitters suggested mechanisms to expedite customer due diligence. A few submissions proposed a central register be established to record recent AML/CFT checks. A few submitters also suggested that where a reporting entity is dealing with another reporting entity there should be the ability to share the information in the form of a letter of assurance or certificate.

A few submitters recommend that the current third party reliance provisions are amended to enable reporting entities to be deemed to have discharged their own customer due diligence obligations where they have relied on customer due diligence conducted by another reporting entity.

A few submitters commented that the manging intermediaries' exemption still causes confusion and should be reviewed.

A few accounting submitters made comments on the makeup of Designated Business Groups. One submitter commented that it is unclear whether Approved Practice Entities would meet the definition of a Designated Business Group. If not, then this submitter would recommend the definition is revised to enable networks of accounting firms to share AML/CFT compliance obligations. Another submitter suggested that the Ministry of Justice should consider the restriction of the Designated Business Group formation being restricted to related parties.

A few submitters noted that it is important that the provisions reflect the changing environments that reporting agencies find themselves in, and the regime should accommodate the development and adoption of new technologies. One submitter mentioned as an example that 'Blockchain' has been developed and used to share information.

Trust and company services

The Ministry of Justice sought views on if it's appropriate to extend the scope of trust and company services covered by the Act to include activities carried out in the ordinary course of business.

Twenty submitters gave their views on the extension of the scope of trust and company service providers covered by the Act.

Table 5: Trust and company services

Implementation period	Number of submitters	Submitter type
Yes – extend the scope of trust and company services	18	6 finance, 4 legal, 3 consultants, 1 accounting, 1 gambling, 1 not specified, 2 'other categories'
No	**0**	
Made a comment but did not state yes or no	**2**	1 legal, 1 not specified
TOTAL	**20**	

Eighteen submitters supported the extension of the scope of trust and company service providers covered by the Act to include activities carried out in the ordinary course of business. These submitters noted the high risk of trusts being used for money laundering and terrorist financing activities and felt the inclusion of all trust and company services providers was preferable. Submitters noted that the inclusion of all providers will limit the possibility of a displacement effect occurring when Phase Two of the reforms bring lawyers and accountants into the scope of the regime.

Two submitters did not state support or opposition to the extent of the extension of the scope of trust and company service providers covered by the Act. One submitter from the legal sector felt that the inclusion of lawyers and accountants largely addresses the issue. The other submitter agrees with the recommendations in the Government Inquiry into Foreign Trust Disclosure Rules[2].

[2] Shewan, J. *Government Inquiry into Foreign Trust Disclosure*. Wellington: New Zealand Government, 2016.

Simplified customer due diligence

The Ministry of Justice sought views on whether it is appropriate to expand the types of low-risk institutions that reporting entities are allowed to conduct simplified due diligence on. These entities include State Owned Enterprises (SOEs) and majority-owned subsidiaries of publically traded entities in New Zealand and in low-risk jurisdictions.

Should simplified due diligence be extended to the types of low-risk institutions proposed?

Twenty three submitters commented on simplified customer due diligence. These included ten finance, four accounting, three legal, one gambling, one high-value goods, one consulting, two 'other category' and one 'unspecified' submission.

Twenty two of these submitters considered that simplified customer due diligence should be extended to SOEs and majority-owned subsidiaries of publically traded entities in New Zealand and low risk overseas jurisdictions for the reasons outlined in the consultation paper. Namely, submitters considered these institutions low-risk because they are owned by the Government, or they have been subject to the same ownership and disclosure relationships as their parent companies.

Should the extension of provisions extend to other institutions?

Sixteen submitters commented on whether the provisions should be extended to other institutions (eight financial, three legal, one consulting, one accounting, one high-value goods, one 'other' submitter and one 'non-specified' submitter).

Three submitters suggested consideration be given to extending simplified customer due diligence to regulated foreign financial institutions in low-risk foreign jurisdictions, as these organisations are generally considered to have more effective policies, procedures and controls. One submitter noted that AML/CFT Act implementation has effectively embedded a framework and requirements related to simplified customer due diligence for the domestic market. However the ability to apply the same treatment to similar entities in equivalent offshore jurisdictions is very limited, putting New Zealand at a disadvantage when being considered in the international market as a destination for capital.

Submitters made the following one-off comments to extending simplified customer due diligence to the following institutions:

- Reporting entities where they themselves are customers of other reporting entities, as by their very nature are subject to supervision. This would include subsidiaries of registered banks and licenced insurers. This would relieve the compliance burden.
- Businesses licensed and supervised by recognised regulatory authorities (lawyers, financial institutions, chartered accountants, etc.).
- Workplace savings schemes that are registered under the Financial Markets Conduct Act 2013.

- Non-bank deposit takers as licenced by the Reserve Bank.
- New Zealand registered charities should be included, as the registration process is already difficult enough without having to go through AML/CFT as well.

One submitter also suggested that consideration should be given to extending simplified customer due diligence to where the majority or 100% of ownership extends down more than one level of ownership (but no more than four levels).

Five submitters stated that there should be no extension of provisions to any other institution, other than those identified in the consultation paper.

Additional considerations

Several submitters made reference to issues outside of the scope of the consultation. The Ministry has been provided with a list of these submissions.

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