



CHARTERED ACCOUNTANTS™  
AUSTRALIA + NEW ZEALAND

3 December 2021

AML/CFT consultation team  
Ministry of Justice  
SX 10088  
WELLINGTON

By email: [aml@justice.govt.nz](mailto:aml@justice.govt.nz)

Dear AML/CFT consultation team

## Statutory review of the AML/CFT Act

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback on the statutory review of the *Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009* (the Act). We have focused our feedback on those areas where we consider we can add the most value as detailed below and in Appendix A. Appendix B provides more information about CA ANZ.

As a professional accounting body, we are committed to acting in the public interest and contributing to a robust system to prevent criminals from using New Zealand for illegal activities. We hold our members to the high ethical standards set out in our Code of Ethics and professional standards, which effectively require our members to comply with the Act and regulations promulgated under it.

### Key points

#### *Preserve the risk-based approach*

The consultation document includes suggestions of significant extensions to the AML/CFT regime, mentioned in passing with brief narratives, without any substantive evidence of the benefits and costs associated with these extensions. Proposals with such significant implications should be evidence-based and subject to robust and transparent consultation.

We consider that only changes which preserve the regime's risk-and activity-based approach should be made to the Act. We strongly object to the suggested inclusion of preparing or processing invoices and preparing annual accounts and tax statements as captured activities. We have grave concerns that extending the regime to capture these activities would ultimately bring the entire accounting profession within the scope of the Act. This would run counter to the intent of the regime, which is to focus on activities that pose undue risk.

#### *Compliance should be easy and collaborative*

Fundamentally, the current practical operation of the Act appears to result in individual entities acting alone to combat ML/FT. It is critical that compliance with the Act and the regulations promulgated under it is easier for business than it currently is. Certain aspects of the regime are unclear and ambiguous.

To increase the effectiveness of the Act and reduce compliance costs for AML/CFT reporting entities, we consider it important for there to be a collaborative approach to preventing and deterring ML/FT across

the whole ecosystem within New Zealand. Effective collaboration requires a whole of government approach and mechanisms that enable entities and sectors to share effective processes and practices.

*Registration and licensing*

With respect to the establishment of a registration regime, most reporting entities should already be known to AML/CFT supervisors. However, we appreciate that this may not always be the case (particularly until reporting entities file their first annual return). While we understand that a registration regime could assist supervisors in fulfilling their functions more effectively, we would only support the establishment of a registration regime to the extent that it facilitates the simple administrative task of self-identification of reporting entities and does not impose fees or levies.

We do not support the establishment of a licensing regime for the accounting profession. We appreciate that there may be gaps in other sectors, but we strongly oppose the imposition of additional regulation and compliance on the accounting profession, which is robustly regulated already, in the absence of clear and compelling impact analysis and evidence to support such an approach. CA ANZ members are already subject to a Code of Ethics, professional and ethical standards, quality review oversight, fit and proper checks and a robust professional conduct/discipline process.

*Assurance regime*

We have several concerns with the current assurance regime under the Act. There are no minimum requirements for both the auditor and the assurance engagement and there is no register of approved AML auditors. This lack of minimum standards and requirements has resulted in significant variations in the cost and quality of AML audits. The regime also relies on the AML/CFT reporting entity to make appropriate decisions regarding the appointment of their auditor. The guidance suggests AML/CFT reporting entities should consider the experience and qualifications of the auditors but there is no guidance as to what the supervisors consider acceptable.

Should you have any questions about our submission or wish to discuss it with us, please contact Karen McWilliams via email at [karen.mcwilliams@charteredaccountantsanz.com](mailto:karen.mcwilliams@charteredaccountantsanz.com) or phone +61 612 8078 5451.

Yours sincerely

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# Appendix A

## Part 1 - Institutional arrangements and stewardship

### Purpose of the AML/CFT Act

We do not consider any changes are needed to the purpose of the Act. If changes are considered, these should be accompanied by a full evidence-based cost/benefit analysis.

While the threats of money-laundering (ML) and financing of terrorism (FT) are acknowledged, there does not appear to be any clear evidence of the effectiveness of the Act in reducing these threats. We consider it critical for the relevant agencies to collect this evidence and share the findings. This would demonstrate to reporting entities under the Act, as well as the wider business community and society, the positive effect the Act is having on countering these illegal activities within New Zealand's financial system. Transparency about the effectiveness of the regime will assist in garnering wider community support for the regime and the compliance burden it imposes.

Fundamentally, the current practical operation of the Act appears to result in individual entities acting alone to combat ML/FT. It is critical that compliance with the Act and the regulations promulgated under it is easier for business than it currently is. Certain aspects of the regime are unclear and ambiguous.

To increase the effectiveness of the Act and reduce compliance costs for AML/CFT reporting entities, we consider it important for there to be a collaborative approach to preventing and deterring ML and FT across the whole ecosystem within New Zealand. Effective collaboration requires a whole of government approach and mechanisms that enable entities and sectors to share effective processes and practices. Whilst government agencies may not be considered AML/CFT reporting entities under the Act, we consider it critical that all government agencies play a role in the prevention, detection and deterrence of ML and TF within New Zealand. For example, agencies such as Customs and Inland Revenue (IR) should actively provide information to assist AML/CFT supervisors, as well as support AML/CFT reporting entities understand higher risk areas.

It is important for AML/CFT supervisors to support the development of standard practices, including technological solutions, enabling reporting entities to centralise certain processes and rely on the work undertaken by others within the regime. For an effective, efficient regime, reporting entities should not be competing with each other in relation to compliance. As indicated in our response to the question about Customer Due Diligence (CDD) below, we note the importance of enabling a central, technological solution for CDD such that once CDD has been undertaken on a customer in a transaction, other reporting entities involved in the transaction can rely on that CDD.

The Terms of Reference for the statutory review establish the aspiration for New Zealand to become the hardest place in the world for ML/FT. We support a robust framework but are concerned that this aspiration sets the bar too high and colours all of the thinking behind the statutory review. As we discuss below, particularly in the 'Risk-based approach to regulation' and 'Potential new activities' sections, such an aspiration must be balanced with consideration of the effect of any changes on the ease of doing business for hundreds of thousands of businesses that act honestly and in compliance with laws and regulations.

## Risk-based approach to regulation

We fully support a risk-based approach to AML/CFT regulation. We consider that only changes which preserve the risk-based and activity-based attributes of the regime should be made to the Act. We are concerned that extending the regime to include some of the proposed activities for capture would have the effect of bringing the entire accounting profession within scope of the Act. This would run counter to the intent of the regime and the statutory framework. This is discussed further in our response to 'Potential new activities' below.

Whilst we support the inclusion of the accounting profession within the Act's purview, we consider the compliance obligations for CA ANZ member firms (and other DNFPBs)<sup>1</sup> should be more closely aligned to risk and should take more account of the existing professional and ethical obligations of our members and of members of other regulated professions.

Whilst some of the compliance obligations for accounting practices that are AML/CFT reporting entities are based on the size and complexity of their operations, there is still a significant 'minimum level' of compliance obligation for all entities regardless of size. This particularly disadvantages smaller accounting practices (small businesses themselves) that do not have the same economies of scale as their larger counterparts. One of our members in public practice with small business clients has described the Act as *"a sledgehammer"* and *"complete overkill for small business owners who face costs out of proportion with risks faced by the sector"*.

With respect to exemptions, and based on our own experience, it is crucial that all relevant government agencies are involved in the discussions about, analysis of, and proposed responses to exemption applications. While the process for applying for an exemption is relatively straightforward, timeframes are unreasonably extended if all parties are not engaged in the discussions about the exemption. As noted above, while government agencies may not be subject to the regime, it is important to recognise that some may play a significant role with respect to certain captured activities and in the overall prevention, detection and deterrence of ML/TF in New Zealand.

## Mitigating unintended consequences

As noted above and discussed further below, we are concerned that some of the proposed activities for capture would ultimately bring the entire accounting profession within scope of the Act. Critically, we consider this to be inconsistent with the intent of the regime.

## Information sharing

We support information sharing between the various government agencies, including those agencies that may not have a specific role under the Act, as noted above. A whole of Government approach is required for an effective, efficient regime.

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<sup>1</sup> Designed Non-Financial Businesses and Professions.

## Licensing and registration

With respect to the establishment of a registration regime, most reporting entities should already be known to AML/CFT supervisors. However, we appreciate that this may not always be the case (particularly until reporting entities file their first annual return). While we understand that a registration regime could assist supervisors in fulfilling their functions more effectively. We would only support the establishment of a registration regime to the extent that it facilitates the simple administrative task of self-identification of reporting entities and does not impose fees or levies.

We do not support the establishment of a licensing regime for the accounting profession. We appreciate that there may be gaps in other sectors, but we strongly oppose the imposition of additional regulation and compliance on the accounting profession, which is robustly regulated already, in the absence of clear and compelling impact analysis and evidence to support such an approach. CA ANZ members are already subject to a Code of Ethics, professional and ethical standards, quality review oversight, fit and proper checks and a robust professional conduct/discipline process.

## Part 2 - Scope of the AML/CFT Act

### Challenges with existing terminology

- *“engaging in or giving instructions on behalf of a customer to another person for ...”*

We agree that there is a need for clearer guidance on what this activity is intended to capture. Further, we are concerned that references to ‘assisting’ (the proposed alternative) could be interpreted broadly in the absence of clear guidance.

### Potential new activities

We are significantly concerned about the potential new activities that the consultation document mentions could be captured by the regime. These suggestions have been made without any empirical evidence being provided as to the nature and extent of ML/TF occurring via these activities. As noted above, any potential extension to the regime should be supported by empirical evidence of its effectiveness at addressing ML/TF risks, a cost/benefit analysis, and the practical considerations for implementation.

- *Acting as a secretary of a company or partner in a partnership*

Seeking to capture activities based on the title or description of a role is inconsistent with the activities-based nature of the regime. If the intent is to capture the activities typically undertaken by persons in a particular role or with a particular title, we strongly recommend that the relevant activities be defined and specified. Otherwise, individuals could seek to sidestep the capture of an activity by using a different title for the person undertaking the role.

- *Preparing or processing invoices*

We strongly object to the inclusion of this activity. It is particularly broad and could result in the capture of the entire accounting profession, which would be counter to the risk-based and activities-based approach of the regime.

Extending the regime to include this activity would particularly disadvantage small businesses that are the primary outsourcers of invoice preparation and processing. Such an extension would significantly increase the cost of doing business within New Zealand and could just displace the ML/TF activity, as entities could move the preparation and processing of invoices in-house.

Further research is required to better understand the extent of trade-based money-laundering – including in which countries/sectors and how it is occurring. The most appropriate method for addressing this risk can then be considered based on the evidence.

We also consider the language in the consultation document to be confusing and needing clarification. The consultation document suggests that this activity is already captured, despite it being included in the ‘Potential new activities’ section.

- *Preparing annual accounts and tax statements*

We do not support the inclusion of this activity in the regime and do not consider it would contribute to any reduction in ML/FT activity in New Zealand. The preparation of annual accounts and tax statements is fundamentally a compilation exercise, occurring sometime after the transactions have taken place. For example, tax returns can be prepared a year or more after the end of the tax year in which the transactions have taken place – due to the extension of time filing option that is available to tax agents.

Inland Revenue already has comprehensive powers under the *Income Tax Act 2007* and *Tax Administration Act 1994* to investigate any taxpayer that it believes may be operating outside the law. This power negates the need for further verification and due diligence processes to be applied to the preparation of annual accounts and tax returns.

The proposal to include this activity is particularly concerning given that this would effectively capture the entire accounting profession, again running counter to the risk-based and activities-based approach to the regime. All accounting practices, to some extent, engage in the preparation of financial statements and tax returns including smaller- accounting practices (and bookkeepers).

Similar to our comments on the preparation and processing of invoices above, capturing the preparation of annual accounts and tax statements would likely have a greater impact on smaller business. Larger businesses are more likely to have the resources to undertake this work in-house. However, smaller businesses are typically the primary outsourcers of this work to accounting practices or bookkeepers, who perform these activities. An extension of the regime to financial accounts and tax return preparation would also increase costs for small businesses, as accounting practices and bookkeepers are likely to pass any significant additional compliance costs onto their clients.

We emphasise again the need for further research and transparency about any challenges posed by trade-based money laundering and for empirical evidence to justify any extension of the regime.

### **Potential new regulatory exemptions**

At a high level, we believe that some exemptions relating to an entire sector should be given permanent status and should not expire. Further, we consider it critical that the current annual 'administrative' exemption provided for corporate annual trustee report obligations<sup>2</sup> should be consulted on and prescribed as a matter as priority.

### **Territorial scope**

As noted above, we consider it critical that the prevention, detection and deterrence of ML/FT involves a whole of government approach. Greater visibility of the activities of government agencies would garner more positive engagement from AML/CFT reporting entities, particularly gatekeeper professions such as accountants. For example, it would be sensible to make visible the checks that are undertaken when a company is created to verify the identity of the people involved.

<sup>2</sup> <https://www.dia.govt.nz/AML-CFT-Extension-on-interim-solution-for-corporate-trustee-annual-report-obligations>



## Part 3 - Supervision, regulation and enforcement

### Agency supervision model

No specific comment, other than we have observed that the Department of Internal Affairs appears to be under-resourced, which in our view may have hindered its ability to effectively perform all its supervisor duties (for example, ensuring that all in scope reporting entities have registered for supervision), particularly given the diverse range of entities which it supervises.

### Regulating auditors, consultants, and agents

There are several issues with the current assurance regime under the Act.

First, there are no minimum requirements for both the auditor and the assurance engagement and there is no register of approved AML auditors. This lack of minimum standards and requirements has resulted in significant variations in the cost and quality of AML audits. The regime also relies on the AML/CFT reporting entity to make appropriate decisions regarding the appointment of their auditor. The guidance suggests AML/CFT reporting entities should consider the experience and qualifications of the auditors, but there is no guidance as to what the supervisors consider acceptable.

For example, audits under the Act meet the definition of an 'assurance engagement' in the New Zealand Institute of Chartered Accountant (NZICA) Rules. These rules apply to our members, Chartered Accountants, who are resident in New Zealand. Only Chartered Accountants who hold a Certificate of Public Practice and meet the independence requirements in [PES 1 Code of Ethics for Assurance Practitioners \(including International Independence Standards\) \(New Zealand\)](#) can carry out audits under the Act. Due to the independence requirements, our members are unable to undertake reciprocal audits. Our members must also comply with the [assurance standards](#) issued by the External Reporting Board (XRB)<sup>3</sup> in the conduct of their work, and our continuing professional development rules. Our members are also subject to practice reviews. Conversely, non-members of CA ANZ, who can also perform AML/CFT audits under the Act, are not subject to these additional requirements and standards.

Further, the DIA, as supervisor of AML/CFT reporting entities within the accounting profession, also undertakes desk-based reviews and on-site inspections. To ensure the effectiveness and efficiency of the assurance regime under the Act, we consider it important to review the interactions between these supervisory oversight activities and the audit requirement to ensure the two processes are complementary and avoid duplicated effort.

In our view, the assurance of reporting entities' compliance with the regime would be much more effective if AML/CFT audits performed under the Act were required to comply with the standards issued by the XRB. In doing so, this:

- ensures there is a uniform platform against which the AML/CFT supervisors can measure the quality of the work carried out and the quality of the reports issued.
- achieves competitive neutrality; and
- ensures AML/CFT reporting entities are getting value for money.

<sup>3</sup> The External Reporting Board (XRB) is an independent Crown Entity that issues auditing and assurance standards which prescribe how auditing and assurance engagements should be conducted.



## Part 4 - Preventative measures

### Customer due diligence

The consultation document is unclear as to what are considered 'high-risk' situations, with respect to removing the requirement for mandatory enhanced customer due diligence for all trusts. We recommend further clarification be provided on this proposal to enable an informed response. Separately, several of our members have indicated that it appears AML/CFT supervisors may not be entirely clear on the level of requirements to which trust accounts are already subject.

The identity verification process for directors and officers of companies is already quite onerous, and, from a customer perspective, is repeated many times when dealing with multiple AML/CFT reporting entities in relation to a single transaction (despite the possible but not commonly used application of section 33 in the Act). This wastes time and resources and adds to the cost of compliance. There now some firms specialising in providing this service.

As noted above, CDD is a key area where a collective response and collaborative approach could increase both the effectiveness and efficiency of the Act. We encourage you to consider developing a centralised ID verification process, performed once, that can be leveraged by all AML/CFT reporting entities.

Finally, through engagement with members and other reporting entities, via the Industry Advisory Group, we have heard overwhelming support for the removal of the customer address verification requirement (which involves the investment of significant time and resources for what is perceived to be limited return).

### Reliance on third parties

As is noted in the consultation document, reliance on third parties commonly occurs with respect to completing CDD. As a result, please refer to comments made above under the Customer due diligence section.

### Internal, policies, procedures, and controls

Several of our members have indicated that the current section 57 requirements, as they seem to be interpreted by supervisors, are overly prescriptive and lack the ability to be appropriately tailored for the size and nature of the entity and their clients.

For example, an AML Compliance Programme is required to include policies, procedures and controls for the circumstances in which Simplified Customer Due Diligence ("Simplified CDD") might be undertaken. However, there are many DNFBP reporting entities for which simplified CDD would not be applicable as their clients would not include the specified organisations, such as Crown entities or local authorities. It would seem excessive for their compliance programmes to include policies, procedures and controls in such circumstances. If this is not the intent of the Act, then it appears that supervisor interpretation may be creating unnecessary requirements.

## Suspicious activity reporting

We understand that the FIU has requested that suspicious activity reports (SARs) are only submitted when they are fully complete and include high-quality information. However, at the same time, accountants captured by the regime are being encouraged to lodge more SARs. This is creating some confusion amongst reporting entities and there is a real lack of clarity about expectations with respect to SARs.

Accountants may become aware of circumstances which raise their suspicions; however, they may not have access to all the necessary details. We recommend that greater clarity is provided regarding expectations for SARs in these circumstances and further guidance and training from the FIU on submitting quality SARs.

## Part 5 - Other issues or topics

### Privacy and protection of information

There needs to be an appropriate balance between privacy and secrecy. Further, in line with our comments earlier regarding a collaborative approach, it is important that the *Privacy Act 2020* operates in concert with the Act.

### Harnessing technology to improve regulatory effectiveness

We strongly recommend goAML be reviewed and redesigned, as it is currently difficult to navigate and use in its current state. Similarly, we also support the establishment of a centralised government register, where AML/CFT reporting entities can conduct identity verification processes of directors and company officers in one place and at one time.

### Harmonisation with Australian regulation

In general, we would support harmonisation with Australian regulation insofar as it would benefit New Zealand businesses by increasing understanding of regulation in one of our largest markets. We note that the Senate Legal and Constitutional Affairs References Committee has recently conducted an inquiry into the adequacy and effectiveness of the Australian regime and is due to report back in March 2022. We encourage Officials to continue to monitor developments in Australia and seek to align the regime with that of Australia where possible.

## Part 6 - Minor changes

No specific comment, beyond what is already set out above.

## Appendix B

### About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents 131,673 financial professionals, supporting them to make a difference to the businesses, organisations and communities in which they work and live. Chartered Accountants are known as Difference Makers. The depth and breadth of their expertise helps them to see the big picture and chart the best course of action.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with mentored practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate boldly in the public good. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations. We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 15 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.

We employ more than 500 talented people across Australia, New Zealand, Singapore, Malaysia, Hong Kong and the United Kingdom.