

## The AML/CFT Act review

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### Current status

On 1 July 2021, the Ministry of Justice (MoJ) [launched a statutory review](#) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML/CFT Act).

On 6 October 2021, the MoJ [announced](#) a public consultation on the AML/CFT Act as an integral part of this review and published an accompanying [consultation document](#).

In this article we set out more information on this consultation, summarise the consultation document and highlight the key areas of focus relevant to reporting entities.

We will regularly update this page with developments on the AML/CFT Act review.

The deadline for submissions on this consultation is 3 December 2021.

If you would like assistance with making a submission on this consultation or advice in relation to the AML/CFT Act, please contact a member of our [financial services regulation](#) team.

### Background

Section 156A of the AML/CFT Act requires the Minister of Justice to ask the MoJ to conduct a review of the AML/CFT Act and any associated legislative instruments (such as regulations, codes of practice and exemptions). This review was required to commence no later than 1 July 2021 and be completed by 30 June 2022.

The [terms of reference](#) for the review set out that the key objectives are to assess the performance of the AML/CFT regime since 2017, consider whether any amendments are required and consider recommendations from the Financial Action Task Force's (FATF) April 2021 '[Mutual Evaluation](#)'.

FATF is an inter-government body that sets relevant standards for member nations that aim to prevent global money laundering and terrorist financing and the harm that these activities cause to society. In April 2021, FATF published a 'Mutual Evaluation' - in essence, a comprehensive peer review - of New Zealand's AML/CFT system to assess its compliance with the 'FATF Recommendations' and provide suggestions to strengthen New Zealand's AML/CFT systems. The FATF Recommendations set out a framework of measures which countries should implement, after being adapted to their particular circumstances, in order to combat money laundering and terrorist financing.

The MoJ's review is supported by other Government agencies that have roles and responsibilities within the AML/CFT regime, as well as an 'Industry Advisory Group' set up by the MoJ to provide additional guidance and support.

### Consultation paper

On 6 October 2021, the MoJ [announced](#) a public consultation on the AML/CFT Act and released an accompanying [consultation document](#) as well as a [summary document](#) which provides an overview of the six key issues that the MoJ would like public feedback on. We briefly summarise these issues below.

### Institutional arrangements and stewardship

This section is likely relevant to all respondents and asks broad, fundamental questions about the AML/CFT Act, including:

- Whether the purpose and goals of the AML/CFT Act remain appropriate
- Whether the appropriate Government agencies are involved in the AML/CFT regime and whether the powers they have are fit for purpose
- Whether the AML/CFT Act has created any unintended consequences that require mitigation

- Whether the regime has found an appropriate balance between adopting a risk-based approach tailored to each entity whilst still maintaining sufficient clarity and certainty
- Whether it would be appropriate to implement a licensing and registration regime for all entities within the scope of the AML/CFT Act - this includes discussion about the appropriateness of introducing a levy or licensing fee.

## Scope of the AML/CFT Act

This section considers whether the correct activities and business are captured by the AML/CFT Act as well as identifying any gaps and whether the regime needs to be expanded to include entities currently outside the regime. This discussion includes questions about:

- Challenges that reporting entities may be having with existing terminology that may be unclear or obsolete - noting, for example, the ambiguity of the term "ordinary course of business" in the definition of "designated non-financial business or profession"
- New activities or types of business that could be included within the AML/CFT regime - for example, businesses that provide a "virtual asset" service (in relation to, for example, cryptocurrency) and non-profit organisations which are not registered charities but send or receive money to or from overseas
- Whether existing exemptions remained appropriate, and whether any new exemptions should be issued, such as for certain trustees or low-value loan providers
- Whether any changes need to be made in relation to the territorial scope of the AML/CFT regime.

## Supervision, regulation and enforcement

Reporting entities under the AML/CFT Act are supervised by either the Department of Internal Affairs (DIA), Financial Markets Authority (FMA) or the Reserve Bank of New Zealand (RBNZ) (the Supervisors). This section queries whether the current processes for supervision, regulation and enforcement of the AML/CFT Act is adequate and whether any changes are required. This section asks for submission on:

- Whether a different supervision model would be more appropriate, noting, for example, that countries such as Australia have one supervisor (with the Financial Intelligence Unit embedded within) whereas other countries such as the United Kingdom have multiple professional bodies
- How consistency of interpretation and application of the AML/CFT Act can be improved between the three Supervisors
- Whether the Supervisors' powers and functions are appropriate, in particular querying whether they should have the right to do remote/virtual or on-site inspections by consent
- Whether to regulate third parties that provide services to reporting entities such as auditors, consultants and agents, noting that policymakers "did not anticipate the potential role of consultants in supporting businesses with complying with AML/CFT" when developing the AML/CFT Act
- Ensuring penalties for non-compliance remained appropriate, including whether penalties need to be introduced for employees, senior managers and directors of a reporting entity.

## Preventative measures

This section discusses the obligations that reporting entities have to prevent or mitigate any AML/CFT risk. The key ideas considered are:

- Challenges reporting entities face in conducting customer due diligence (CDD), ongoing CDD and enhanced CDD as well as whether changes need to be made to the definition of "customer" and what information should be obtained and verified
- Challenges reporting entities face with record-keeping and whether any other information should be required to be recorded
- Queries about the identification, treatment and definition of politically exposed persons
- Whether the AML/CFT Act could do more to assist reporting entities in meeting their obligations under the Terrorism Suppression Act 2002 and the United Nations Act 1946
- How AML/CFT obligations may be tailored for virtual asset providers, noting that the current regime has no specific obligations for these types of businesses
- Queries about how the regime can better deal with "high risk" countries (eg by banning transactions with blacklisted countries)
- Queries about how suspicious activity reporting can be improved procedurally and how the quality of reports may be improved
- Whether the treatment of high value dealers needs to be brought in line with other AML/CFT reporting entities.

## Other topics and issues

This section considers other systems and frameworks that overlap with the AML/CFT regime, including:

- Whether the AML/CFT Act appropriately balances the need to collect information with other privacy concerns

- Querying what barriers reporting entities have faced in harnessing technology to improve efficiencies in complying the AML/CFT regime
- Whether there are ways in which the regime can be better harmonised with Australia's AML/CFT regime.

## Minor changes

This last section sets out a number of minor changes that could improve the AML/CFT Act and supporting regulations.

## Next steps

Submissions must be made by 5.00pm on Friday 3 December 2021 and can be made via post or email.

The consultation document sets out an indicative timeline for the remainder of the AML/CFT Act review.

Following the public consultation, the MoJ will then conduct further targeted consultation between February 2022 to April 2022 with the private sector and communities.

The review will conclude by 30 June 2022, with the MoJ providing a report to the Minister of Justice assessing the AML/CFT Act's performance since 2017 and any recommended changes necessary to the regime.

The consultation document sets out that legislative changes may take two to three years to implement and that, in the interim, the MoJ would provide advice to the Minister of Justice in early 2022 about what changes can be made at an earlier stage, using regulations or secondary legislation.

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