

# **Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill**

Government Bill

As reported from the Law and Order Committee

## **Commentary**

### **Recommendation**

The Law and Order Committee has examined the Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill, and recommends that it be passed with the amendments shown.

### **Introduction**

Money laundering is the process of making money obtained through crime appear legal. The Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill (the AML/CFT Bill) would amend the 2009 Act of the same name. The Act aims to detect and deter money laundering and the financing of terrorism.

The Act's obligations concerning risk assessment, monitoring, customer due diligence, and reporting currently apply to banks, casinos, and financial institutions. The bill would extend these obligations to lawyers, conveyancers, accountants, real estate agents, the New Zealand Racing Board, and certain dealers in high-value goods (such as cars, boats, jewellery, and art) when they carry out activities that involve a risk of money laundering or the financing of terrorism. These sectors, known as the Phase 2 sectors, are at high risk of being targeted by criminals to launder money or to finance terrorism.

The bill would also require the Phase 2 sectors (except dealers in high-value goods) to report large cash transactions and suspicious activity, and to develop and maintain a risk assessment and compliance programme. High-value dealers would have a limited set of obligations (customer due diligence, cash reporting, and voluntary reporting of suspicious activity) when they deal in cash over a specific threshold.

Under the bill as introduced, situations where reporting entities could undertake simplified customer due diligence would be expanded, and organisations would have more flexibility to share information to meet the purposes of the Act. The bill would establish the Department of Internal Affairs as the supervisor of the Phase 2 sectors for anti-money laundering and countering terrorism financing purposes.

The bill seeks to strike a balance between combating crime, minimising costs, and enabling New Zealand to meet its international obligations. It also responds to some aspects of the “Government Inquiry into Foreign Trust Disclosure Rules” conducted in 2016 by John Shewan.

### **The committee’s recommended changes to the bill**

In this commentary we discuss the main changes we recommend to the bill. We have organised our comments by topic, rather than by following the numerical order of the clauses as they appear in the bill. We do not cover minor or technical changes.

Our changes cover the following topics:

- implementation timeframes
- scope of activities
- obligations for high value dealers
- information sharing
- legal professional privilege
- customer due diligence
- exemptions.

### **Implementation timeframes**

Clause 6 of the bill as introduced would replace section 6 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. This concerns the application of the Act to reporting entities.

### **Implementation dates being set by Order in Council**

As introduced, the obligations in the Act would apply to each of the Phase 2 sectors at a date to be set by the Governor-General by Order in Council, not later than the dates specified in Clause 6(2).

The Regulations Review Committee has expressed concern that the bill would not apply to the reporting entities until a date is set by Order in Council. This is not in line with usual or best practice for legislation, and would create uncertainty for the affected entities.

We see value in being able to implement the new provisions for each Phase 2 sector within a reasonable time of the relevant regulations and guidance being in place for them. We appreciate, however, that the proposed commencement provisions do not include automatic commencement if the relevant Orders in Council are not made. Therefore, we recommend amending all the commencement provisions in clause 6

(including, as discussed below, new section 6(1A) concerning the reporting of suspicious activity) to ensure that, if Orders in Council have not been made, the relevant provisions would automatically come into force on the dates specified for each of the sectors.

### **Implementation deadlines for each sector**

Clause 6(2) provides for the various sectors to be subject to the following staged implementation periods:

- Lawyers and conveyancers would be bound by the provisions by 1 July 2018.
- Accountants would be bound by the provisions by 1 October 2018.
- Real estate agents would be bound by the provisions by 1 January 2019.
- The New Zealand Racing Board and high-value dealers would be bound by the provisions by 1 August 2019.
- The legislation would apply to trust and company service providers on 1 July 2018, if they were not already a reporting entity under regulation 17 of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011.

Some submitters expressed concern that the proposed timeframes were too short, and worried about being ready to meet their new obligations. We have carefully considered these views.

We recognise that businesses would need time to prepare for the new requirements. In particular they would need to develop risk assessments and programmes, put in place the associated procedures and controls, and train staff in the new procedures. The proposed implementation timeframe has been calculated on the basis that relevant regulations and guidance would be in place at least six months before the relevant sector was bound by the Act.

The proposed phased approach aims to balance the risks from the sectors continuing without having to meet the AML/CFT obligations, against the work needed to ensure they can comply with the new regime. Delaying implementation would also affect New Zealand's next Financial Action Taskforce evaluation, which is scheduled for 2019. This assessment directly affects New Zealand's international trade reputation.

We consider that, while the timeline may be challenging for some, overall the phased implementation would provide the various sectors with enough time to prepare for and make changes that are necessary to implement the reforms.

### **Scope of activities**

Clause 5 of the bill as introduced would amend section 5 of the Act by inserting, replacing, amending, and repealing certain definitions.

These definitions describe the entities that would be covered when the AML/CFT regime is extended to the Phase 2 sectors. They also describe the activities within those

sectors that would trigger the Act's application. We recommend amending some of the definitions to make them clearer.

### **Amendments to definition of “designated non-financial business or profession”**

We recommend the following amendments to various aspects of the definition of designated non-financial business or profession in clause 5(1).

A designated non-financial business or profession is defined in the bill as a law firm, a conveyancing practitioner, an incorporated conveyancing firm, an accounting practice, a real estate agent, or a trust and company service provider who carries out certain specified activities.

#### **Listed activities apply to all named sectors**

We recommend amending the definition of designated non-financial business or profession in clause 5(1)(a) to clarify that the list of activities would apply to all of the named sectors, not just to trust and company service providers.

#### **Defining “legal arrangement”**

We recommend inserting a definition of “legal arrangement” in clause 5(1) to mean a trust, a partnership, a charitable entity, and any other prescribed arrangement that involves a risk of money laundering or the financing of terrorism. This would clarify for reporting entities what types of legal arrangements are meant.

#### **Replacing “engaging in or giving instructions in relation to”**

In clause 5(1), we recommend amending paragraph (a)(vi) of the definition of “designated non-financial business or profession” so that the provision would read “engaging in or giving instructions on behalf of a customer to another person for—”.

This amendment would make it clear that this part of the definition relates to a designated non-financial business or profession, such as a lawyer, who is either acting, or instructing a third party to act, on behalf of someone else. We note that using a lawyer to distance a criminal from the activities concerned is a well-known approach used by money launderers to disguise money laundering activity.

Amending the words as suggested would also narrow the scope of the activity to focus on the specific transaction.

#### **Reporting entity to take guidance into account**

We recommend amending clause 5(10) to add the words “if any” to section 5(4) of the Act so that the provision reads “... a reporting entity must take into account guidance, if any, on the application of those definitions issued by the relevant AML/CFT supervisor”. This would mean that if guidance does not exist, a reporting entity must still comply with the Act.

**Amendments to make the real estate aspects clearer**

We consider that the real estate aspects of the definition of “designated non-financial business or profession” could be clearer about what is covered.

In clause 5(1), we recommend amending paragraphs (a)(v) and (vi) of the definition to use the definition of “transaction” from section 4(1) of the Real Estate Agents Act 2008. This more precise definition would mean that any real estate agent who carries out a transaction as defined in that Act would be covered by the Anti-Money Laundering and Countering Financing of Terrorism Act.

Similarly, we recommend amending paragraph (a)(vi)(A) to refer to the definition of “conveyancing” in the Lawyers and Conveyancers Act 2006, but narrowing it to matters that are to effect a “transaction” under the Real Estate Agents Act 2008. The covered matters are set out in bullet points for clarity.

**Recommended changes to other definitions****Definition of “law firm”**

For clarity, we recommend amending the definition of “law firm” to read “a barrister or barrister and solicitor, practising on the barrister’s or barrister and solicitor’s own account (whether in partnership or otherwise)”. This would cover both categories of practising solicitor: a barrister and a barrister and solicitor.

We recommend deleting clause 5(b) of the definition of “law firm” which refers to partnerships. This is because a partnership is not a legal person and so cannot, itself, be a reporting entity.

**Definition of “existing customer”**

We consider that the definition of “existing customer” in the bill as introduced could be interpreted to mean that a Phase 2 business would be entitled to treat as an “existing customer” a person who was in an existing business relationship with any reporting entity, rather than just with the reporting entity in question.

Therefore, we recommend amending the definition of “existing customer” in clause 5(3) to read, “existing customer, in relation to a reporting entity, means a person who was in a business relationship with the reporting entity immediately before any provision of this Act began to apply to the reporting entity”.

**Definition of “wire transfer”**

We recommend replacing the definition of “wire transfer” in clause 5 by inserting new section 5(9A). The definition would explain what wire transfer means, and update the terminology to reflect the Phase 2 sectors. Our amendment would make it clearer that all reporting entities would be bound by the prescribed transaction reporting regime if they carry out transactions that are covered by the Act.

## **Customer due diligence obligations when lodging suspicious activity report**

Regulation 5A of the Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011 requires reporting entities to conduct enhanced due diligence when they lodge a suspicious activity report. We consider it appropriate to make regulation 5A part of the primary legislation so that this obligation is more transparent. Therefore, we recommend amending clauses 10(1) and 10A to insert section 22A into the Act.

However, we do not think it appropriate to require high-value dealers to conduct enhanced customer due diligence when they choose to lodge a suspicious activity report. This is because it would not be consistent with their overall AML/CFT obligations. Therefore, we recommend exempting high-value dealers from this requirement, and requiring them instead to conduct standard customer due diligence when they lodge a suspicious activity report. New section 22A would make this clear.

## **Information sharing**

The bill as introduced would provide new and expanded powers for agencies to share information, including personal information.

We consider that the framework provided for information sharing under clauses 38, 40, and 48 is unduly broad. It contains unnecessary duplication, and it risks undermining the privacy protections in other statutes. We have consulted the Privacy Commissioner, who shares this view.

Therefore, we recommend retaining some of the existing information-sharing provisions in the Anti-Money Laundering and Countering Financing of Terrorism Act, with minor amendments. These amendments would enable implementation of the regime for the Phase 2 sectors, update certain aspects, and include a regulation-making power for additional flexibility. We consider that the scope of the information-sharing provisions in the existing Act is broadly at an appropriate level. The provisions are also well understood by the agencies currently using them.

## **Amendments to the definition of “law enforcement purposes”**

We recommend deleting the terms “intelligence gathering and analysis” and “national security and defence purposes” from the definition of “law enforcement purposes” in clause 5 of the bill. We consider that these terms are too broad, and that the purposes for disclosure need to be more clearly defined.

We also recommend replacing the word “includes” at the start of the definition with “means”. This would provide certainty about the scope of the definition.

We recommend deleting paragraph (d)(vii) of the definition of “law enforcement purposes” to remove the ability to expand the definition by regulation. This definition is central to the information-sharing regime under the bill, and it is not appropriate to have it amended by regulation.

We recommend adding the following law enforcement purposes to the definition:

- the prevention, disruption, detection, investigation, and prosecution of an offence under the Terrorism Suppression Act 2002
- the performance by the Security Intelligence Service or the Government Communications Security Bureau of their functions under the Intelligence and Security Act 2017
- the detection and prevention of harms specified in section 58(2) of the Intelligence and Security Act 2017 (which include terrorism, violent extremism, espionage, sabotage, and proliferation of weapons of mass destruction).

This would allow relevant agencies to share information about both money laundering and terrorism financing, and the underlying offences. We recognise that investigating the underlying offences is an important part of detecting and deterring money laundering and terrorism financing. Being able to undertake this work is necessary for the effective functioning of the AML/CFT regime.

### **Removal of “regulatory purposes”**

We recommend removing the term “regulatory purposes” from the bill. It is not specific, and we are concerned that it could be read to include functions outside the purposes of the Act.

### **Suspicious activity reports**

Clause 18 would replace subpart 2 of Part 2 of the Act, which deals with suspicious transaction reports. New subpart 2 would expand the scope of what must be reported to the Financial Intelligence Unit of the New Zealand Police by replacing these reports with broader suspicious activity reports.

We recommend amending clause 18 to update section 46 of the Act to reflect the change from suspicious transaction reports to suspicious activity reports.

We also recommend amending clause 18 to delete the regulation-making power in proposed clause 46(2)(f) of the bill as introduced. The proposed general regulation-making power for information sharing, provided under clause 38, would make this provision redundant.

We recommend amending clause 6 to insert new section 6(1A), which states that the sections of the Act relating to suspicious activity reports (other than those relating to privileged communication) would not apply until 1 July 2018 or an earlier date appointed by the Governor-General by Order in Council.

We recommend amending clause 18 so that existing section 48 remains in the Act.

### **Power to disclose information**

Clause 38 would replace section 139 of the Act by setting out a power to disclose information in certain circumstances. We have concerns about the breadth and implications of these provisions.

Therefore, we recommend amending clause 38 to delete clauses 139 and 139A of the bill as introduced. This would mean retaining section 139 as it appears in the Act at

present, with some amendments that are needed to enable the Phase 2 sectors to implement the AML/CFT regime.

### **Regulations relating to information sharing**

We recommend amending clause 38 to insert section 139(2) and (3) in the Act. Section 139(2) would provide the power to share information for law enforcement purposes, in accordance with regulations made under section 139A. This provision would begin with the proviso “If not authorised under this Act”. The new section would provide a mechanism to authorise information sharing between parties (including reporting entities), where appropriate and justified, thus providing flexibility to the information-sharing regime.

We recommend the addition of clause 38A to insert new section 139A in the Act. This new section would provide for the Governor-General, by Order in Council, to make regulations relating to information sharing, with the following safeguards. New section 139A(1) would provide that regulations could be made for the purpose of specifying the type of information that may or may not be disclosed, and prescribing conditions for the disclosure and use of that information. New section 139A(2) would provide that, before making regulations the Minister must consult the Privacy Commissioner, among other people.

### **Privacy Act 1993 may allow personal information to be shared**

Our proposed new section 139(3) would add an avoidance of doubt clause stating that “Nothing in this section limits the Privacy Act 1993.” This would make it clear that, although section 139 does not cover personal information, the Privacy Act may still allow some personal information to be shared in certain situations.

### **Use and disclosure of information obtained under other enactments**

Clause 39 would amend section 140 of the Act. We recommend deleting “law enforcement or regulatory purposes” from the title of this section in the bill as introduced. This would mean that the section is concerned with the power to use and disclose information supplied or obtained under other enactments for AML/CFT purposes.

We recommend amending clause 39 to insert “reasonable grounds to believe” in section 140(1). This would help the disclosing entity to consider whether the disclosure is necessary or desirable for ensuring compliance with the Act and regulations.

We also recommend inserting section 39(2)(ta) to include the Secondhand Dealers and Pawnbrokers Act 2004 in the list of enactments in section 140.

### **The sharing of databases**

Clause 40 of the bill as introduced would insert new section 140A in the Act to provide for officials to enter into written agreements to facilitate access to databases between government agencies for law enforcement purposes.



We recommend deleting clause 40 to remove section 140A from the bill. We share the Privacy Commissioner's concern that this section would inappropriately give officials the power to enter into direct access agreements. It would also be inconsistent with the Intelligence and Security Act 2017, and the Customs and Excise Bill as reported to the House by the Foreign Affairs, Defence and Trade Committee, both of which would require ministerial approval for direct access agreements.

With the removal of proposed section 140A, agencies that work on anti-money laundering and countering the financing of terrorism (for example the Police or the Department of Internal Affairs) may still be able to enter into domestic data access agreements, in the form of an Approved Information Sharing Agreement (AISA) under the Privacy Act 1993. AISAs can be used between government agencies or between a government agency and a reporting entity, but cannot be used to enable the sharing of personal information between reporting entities.

### **Financial intelligence functions of Police Commissioner**

We recommend amending clause 41 to delete sections 142(a) and (ab) from the bill as introduced, and to retain the Act's existing section 142. This is consistent with our earlier recommended amendments to retain the information-sharing provisions in the Act with minor changes to enable the implementation of Phase 2. Our amendment to clause 41 would mean that the Police Commissioner would continue to be able to receive, analyse, and refer specified reports to the investigative branch of the Police, and to other law enforcement agencies. However, we recommend some minor amendments to update wording so that it is applicable to the Phase 2 sectors, such as replacing "suspicious transaction" with "suspicious activity".

We also recommend amending clause 41 to insert section 142(ka). This new section would provide for the Police Commissioner to receive and analyse financial intelligence relating to law enforcement purposes from international authorities that perform functions broadly equivalent to the Commissioner's financial intelligence functions.

We recommend amending clause 42 to delete section 143(1) and (2) of the bill as introduced and to retain existing section 143 of the Act. However, we recommend some updates to include the terms "suspicious activity reports", "prescribed transaction reports", "regulators", and "information received by the Commissioner under this Act". We also recommend including new section 143(2) to provide for privilege to be claimed in relation to requests for documents by the Police under section 143.

### **Legal professional privilege**

We consider that the bill needs to strike a careful balance between protecting properly privileged information, and making non-privileged information available.

Therefore, we recommend amending clause 18, section 40(4) of the Act, to make it clear that a lawyer may only withhold privileged information when they believe, on reasonable grounds, that the information is privileged in terms of section 42, which defines privileged communication.

**Defence concerning privileged information**

We recognise the difficulty inherent where lawyers self-assess whether privilege applies in a given situation. We consider it appropriate to afford some protection from prosecution and disciplinary action that could arise from reporting or non-reporting by lawyers who have reasonable grounds to rely or not rely on privilege.

Therefore, we recommend amending clause 27 to insert section 92(2). This would provide that a lawyer who believes on reasonable grounds that information is privileged has a defence to the offence of failing to file a suspicious activity report in regard to such information.

We also recommend amending clause 18 to replace section 44(4). New section 44(4) would make it clear that there would be no defence to civil, criminal, or disciplinary action against a lawyer for disclosing privileged information if the information was disclosed or supplied in bad faith. New section 44(4) also provides that there would be no defence if a lawyer disclosing or supplying information did so despite there being reasonable grounds to believe that the information was a privileged communication.

We consider that these amendments emphasise the need to make reasonable case-by-case assessments. They are consistent with the more generic immunity from civil or criminal liability, available under section 77 of the Act, that applies to all reporting entities that act reasonably and in good faith.

**Clarifying when privilege can be claimed**

We recommend inserting clauses 36A and 36B, and amending clause 42, to make it clear that privilege could be claimed in relation to:

- onsite inspections by supervisors under section 133
- requests for documents by supervisors under section 132
- requests for documents by the Police under section 143.

This would preserve the ability to claim privilege and refuse to provide information, which is already inherent via the common law.

**Resolving disputes about privilege**

We recommend inserting clause 51A, section 159A, to allow either the person claiming privilege or the requester to ask a District Court Judge to determine the validity of a claim of privilege under sections 132(4), 133(5), or 143(3). This would provide a mechanism to resolve any impasse in such situations.

Under new section 159A(2) the District Court Judge could require the information or document to be produced for the purposes of determining the application.

We also recommend amending clauses 18 and 42, and inserting clauses 36A and 38B, to make it clear that privilege could be claimed by non-legal staff in legal practices who have an obligation to report a suspicious activity.

### **Circumstances when standard customer due diligence applies**

The degree of due diligence (simplified, standard, or enhanced) required under the law varies according to the money laundering and terrorism financing risk presented by the customer, transaction, or activity.

Clause 8 would amend section 14 of the Act to adjust the circumstances when standard customer due diligence applies. Section 14(2) would provide that, if a reporting entity becomes aware that an existing account is anonymous, it must conduct standard customer due diligence in respect of that account as soon as practicable.

We recommend inserting clause 7A to specify that, for designated non-financial businesses or professions, customer due diligence must be conducted only when these entities undertake specified activities under the Anti-Money Laundering and Countering Financing of Terrorism Act.

We recommend inserting clauses 8A and 11A to amend sections 16(3)(b) and 24(3)(b) of the Act to replace the words “and account monitoring” with “and account monitoring or (if the reporting entity is not a financial institution) through other appropriate risk management procedures”. This new wording would ensure that the Phase 2 sectors were covered, as well as the Phase 1 sectors.

We recommend inserting a definition of “occasional activity” in clause 5, and amending the principal Act through the amendments in Schedule 2, to make it clear that the performance of any of the activities applying to Phase 2 sectors would automatically trigger customer due diligence, whether these activities were done on a one-off basis or not. We consider that this would cover the activities relevant to the Phase 2 sectors, which include acting as a formation agent of legal persons or arrangements, and engaging in transactions on behalf of any person in relation to the buying or selling of businesses or legal persons.

### **Commencement of reliance provision**

Clause 15 would amend section 33 of the Act to enable a reporting entity to rely on another reporting entity and not be liable for this reliance where certain conditions are met.

In the bill as introduced, the commencement date for this provision is the day after the bill receives Royal assent. We recommend amending clause 15, section 33(3A)(d), so that it reads “the conditions (if any) prescribed by regulations are complied with”. This would provide for the reliance provisions to come into force on the day after Royal assent, whether or not the required regulations had yet been promulgated.

### **Prohibitions if customer due diligence not conducted**

We recommend amending clause 17 to insert new section 37(2) in the Act. This new section would make it clear that where a reporting entity was unable to conduct customer due diligence in regard to the specific activities set out in the Act, it would not be prohibited from establishing or continuing a business relationship with a customer in respect of an activity outside those specified in the Act.

### **Simplified customer due diligence**

Simplified customer due diligence involves conducting a lower level of due diligence on low-risk entities. Clause 9 would expand the list of specified customers that could be subject to simplified customer due diligence to include more State-owned enterprises and other low-risk entities. We consider that this would result in lower compliance costs when dealing with low-risk entities. This approach is consistent with that taken by our international partners.

We have considered proposals to extend the simplified customer due diligence provisions to Australian Financial Services Licence holders and Authorised Deposit-taking Institutions. However, our view is that including such entities in primary legislation is not appropriate. We consider that any further extensions should be considered through the development of regulations or class exemptions.

Also, prescribing approved countries in legislation or regulation is not appropriate. The risk of money laundering and terrorism financing is dynamic and contextual, and reporting entities must determine for themselves the level of risk they are comfortable with.

### **Having a centralised register of beneficial ownership information**

We have considered the suggestion made by some submitters of creating a centralised register of the beneficial ownership of companies and trusts, that would be available to reporting entities. Such a register could also record recent checks on companies and trusts made under the Act by reporting entities.

We acknowledge the potential benefits and reduced compliance costs of having a centrally maintained register of the beneficial owners of companies and trusts. We understand that the Ministry of Business, Innovation and Employment (MBIE) is undertaking preliminary work on a beneficial ownership register in relation to companies. The Shewan Report also referred to a central registry of beneficial owners.

However, we are also aware that the United Kingdom's experience of establishing a beneficial ownership register for trusts has so far proved to be complex and time-consuming. Given this, and the nature and extent of trusts in New Zealand, we recommend that officials maintain a watching brief on the progress being made by MBIE on a central register of beneficial owners of companies, and on the effectiveness of similar measures in other jurisdictions.

### **Minister may grant exemptions**

Clause 51 of the bill as introduced would provide for the Secretary for Justice to grant exemptions to any individual from any or all of the provisions in the Act.

We do not consider that the Secretary for Justice is the appropriate person to hold this authority, considering the breadth and nature of the exemption power. Therefore, we recommend amending clause 51, section 157 of the Act, so that the Minister of Justice retains the power to grant these exemptions. This would maintain the current flexibility in the Act to respond on a case-by-case basis to entities that are low risk and

have disproportionately high compliance costs, balanced by appropriate ministerial oversight.

## **Appendix**

### **Committee process**

The Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill was referred to the Law and Order Committee on 23 March 2017. The closing date for submissions was 20 April 2017. We received and considered 31 submissions from interested groups and individuals. We heard oral evidence from 18 submitters.

We received advice from the Ministry of Justice, the Department of Internal Affairs, and the New Zealand Police. The Regulations Review Committee reported to us on the powers contained in clauses 6 and 38.

### **Committee membership**

Kanwaljit Singh Bakshi

Mahesh Bindra

David Clendon

Ian McKelvie

Stuart Nash

Maureen Pugh

Aupito William Sio

Lindsay Tisch

Jonathan Young

**Anti-Money Laundering and Countering Financing of  
Terrorism Amendment Bill**

---

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~





*Hon Amy Adams*

# **Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill**

Government Bill

## **Contents**

	Page
1 Title	5
2 Commencement	5
3 Principal Act	6
<b>Part 1</b>	
<b>Amendments to principal Act</b>	
4 Section 4 amended (Overview)	6
5 Section 5 amended (Interpretation)	6
6 Section 6 replaced (Application of this Act to reporting entities)	15
6 Application of this Act to reporting entities	15
7 Section 7 amended (Amounts not in New Zealand currency)	17
<u>7A</u> <u>New section 7A inserted (Transitional, savings, and related provisions)</u>	<u>17</u>
<u>7A</u> <u>Transitional, savings, and related provisions</u>	<u>17</u>
<u>7B</u> <u>Section 11 amended (Customer due diligence)</u>	<u>17</u>
8 Section 14 amended (Circumstances when standard customer due diligence applies)	17
<u>8A</u> <u>Section 16 amended (Standard customer due diligence: verification of identity requirements)</u>	<u>18</u>
9 Section 18 amended (Circumstances when simplified customer due diligence applies)	18
10 Section 22 amended (Circumstances when enhanced customer due diligence applies)	19
<u>10A</u> <u>New section 22A inserted (Enhanced customer due diligence required for certain activities requiring suspicious activities report)</u>	<u>19</u>

**Anti-Money Laundering and Countering Financing of  
Terrorism Amendment Bill**

	<u>22A</u>	<u>Enhanced customer due diligence required for certain activities requiring suspicious activities report</u>	<u>19</u>
11		Section 23 amended (Enhanced customer due diligence: identity requirements)	20
<u>11A</u>		<u>Section 24 amended (Enhanced customer due diligence: verification of identity requirements)</u>	<u>20</u>
12		Section 27 amended (Wire transfers: identity requirements)	20
<u>12A</u>		<u>New section 27A inserted (Other identifying information prescribed in relation to wire transfers)</u>	<u>20</u>
	<u>27A</u>	<u>Other identifying information prescribed in relation to wire transfers</u>	<u>21</u>
<u>12B</u>		<u>Section 29 amended (Corresponding banking relationships)</u>	<u>21</u>
13		Section 31 amended (Ongoing customer due diligence and account monitoring)	21
14		Section 32 amended (Reliance on member of designated business group)	21
15		Sections-33 amended (Reliance on other reporting entities or persons in another country)	21
16		Section 36 amended (Protection of personal information and designated business groups)	22
17		Section 37 amended (Prohibitions if customer due diligence not conducted)	22
18		Subpart 2 of Part 2 replaced	22
		Subpart 2—Suspicious activity reports	
	39A	Interpretation	22
	40	Reporting entities to report suspicious activities	23
	41	Nature of suspicious activity report	23
	42	Privileged communication defined	24
	43	Auditors may report suspicious activities	25
	44	Protection of persons reporting suspicious activities	25
	45	Immunity from liability for disclosure of information relating to money laundering transactions	26
	46	Disclosure of information relating to suspicious activity reports	27
	47	Disclosure of information in proceedings	28
	<u>48</u>	<u>Disclosure of personal information relating to employees or senior managers</u>	<u>28</u>
19		New section 49A inserted (Obligation to keep reports of suspicious activities)	29
	49A	Obligation to keep reports of suspicious activities	29
20		Section 51 amended (Obligation to keep other records)	29
21		Section 57 amended (Minimum requirements for AML/CFT programmes)	29

**Anti-Money Laundering and Countering Financing of  
Terrorism Amendment Bill**

22	Section 59 replaced (Review and audit of risk assessment and AML/CFT programme)	29
	59 Review and audit of risk assessment and AML/CFT programmes	29
	59A Audit of compliance with AML/CFT obligations	30
	59B Who carries out audit	30
23	Section 68 amended (Reports about movement of cash into or out of New Zealand)	30
24	Section 69 amended (Reports about receipt of cash from outside New Zealand)	30
25	Section 70 amended (Reporting requirements)	30
<u>25A</u>	<u>Section 76 amended (Protection for AML/CFT supervisors)</u>	<u>31</u>
26	Cross-heading above section 92 amended	31
27	Section 92 amended (Failing to report suspicious transaction)	31
28	Section 93 amended (Providing false or misleading information in connection with suspicious transaction reports <u>or prescribed transaction reports</u> )	31
29	Section 94 amended (Unlawful disclosure of suspicious transaction reports <u>or prescribed transaction reports</u> )	31
30	Section 95 amended (Failure to keep or retain adequate records relating to suspicious transactions <u>or prescribed transactions</u> )	32
31	Section 96 amended (Obstruction of investigation relating to suspicious transaction reports <u>or prescribed transaction reports</u> )	32
32	Section 99 amended (Time limit for prosecution of offences relating to civil liability act and suspicious transaction reports <u>or prescribed transaction reports</u> )	32
<u>32A</u>	<u>Section 102 amended (Offence to obstruct AML/CFT supervisor)</u>	<u>32</u>
33	Section 106 amended (Failure to report cash over applicable threshold values moved into or out of New Zealand)	32
34	Section 107 amended (Failure to report cash over applicable threshold value received by person in New Zealand from overseas)	32
<u>34A</u>	<u>Section 111 amended (Offence to obstruct or not to answer questions from Customs officer)</u>	<u>32</u>
35	Section 117 amended (Search warrant)	32
36	Section 130 amended (AML/CFT supervisors)	33
<u>36A</u>	<u>Section 132 amended (Powers)</u>	<u>33</u>
<u>36B</u>	<u>Section 133 amended (Matters relating to conduct of on-site inspections)</u>	<u>33</u>
37	Section 137 amended (Power to use information obtained as AML/CFT supervisor in other capacity and vice versa)	33
38	Section 139 <del>replaced</del> amended (Power to disclose information supplied or obtained as AML/CFT supervisor)	33
	<del>139 Power to disclose information</del>	<del>33</del>
	<del>139A Regulations relating to information sharing</del>	<del>34</del>

**Anti-Money Laundering and Countering Financing of  
Terrorism Amendment Bill**

<u>38A</u>	<u>New section 139A inserted (Regulations relating to information sharing)</u>	<u>35</u>
	<u>139A Regulations relating to information sharing</u>	<u>35</u>
39	Section 140 amended (Power to use and disclose information supplied or obtained under other enactments for law enforcement or regulatory purposes AML/CFT purposes)	35
40	<del>New section 140A inserted (Data access for law enforcement purposes)</del>	<del>36</del>
	<u>140A Data access for law enforcement purposes</u>	<u>36</u>
41	Section 142 amended (Financial intelligence functions of Commissioner)	37
42	Section 143 <del>replaced</del> <u>amended</u> (Powers relating to financial intelligence functions of Commissioner)	38
	<u>143 Powers relating to financial intelligence functions of Commissioner</u>	<u>38</u>
43	Section 144 amended (Delegation of powers of Commissioner)	39
44	Section 145 amended (Guidelines relating to reporting of suspicious transactions)	39
45	Section 146 amended (Consultation on proposed guidelines)	39
46	Section 147 amended (Availability of guidelines)	40
47	Section 148 amended (Review of guidelines)	40
48	Section 153 amended (Regulations)	40
49	Section 154 amended (Regulations relating to application of Act)	40
50	New section 156A and cross-heading inserted	40
	<i>Review provision</i>	
	<u>156A Review of operation of Act</u>	<u>41</u>
51	<del>Sections 157 to 159 and cross-heading above section 157 replaced</del>	<del>41</del>
	<i>Exemptions</i>	
	<del>157 Chief executive may grant exemptions</del>	<del>41</del>
	<del>158 Chief executive must consult before granting exemption</del>	<del>42</del>
	<del>159 Requirements relating to exemptions</del>	<del>42</del>
<u>51</u>	<u>Section 157 amended (Minister may grant exemptions)</u>	<u>42</u>
<u>51A</u>	<u>New section 159A and cross-heading inserted</u>	<u>43</u>
	<i>Resolution of disputes about privilege</i>	
	<u>159A Procedure for testing assertions that document privileged</u>	<u>43</u>
<u>51B</u>	<u>Section 160 and cross-heading repealed</u>	<u>43</u>
52	Sections 162 and 163 repealed	43
<u>52A</u>	<u>Schedule 1 amended</u>	<u>43</u>
<u>52B</u>	<u>Consequential amendments to principal Act</u>	<u>44</u>

<b>Part 2</b>		
<b>Amendments to other enactments and repeal</b>		
53	Amendments to Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011	44
53A	<u>Amendment to Anti-Money Laundering and Countering Financing of Terrorism (Prescribed Transactions Reporting) Regulations 2016</u>	44
54	Amendments to Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011	44
55	Amendments to Financial Transactions Reporting Act 1996	44
56	Financial Transactions Reporting Act 1996 repealed	45
	<b>Schedule 1</b>	46
	<b><u>Amendments to Schedule 1 of principal Act</u></b>	
	<b>Schedule 2</b>	48
	<b><u>Consequential amendments to principal Act</u></b>	
	<b>Schedule 3</b>	50
	<b><u>New Schedule 2 inserted</u></b>	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act **2016**.

**2 Commencement**

5

(1) This Act (except **sections 53, 54, 55(2) to (5), and 56**) comes into force on **1 July 2017** the day after the date on which it receives the Royal assent.

(2) **Sections 53, 54, and 56** come into force on a date (not later than **1 July August 2019**) or on an earlier date appointed by the Governor-General by Order in Council.

10

(3) **Section 55(2)** comes into force on a date (not later than **1 January 2019**) or on an earlier date appointed by the Governor-General by Order in Council.

(4) **Section 55(3)** comes into force on a date (not later than **1 July 2019**) **1 August 2019** or on an earlier date appointed by the Governor-General by Order in Council.

15

(5) **Section 55(4)** comes into force on a date (not later than **1 July 2018**) or on an earlier date appointed by the Governor-General by Order in Council.

(6) **Section 55(5)** comes into force on a date (not later than **1 October 2018**) or on an earlier date appointed by the Governor-General by Order in Council.

**3 Principal Act**

This Act amends the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **principal Act**).

**Part 1**  
**Amendments to principal Act**

5

**4 Section 4 amended (Overview)**

Replace section 4(3)(b) with:

- (b) subpart 2 includes provisions dealing with requirements on reporting entities to report suspicious activities and protection of persons making suspicious activity reports:

10

**5 Section 5 amended (Interpretation)**

- (1) In section 5, insert in their appropriate alphabetical order:

**accounting practice** means—

- (a) an accountant in public practice on his or her own account (whether in partnership or otherwise):
- (b) ~~in relation to 2 or more accountants in public practice, and practising in partnership, the partnership:~~
- (c) an incorporated accounting practice

15

**approved entity** means an entity—

- (a) that is prescribed by regulations as an approved entity; or
- (b) that comes within a class of entities prescribed by regulations as a class of approved entities

20

**conveyancing practitioner** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

**designated non-financial business or profession** means—

25

- (a) a law firm, a conveyancing practitioner, an incorporated conveyancing firm, an accounting practice, a real estate agent, or a trust and company service provider, who, in the ordinary course of business, carries out 1 or more of the following activities:
- (i) acting as a formation agent of legal persons or legal arrangements:
- (ii) acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or legal arrangements:
- (iii) providing a registered office or a business address, a correspondence address, or an administrative address for a company, or a partnership, or for any other legal person or arrangement, unless

30

35

the office or address is provided solely as an ancillary service to the provision of other services (being services that do not constitute an activity listed in this subparagraph or **subparagraphs (i), (ii), and (iv) to (vi)**):

- (iv) managing client funds (other than sums paid as fees for professional services), accounts, securities, or other assets: 5
- (v) providing real estate agency work (within the meaning of section 4(1) of the Real Estate Agents Act 2008) ~~that involves the representation, as an agent, of a vendor or purchaser in connection with the sale or purchase, or the proposed sale or purchase, of real estate or any business to effect a transaction (within the meaning of section 4(1) of the Real Estate Agents Act 2008):~~ 10
- (vi) engaging in or giving instructions in relation to on behalf of a customer to another person for—
- (A) any conveyancing (within 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; or to effect a transaction (within the meaning of section 4(1) of the Real Estate Agents Act 2008), namely,—~~ 15
- the sale, the purchase, or any other disposal or acquisition of a freehold estate or interest in land:
  - the grant, sale, or purchase or any other disposal or acquisition of a leasehold estate or interest in land (other than a tenancy to which the Residential Tenancies Act 1986 applies): 25
  - the grant, sale, or purchase or any other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952:
  - the grant, sale, or purchase or any other disposal or acquisition of an occupation right agreement within the meaning of section 5 of the Retirement Villages Act 2003: 30
- (B) ~~transactions on behalf of any person in relation to the buying or selling of real estate or transferring the title in, or beneficial ownership of, real estate; or~~ 35
- (B) a transaction (within the meaning of section 4(1) of the Real Estate Agents Act 2008); or
- (BA) the transfer of a beneficial interest in land or other real property; or 40

- (C) ~~transactions~~ a transaction on behalf of any person in relation to the buying, transferring, or selling of ~~businesses or legal persons~~ a business or legal person (for example, ~~companies~~ a company) and any other legal ~~arrangements~~ arrangement; or 5
- (D) ~~transactions~~ a transaction on behalf of a customer in relation to creating, operating, and managing ~~a legal person~~ a legal person (for example, ~~companies~~ a company) and any other legal ~~arrangements~~ arrangement; and
- (b) includes a person or class of persons declared by regulations to be a designated non-financial business or profession for the purposes of this Act; but 10
- (c) excludes a person or class of persons declared by regulations not to be a designated non-financial business or profession for the purposes of ~~the~~ this Act 15
- high-value dealer**—
- (a) means a person who is in trade and in the ordinary course of business, buys or sells all or any of the following articles by way of a cash transaction or a series of related cash transactions, if the total value of that transaction or those transactions is equal to or above the applicable threshold value: 20
- (i) jewellery:
  - (ii) watches:
  - (iii) gold, silver, or other precious metals:
  - (iv) diamonds, sapphires, or other precious stones: 25
  - (v) paintings:
  - (vi) prints:
  - (vii) protected foreign objects (within the meaning of section 2(1) of the Protected Objects Act 1975):
  - (viii) protected New Zealand objects (within the meaning of section 2(1) of the Protected Objects Act 1975): 30
  - (ix) sculptures:
  - (x) photographs:
  - (xi) carvings in any medium:
  - (xii) other artistic or cultural artifacts: 35
  - (xiii) motor vehicles (within the meaning of section 6(1) of the Motor Vehicle Sales Act 2003):
  - (xiv) ships (within the meaning of section 2(1) of the Maritime Transport Act 1994); and



- (b) includes any person who carries out the activities referred to in **paragraph (a)** as a registered auctioneer (within the meaning of section 4(1) of the Auctioneers Act 2013); but
- (c) does not include any person, to the extent that the person is engaged in providing services other than the buying or selling of articles referred to in **paragraph (a)**, including the following services: 5
- (i) mining precious metals or precious stones:
  - (ii) manufacturing jewellery:
  - (iii) crafting or polishing precious stones; and
- (d) does not include any person to the extent that the person is engaged in the buying or selling of precious metals or precious stones for industrial purposes 10
- incorporated conveyancing firm** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006
- incorporated law firm** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006 15
- law enforcement purposes** ~~includes means~~—
- (a) ~~intelligence gathering and analysis:~~
- (b) ~~national security and defence purposes:~~
- (c) the prevention, disruption, detection, investigation, and prosecution of— 20
- (i) any offence under this Act; or
  - (ii) a money laundering offence; or
  - (iii) any offence within the meaning of section 243(1) of the Crimes Act 1961; or
  - (iv) an offence under the Terrorism Suppression Act 2002: 25
- (d) the enforcement and administration of—
- (i) this Act:
  - (ii) the Criminal Proceeds (Recovery) Act 2009:
  - (iii) the Misuse of Drugs Act 1975:
  - (iv) the Terrorism Suppression Act 2002: 30
  - (v) the Mutual Assistance in Criminal Matters Act 1992:
  - (vi) the Customs and Excise Act 1996:
  - (vii) ~~any other enactment prescribed in regulations:~~
- (da) the performance by the New Zealand Security Intelligence Service or the Government Communications Security Bureau of its functions under the Intelligence and Security Act 2017: 35

- (db) the detection and prevention of the harms specified in section 58(2) of the Intelligence and Security Act 2017:
- (e) any purpose or action referred to in **paragraphs (a) to (d) (db)** relating to, or taken in respect of, legislation of an overseas jurisdiction that is broadly equivalent to the enactments ~~listed~~ referred to in those paragraphs 5
- law firm** means—
- (a) a barrister or barrister and solicitor, practising on the barrister's or barrister and solicitor's own account (whether in partnership or otherwise):
- (b) in relation to 2 or more lawyers practising law in partnership, each of the partners in the partnership and the partnership: 10
- (c) an incorporated law firm
- lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006
- legal arrangement** means— 15
- (a) a trust:
- (b) a partnership:
- (c) a charitable entity (within the meaning of section 4(1) of the Charities Act 2005):
- (d) any other prescribed arrangement (being an arrangement that involves a risk of money laundering or the financing of terrorism) 20
- non-bank deposit taker** has the meaning given to NBDT by section 5 of the Non-bank Deposit Takers Act 2013
- occasional activity**—
- (a) means an activity— 25
- (i) that is specified in **section 6(3)** in relation to a reporting entity (other than an occasional transaction); and
- (ii) that does not involve a business relationship between the reporting entity and the reporting entity's customer; and
- (b) includes an activity or a class of activities declared by regulations to be an occasional activity for the purposes of this Act; but 30
- (c) excludes an activity or a class of activities declared by regulations not to be an occasional activity for the purposes of this Act
- occasional transaction or activity** means—
- (a) an occasional transaction: 35
- (b) an occasional activity
- privileged communication** has the meaning set out in **section 42**

**real estate agent** has the same meaning as the definition of agent in section 4(1) of the Real Estate Agents Act 2008

**real estate agency work** has the same meaning as in the definition of that term in section 4(1) of the Real Estate Agents Act 2008

**regulator**— 5

(a) means a professional body responsible under any New Zealand enactment for enforcing the regulatory obligations of a particular industry or profession whose members are subject to this Act; and

(b) includes any other body prescribed in regulations

**regulatory purposes** includes— 10

(a) ~~the work involved in AML/CFT supervision:~~

(b) ~~the enforcement and administration of Acts prescribed in regulations:~~

(c) ~~any purpose or action referred to in **paragraph (b)** relating to, or taken in respect of, legislation of an overseas jurisdiction that is broadly equivalent to the enactments listed in those paragraphs~~ 15

**search warrant** means a warrant issued under section 117

**suspicious activity report**—

(a) means a report made under **section 40**:

(b) includes—

(i) a suspicious transaction report made under this Act; and 20

(ii) a suspicious transaction report made under the Financial Transactions Reporting Act 1996

**trust and company service provider** ~~or TCSP~~ means a person (other than a law firm, a conveyancing practitioner, an incorporated conveyancing firm, an accounting practice, or a real estate agent) who carries out any of the activities described in **paragraphs (a)(i) to (vi)** of the definition of designated non-financial business or profession. 25

(2) In section 5, replace the definition of **designated business group** with:

**designated business group** means a group of 2 or more persons in which—

(a) each member of the group has elected, in writing, to be a member of the group and the election is in force; and 30

(b) each election was made in accordance with regulations (if any); and

(c) no member of the group is a member of another designated business group; and

(d) each member of the group is— 35

(i) related to each other member of the group within the meaning of section 2(3) of the Companies Act 1993 and is—

(A) a reporting entity resident in New Zealand; or

- (B) a person that is resident in a country that has sufficient AML/CFT systems and is supervised or regulated for AML/CFT purposes; or
- (ii) providing a service under a joint venture agreement to which each member of the group is a party; or 5
- (iii) a government department named in Schedule 1 of the State Sector Act 1988, a State enterprise under the State-Owned Enterprises Act 1986, or a Crown entity under section 7 of the Crown Entities Act 2004; or
- (iv) related to 1 or more of the entities referred to in **subparagraph (iii)** through the provision of common products or services; or 10
- (v) a body corporate that is—
- (A) either a company (within the meaning of section 2(1) of the Companies Act 1993) or an overseas company within the meaning of that section; and 15
- (B) related (within the meaning of section 12(2) of the Financial Markets Conduct Act 2013) to every body corporate in the designated business group or proposed designated business group; and
- (C) either a reporting entity resident in New Zealand or a person who is resident in a country that has sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes; or 20
- (vi) a related law firm, or a subsidiary of a law firm, that is a reporting entity in New Zealand (or the equivalent body in another country that has sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes); or 25
- (vii) a related conveyancer, or a subsidiary of a conveyancer, that is a reporting entity in New Zealand (or the equivalent body in another country that has sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes); or 30
- (viii) a related accounting practice, or a subsidiary of an accounting practice, that is a reporting entity in New Zealand (or the equivalent body in another country that has sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes); or 35
- (ix) a related trust and company service provider, or a subsidiary of a TCSP trust and company service provider, that is a reporting entity in New Zealand (or the equivalent body in another country that has sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes); or 40

- (x) a related real estate agent, or a subsidiary of a real estate agent, that is a reporting entity in New Zealand (or the equivalent in another country that has sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes); or
- (xi) a related high-value dealer, or a subsidiary of a high-value dealer, that is a reporting entity in New Zealand (or an equivalent person resident outside New Zealand in a country that has sufficient AML/CFT systems and that is supervised or regulated for AML/CFT purposes); or 5
- (xii) a group of reporting entities, if the entities are each money transfer agents or sub-agents and each entity is related to every other entity in the designated business group or proposed designated business group in either of the following ways: 10
- (A) one of those entities is a money transfer agent and the other entities are the sub-agents of those agents: 15
- (B) those entities are each sub-agents of the same money transfer agent; or
- (xiii) an entity or a class of entities prescribed by regulations; and
- (e) each member of the group satisfies any conditions in **subsection (3)** that apply to that member 20
- (3) In section 5, replace the definition of **existing customer** with:  
**existing customer, in relation to a reporting entity**, means a person who was in a business relationship with a the reporting entity immediately before any provisions of this Act began to apply to the reporting entity
- (4) In section 5, definition of **financial institution**, paragraph (a)(vii), replace “for the person’s own account or for the accounts of customers in any of the following:” with “for, or on behalf of, a customer in any of the following using the person’s account or the customer’s account:”. 25
- (5) In section 5, definition of **occasional transaction**, paragraph (a), replace “over” with “equal to or above”. 30
- (6) In section 5, definition of **prescribed transaction**, paragraphs (a) and (b) (as inserted by section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2015), replace “value greater than” with “value equal to or above”. 35
- (7) In section 5, definition of **reporting entity**, replace paragraph (a) with: 35
- (a) means—
- (i) a casino:
- (ii) a designated non-financial business or profession:
- (iii) a financial institution:
- (iv) a high-value dealer: 40

- (v) the New Zealand Racing Board; and
- (8) In section 5, repeal the definition of **suspicious transaction report**.
- (9) In section 5, definition of **transaction**, replace paragraph (c) with:
- (c) excludes the following:
- (i) the placing of any bet unless authorised under the Racing Act 2003: 5
- (ii) participation in gambling (as defined in section 4(1) of the Gambling Act 2003) unless authorised under the Racing Act 2003):
- (iii) a transaction or class of transactions declared by regulations not to be a transaction for the purposes of this Act 10
- (9A) In section 5, replace the definition of **wire transfer** with—
- wire transfer**—
- (a) means a transaction carried out on behalf of a person (the **originator**) through a reporting entity by electronic means with a view to making an amount of money available to a beneficiary (who may also be the originator) at another reporting entity; and 15
- (b) includes a transfer or transaction, or class of transfers or transactions, declared by regulations to be a wire transfer for the purposes of this Act; but
- (c) excludes— 20
- (i) transfers and settlements between financial institutions or other reporting entities if both the originator and the beneficiary are financial institutions or other reporting entities acting on their own behalf; and
- (ii) credit and debit card transactions if the credit or debit card number accompanies the transaction; and 25
- (iii) any other transfer or transaction or class of transfers or transactions declared by regulations not to be a wire transfer for the purposes of this Act.
- (10) In section 5, insert as subsections (2) to (4): 30
- (2) For the purposes of **paragraph (d)(xii)** of the definition of **designated business group** in **subsection (1)**,—
- money transfer agent**, in relation to a money transfer provider, means a reporting entity that has a representation agreement with a money transfer provider 35
- money transfer provider** means a person who, under a representation agreement, authorises a money transfer agent to carry on money transfer services on behalf of the money transfer provider and to engage sub-agents for the purpose of carrying on those services in New Zealand

**money transfer services** means the provision of remittance services that are carried on, otherwise than by a bank, under a single brand, trade mark, or business name

**representation agreement** means a written agreement between a money transfer provider and a money transfer agent, or between a money transfer agent and a sub-agent, that states the terms on which the money transfer agent, or the sub-agent, carries on money transactions for customers relating to creating, operating, and managing companies

**sub-agent** means a reporting entity that has a representation agreement with a money transfer agent.

(3) For the purposes of **paragraph (e)** of the definition of **designated business group** in **subsection (1)**, a condition of membership is that the contact person of a designated business group must notify the relevant AML/CFT supervisor, in writing within 30 days, of any of the following:

- (a) the withdrawal of a member from the designated business group:
- (b) the termination of the designated business group:
- (c) any other change in the details previously notified to any AML/CFT supervisor in respect of the designated business group.

(4) For the purpose of applying the definitions of **designated non-financial business or profession** and **designated business group**, a reporting entity must take into account guidance (if any) on the application of those definitions issued by the relevant AML/CFT supervisor.

## 6 Section 6 replaced (Application of this Act to reporting entities)

Replace section 6 with:

### 6 Application of this Act to reporting entities

(1) Subject to **subsections (1A) and (2)** and to **Schedule 1**, this Act (as amended by the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017) applies to any reporting entity that is in existence at the close of **30 June 2017** or that comes into existence on or after **1 July 2017**.

(1A) **Sections 39A to 41 and 43 to 47** (as inserted by **section 18** of the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017) do not apply until **1 July 2018** or an earlier date appointed by the Governor-General by Order in Council.

(2) This Act—  
(a) does not apply to a law firm, a conveyancing practitioner, or an incorporated conveyancing firm until ~~a date (not later than 1 July 2018)~~ or an earlier date set by the Governor-General by Order in Council:

- (b) does not apply to an accounting practice until ~~a date (not later than 1 October 2018)~~ or an earlier date set by the Governor-General by Order in Council:
- (c) does not apply to a real estate agent until ~~a date (not later than 1 January 2019)~~ or an earlier date set by the Governor-General by Order in Council: 5
- (d) does not apply to the New Zealand Racing Board or a high-value dealer until ~~a date (not later than 1 August 2019)~~ or an earlier date set by the Governor-General by Order in Council:
- (e) in the case of a trust and company service provider that immediately before the commencement of this section was a reporting entity under regulation 17 of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011, applies on and after the date on which this section comes into force: 10
- (f) in the case of a trust or company service provider to which **paragraph (e)** does not apply, applies on ~~a date (not later than 1 July 2018)~~ or an earlier date set by the Governor-General by Order in Council. 15
- (3) This Act applies to a reporting entity only to the extent that,—
- (a) in the case of a reporting entity that is a financial institution, the financial activities undertaken by that entity fall within the activities described in the definition of financial institution in **section 5(1)**: 20
- (b) in the case of the New Zealand Racing Board, it carries out the following:
- (i) the conduct of betting under section 50 of the Racing Act 2003:
- (ii) the operation of accounts or provision of vouchers: 25
- (c) in the case of a law firm, conveyancer, incorporated conveyancing firm, accounting practice, real estate agent, or other designated non-financial business or profession, the activities carried out by that reporting entity are activities described in the definition of designated non-financial business or profession in **section 5(1)**: 30
- (d) in the case of a high-value dealer,—
- (i) the high-value dealer carries out activities described in the definition of high-value dealer in **section 5(1)**; and
- (ii) if **subparagraph (i)** applies, the high-value dealer— 35
- (A) must conduct standard customer due diligence under sections ~~14(1)(b)~~, 15, and 16:
- (B) may rely on third parties under sections 32 to 34:
- (C) must comply with the prohibitions under section 37 if the high-value dealer is unable to conduct standard customer due diligence: 40



(D)	may report suspicious activities to the Commissioner under <b>section 40(5)</b> (in which case <b>sections 44 to 46</b> (which relate to suspicious activities) apply to the high-value dealer):	
(E)	must report prescribed transactions equal to or above the applicable cash threshold under sections 48A and 48B:	5
(F)	must keep records of any suspicious activity reports under <b>section 49A</b> :	
(G)	must keep identity and verification records under section 50 when standard customer due diligence is conducted:	10
(H)	must keep records of any audits under section 51(1)(b), <b>(2)</b> , and (3):	
(I)	must audit its AML/CFT compliance obligations under <b>section 59A</b> if requested by an AML/CFT supervisor:	
(e)	in the case of a casino, the casino carries out activities that may give rise to a risk of money laundering or financing of terrorism.	15

**7 Section 7 amended (Amounts not in New Zealand currency)**

- (1A) In section 7(1), after “Act”, insert “or regulations”.  
 (2) In section 7(1)(a), replace “exceeds” with “is equal to or above”.

**7A New section 7A inserted (Transitional, savings, and related provisions)** 20

After section 7, insert:

**7A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

**7B Section 11 amended (Customer due diligence)** 25

After section 11(5), insert:

- (6) Subsections (1) and (3) and sections 14 to 31 do not apply in relation to the provision of services by a reporting entity to a customer, that, in relation to that reporting entity, are not, under **section 6(3)**, activities to which this Act applies. 30

**8 Section 14 amended (Circumstances when standard customer due diligence applies)**

- (1) Replace section 14(d) with:  
 (d) any other circumstances specified in **subsection (2)** or in regulations.  
 (2) In section 14, insert as subsections (2) and (3): 35

- (2) For the purposes of **subsection (1)(d)**, as soon as practicable after a reporting entity becomes aware that an existing account is anonymous, the reporting entity must conduct standard customer due diligence in respect of that account.
- (3) Despite **subsections (1) and (2)**, a real estate agent must conduct standard customer due diligence at the times, and with any other modifications, specified in regulations. 5

**8A Section 16 amended (Standard customer due diligence: verification of identity requirements)**

In section 16(3)(b), replace “and account monitoring” with “and account monitoring or (if the reporting entity is not a financial institution) through other appropriate risk management procedures”. 10

**9 Section 18 amended (Circumstances when simplified customer due diligence applies)**

- (1) Replace section 18(2) with:
- (2) The following are customers for the purposes of subsection (1): 15
  - (a) a listed issuer (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that is the issuer of quoted voting products (within the meaning of that Act):
  - (b) a government department named in Schedule 1 of the State Sector Act 1988: 20
  - (c) a local authority, as defined in section 5(2) of the Local Government Act 2002:
  - (d) the New Zealand Police:
  - (e) a State enterprise (within the meaning of section 2 of the State-Owned Enterprises Act 1986) and a new State enterprise (as listed in Schedule 2 of that Act): 25
  - (f) a body that—
    - (i) corresponds to a State enterprise or a new State enterprise (as defined in **paragraph (e)**); and
    - (ii) is located in a country that has sufficient AML/CFT systems: 30
  - (g) the New Zealand Security Intelligence Service:
  - (h) a person licensed to be a supervisor or statutory supervisor under the Financial Markets Supervisors Act 2011, when the person acts for itself:
  - (i) a trustee corporation, within the meaning of section 2(1) of the Administration Act 1969, when the trustee corporation acts for itself: 35
  - (j) a Crown entity, as defined in section 7(1) of the Crown Entities Act 2004:
  - (k) an organisation named in Schedule 4 of the Public Finance Act 1989:

(l)	a company named in Schedule 4A of the Public Finance Act 1989:	
(m)	a government body that—	
	(i) corresponds to a government department named in Schedule 1 of the State Sector Act 1988; and	
	(ii) is located in an overseas jurisdiction that has sufficient AML/CFT systems:	5
(n)	a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989:	
(o)	a licensed insurer within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010:	10
(p)	a company, or a subsidiary (within the meaning of section 5(1) of the Companies Act 1993) of that company,—	
	(i) whose equity securities are listed in New Zealand or on an overseas stock exchange that has sufficient disclosure requirements; and	15
	(ii) that is located in a country that has sufficient AML/CFT systems in place:	
(q)	any other entity or class of entities specified in regulations.	
(2)	After section 18(3), insert:	
(3A)	Despite subsections (1) to (3), a real estate agent must conduct simplified customer due diligence at the times, and with any other modifications, specified in regulations.	20
<b>10</b>	<b>Section 22 amended (Circumstances when enhanced customer due diligence applies)</b>	
(1)	<u>In section 22(1)(e), replace “regulations” with “<b>section 22A</b> or regulations”.</u>	25
(2)	After section 22(5), insert:	
(6)	Despite subsections (1) to (5), a real estate agent must conduct enhanced customer due diligence at the times, <u>in the circumstances,</u> and with any other modifications, specified in regulations.	
<b>10A</b>	<b><u>New section 22A inserted (Enhanced customer due diligence required for certain activities requiring suspicious activities report)</u></b>	30
	After section 22, insert:	
<b>22A</b>	<b><u>Enhanced customer due diligence required for certain activities requiring suspicious activities report</u></b>	
(1)	<u>This section applies to an activity—</u>	35
	(a) <u>that the reporting entity concerned (other than a high-value dealer) is required to report to the Commissioner under <b>section 40</b>; and</u>	

- (b) that is not otherwise exempt from the customer due diligence requirements or from all the requirements of the Act; and
- (c) that is conducted, or sought to be conducted,—
- (i) by an existing customer; or
- (ii) by a customer engaging in an occasional transaction or activity. 5
- (2) For the purposes of section 22(1)(e), as soon as practicable after a reporting entity becomes aware that the reporting entity must report the suspicious activity under **section 40**, a circumstance occurs in which the reporting entity must conduct enhanced customer due diligence in respect of that activity.
- 11 Section 23 amended (Enhanced customer due diligence: identity requirements)** 10
- (1) Replace section 23(b) with:
- (b) the additional information referred to in **subsection (2)** and any additional information prescribed by regulations.
- (2) In section 23, insert as subsection (2): 15
- (2) For the purposes of **subsection (1)(b)**, a reporting entity must obtain,—
- (a) in the case of a trust other than a trust to which **paragraph (b)** applies, the name and the date of birth of each beneficiary of the trust:
- (b) in the case of a customer that is a discretionary trust or a charitable trust or a trust that has more than 10 beneficiaries, a description of— 20
- (i) each class or type of beneficiary:
- (ii) if the trust is a charitable trust, the objects of the trust.
- 11A Section 24 amended (Enhanced customer due diligence: verification of identity requirements)**
- In section 24(3)(b), replace “and account monitoring” with “and account monitoring or (if the reporting entity is not a financial institution) through other appropriate risk management procedures”. 25
- 12 Section 27 amended (Wire transfers: identity requirements)**
- (1) In section 27(1), replace “over” with “equal to or above”.
- (1A) In section 27(1)(d), replace “regulations” with “**section 27A** or regulations”. 30
- (2) In section 27(5)(b), replace “suspicious transaction” with “suspicious activity”.
- 12A New section 27A inserted (Other identifying information prescribed in relation to wire transfers)**
- After section 27, insert:

<b>27A</b>	<b>Other identifying information prescribed in relation to wire transfers</b>	
(1)	<u>Information that gives the name of the beneficiary of a wire transfer and the account number of that beneficiary or any unique transaction reference that allows the transaction to be traced is prescribed for the purposes of section 27(1)(d).</u>	5
(2)	<u>In the case of a domestic wire transfer, any information that enables the transaction itself to be identified and traced to the originator is prescribed to be other identifying information for the purposes of section 27(2).</u>	
<b>12B</b>	<b>Section 29 amended (Corresponding banking relationships)</b>	
	In section 29(3), after “Act”, insert “or regulations”.	10
<b>13</b>	<b>Section 31 amended (Ongoing customer due diligence and account monitoring)</b>	
	In section 31(2)(b), replace “suspicious transaction” with “suspicious activity”.	
<b>14</b>	<b>Section 32 amended (Reliance on member of designated business group)</b>	
(1)	In section 32(1)(a)(ii), replace “, but no later than 5 working days,” with “on request by the reporting entity, but within 5 working days of the request,”.	15
(2)	In section 32(1)(d), replace “suspicious transaction” with “suspicious activity or prescribed transaction”.	
(3)	After section 32(1), insert:	
(1A)	<u>A reporting entity (<b>member A</b>) that is a member of a designated business group may rely on another member of the group (<b>member B</b>) to make prescribed transaction reports under this Act or regulations.</u>	20
<b>15</b>	<b>Sections 33 amended (Reliance on other reporting entities or persons in another country)</b>	
(1)	In section 33(2)(c)(ii), replace “, but no later than 5 working days, after the business relationship is established or the occasional transaction is conducted” with “on request by the reporting entity, but within 5 working days of the request”.	25
(2)	After section 33(3), insert:	
(3A)	However, a reporting entity relying on a third party to conduct the customer due diligence procedure is not responsible for ensuring that customer due diligence is carried out in accordance with this Act if the following conditions are met:	30
(a)	the reporting entity is acting in good faith when relying on a third party; and	35
(b)	the reporting entity has reasonable cause to believe the reporting entity that is relied on has conducted relevant customer due diligence procedures to at least the standard required by this Act and regulations; and	

	(c) the reporting entity being relied on is an approved entity or is within an approved class of entities; and	
	(d) <del>any other</del> <u>the conditions (if any)</u> prescribed by regulations are complied with.	
<b>16</b>	<b>Section 36 amended (Protection of personal information and designated business groups)</b>	<b>5</b>
(1)	In section 36(5)(a), replace “suspicious transactions report” with “suspicious activity report”.	
(2)	In section 36(5)(b), replace “suspicious transaction” with “suspicious activity”.	
<b>17</b>	<b>Section 37 amended (Prohibitions if customer due diligence not conducted)</b>	<b>10</b>
(1)	In section 37(d), replace “suspicious transactions report” with “suspicious activity report”.	
(2)	In section 37(e), replace “suspicious transaction” with “suspicious activity”.	
(3)	<u>In section 37, insert as subsection (2):</u>	
(2)	<u>A reporting entity is not prohibited by subsection (1)(a) or (b) from establishing or continuing a business relationship with a customer in respect of an activity that is not specified in <b>section 6(3)</b> in relation to that reporting entity.</u>	<b>15</b>
<b>18</b>	<b>Subpart 2 of Part 2 replaced</b>	
	Replace subpart 2 of Part 2 with:	
	Subpart 2—Suspicious activity reports	<b>20</b>
<b>39A</b>	<b>Interpretation</b>	
	For the purposes of this subpart,—	
	<b>service—</b>	
(a)	means an activity that is carried out by a reporting entity; but	
(b)	does not include an activity unless <b>section 6(3)</b> applies <u>this Act to the reporting entity in relation to the activity</u>	<b>25</b>
	<b>suspicious activity</b> means an activity undertaken in circumstances <u>specified in <b>section 6(3)</b> in relation to a reporting entity, that is undertaken in circumstances—</u>	
(a)	in which—	<b>30</b>
(i)	a person conducts or seeks to conduct a transaction through a reporting entity; or	
(ii)	a reporting entity provides or proposes to provide a service to a person; or	
(iii)	a person requests a reporting entity to provide a service or makes an inquiry to the reporting entity in relation to a service; and	<b>35</b>

- (b) where the reporting entity has reasonable grounds to suspect that the transaction or proposed transaction, the service or proposed service, or the inquiry, as the case may be, is or may be relevant to—
- (i) the investigation or prosecution of any person for a money laundering offence; or 5
  - (ii) the enforcement of the Misuse of Drugs Act 1975; or
  - (iii) the enforcement of the Terrorism Suppression Act 2002; or
  - (iv) the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009; or
  - (v) the investigation or prosecution of an offence (within the meaning of section 243(1) of the Crimes Act 1961). 10

#### 40 Reporting entities to report suspicious activities

- (1) **Subsections (3) and (4)** apply to reporting entities other than high-value dealers. 15
- (2) **Subsection (5)** applies to high-value dealers. 15
- (3) If this subsection applies, the reporting entity must, as soon as practicable but no later than 3 working days after forming its suspicion, report the activity, or suspicious activity, to the Commissioner in accordance with **section 41**.
- (4) Nothing in **subsection (3)** requires any lawyer person to disclose any privileged communication (as defined in **section 42**); any information that the person believes on reasonable grounds is a privileged communication. 20
- (5) A high-value dealer may report a suspicious activity, ~~or proposed activity,~~ to the Commissioner. 10

#### 41 Nature of suspicious activity report

- (1) Except as provided in **subsection (2)**, a report under **section 40** must— 25
  - (a) be in the prescribed form (if any); and
  - (b) contain the details prescribed by regulations; and
  - (c) contain a statement of the grounds on which the reporting entity holds the suspicions referred to in **paragraph (b)** of the definition of suspicious activity in **section 39A**; and 30
  - (d) be signed by a person authorised by the reporting entity to sign suspicious activity reports (unless the report is forwarded by electronic means); and
  - (e) be forwarded, in writing, to the Commissioner— 35
    - (i) by way of secure electronic transmission by a means specified or provided by the Commissioner for that purpose; or

- (ii) by another means (including, without limitation, by way of transmission by fax or email) that may be agreed from time to time between the Commissioner and the reporting entity concerned.
- (2) If the urgency of the situation requires, a suspicious activity report may be made orally to any Police employee authorised for the purpose by the Commissioner, but in any such case the reporting entity must, as soon as practicable but no later than 3 working days after forming its suspicions, forward to the Commissioner a suspicious activity report that complies with the requirements in **subsection (1)**. 5
- (3) The Commissioner may confer the authority to receive a suspicious activity report under **subsection (2)** on— 10
- (a) any specified Police employee; or
- (b) Police employees of any specified rank or class; or
- (c) any Police employee or Police employees for the time being holding any specified office or specified class of offices. 15
- 42 Privileged communication defined**
- (1) For the purposes of ~~sections 40(4) and 48A(2)~~, a A communication is a **privileged communication** if—
- (a) it is a confidential communication (oral or written) (including any information or opinion)— 20
- (i) that passes between—
- (A) a lawyer and another lawyer in their professional capacity; or
- (B) a lawyer in his or her professional capacity and his or her client; or 25
- (C) any person described in ~~subparagraph (i) or (ii) subparagraph (A) or (B)~~ and the agent of the other person described in that subparagraph (or between the agents of both the persons described) either directly or indirectly; and
- (ii) that is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; or 30
- (b) it is a communication (including any information or opinion) that—
- (i) is subject to the general law governing legal professional privilege; or
- (ii) is specified in ~~section 54(1), 56(1) and (2), or 57~~ 53, 54, 55, 56, or 57 of the Evidence Act 2006. 35
- (2) However, a communication is not a privileged communication—
- (a) if there is a prima facie case that the communication or information is made or received, or compiled or prepared,—



- (i) for a dishonest purpose; or
    - (ii) to enable or aid the commission of an offence; or
  - (b) if, where the information wholly or partly consists of, or relates to, the receipts, payments, income, expenditure, or financial transactions of any specified person, it is contained in (or comprises the whole or a part of) any book, account, statement, or other record prepared or kept by the lawyer in connection with a trust account of the lawyer within the meaning of section 6 of the Lawyers and Conveyancers Act 2006. 5
  - (3) For the purposes of this section, references to a **lawyer** include a firm in which the lawyer is a partner or is held out to be a partner. 10
- 43 Auditors may report suspicious activities**
- (1) Despite any other enactment or any rule of law, this section applies to a person who, in the course of carrying out the duties of that person's occupation as an auditor, has reasonable grounds to suspect, in relation to any activity, that the activity is relevant to— 15
    - (a) the investigation or prosecution of any person for a money laundering offence; or
    - (b) the enforcement of the Misuse of Drugs Act 1975; or
    - (c) the enforcement of the Terrorism Suppression Act 2002; or
    - (d) the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009; or 20
    - (e) the investigation or prosecution of an offence (within the meaning of section 243(1) of the Crimes Act 1961).
  - (2) A person may report an activity referred to in **subsection (1)** to the Commissioner. 25
- 44 Protection of persons reporting suspicious activities**
- (1) **Subsection (2)** applies to a person who—
    - (a) discloses or supplies any information in any suspicious activity report; or
    - (b) supplies any information in connection with any suspicious activity report, whether at the time the report is made or afterwards. 30
  - (2) No civil, criminal, or disciplinary proceedings lie against a person to whom **subsection (1)** applies—
    - (a) in respect of the disclosure or supply, or the manner of the disclosure or supply, by that person of the information referred to in that subsection; or 35
    - (b) for any consequences that follow from the disclosure or supply of that information.

- (3) If any information is reported under **section 43** to any Police employee by any person, no civil, criminal, or disciplinary proceedings lie against that person—
- (a) in respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or 5
  - (b) for any consequences that follow from the disclosure or supply of that information.
- (4) However, **subsections (2) and (3)** do not apply ~~if the information was disclosed or supplied in bad faith.~~—
- (a) if the information was disclosed or supplied in bad faith; or 10
  - (b) if, in the case of information disclosed or supplied by a lawyer, there were reasonable grounds to believe that the information was a privileged communication but the lawyer disclosed it or supplied it despite the existence of those grounds.
- (5) Nothing in this section applies in respect of proceedings for an offence under any of sections 92 to 97. 15
- 45 Immunity from liability for disclosure of information relating to money laundering transactions**
- (1) This section applies if—
- (a) a person does any act that would constitute, or that the person believes would constitute, an offence against section 243(2) or (3) of the Crimes Act 1961; and 20
  - (b) in respect of the doing of that act, that person would have, by virtue of section 244 of the Crimes Act 1961, a defence to a charge under section 243(2) or (3) of that Act; and 25
  - (c) that person discloses to any Police employee any information relating to a money laundering transaction (within the meaning of section 243(4) of the Crimes Act 1961), being a money laundering transaction that constitutes (in whole or in part), or is connected with or related to, the act referred to in **paragraph (a)**; and 30
  - (d) that information is so disclosed, in good faith, for the purpose of, or in connection with, the enforcement or intended enforcement of any enactment or provision referred to in section 244(a) of the Crimes Act 1961; and
  - (e) that person is otherwise under any obligation (whether arising by virtue of any enactment or any rule of law or any other instrument) to maintain secrecy in relation to, or not to disclose, that information. 35
- (2) If this section applies, then, without limiting **section 44** and despite the fact that the disclosure would otherwise constitute a breach of that obligation of secrecy or non-disclosure, the disclosure by that person, to that Police employee, 40

of that information is not a breach of that obligation of secrecy or non-disclosure or (where applicable) of any enactment by which that obligation is imposed.

**46 Disclosure of information relating to suspicious activity reports**

- (1) This section and **section 47** apply in respect of the following information: 5
- (a) any suspicious activity report:
  - (b) any information the disclosure of which will identify, or is reasonably likely to identify, any person—
    - (i) as a person who, in his or her capacity as an officer or employee of a reporting entity, has handled a transaction in respect of which a suspicious activity report was made; or 10
    - (ii) as a person who has prepared a suspicious activity report; or
    - (iii) as a person who has made a suspicious activity report:
  - (c) any information that discloses, or is reasonably likely to disclose, the existence of a suspicious activity report. 15
- (2) A reporting entity must not disclose information to which this section relates to any person except—
- (a) a Police employee who is authorised by the Commissioner to receive the information; or
  - (b) the reporting entity’s AML/CFT supervisor; or 20
  - (c) an officer or employee of the reporting entity, for any purpose connected with the performance of that person’s duties; or
  - (d) a lawyer, for the purpose of obtaining legal advice or representation in relation to the matter; or
  - (e) another member of a designated business group of which the reporting entity is a member, to the extent necessary for the reporting entity to decide whether to make a suspicious activity report; or 25
  - (f) ~~another member of a group of reporting entities authorised by regulations made under this Act to receive that information for the purpose of detecting and preventing money laundering and terrorism financing.~~ 30
- (3) A Police employee may disclose information to which this section applies only for law enforcement purposes.
- (4) An AML/CFT supervisor may disclose information to which this section applies only to the Police for law enforcement purposes.
- (5) A person to whom a function or power has been delegated under section 134 may disclose information to which this section applies only to the AML/CFT supervisor that made the delegation. 35
- (6) A person (**person A**) referred to in **subsection (2)(c)** to whom disclosure of any information to which that subsection applies has been made must not dis-

	close that information except to another person of the kind referred to in that subsection for the purpose of—	
	(a) the performance of person A's duties; or	
	(b) obtaining legal advice or representation in relation to the matter.	
(7)	A person referred to in <b>subsection (2)(d)</b> to whom disclosure of any information to which that subsection applies has been made must not disclose that information except to a person of the kind referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.	5
(8)	Any other person who has information to which this section applies may disclose that information only to the Police for law enforcement purposes.	10
<b>47</b>	<b>Disclosure of information in proceedings</b>	
(1)	No person may disclose, in any judicial proceeding (within the meaning of section 108(4) of the Crimes Act 1961), any information contained in a suspicious activity report unless the Judge or, as the case requires, the person presiding at the proceeding is satisfied that the disclosure of the information is necessary in the interests of justice.	15
(2)	Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against section 93 or 94.	
<b>48</b>	<b><u>Disclosure of personal information relating to employees or senior managers</u></b>	20
	<u>An AML/CFT supervisor that has, in the performance and exercise of its functions and powers under this Act, obtained personal information about employees or senior managers may disclose that information to another government agency for the following purposes if the AML/CFT supervisor is satisfied that the agency has a proper interest in receiving the information:</u>	25
	(a) <u>law enforcement purposes:</u>	
	(b) <u>the detection, investigation, and prosecution of any offence under the following Acts:</u>	
	(i) <u>the Companies Act 1993:</u>	30
	(ii) <u>the Financial Advisers Act 2008:</u>	
	(iii) <u>the Financial Service Providers (Registration and Dispute Resolution) Act 2008:</u>	
	(iv) <u>the Gambling Act 2003:</u>	
	(v) <u>the Reserve Bank of New Zealand Act 1989:</u>	35
	(vi) <u>the Financial Markets Conduct Act 2013.</u>	

**19 New section 49A inserted (Obligation to keep reports of suspicious activities)**

After section 49, insert:

**49A Obligation to keep reports of suspicious activities**

- (1) If a reporting entity reports a suspicious activity to the Commissioner, the reporting entity must keep a copy of that report. 5
- (2) The reporting entity must keep a copy of the report for—
  - (a) a period of at least 5 years after the report is made; or
  - (b) any longer period that the AML/CFT supervisor for the reporting entity, or the Commissioner, specifies. 10

**20 Section 51 amended (Obligation to keep other records)**

- (1) In section 51(1)(c), after “the business relationship”, insert “; and”.
- (2) After section 51(1)(c), insert:
  - (d) any other records prescribed by regulations made under section 153.
- (3) Replace section 51(2) with: 15
- (2) The records relating to risk assessment, AML/CFT programmes, and audits must be kept for a period of at least 5 years after the date on which they ceased to be used on a regular basis.

**21 Section 57 amended (Minimum requirements for AML/CFT programmes)**

- (1) In section 57, after “programme must”, insert “be in writing and”. 20
- (2) In section 57(d), replace “suspicious transactions” with “suspicious activities”.
- (3) In section 57, insert as subsection (2):
- (2) In developing an AML/CFT programme, a reporting entity must have regard to any applicable guidance material produced by AML/CFT supervisors or the Commissioner relating to AML/CFT programmes. 25

**22 Section 59 replaced (Review and audit of risk assessment and AML/CFT programme)**

Replace section 59 with:

**59 Review and audit of risk assessment and AML/CFT programmes**

- (1) A reporting entity (other than a high-value dealer) must review its risk assessment and AML/CFT programme to— 30
  - (a) ensure that the risk assessment and AML/CFT programme are up to date; and
  - (b) identify any deficiencies in the effectiveness of the risk assessment and the AML/CFT programme; and 35

- (c) make any changes to the risk assessment or AML/CFT programme identified as being necessary under **paragraph (b)**.
- (2) A reporting entity (other than a high-value dealer) must ensure that its risk assessment and AML/CFT programme are audited every 2 years or during a different time period prescribed by regulations, or at any other time at the request of the relevant AML/CFT supervisor. 5
- 59A Audit of compliance with AML/CFT obligations**
- A high-value dealer must ensure that its compliance with its AML/CFT obligations under **section 6(3)(d)(ii)**, and any regulations, is audited when the relevant AML/CFT supervisor requests. 10
- 59B Who carries out audit**
- (1) An audit under **section 59 or 59A** must be carried out by an independent person, appointed by the reporting entity, who is appropriately qualified to conduct the audit.
- (2) A person appointed to conduct an audit is not required to be— 15
- (a) a chartered accountant within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996; or
- (b) qualified to undertake financial audits.
- (3) A person appointed to conduct an audit must not have been involved in— 20
- (a) the establishment, implementation, or maintenance of the reporting entity’s AML/CFT programme (if any); or
- (b) the undertaking of the reporting entity’s risk assessment (if any).
- (4) The audit of a risk assessment under **section 59** is limited to an audit of whether the reporting entity’s risk assessment fulfils the requirements in section 58(3). 25
- (5) A reporting entity must provide a copy of any audit to its AML/CFT supervisor on request.
- 23 Section 68 amended (Reports about movement of cash into or out of New Zealand)**
- In section 68(1)(a), replace “more than” with “equal to or above”. 30
- 24 Section 69 amended (Reports about receipt of cash from outside New Zealand)**
- In section 69(a), replace “more than” with “equal to or above”.
- 25 Section 70 amended (Reporting requirements)**
- (1) In section 70(a), replace “the prescribed form” with “the appropriate prescribed form”: 35
- (2) Replace section 70(d) with:

- (d) be provided to a Customs officer or any other prescribed person,—
- (i) in the case of accompanied cash, at the time prescribed for the purposes of this subparagraph; and
  - (ii) in the case of unaccompanied cash, at the time prescribed for the purposes of this subparagraph.

5

**25A Section 76 amended (Protection for AML/CFT supervisors)**

In section 76, after “Act”, insert “or regulations”.

**26 Cross-heading above section 92 amended**

In the cross-heading above section 92, replace “*transaction*” with “*activity*”.

**27 Section 92 amended (Failing to report suspicious transaction)**

10

- (1) In the heading to section 92, replace “**transaction**” with “**activity**”.
- (2) In section 92(a), replace “a transaction” with “an activity”.
- (3) In section 92(b), replace “the transaction or the proposed transaction” with “the activity or the proposed activity”.
- (4) In section 92(c), replace “the transaction or the proposed transaction” with “the activity or the proposed activity”.
- (5) In section 92, insert as subsection (2):

15

- (2) It is a defence to a prosecution under this section if a reporting entity believes on reasonable grounds that the documents or information relating to the activity were privileged communications.

20

**28 Section 93 amended (Providing false or misleading information in connection with suspicious transaction reports or prescribed transaction reports)**

- (1) In the heading to section 93, replace “**suspicious transaction**” with “**suspicious activity**”.
- (2) In section 93, replace “suspicious transaction” with “suspicious activity”.

25

**29 Section 94 amended (Unlawful disclosure of suspicious transaction reports or prescribed transaction reports)**

- (1) In the heading to section 94, replace “**suspicious transaction**” with “**suspicious activity**”.
- (2) In section 94(2)(b), replace “any transaction or proposed transaction that is the subject of a suspicious transaction report” with “any activity or proposed activity that is the subject of a suspicious activity report”.

30

- 30 Section 95 amended (Failure to keep or retain adequate records relating to suspicious transactions or prescribed transactions)**
- (1) In the heading to section 95, replace “suspicious transactions” with “activities suspicious activities”.
- (2) In section 95, replace “suspicious transaction” with “suspicious activity”. 5
- 31 Section 96 amended (Obstruction of investigation relating to suspicious transaction reports or prescribed transaction reports)**
- (1) In the heading to section 96, replace “suspicious transaction” with “suspicious activity”.
- (2) In section 96, replace “suspicious transaction” with “suspicious activity”. 10
- (3) In section 96, insert as subsection (2):
- (2) It is a defence to a prosecution under this section if the reporting entity believes on reasonable grounds that the documents or information were privileged communications.
- 32 Section 99 amended (Time limit for prosecution of offences relating to civil liability act and suspicious transaction reports or prescribed transaction reports)** 15
- In the heading to section 99, replace “suspicious transaction” with “suspicious activity”.
- 32A Section 102 amended (Offence to obstruct AML/CFT supervisor)** 20
- In section 102, after “Act”, insert “or regulations”.
- 33 Section 106 amended (Failure to report cash over applicable threshold values moved into or out of New Zealand)**
- (1) In the heading to section 106, replace “over” with “equal to or above”.
- (2) In section 106, replace “over” with “equal to or above”. 25
- 34 Section 107 amended (Failure to report cash over applicable threshold value received by person in New Zealand from overseas)**
- (1) In the heading to section 107, replace “over” with “equal to or above”.
- (2) In section 107, replace “over” with “equal to or above”.
- 34A Section 111 amended (Offence to obstruct or not to answer questions from Customs officer)** 30
- In section 111(1), after “Act”, insert “or regulations”.
- 35 Section 117 amended (Search warrant)**
- In section 117(4), after “3,”, insert “4,”.



- 36 Section 130 amended (AML/CFT supervisors)**
- Replace section 130(1)(c) with:
- (c) for designated non-financial businesses or professions and high-value dealers, the Department of Internal Affairs, or another AML/CFT supervisor prescribed for the purpose, is the relevant AML/CFT supervisor: 5
  - (d) for the New Zealand Racing Board, casinos, non-deposit-taking lenders, money changers, and other reporting entities that are not covered by paragraphs (a) and (c), the Department of Internal Affairs is the relevant AML/CFT supervisor.
- 36A Section 132 amended (Powers)** 10
- (1) In section 132(1), after “Act”, insert “or regulations”.
  - (2) After section 132(3), insert:
  - (4) Nothing in this section requires any person to disclose any privileged communication.
- 36B Section 133 amended (Matters relating to conduct of on-site inspections)** 15
- In section 133(5), replace “lawyer” with “person”.
- 37 Section 137 amended (Power to use information obtained as AML/CFT supervisor in other capacity and vice versa)**
- (1) In section 137(2), after “Reserve Bank of New Zealand Act 1989”, insert “, the Insurance (Prudential Supervision) Act 2010, and the Non-bank Deposit Takers Act 2013”. 20
  - (2) In section 137(3), after “Reserve Bank of New Zealand Act 1989”, insert “, the Insurance (Prudential Supervision) Act 2010, and the Non-bank Deposit Takers Act 2013”.
  - (3) In section 137(6), after “the Gambling Act 2003”, insert “, the Racing Act 2003, and the Charities Act 2005”. 25
  - (4) In section 137(7), after “the Gambling Act 2003”, insert “, the Racing Act 2003, and the Charities Act 2005”.
- 38 Section 139 ~~replaced~~ amended (Power to disclose information supplied or obtained as AML/CFT supervisor)** 30
- (+) Replace section 139 with:
- 139 Power to disclose information**
- (1) ~~The Commissioner, the New Zealand Customs Service, or an AML/CFT supervisor may disclose any information supplied or obtained by it in the exercise of its powers or the performance of its functions and duties under this Act to any other government agency or to any regulator.~~ 35
  - (2) ~~However, a disclosure may be made only if—~~

- (a) ~~the disclosure of the information is for law enforcement purposes or regulatory purposes; and~~
- (b) ~~the disclosing entity is satisfied that the recipient of the information has a proper interest in receiving the information.~~
- (3) ~~If not authorised under **subsections (1) and (2)** or any other enactment, disclosure of any information between a government agency, a regulator, the Commissioner, the New Zealand Customs Service, an AML/CFT Supervisor, or reporting entities, or to or from any of those parties, may be made for law enforcement purposes or regulatory purposes—~~ 5
- (a) ~~in accordance with regulations made under **section 139A** or 153; or~~ 10
- (b) ~~in the absence of regulations, in accordance with a written agreement (that contains the matters specified in **section 140A(3)**) between the relevant parties.~~
- (4) ~~The parties to a written agreement that involves the disclosure of personal information must,—~~ 15
- (a) ~~before entering into or amending such an agreement, consult the Privacy Commissioner; and~~
- (b) ~~review the agreement if there is a material change in circumstances.~~
- (5) ~~**Subsection (4)(a)** does not apply if an agreement is being amended and the proposed amendments are minor or technical in nature.~~ 20
- (6) ~~An agreement under **subsection (3)(b)** must be published on, or linked to by, at least one Internet site maintained by a party to whom the agreement applies.~~
- (7) ~~This section does not apply to any information that may be disclosed or shared under an agreement specified in **section 140A**.~~
- 139A Regulations relating to information sharing** 25
- (1) ~~The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the purpose of **section 139**—~~
- (a) ~~specifying the type of information that may or may not be disclosed;~~
- (b) ~~prescribing the conditions under which the information may be disclosed and the conditions applying to the use of that information (for example, conditions relating to storage, copying, access, and the return of information).~~ 30
- (2) ~~Before recommending the making of regulations under this section, the Minister must consult—~~
- (a) ~~the agencies and regulators that may be affected by the proposed regulations; and~~ 35
- (b) ~~the Privacy Commissioner; and~~
- (c) ~~any other person or body that the Minister considers may be affected by the proposed regulations.~~

- (1) In the heading to section 139, delete “supplied or obtained as AML/CFT supervisor”.
- (2) In section 139,—
- (a) after “government agency”, insert “or any regulator”:
- (b) after “the agency”, insert “or regulator”. 5
- (3) In section 139, insert as subsections (2) and (3):
- (2) If not authorised under any other provision of this Act, disclosure of any information between a government agency, a regulator, the Commissioner, the New Zealand Customs Service, an AML/CFT supervisor, or reporting entities, or to or from any of those parties, may be made for law enforcement purposes in accordance with regulations made under **section 139A**. 10
- (3) Nothing in this section limits the Privacy Act 1993 (which permits certain disclosures in addition to those authorised under this section).
- 38A New section 139A inserted (Regulations relating to information sharing)**
- After section 139, insert: 15
- 139A Regulations relating to information sharing**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the purpose of **section 139(2)**—
- (a) specifying the type of information that may or may not be disclosed:
- (b) prescribing the conditions under which the information may be disclosed and the conditions applying to the use of that information (for example, conditions relating to storage, copying, access, and the return of information). 20
- (2) Before recommending the making of regulations under this section, the Minister must consult— 25
- (a) the agencies and regulators that may be affected by the proposed regulations; and
- (b) the Privacy Commissioner; and
- (c) any other person or body that the Minister considers may be affected by the proposed regulations. 30
- 39 Section 140 amended (Power to use and disclose information supplied or obtained under other enactments for law enforcement or regulatory purposes)**
- (1) In section 140(1), after “subsection (2) if”, insert “the disclosing entity has reasonable grounds to believe that”. 35
- (2) Replace section 140(2) with:
- (2) The enactments referred to in subsection (1) are—

- |      |   |    |
|------|---|----|
| (a)  | the Charities Act 2005:   |    |
| (b)  | the Companies Act 1993:   |    |
| (c)  | the Criminal Proceeds (Recovery) Act 2009:                                      |    |
| (d)  | the Customs and Excise Act 1996:  |    |
| (e)  | the Financial Advisers Act 2008:  | 5  |
| (f)  | the Financial Markets Authority Act 2011:                                       |    |
| (g)  | the Financial Markets Conduct Act 2013:   |    |
| (h)  | the Financial Service Providers (Registration and Dispute Resolution) Act 2008: |    |
| (i)  | the Financial Transactions Reporting Act 1996:                                  | 10 |
| (j)  | the Gambling Act 2003:  |    |
| (k)  | the Goods and Services Tax Act 1985:  |    |
| (l)  | the Income Tax Act 2007:  |    |
| (m)  | the Insurance (Prudential Supervision) Act 2010:                                |    |
| (n)  | the Lawyers and Conveyancers Act 2006:  | 15 |
| (o)  | the New Zealand Institute of Chartered Accountants Act 1996:                    |    |
| (p)  | the Non-bank Deposit Takers Act 2013:   |    |
| (q)  | the Proceeds of Crime Act 1991:   |    |
| (r)  | the Racing Act 2003:  |    |
| (s)  | the Real Estate Agents Act 2008:  | 20 |
| (t)  | the Reserve Bank of New Zealand Act 1989:                                       |    |
| (ta) | <u>the Secondhand Dealers and Pawnbrokers Act 2004:</u>                         |    |
| (u)  | the Tax Administration Act 1994:  |    |
| (v)  | the Terrorism Suppression Act 2002:   |    |
| (w)  | any other Act prescribed by regulations.  | 25 |

**40 ~~New section 140A inserted (Data access for law enforcement purposes)~~**

~~After section 140, insert:~~

**~~140A Data access for law enforcement purposes~~**

- |     |   |    |
|-----|---|----|
| (1) | <del>The purpose of this section is to facilitate access to data holdings between government agencies for law enforcement purposes.</del> | 30 |
| (2) | <del>For the purposes of this section, the chief executive of a government agency may, in accordance with a written agreement,—</del>     |    |
| (a) | <del>disclose any relevant information to the chief executive of another government agency; or</del>                                      |    |

- (b) allow the chief executive of another government agency access to 1 or more databases; or
- (c) disclose any relevant information to an agency in another country that is authorised to receive the information in accordance with regulations.
- (3) The agreement must specify— 5
- (a) the information that may be disclosed:
- (b) the databases and type of information that may be accessed:
- (c) how the information may be used to facilitate law enforcement and regulatory purposes:
- (d) the positions or designations of the persons who may handle the information or access the databases: 10
- (e) the records to be kept in relation to each occasion on which the information is handled or the databases accessed:
- (f) the safeguards that are to apply for protecting personal information or commercially sensitive information that is disclosed: 15
- (g) the requirements relating to storage and disposal of information that may be disclosed:
- (h) the circumstances (if any) and manner in which the information may be disclosed to another government agency:
- (i) the requirements for reviewing the agreement. 20
- (4) Before entering into or amending the agreement, the chief executive must consult the Privacy Commissioner.
- (5) **Subsection (4)** does not apply if the chief executive considers that the proposed amendments to the agreement are minor.
- (6) An agreement under this section must be published on an Internet site maintained by or on behalf of the relevant government agencies. 25

**41 Section 142 amended (Financial intelligence functions of Commissioner)**

- (1) Replace In section 142(a), replace “suspicious transaction” with: “suspicious activity”.
- (a) receive suspicious activity reports: 30
- (ab) carry out, to the extent permitted under **section 139** or any other enactment, the following tasks:
- (iaa) receive financial intelligence from government agencies and regulators:
- (iab) analyse that financial intelligence: 35
- (iac) refer that financial intelligence to other government agencies and regulators:

- (i) refer financial intelligence to AML/CFT supervisors to assist those supervisors in the supervisory functions:
- (ii) receive, analyse, and refer financial intelligence to and from government agencies and regulators:
- (iii) co-operate and share information and advice related to money laundering and terrorism financing with AML/CFT supervisors, government agencies, and regulators: 5
- (iv) share information and advice related to money laundering, terrorism financing, and predicate offending with reporting entities:
- (1A) Replace section 142(b)(ii) with: 10
- (ii) information for reporting entities on their obligations to report suspicious activities and prescribed transactions, and how to meet those obligations:
- (2) ~~Replace~~In section 142(d), ~~replace “suspicious transaction” with: “suspicious activity”.~~ 15
- (d) ~~enforce requirements to provide suspicious activity reports:~~
- (3) In section 142(e), replace “suspicious transaction” with “suspicious activity”.
- (4) In section 142(f), replace “suspicious transaction” with “suspicious activity”.
- (5) In section 142(g), replace “suspicious transaction reports” with “financial intelligence reportssuspicious activity”. 20
- (6) In section 142(h), replace “suspicious transaction” with “suspicious activity” in each place.
- (7) After section 142(k), insert:
- (ka) receive and analyse financial intelligence relating to law enforcement purposes from international authorities authorised to perform functions broadly equivalent to the Commissioner’s financial intelligence functions: 25
- (8) In section 142(l), after “New Zealand Customs Service,”, insert “regulators.”.
- 42 Section 143 ~~replaced~~ amended (Powers relating to financial intelligence functions of Commissioner)** 30
- (i) Replace section 143 with:
- 143 Powers relating to financial intelligence functions of Commissioner**
- (1) The Commissioner may order production of or access to all records, documents, and information from any reporting entity that are relevant to analysing the financial information and intelligence information received by the Commissioner, with or without a court order. 35
- (2) The Commissioner may, to the extent permitted under ~~section 139~~ or any other enactment,—

<p>(a) <del>share suspicious activity reports, cash reports, suspicious property reports, and other financial information and intelligence information received by the Commissioner under this Act with government agencies for law enforcement or regulatory purposes:</del></p> <p>(b) <del>co-operate and share financial intelligence with reporting entities, in accordance with the functions of the Commissioner in section 142.</del></p>	<p>5</p>
<p>(1) <u>In section 143(a), replace “a suspicious transaction report received by the Commissioner” with “information received by the Commissioner under this Act”.</u></p> <p>(2) <u>In section 143(b), replace “suspicious transaction reports” with “suspicious activity reports”.</u></p> <p>(3) <u>In section 143(b), after “with”, insert “regulators and”.</u></p> <p>(4) <u>Insert as subsection (2):</u></p> <p>(2) <u>Nothing in this section requires any person to disclose any privileged communication.</u></p>	<p>10</p>
<p><b>43 Section 144 amended (Delegation of powers of Commissioner)</b></p> <p>In section 144(1), after “inspector”, insert “or an equally senior <u>or more senior</u> Police employee”.</p>	<p>15</p>
<p><b>44 Section 145 amended (Guidelines relating to reporting of suspicious transactions)</b></p> <p>(1) In the heading to section 145, replace “<b>transactions</b>” with “<b>activities</b>”.</p> <p>(2) In section 145(1)(a),—</p> <p style="padding-left: 20px;">(a) <del>replace after “a transaction” with,</del> <u>insert “an or other activity”:</u></p> <p style="padding-left: 20px;">(b) <del>replace after “the transaction” with,</del> <u>insert “the or other activity”.</u></p> <p>(3) In section 145(1)(b), replace “suspicious transaction report relating to such a transaction” with “suspicious activity report relating to such an activity”.</p> <p>(4) In section 145(2), <del>replace after “transaction” with,</del> <u>insert “or other activity”.</u></p> <p>(5) In section 145(3), <del>replace after “transaction” with,</del> <u>insert “or other activity”.</u></p> <p>(6) In section 145(4),—</p> <p style="padding-left: 20px;">(a) <del>replace after “transaction” with,</del> <u>insert “or other activity”:</u></p> <p style="padding-left: 20px;">(b) <del>replace after “transactions” with,</del> <u>insert “or other activities”.</u></p>	<p>20</p> <p>25</p> <p>30</p>
<p><b>45 Section 146 amended (Consultation on proposed guidelines)</b></p> <p>(1) In section 146(1), <del>replace after “transaction” with,</del> <u>insert “or other activity”.</u></p> <p>(2) In section 146(2), <del>replace after “transaction” with,</del> <u>insert “or other activity”.</u></p> <p>(3) In section 146(3), <del>replace after “transaction” with,</del> <u>insert “or other activity”.</u></p>	<p></p>

- 46 Section 147 amended (Availability of guidelines)**  
In section 147, ~~replace after~~ “transaction” ~~with~~, insert “or other activity”.
- 47 Section 148 amended (Review of guidelines)**  
(1) In section 148(1), ~~replace after~~ “transaction” ~~with~~, insert “or other activity”.  
(2) In section 148(2), ~~replace after~~ “transaction” ~~with~~, insert “or other activity”. 5
- 48 Section 153 amended (Regulations)**  
(1) Replace section 153(d) with:  
(d) prescribing amounts or thresholds that are required to be prescribed for the purposes of this Act or regulations (and 1 or more amounts or thresholds may be prescribed for the purposes of different provisions of this Act or regulations): 10  
(2) After section 153(i), insert:  
(ia) ~~authorising and regulating the sharing of information between reporting entities in different groups:~~  
(ib) ~~authorising and regulating the sharing of information between the Commissioner, the New Zealand Customs Service, AML/CFT supervisors, and international authorities:~~ 15
- 49 Section 154 amended (Regulations relating to application of Act)**  
(1) After section 154(1)(a), insert:  
(ab) exempting or providing for the exemption of any financial activity or class of financial activities described in the definition of financial institution in section 5 from all or any of the provisions of this Act: 20  
(ac) declaring an entity or a class of entities to be an approved entity or approved class of entities for the purposes of **section 33(3A)**:  
(1A) After section 154(1)(h), insert: 25  
(ha) ~~declaring an activity or a class of activities to be, or not to be, an occasional activity for the purposes of this Act:~~  
(hb) ~~prescribing an entity or a class of entities as an approved entity or an approved class of entities:~~  
(2) In section 154(2)(a), delete “and the Financial Transactions Reporting Act 1996”. 30  
(3) Repeal section 154(3)(c) and (5).
- 50 New section 156A and cross-heading inserted**  
After section 156, insert:



*Review provision*

**156A Review of operation of Act**

- (1) The Minister of Justice must, not later than 1 July 2021, refer to the Ministry of Justice for consideration the following matters:
  - (a) the operation of the provisions of this Act since the commencement of this section; and 5
  - (b) whether any amendments to this Act are necessary or desirable.
- (2) The Ministry must report on those matters to the Minister of Justice within 1 year of the date on which the reference occurs.
- (3) The Minister of Justice must present a copy of the report provided under this section to the House of Representatives as soon as practicable after receiving it. 10

**51 Sections 157 to 159 and cross-heading above section 157 replaced**

Replace sections 157 to 159 and the cross-heading above section 157 with:

*Exemptions*

**157 Chief executive may grant exemptions**

- (1) The chief executive may, in the prescribed form, exempt either of the following from the requirements of all or any of the provisions of this Act:
  - (a) a reporting entity or class of reporting entities: 15
  - (b) a transaction or class of transactions.
- (2) The chief executive may grant the exemption— 20
  - (a) unconditionally; or
  - (b) subject to any conditions that the chief executive thinks fit.
- (3) Before deciding to grant an exemption and whether to attach any conditions to the exemption, the chief executive must have regard to the following:
  - (a) the intent and purpose of this Act and any regulations: 25
  - (b) the risk of money laundering and the financing of terrorism associated with the reporting entity, including, where appropriate, the products and services offered by the reporting entity and the circumstances in which the products and services are provided:
  - (c) the effects on prevention, detection, investigation, and prosecution of offenees: 30
  - (d) the level of regulatory burden to which the reporting entity would be subjected in the absence of an exemption:
  - (e) whether the exemption would create an unfair advantage for the reporting entity or disadvantage third party reporting entities: 35

- (f) the overall effect that the exemption would have on the integrity of, and compliance with, the AML/CFT regulatory regime.
- (4) An exemption under this section is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 5
- (5) A class exemption under this section must be published under section 6 of the Legislation Act 2012 and, for that purpose, **class exemption** —
- (a) means an exemption of general application that applies to a class of reporting entities or transactions; but
- (b) does not include an exemption granted in relation to a particular reporting entity or transaction. 10
- (6) An exemption under this section that is not a class exemption under **subsection (5)** must, as soon as practicable after it is granted, be —
- (a) published on an Internet site maintained by or on behalf of the chief executive; and 15
- (b) notified in the *Gazette*; and
- (c) made available in printed form for purchase on request by members of the public.
- (7) A notification in the *Gazette* for the purpose of **subsection (6)(b)** does not have to incorporate the exemption. 20
- 158 Chief executive must consult before granting exemption**
- Before granting an exemption under **section 157**, the chief executive must consult —
- (a) the AML/CFT supervisors; and
- (b) any other persons that the chief executive considers appropriate having regard to the matters listed in **section 157(3)**. 25
- 159 Requirements relating to exemptions**
- (1) The exemption must include an explanation of the reason for granting the exemption.
- (2) The exemption — 30
- (a) must be granted for a period specified by the chief executive, but that period must not be more than 5 years; and
- (b) may, at any time, be varied or revoked by the chief executive.
- 51 Section 157 amended (Minister may grant exemptions)**
- (1) In section 157(1), replace “, in the prescribed form, exempt any” with “exempt either or both”. 35
- (2) In section 157(1)(a), replace “entities; or” with “entities.”.

(3) After section 157(1), insert:

(1A) The Minister may grant an exemption—

- (a) to an individual reporting entity on application by that entity in a manner and form approved by the chief executive (if any):
- (b) to a class of reporting entities on the Minister’s own motion or on application by 1 or more reporting entities made in a manner or form approved by the chief executive (if any).

5

(4) Repeal section 157(3)(a).

(5) In section 157(4), after “disallowable instrument”, insert “but not a legislative instrument”.

10

(6) In section 157(5), after “this section”, insert “is a legislative instrument and”.

**51A New section 159A and cross-heading inserted**

After section 159, insert:

*Resolution of disputes about privilege*

**159A Procedure for testing assertions that document privileged**

15

- (1) If any person refuses to disclose any information or document on the grounds that it is a privileged communication and that **section 132(4), 133(5), or 143(3)** applies, the Commissioner, an AML/CFT supervisor, or that person may apply to a District Court Judge for an order determining whether or not the claim of privilege is valid.
- (2) For the purposes of determining that application, the District Court Judge may require the information or document to be produced to the District Court Judge.

20

**51B Section 160 and cross-heading repealed**

Repeal section 160 and the cross-heading above section 160.

**52 Sections 162 and 163 repealed**

25

Repeal sections 162 and 163.

**52A Schedule 1 amended**

- (1) In the Schedule 1 heading, replace “s 160” with “s 7A”.
- (2) In the Schedule heading, replace “and savings provisions” with “savings, and related provisions”.
- (3) After Schedule 2, insert:

30

**Part 1**

**Transitional, savings, and related provisions relating to the Financial Reporting Act 1996**

- (4) In Schedule 1, after clause 3, insert the **Part 2** set out in **Schedule 1** of this Act.

**52B Consequential amendments to principal Act**

The principal Act is amended in the manner set out in **Schedule 2**.

**Part 2**

5

**Amendments to other enactments and repeal**

**53 Amendments to Anti-Money Laundering and Countering Financing of  
Terrorism (Definitions) Regulations 2011**

- (1) This section amends the Anti-Money Laundering and Countering Financing of  
Terrorism (Definitions) Regulations 2011. 10
- (2) Revoke regulations 8 and 9.
- (3) Replace regulation 20(1) with:

- (1) A person is not a reporting entity, for the purposes of the Act, by reason only  
that the person carries out a relevant service in the ordinary course of the per-  
son's business as an executor, an administrator, or a trustee in respect of ser-  
vices provided in the administration of an estate or, in the case of a trustee, in  
respect of services provided to beneficiaries of a family trust. 15

**53A Amendment to Anti-Money Laundering and Countering Financing of  
Terrorism (Prescribed Transactions Reporting) Regulations 2016**

- (1) This section amends the Anti-Money Laundering and Countering Financing of  
Terrorism (Prescribed Transactions Reporting) Regulations 2016. 20
- (2) Replace Schedule 2 with the Schedule 2 set out in **Schedule 3** of this Act.

**54 Amendments to Anti-Money Laundering and Countering Financing of  
Terrorism (Requirements and Compliance) Regulations 2011**

- (1) This section amends the Anti-Money Laundering and Countering Financing of  
Terrorism (Requirements and Compliance) Regulations 2011. 25
- (2) Revoke regulations 4 to 7 and the cross-headings above regulations 4, 5, and  
5A.

**55 Amendments to Financial Transactions Reporting Act 1996**

- (1) This section amends the Financial Transactions Reporting Act 1996. 30
- (2) Repeal section 3(1)(g).
- (3) Repeal section 3(1)(j).
- (4) Repeal section 3(1)(l) and (la).
- (5) Repeal section 3(1)(m).

**56 Financial Transactions Reporting Act 1996 repealed**

The Financial Transactions Reporting Act 1996 (1996 No 9) is repealed.

**Schedule 1**  
**Amendments to Schedule 1 of principal Act**

s 52A

**Part 2**

**Transitional provisions relating to the Anti-Money Laundering and  
Countering Financing of Terrorism Amendment Act 2017** 5

**4 Exemptions**

~~An exemption granted by the Minister under **section 157** of the principal Act that is in force immediately before the commencement of this clause, continues in force for the unexpired portion of the term for which it was granted, as if it had been granted under **section 157** of the principal Act (as substituted by **section 51** of the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act **2017** (the **2017 Act**)).~~ 10

**4 Application for exemption**

Any application for an exemption under section 157 that has been lodged but not determined by the Minister, immediately before the commencement of this clause, must be determined by the Minister under section 157 (as amended by **section 51** of the Anti-Money Laundering and Countering Financing of Terrorism Act **2017** (the **2017 Act**)). 15

*Suspicious transaction reports continue until 1 July 2018 or earlier date appointed by Order in Council* 20

**5 Reporting entity must continue to report suspicious transactions**

Despite **section 18** of the **2017 Act**, in the period between the commencement of this clause and **1 July 2018** or an earlier date appointed by the Governor-General by Order in Council,— 25

- (a) a reporting entity must comply with sections 40, 41, and 43 to 48 (as they read before the commencement of **section 18** of the **2017 Act**) (which relate to suspicious transaction reports); and
- (b) a reporting entity and any other person may rely on **section 42** of the principal Act (as inserted by **section 18** of the **2017 Act**); and 30
- (c) a reporting entity must not comply with **sections 39A, 41, and 43 to 48** (as inserted by **section 18** of the **2017 Act**); and
- (d) for the purposes of giving effect to **paragraphs (a) and (c), section 42** (as inserted by **section 18** of the **2017 Act**) and sections **139, 140, 140A, 142, 143, 144, 145, 146, 147, 148, 153, 154, and 154A** (as amended or inserted by **sections 38 to 49A** of the **2017 Act**) apply with any necessary modifications; and 35

(e) subject to **paragraph (b)**, for the purposes of, and to the extent necessary for, giving effect to **paragraphs (a) and (c)**, this Act (as it read before the enactment of the **2017 Act**) continues in force.

**6** **Treatment of existing suspicious transaction reports**

If, on the commencement of **section 18**, the Commissioner of Police holds 1 or more suspicious transaction reports given to the Commissioner before the commencement of **section 38**, the provisions of this Act (as amended by the **2017 Act**) apply to those reports as if they were suspicious activity reports.

5

## Schedule 2

### Consequential amendments to principal Act

s 52B

- In section 5, definition of **customer**, paragraph (b)(ii), replace “occasional transaction” with “occasional transaction or activity”. 5
- In section 14(b), replace “occasional transaction” with “occasional transaction or activity”.
- In section 16(2), replace “occasional transaction” with “occasional transaction or activity”.
- In section 18(1)(b), replace “occasional transaction” with “occasional transaction or activity”. 10
- In section 20(2), replace “occasional transaction” with “occasional transaction or activity”.
- In section 22(1)(b), replace “occasional transaction” with “occasional transaction or activity”. 15
- In section 22(2)(b), replace “occasional transaction” with “occasional transaction or activity”.
- In section 22(5)(b), replace “occasional transaction” with “occasional transaction or activity”.
- In section 24(2), replace “occasional transaction” with “occasional transaction or activity”. 20
- In section 26(1), replace “occasional transaction” with “occasional transaction or activity”.
- In section 26(3), replace “occasional transaction” with “occasional transaction or activity”. 25
- In section 26(3), after “that transaction”, insert “or other activity”.
- In section 30, replace “occasional transaction” with “occasional transaction or activity”.
- In section 32(1)(a)(i) and (ii), replace “occasional transaction” with “occasional transaction or activity”. 30
- In section 33(2)(c)(i) and (ii), replace “occasional transaction” with “occasional transaction or activity”.
- In section 37(c), replace “occasional transaction” with “occasional transaction or activity”.
- In section 39(1), replace “occasional transaction” with “occasional transaction or activity”. 35
- In section 50(3)(b), replace “occasional transaction” with “occasional transaction or activity” in each place.



In section 50(3)(c)(ii), replace “occasional transaction” with “occasional transaction or activity”.

In section 154(1)(g), insert:

(ga) declaring an activity or a class of activities to be, or not to be, an occasional activity and the circumstances and conditions in which an activity or a class of activities is to be, or not to be, an occasional activity for the purposes of the Act.

5

**Schedule 3**  
**New Schedule 2 inserted**

s 53A

**Schedule 2**  
**Information to be included in section 48A(1) report**

5

s 48A

**Part 1**

**Details to be contained in international wire transfer report**

**1 General**

For the reporting entity,—

10

- (a) the name of the reporting entity:
- (b) the business address of the reporting entity:
- (c) the name of the reporting entity's AML/CFT supervisor.

**2 Transaction details**

For each transaction,—

15

- (a) the branch or location where the transaction took place in New Zealand (if relevant):
- (b) the country where the transaction took place (if not New Zealand):
- (c) the date and time of transaction:
- (d) the mode of the transaction (ie, wire transfer):
- (e) the type of funds (eg, cash deposit, deposit from electronic funds):
- (f) the amount in New Zealand dollars:
- (g) the amount in foreign currency (if applicable):
- (h) the exchange rate (if applicable):
- (i) the unique transaction reference number:
- As available*
- (j) the branch or city or region where the transaction took place if not in New Zealand:
- (k) the Internet Protocol address of the originator.

20

25

**3 Transaction details in relation to originator or beneficiary**

30

For each transaction by international wire transfer,—

- (a) the information to be provided where the reporting entity's customer is the originator of the transaction (and not the information in paragraph (b)) is as follows:
- (i) the name of the beneficiary of the international wire transfer:
  - (ii) the account number for the beneficiary of the international wire transfer: 5
  - (iii) the country where the beneficiary account is held or the location of the beneficiary (city or region, if available):
  - (iv) any other details of the location of the beneficiary account or beneficiary, as available: 10
  - (v) any other identifying information regarding the beneficiary of the international wire transfer, as available:
- (b) the information to be provided where the reporting entity's customer is the beneficiary of the international wire transfer (and not the information in paragraph (a)) is as follows: 15
- (i) the name of the originator of the international wire transfer:
  - (ii) the account number for the originator of the international wire transfer:
  - (iii) the country where the originator account is held or the originator is: 20
  - (iv) any other details of the location of the originator account or the originator, as available:
  - As available*
  - (v) any other identifying information regarding the originator of the international wire transfer. 25

**4 Customer details**

- (1) For each customer party to the transaction,—
- (a) their name:
  - (b) either their account number or unique customer identifier or both (if applicable): 30
  - (c) their date of birth (if applicable):
  - (d) their identity document number:
  - As available*
  - (e) the type of account or facility:
  - (f) the physical address of each customer party to the transaction or (if the customer party is a company) the address of its registered office: 35
  - (g) the phone number of each customer party to the transaction:

- (h) any other identifying information regarding each customer party to the transaction.
- (2) For each person acting on behalf of a customer,—
- As available*
- (a) the name of the person: 5
- (b) their account number or unique customer identifier:
- (c) their date of birth (if applicable):
- (d) their identity document number:
- (e) if the customer is not a natural person, identifying information that allows the transaction to be traced back to the person originating the transaction on behalf of the customer. 10

## **Part 2**

### **Details to be contained in domestic physical cash transaction report**

- 5** **General**
- For the reporting entity,— 15
- (a) the name of the reporting entity:
- (b) the business address of the reporting entity:
- (c) the name of the reporting entity's AML/CFT supervisor.
- 6** **Transaction details**
- For each transaction,— 20
- (a) the branch or location and where the transaction took place:
- (b) the date and time of transaction:
- (c) the mode of transaction (eg, in person, ATM, or other relevant system or channel):
- (d) the type of funds (eg, cash): 25
- (e) the amount in New Zealand dollars:
- (f) the amount in foreign currency (if applicable):
- (g) the exchange rate (if applicable):
- (h) the unique transaction reference number.
- 7** **Customer details** 30
- (1) For each customer party to the transaction,—
- (a) their name:
- (b) either their account number or unique customer identifier or both (if applicable):

- (c) their date of birth (if applicable):
- (d) their identity document number:  
*As available*
- (e) the type of account or facility:
- (f) the physical address of each customer party to the transaction or (if the customer party is a company) the address of its registered office: 5
- (g) the phone number of each customer party to the transaction:
- (h) any other identifying information regarding each customer party to the transaction.
- (2) For each person acting on behalf of a customer,— 10
- (a) the name of the person:  
*As available*
- (b) their account number or unique customer identifier:
- (c) their date of birth (if applicable):
- (d) their identity document number: 15
- (e) if the customer is not a natural person, identifying information that allows the transaction to be traced back to the person originating the transaction on behalf of the customer.

### Legislative history

13 March 2017  
23 March 2017

Introduction (Bill 248–1)  
First reading and referral to Law and Order Committee