

Anti-Money Laundering and Countering Financing of Terrorism Bill

Government Bill

As reported from the Foreign Affairs,
Defence and Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Anti-Money Laundering and Countering Financing of Terrorism Bill and recommends that it be passed with the amendments shown.

Introduction

The Anti-Money Laundering and Countering Financing of Terrorism Bill represents the first comprehensive anti-money laundering and countering financing of terrorism (AML/CFT) reforms since 1996. The bill seeks to bring New Zealand into line with the international standards for AML/CFT frameworks, as set out by the Financial Action Task Force (FATF).

It is apparent to us that New Zealand's AML/CFT framework needs upgrading to meet New Zealand's international obligations in areas including customer due diligence, record-keeping standards, and in the supervision of AML/CFT activity.

We set out to ensure that the Draft legislation was forward-looking (future-proofed), risk-based (to minimise compliance costs) and as far as practicable harmonised with Australian legislation. We have also worked to ensure that the legislation now being returned to the House with our recommendations meets New Zealand's international obligations set out in recommendations from the FATF.

The draft bill provides the following:

- a set of reporting requirements for entities covered by the bill
- a risk-based approach to tracking possible money laundering and terrorism financing activity, which is intended to minimise compliance costs
- an enforcement regime, including new civil and criminal offences
- a regime for supervision, monitoring and enforcement of AML/CFT obligations involving four supervisors—the Reserve Bank of New Zealand, the Securities Commission, the Police, and the Department of Internal Affairs.

Following consultation with submitters and four banking experts appointed to assist us, we formed the view that the bill as introduced did not give sufficient emphasis to a risk-based framework for countering money laundering and the financing of terrorism. Accordingly we recommend amendments to enhance the bill and to ensure that it is closely aligned with the Australian AML/CFT regime.

While this is beyond the scope of the bill, we note that Australia has a single supervisory agency, the Australian Transactions Reports and Analysis Centre (AUSTRAC). We think this arrangement is preferable to the situation applying in New Zealand where four entities, the Reserve Bank of New Zealand, the Securities Commission, the Department of Internal Affairs, and Police are all involved. Consideration should be given to consolidating supervision arrangements in one body which has a close relationship with AUSTRAC. The proposed arrangement seems administratively untidy.

Furthermore New Zealand needs seamless links with the Australian financial sector, and as both countries are working towards a single market, it would make sense to provide for the exchange of intelligence between agencies in both countries. The Government might consider evaluating the possible benefits that would accrue from adopting a national transaction database, similar to that supporting

the Australian regulatory environment, and any differences in privacy considerations notwithstanding. Our commentary focuses only on the substantive issues considered.

Commencement

The bill is complex. Banks and financial entities required to comply with the legislation would need reasonable time to develop systems and procedures to comply with its provisions.

Accordingly the bill provides for commencement by Royal assent and Order in Council. The explanatory note signals a 2-year time-frame for implementation. We considered whether the bill should state commencement dates for the entry into force of segments of the legislation. Representations by the Regulations Review Committee were relevant to this part of our deliberation.

A majority of submitters sought a flexible approach to implementation, particularly to allow time for the financial and casino sectors to implement their AML/CFT regimes.

We recommend that the AML/CFT coordination committee ensure that regulators and supervisors issue a coordinated timetable for issuing regulations and adopting codes of practice. We consider that the implementation of the AML/CFT regime should be staggered and allow reasonable time between the issuing of regulations and the commencement of obligations under the new AML/CFT regime.

To implement effectively an AML/CFT regime, the various regulators and supervisors would need to coordinate their pre-commencement work. Reporting entities would need to receive clear time tables for the introduction of regulations, supervisory arrangements, and codes of practice as soon as practicable if they are to manage the transition to the new regime efficiently. We are advised that the Government will cooperate with the sector regarding the sequencing and implementation of the legislation.

We recommend amending clause 2 to allow the following matters to come into force upon enactment:

- the financial intelligence functions of the Police Commissioner, to enable the immediate development of guidance material
- the definition, functions, and powers of AML/CFT supervisors

- the establishment and operation of the AML/CFT coordination committee
- the activation of regulation and exemption-making powers.

We also recommend a further amendment to clause 2 to allow provisions relating to cross-border transportation of cash duties and obligations to come into effect 1 year after enactment of the bill.

Purpose and overview

Committee members were impressed by the clarity given to Australian legislation by simplified outlines of the intention of each part of the Australian Act. We would have liked to follow this example, but were told by Parliamentary Counsel that such a step did not align with current New Zealand practice. We recommend that New Zealand's practice be changed. The use of simplified outlines of the purpose of a part of a bill would make New Zealand legislation more user-friendly and comprehensible to the public.

We recommend amending the bill's purpose (clause 3) to make it clear that one of the main objects of the bill is to detect and deter money laundering and the financing of terrorism, and that the bill is designed to facilitate cooperation between reporting entities, AML/CFT supervisors, and Government agencies, particularly law enforcement and regulatory agencies.

We also recommend inserting an overview clause (new clause 3A) to set out, in plain English, the contents of the bill. The bill and the obligations it imposes are complex, and we consider that an overview clause would help readers understand its content and structure.

Politically exposed persons

Clause 4 of the bill defines "politically exposed persons" (PEPs). Canada, the United Kingdom, and Europe define foreign national PEPs in law and Australia defines foreign PEPs in guidelines. None of these countries define domestic PEPs in law.

We gave considerable thought to this question and recommends there be no definition of domestic PEPs in the bill or in guidelines.

We consider that New Zealand-based PEPs are already required to conform to robust accounting, audit, company and trust legislation, practice, and procedures. We were also told that banks subscribe to

commercial lists of PEPs containing more than 55,000 names, including the names of all parliamentarians and other PEPs in New Zealand. Submitters also informed us on “backroom”, systems used to monitor transactions and to identify money laundering.

Given the strength and robust nature of New Zealand’s existing financial monitoring systems, we recommend against requiring the application of the FATF definition of PEPs to New Zealand nationals domiciled in New Zealand. The definition and enhanced scrutiny should, however, be applied to foreign PEPs conducting transactions in the New Zealand financial sector.

New Zealand’s plans to ratify the United Nations Convention Against Corruption (UNCAC) are before us. Each State party to the convention must require financial institutions within its jurisdiction to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have performed, prominent public functions, and their family members, and close associates. Without prejudging consideration of UNCAC which is still to occur, we were inclined to the view that this scrutiny may already apply to PEPs with New Zealand nationality domiciled in New Zealand, and accordingly recommend that these persons not be included in the AML/CFT framework. We agree that foreign PEPs should be included in the CML/CFT framework, however.

We recommend amending clause 23. We think that requiring checks on PEPs before conducting occasional transactions would be too onerous. Our recommended amendment of clause 23 would allow due diligence regarding PEPs to be conducted after they had carried out occasional transactions. Once a reporting entity had determined that a person who had conducted a transaction was politically exposed, they would then be required to take reasonable steps to ascertain the source of that person’s wealth or funds.

Application of legislation to reporting entities

We recommend inserting new clause 4A to clarify that the bill would apply to a financial institution only to the extent that the financial activities undertaken fell into the definition of financial institution. For a non-financial institution, such as a casino, the bill would apply to the extent that the activities that are carried out may give rise to risk of money laundering or the financing of terrorism. This amendment

would provide certainty to the reporting entities as to which of their activities were covered by the bill.

Customer due diligence

We consider that entities covered by this legislation should take a risk-based approach to the conduct of customer due diligence for transactions. A risk-based approach would enable financial institutions to focus resources on areas of higher risk and thereby meet the objectives of AML/CFT activity efficiently and cost-effectively. Customer due diligence provisions should also be harmonised with Australian law.

This legislation requires a minimum standard of identification and verification of the bona fides of a customer. We recommend a change to clause 9 (4) to avoid the need to obtain or verify existing information held by the reporting entity unless the information held is deficient.

Verification of identity requirements

We recommend amending the customer and enhanced customer due diligence requirements, to clarify a risk-based approach to verifying the identity of the beneficial owner or a person acting on behalf of a customer. We also recommend that clauses 14 and 22 be amended to allow a reporting entity to complete verification of identity as soon as practicable once the business relationship has been established, rather than within a specified period.

Treatment of existing customers

We considered the proposed trigger point for moving existing customers to the new regime is too low. The compliance cost of moving low-risk customers into the proposed regime is high, and not justified by the risk of money laundering, which is already monitored by bank “back room”, systems. Accordingly we recommend amendments to clause 12(e) to require customer due diligence to be carried out when there is a material change in the nature or purpose of the relationship and the reporting entity considers it has insufficient information about the customer.

Wire transfers

We recommend amending clause 24(5) to require a beneficiary institution to adopt effective risk-based procedures for processing wire transfers that are not accompanied by complete originator information. We also recommend amending clause 24(6) to require intermediary institutions processing cross-border and domestic wire transfers to maintain the originator information received from the previous institution, rather than to obtain information that might be missing.

Reliance on third parties

We recommend greater flexibility for entities and classes of entities to become part of the regime by joining a designated business group. As introduced, clause 29 would allow a reporting entity to rely on another member of its designated business group to conduct customer due diligence. We recommend inserting a new clause 29(1A) to clarify that the reporting entity, and not the member of the designated business group, would be responsible for ensuring that customer due diligence was carried out in accordance with this legislation.

Disclosure of information

Clause 43 sets out the requirements regarding the disclosure of information about a suspicious transaction report. We recommend amending clause 43(2)(e) to allow the disclosure of information to a member of a designated business group where it is necessary to make a suspicious transaction report. This amendment would ensure that the reporting entity would have the necessary information to make a suspicious transaction report.

Removal of civil or criminal liability for senior management

We consider that holding individual senior managers civilly or criminally liable under the regime is not consistent with the intention of the bill. The legislation should create a cooperative relationship between reporting entities, and law enforcement and supervisory agencies. We therefore recommend the removal of explicit senior management liability of reporting entities when exercising their functions

under this bill. The existing common law liability of senior managers is sufficient to ensure that reporting entities meet their obligations.

Immunities from civil or criminal liability

We recommend inserting new clauses 72A and 72B to ensure that AML/CFT supervisors or reporting entities would be protected against inappropriate civil or criminal proceedings. New clause 72A seeks to provide protection for AML/CFT supervisors against civil or criminal proceedings unless they have acted in bad faith in exercising or intending to exercise their functions under this legislation. New clause 72B would provide further protection for reporting entities against civil or criminal liability in circumstances where reasonable action was taken in good faith to comply with this legislation.

AML/CFT supervisory arrangements for reporting entities

Under the multiple supervisor model some reporting entities may end up having responsibility for two or more kinds of financial operations under the legislation, and so might come under the jurisdiction of more than one supervisory agency. We understand that an AML/CFT coordination committee proposed by the bill would be responsible for ensuring consistency in the application of the regime between supervisory agencies, and decide who should supervise each agency business group. We are concerned that reporting entities might “shop” around for the least restrictive supervisory agency. Accordingly we recommend an amendment to make clear that the AML/CFT supervisors will agree between them who will be responsible for supervising the reporting entity.

Delegation of functions and powers by AML/CFT supervisor

We recommend inserting new clauses 130A, 130B, and 130C into the bill to enable an AML/CFT supervisor to delegate specified functions and powers to a suitably trained or experienced person. New clause 130B includes provisions regarding the authority to act as a delegate, and new clause 130C details the effect of the delegation. We consider

that this amendment is necessary to ensure the efficient administration of the regime.

Regulation-making powers relating to politically exposed persons, AML/CFT programmes, and offences and fines

We consider that citizens and reporting entities need absolute clarity about what constitutes an offence and the penalties they would incur. We do not consider it appropriate to be able to create offences (or fines) in regulation.

We recommend removing the regulation-making powers in clauses 23(b) and 147(2)(j) for additional requirements relating to politically exposed persons, clauses 54(n), 54(o), and 147(a)(vi) for additional requirements in AML/CFT programmes, and clause 147(n) for prescribing offences and fines.

Because the requirements of AML/CFT programmes are fundamental to the purpose and operation of the legislation, these requirements should be set in statute rather than regulation. We consider that the regulation-making powers contained in the bill as introduced might allow these requirements to expand inappropriately beyond the intent of the legislation. The minimum requirements for the AML/CFT programmes would also attract significant compliance costs for reporting entities. We consider that requirements should be clear, certain, and subject to robust scrutiny.

Exemptions regulations

Supervisors granting exemptions

Clause 148 provides for exemptions regulations and sets out criteria that the Minister responsible must consider before recommending that an exemption regulation be issued. We recommend relocating the regulation-making powers set out in clause 147(b), (g), and (i) to clause 148 to ensure that they would be subject to the same controls on the Minister as other exemptions regulations.

Ministerial exemptions

Clauses 151, 152, 153 would also provide the Minister with the power to grant exemptions, again according to explicit criteria. To

ensure transparency and scrutiny, we recommend that ministerial exemptions be subject to the Regulations (Disallowance) Act 1989 and scrutiny by Parliament's Regulations Review Committee.

Appendix

Committee process

The Anti-Money Laundering and Countering Financing of Terrorism Bill was referred to the committee on 30 June 2009. The closing date for submissions was 6 August 2009; this was extended to 13 August 2009. We received and considered 41 submissions from interested groups and individuals. We heard 17 submissions.

We received advice from the Ministry of Justice. The Regulations Review Committee reported to us on the regulation-making powers contained in the bill. We appointed four individuals from the banking sector to provide evidence to assist the committee in its consideration of the bill. Officials worked in consultation with these individuals to develop drafting solutions in accordance with our recommendations.

Committee membership

John Hayes (Chairperson)

Hon Chris Carter

Jacqui Dean

Hone Harawira (Non-voting member from 17 June 2009)

Hon Pete Hodgson

Dr Paul Hutchison

Keith Locke

Todd McClay

Hon Maryan Street

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

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

Anti-Money Laundering and Countering Financing of Terrorism Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Anti-Money Laundering and Countering Financing of Terrorism Act **2009**.

2 Commencement

(1AA) **Parts 1 and 4** (except **section 156**) come into force on the day after the date that this Act receives the Royal assent. 5

- (1AB) Sections 65 to 68, 104 to 112A, and 157 come into force 12 months after the date on which this Act receives the Royal assent.
- (1) This Except as provided in **subsection (3)**, the rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council. 5
- (2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.
- (3) However, section 156 may not be brought into force unless every provision of Part 2 has been brought into force. 10

Part 1 Preliminary provisions

3 Purpose

- (1) The purposes of this Act are—
- (a) to detect and deter money laundering and the financing of terrorism; and
- (b) to maintain and enhance New Zealand’s international reputation by adopting, where appropriate in the New Zealand context, recommendations issued by the Financial Action Task Force; and 20
- (c) to contribute to public confidence in the financial system.
- (2) Accordingly, this Act facilitates cooperation amongst reporting entities, AML/CFT supervisors, and various government agencies, in particular law enforcement and regulatory agencies. 25

3A Overview

- (1) This section is a guide to the general scheme and effect of this Act, but does not affect the interpretation or application of the other provisions of the Act. 30
- (2) Part 1 deals with preliminary matters such as definitions of terms used in the Act. It sets out the purpose of the Act and the extent to which it applies to reporting entities.
- (3) Part 2 deals with AML/CFT requirements and compliance and has 6 subparts, as follows: 35

- (a) subpart 1 includes provisions dealing with requirements on reporting entities to conduct due diligence on customers and certain other persons, the ability of reporting entities to rely on third parties to carry out customer due diligence and other AML/CFT functions, and prohibitions on establishing or continuing business relationships and setting up facilities in certain circumstances: 5
- (b) subpart 2 includes provisions dealing with requirements on reporting entities to report suspicious transactions, protection of persons making suspicious transaction reports, and disclosure of information relating to such reports: 10
- (c) subpart 3 sets out requirements on reporting entities to keep records and includes provisions concerning the storage and destruction of records: 15
- (d) subpart 4 deals with reporting entities' internal policies and procedures relating to the prevention of money laundering and the financing of terrorism, including provisions setting out requirements for reporting entities to have an AML/CFT programme for detecting and managing the risk of money laundering and the financing of terrorism, to carry out a risk assessment before conducting customer due diligence or establishing an AML/CFT programme, and to review, audit, and report on their risk assessment and AML/CFT programmes: 20 25
- (e) subpart 5 deals with codes of practice and includes provisions relating to the preparation of codes by AML/CFT supervisors, approval of codes of practice, and their legal effect: 30
- (f) subpart 6 contains provisions relating to the reporting of certain movements of cash into and out of New Zealand.
- (4) Part 3 deals with enforcement and contains provisions relating to civil liability acts, offences, search and seizure, penalties, and immunity of certain persons from civil and criminal proceedings. 35

(5) **Part 4** deals with institutional arrangements and miscellaneous matters and has 2 subparts, as follows:

- (a) **subpart 1** includes provisions that identify the AML/CFT supervisors and their functions, powers, and ability to delegate supervisory functions; the financial intelligence functions of the Commissioner of Police and a requirement on that person to issue guidelines relating to suspicious transaction reports; the roles and responsibilities of the Ministry, the AML/CFT co-ordination committee required to be established by the chief executive of the Ministry, and other agencies concerning monitoring, evaluating, and advising on the operation of the AML/CFT regulatory system: 5 10
- (b) **subpart 2** includes regulation making powers and provisions relating to the Minister's power to grant exemptions from the requirements of the Act. 15

4 Interpretation

In this Act, unless the context otherwise requires,—

AML/CFT means anti-money laundering and countering the financing of terrorism 20

AML/CFT programme means a compliance programme established under **section 53(1)**

AML/CFT requirements means the requirements set out in **Part 2**

AML/CFT supervisor, in relation to a reporting entity, means the person referred to in **section 127(1)** that is responsible for supervising the reporting entity under **Parts 3 and 4** 25

applicable threshold value means the threshold value that—

- (a) is prescribed in regulations; and
(b) applies to a particular person, class of persons, transaction, class of transactions, financial activity, or class of financial activities prescribed in regulations 30

bearer-negotiable instrument means—

- (a) a bill of exchange; or
(b) a cheque; or
(c) a promissory note; or
(d) a bearer bond; or 35

- (e) a traveller's cheque; or
 (f) a money order, postal order, or similar order; or
 (g) any other instrument prescribed by regulations
- beneficial owner** means the individual who—
- (a) has effective control of a customer or person on whose behalf a transaction is conducted; or 5
 (b) owns a prescribed threshold of the customer or person on whose behalf a transaction is conducted
- beneficiary institution**, in relation to ~~an electronic transfer of funds~~ a wire transfer from an ordering institution, means any person who receives those funds and then makes those funds available to a person (the **payee**) by— 10
- (a) crediting it to an account held by the payee; or
 (b) paying it to the payee
- business relationship** means a business, professional, or commercial relationship between a reporting entity and a customer that has an element of duration or that is expected by the reporting entity, at the time when contact is established, to have an element of duration 15
- cash** means— 20
- (a) physical currency;
 (b) bearer-negotiable instruments
- cash report** means a report made under **subpart 6 of Part 2**
- casino** means the holder of a casino operator's licence under the Gambling Act 2003 25
- chief executive** means the chief executive of the Ministry
- civil liability act** has the meaning set out in **section 76**
- code of practice** and **proposed code of practice** have the meanings set out in **section 59**
- Commissioner** means the Commissioner of Police 30
- constable** has the same meaning as in section 4 of the Policing Act 2008
- control of the Customs** has the same meaning as in section 20 of the Customs and Excise Act 1996, except that, for the purposes of this Act, references in that section to goods are to be read as if they were references to cash 35

correspondent banking relationship has the meaning set out in **section 26(3)**

country includes any State, territory, province, or other part of a country

customer— 5

(a) means a new customer or an existing customer; and

(b) includes—

(i) a facility holder:

(ii) a person conducting or seeking to conduct an occasional transaction through a reporting entity: 10

(iii) a junket organiser as defined in section 4(1) of the Gambling Act 2003:

(iv) a person or class of persons declared by regulations to be a customer for the purposes of this Act; but 15

(c) excludes a person or class of persons that is declared by regulations not to be a customer for the purposes of this Act

Customs officer has the same meaning as in section 2(1) of the Customs and Excise Act 1996 20

designated business group means a group of 2 or more persons where—

(a) ~~at least 1 member of the group is a reporting entity; and~~

(b) each member of the group has elected, in writing, to be a member of the group and the election is in force; and 25

(c) each election was made in accordance with ~~the~~ regulations (if any); and

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

(e) each member of the group is— 30

(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 35

(B) a person that is resident in another country with sufficient anti-money laundering and countering the financing of terrorism systems and is supervised or regulated for

- anti-money laundering and countering the financing of terrorism 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 10
- (iv) related to 1 or more of the entities in **subparagraph (iii)** through the provision of common products or services; or
- (v) an entity or class of entities prescribed by regulations to be a member of a designated entity; and 15
- (f) each member of the group satisfies any conditions that may be prescribed by regulations and that apply to that member
- domestic wire transfer** has the meaning set out in **section 24(7)** 20
- existing customer**, in relation to a reporting entity, means a person who was in a business relationship with the reporting entity immediately before the commencement of **Part 2**
- facility**—
- (a) means any account or arrangement— 25
- (i) that is provided by a reporting entity; and
- (ii) through which a facility holder may conduct 2 or more transactions; and
- (b) without limiting **paragraph (a)**, includes— 30
- (i) a life insurance policy;
- (ii) membership of a superannuation scheme;
- (iii) the provision, by a reporting entity, of facilities for safe custody, including (without limitation) a safety deposit box;
- (iv) an account or arrangement declared by regulations to be a facility for the purposes of this Act; but 35
- (c) excludes an account or arrangement declared by regulations not to be a facility for the purposes of this Act

facility holder, in relation to a facility,—

- (a) means the person in whose name the facility is established; or
- (b) if that facility is a life insurance policy, means any person who for the time being is the legal holder of that policy; or 5
- (c) if that facility consists of membership of a superannuation scheme, means any person who is a member of the scheme within the meaning of member in section 2(1) of the Superannuation Schemes Act 1989 10

financial institution—

- (a) means a person who, in the ordinary course of business, carries on 1 or more of the following financial activities:
 - (i) accepting deposits or other repayable funds from the public: 15
 - (ii) lending to or for a customer, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions (including forfeiting):
 - (iii) financial leasing (excluding financial leasing arrangements in relation to consumer products): 20
 - (iv) transferring money or value for, or on behalf of, a customer:
 - (v) issuing or managing the means of payment (for example, credit or debit cards, cheques, traveller's cheques, money orders, bankers' drafts, or electronic money): 25
 - (vi) undertaking financial guarantees and commitments:
 - (vii) trading for the person's own account or for the accounts of customers in any of the following: 30
 - (A) money market instruments (for example, cheques, bills, certificates of deposit, or derivatives):
 - (B) foreign exchange: 35
 - (C) exchange, interest rate, or index instruments:
 - (D) transferable securities:
 - (E) commodity futures trading:

- (viii) participating in securities issues and the provision of financial services related to those issues:
- (ix) managing individual or collective portfolios:
- (x) safe keeping or administering of cash or liquid securities on behalf of other persons: 5
- (xi) investing, administering, or managing funds or money on behalf of other persons:
- (xii) underwriting or placement of life insurance or other investment related insurance:
- (xiii) money or currency changing; and 10
- (b) includes a person or class of persons declared by regulations to be a financial institution for the purposes of this Act; but
- (c) excludes a person or class of persons declared by regulations not to be a financial institution for the purposes of this Act 15
- financing of terrorism** has the same meaning as in section 4(1) of the Terrorism Suppression Act 2002
- gambling inspector** has the same meaning as in section 4(1) of the Gambling Act 2003 20
- government agency** means—
- (a) a government department named in Schedule 1 of the State Sector Act 1988; or
- (b) a Crown entity under section 7 of the Crown Entities Act 2004; or 25
- (c) the Reserve Bank, the Parliamentary Counsel Office, the New Zealand Police, and the New Zealand Security Intelligence Service; or
- (d) any international counterpart of the entities in **paragraphs (a) to (c)** 30
- identity information** means information obtained under **sections 13, 17, 21, and 24(1) and (2)** and any other information relating to identity prescribed by **sections 23(b), 26(2)(g) and 27(b)**
- individual** means a natural person, other than a deceased natural person 35
- intermediary institution**, in relation to a wire transfer, is a person that participates in a transfer of funds that takes place

through more than 1 institution but is not an ordering institution or a beneficiary institution

law enforcement purposes means—

- (a) the administration of this Act:
- (b) the detection, investigation, and prosecution of— 5
 - (i) any offence under this Act; ~~and~~ or
 - (ii) a money laundering offence; ~~and~~ or
 - (iii) any offence under ~~the Income Tax Act 2007~~ section 143B of the Tax Administration Act 1994;
and or 10
 - (iv) any serious offence (within the meaning of section 243(1) of the Crimes Act 1961)
- (c) the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009:
- (d) the enforcement of the Misuse of Drugs Act 1975: 15
- (e) the enforcement of the Terrorism Suppression Act 2002:
- (f) the administration of the Mutual Assistance in Criminal Matters Act 1992:
- (g) the investigation of matters relating to security under the New Zealand Security Intelligence Service Act 1969: 20
- (h) any action referred to in **paragraphs (a) to (g)** taken in respect of legislation of an overseas jurisdiction that is broadly equivalent to the enactments listed in those paragraphs 25

Minister means the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 30

money laundering offence means an offence against section 243 of the Crimes Act 1961 or section 12B of the Misuse of Drugs Act 1975 or any act committed overseas that, if committed in New Zealand, would be an offence under those sections 35 of those Acts

occasional transaction—

- (a) means a cash transaction that occurs outside of a business relationship and is over the applicable threshold

- value (whether the transaction is carried out in a single operation or several operations that appear to be linked); and
- (b) includes a transaction or class of transactions declared by regulations to be an occasional transaction for the purposes of this Act; but 5
- (c) excludes—
- (i) cheque deposits; and
- (ii) a transaction or class of transactions declared by regulations not to be an occasional transaction for the purposes of this Act 10
- ordering institution—**
- (a) means any person who has been instructed by a person (the **payer**) to electronically transfer funds controlled by the payer to a person (the **payee**) who may or may not be the payer on the basis that the transferred funds will be made available to the payee by a beneficiary institution; and 15
- (b) includes a person declared by regulations to be an ordering institution for the purposes of this Act; but 20
- (c) excludes a person or class of persons declared by regulations not to be an ordering institution for the purposes of this Act
- physical currency** means the coin and printed money (whether of New Zealand or of a foreign country) that— 25
- (a) is designated as legal tender; and
- (b) circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue
- Police employee** has the same meaning as in section 4 of the Policing Act 2008 30
- politically exposed person** means—
- (a) an individual who holds, or has held at any time in the preceding 12 months, in any overseas country the prominent public function of—
- (i) Head of State or head of a country or government; 35
or
- (ii) government minister or equivalent senior politician; or

- (iii) Supreme Court Judge or equivalent senior Judge;
or
 - (iv) governor of a central bank or any other position
that has comparable influence to the Governor of
the Reserve Bank of New Zealand; or 5
 - (v) senior foreign representative, ambassador, or
high commissioner; or
 - (vi) high-ranking member of the armed forces; or
 - (vii) board chair, chief executive, or chief financial of-
ficer of, or any other position that has comparable 10
influence in, any State enterprise; and
 - (b) an immediate family member of person referred to in
paragraph (a), including—
 - (i) a spouse; or
 - (ii) a partner, being a person who is considered by the 15
relevant national law as equivalent to a spouse; or
 - (iii) a child and a child’s spouse or partner; or
 - (iv) a parent; and
 - (c) having regard to information that is public or readily
available,— 20
 - (i) any individual who is known to have joint bene-
ficial ownership of a legal entity or legal arrange-
ment, or any other close relationship, with a per-
son referred to in paragraph (a); or
 - (ii) any individual who has sole beneficial owner- 25
ship of a legal entity or legal arrangement that
is known to exist for the benefit of a person de-
scribed in paragraph (a)
- politically exposed person** means—
- (a) an individual who holds in New Zealand the prominent 30
public function of—
 - (i) Prime Minister; or
 - (ii) Minister of the Crown; or
 - (iii) Judge of the Supreme Court; or
 - (iv) Governor of the Reserve Bank of New Zealand; 35
or
 - (v) ambassador or high commissioner; or
 - (vi) Chief of Defence Force; or

- (vii) board chair, chief executive, or chief financial officer of any State enterprise as defined by the State-Owned Enterprises Act 1986; and
- (b) an individual who holds in any other country the prominent public function of— 5
- (i) Head of State or head of a country or government; or
- (ii) government minister or equivalent senior politician; or
- (iii) Supreme Court Judge or equivalent senior Judge; or 10
- (iv) governor of a central bank or any other position that has comparable influence to the Governor of the Reserve Bank of New Zealand; or
- (v) senior foreign representative, ambassador, or high commissioner; or 15
- (vi) high-ranking member of the armed forces; or
- (vii) board chair, chief executive, or chief financial officer of; or any other position that has comparable influence in; any State enterprise; and 20
- (c) an immediate family member of a person referred to in **paragraph (a) or (b)**; including—
- (i) a spouse; or
- (ii) a partner, being a person who is considered by the relevant national law as equivalent to a spouse; or 25
- (iii) a child and the child's spouse or partner; or
- (iv) a parent; and
- (d) having regard to information that is public or readily available,—
- (i) any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close relationship, with a person referred to in **paragraph (a) or (b)**; or 30
- (ii) any individual who has sole beneficial ownership of a legal entity or legal arrangement that is known to exist for the benefit of a person referred to in **paragraph (a) or (b)** 35

registered bank has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

regulations means regulations made under this Act

reporting entity means—

- (a) a financial institution; or
- (b) a casino; or
- (c) any other person that is required by any enactment to comply with this Act as if it were a reporting entity 5

reporting entity—

- (a) means—
 - (i) a financial institution; and
 - (ii) a casino; and 10
- (b) includes—
 - (i) a person or class of persons declared by regulations to be a reporting entity for the purposes of this Act; and
 - (ii) any other person that is required by any enactment to comply with this Act as if it were a reporting entity; but 15
- (c) excludes a person or class of persons declared by regulations not to be a reporting entity for the purposes of this Act 20

security has the same meaning as in section 2(1) of the New Zealand Security Intelligence Service Act 1969

senior manager (and **senior management** correspondingly) means,—

- (a) in relation to a reporting entity that is a company, a director within the meaning of section 126 of the Companies Act 1993; and 25
- (b) in relation to a reporting entity that is not a company, a person who occupies a position comparable to that of a director (for example, a trustee or partner); and 30
- (c) any other person who occupies a position within a reporting entity that allows that person to exercise an influence over the management or administration of the reporting entity (for example, a chief executive or a chief financial officer) 35

shell bank has the meaning set out in **section 36(2)**

suspicious property report has the same meaning as in section 4(1) of the Terrorism Suppression Act 2002

suspicious transaction report means a report made under **section 37**

transaction—

- (a) means any deposit, withdrawal, exchange, or transfer of funds (in any denominated currency), whether— 5
 - (i) in cash; or
 - (ii) by cheque, payment order, or other instrument; or
 - (iii) by electronic or other non-physical means; and
- (b) without limiting **paragraph (a)**, includes— 10
 - (i) any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation; and
 - (ii) a transaction or class of transactions declared by regulations to be a transaction for the purposes of this Act; but 15
- (c) excludes the following:
 - (i) the placing of any bet;
 - (ii) participation in gambling as defined in section 4(1) of the Gambling Act 2003: 20
 - (iii) a transaction or class of transactions declared by regulations not to be a transaction for the purposes of this Act

trustee has the same meaning as in section 2(1) of the Trustee Act 1956 25

verification information means information obtained under **sections 14, 18, 22, and 25**

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 financial institution; and 30
- (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 35
- (c) excludes—
 - (i) transfers and settlements between financial institutions if both the originator and the beneficiary

- are financial institutions acting on their own behalf; and
- (ii) credit and debit card transactions if the credit or debit card number accompanies the transaction; and
 - (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.

4A Application of this Act to reporting entities

This Act applies to a reporting entity only to the extent that— 10

- (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; or
- (b) a reporting entity, that is not a financial institution, is carrying out activities that may give rise to a risk of money laundering or financing of terrorism. 15

5 Amounts not in New Zealand currency

- (1) This section applies if, for the purposes of this Act, it is necessary to determine whether the amount of any cash (whether alone or together with any other amount of cash)— 20
 - (a) exceeds the applicable threshold value; and
 - (b) is denominated in a currency other than New Zealand currency.
- (2) If this section applies, the amount of the cash is taken to be the equivalent in New Zealand currency,— 25
 - (a) calculated at the rate of exchange on the date of the determination; or
 - (b) if there is more than 1 rate of exchange on that date, calculated at the average of those rates. 30
- (3) For the purposes of this section, a written certificate purporting to be signed by an officer of any bank in New Zealand that a specified rate of exchange prevailed between currencies on a specified day, and that at such rate a specified sum in a particular currency is equivalent to a specified sum in terms of the currency of New Zealand, is sufficient evidence of the rate of 35

exchange so prevailing and of the equivalent sums in terms of the respective currencies.

Compare: 1996 No 9 s 4

- 6 Act binds the Crown** 5
This Act binds the Crown.

Part 2

AML/CFT requirements and compliance

- 7 Non-compliance not excused by contractual obligations**
(1) This Act has effect despite anything to the contrary in any contract or agreement. 10
(2) No person is excused from compliance with any requirement of this Act or the regulations by reason only that compliance with that requirement would constitute breach of any contract or agreement.

Subpart 1—Customer due diligence 15

- 8 Definitions**
In this subpart, unless the context otherwise requires,—
enhanced customer due diligence means customer due diligence in accordance with the requirements set out in **sections 21 to 27** and any other requirements prescribed by regulations 20
simplified customer due diligence means customer due diligence in accordance with the requirements set out in **sections 17 to 19** and any other requirements prescribed by regulations
standard customer due diligence means customer due diligence in accordance with the requirements set out in **sections 13 to 15** and any other requirements prescribed by regulations. 25

- 9 Customer due diligence**
(1) A reporting entity must conduct customer due diligence on— 30
(a) a customer:
(b) any beneficial owner of a customer:
(c) any person acting on behalf of a customer.

- (2) For the purposes of **subsection (1)(b)**, a customer who is an individual and who the reporting entity believes on reasonable grounds is not acting on behalf of another person is to be treated as if he or she were also the beneficial owner unless the reporting entity has reasonable grounds to suspect that that customer is not the beneficial owner. 5
- (3) The type of customer due diligence that must be conducted by a reporting entity is,—
- (a) in the circumstances described in **section 12**, at least standard customer due diligence: 10
 - (b) in the circumstances described in **section 16**, at least simplified customer due diligence:
 - (c) in the circumstances described in **section 20**, enhanced customer due diligence.
- (4) A reporting entity that is required to conduct customer due diligence in the circumstances described in **sections 12, 16, and 20** is not required to obtain or verify any documents, data, or information that it has previously obtained and verified for the purposes of carrying out customer due diligence in accordance with this Act, unless there are reasonable grounds for the reporting entity to doubt the adequacy or veracity of the documents, data, or information previously obtained. 15 20
- (5) Nothing in **subsection (4)** affects the obligation to conduct ongoing customer due diligence in accordance with **section 28**. 25
- 10 Reliance on risk assessment when establishing level of risk**
When establishing the level of risk involved for the purposes of this subpart, a reporting entity must rely on its AML/CFT programme and its risk assessment undertaken in accordance with **sections 54(c) and (f) and 55 section 55**. 30
- 11 Basis for verifying identity**
Verification of identity must be done on—
- (a) the basis of documents, data, or information ~~obtained from~~ issued by a reliable and independent source; or
 - (b) any other basis applying to a specified situation, customer, product, service, business relationship, or transaction prescribed by regulations. 35

*Standard customer due diligence***12 Circumstances when standard customer due diligence applies**

A reporting entity must conduct standard customer due diligence in the following circumstances: 5

- (a) if the reporting entity establishes a business relationship with a new customer: 5
- (b) if a customer seeks to conduct an occasional transaction through the reporting entity:
- (c) ~~if, in relation to any customer, the reporting entity suspects that money laundering or financing of terrorism may be involved:~~ 10
- (d) ~~if, in relation to any customer, the reporting entity suspects on reasonable grounds that the customer is not who he or she claims to be:~~ 15
- (e) if, in relation to an existing customer, and according to the level of risk involved,—
 - (i) there has been a material change in the nature or purpose of the business relationship; ~~or and~~
 - (ii) ~~doubt arises as to the adequacy or veracity of documents, data, or information previously obtained for the purposes of identification or verification of the customer, the beneficial owner, or the person who is acting, or who has acted, on behalf of the customer, as the case may be:~~ 20
 - (iii) the reporting entity suspects that a transaction the customer is seeking to conduct may involve money laundering or the financing of terrorism; ~~or~~
 - (iv) the reporting entity considers that, ~~according to the level of risk involved,~~ it has insufficient information about the customer: 25
- (f) any other circumstances specified in regulations. 30

13 Standard customer due diligence: identity requirements

A reporting entity must obtain the following identity information in relation to the persons referred to in **section 9(1)**: 35

- (a) the person's full name; and
- (b) the person's date of birth; and

- (c) if the person is not the customer, the person’s relationship to the customer; and
 - (d) the person’s address or registered office; and
 - (e) the person’s company identifier or registration number; and 5
 - (f) any information prescribed by regulations.
 - ~~(g) any other information that, according to the level of risk involved, could reasonably be obtained.~~
- 14 Standard customer due diligence: verification of identity requirements** 10
- ~~(1) A reporting entity must, according to the level of risk involved,—~~
- ~~(a) take all reasonable steps to satisfy itself that the information provided under **section 13** is current and correct; and~~ 15
 - ~~(b) take all reasonable steps to verify any beneficial owner’s identity so that the reporting entity is satisfied that it knows who the beneficial owner is; and~~
 - ~~(c) if a person is acting on behalf of the customer, verify both the customer’s and the person’s identity and that person’s authority to act on behalf of the customer so that the reporting entity is satisfied it knows who the person is and that the person has authority to act on behalf of the customer; and~~ 20
 - ~~(d) verify any other information prescribed by regulations.~~ 25
- (1) A reporting entity must—
- (a) take reasonable steps to satisfy itself that the information provided under **section 13** is correct; and
 - (b) according to the level of risk involved, take reasonable steps to verify any beneficial owner’s identity so that the reporting entity is satisfied that it knows who the beneficial owner is; and 30
 - (c) if a person is acting on behalf of the customer, according to the level of risk involved, take reasonable steps to verify the person’s identity and authority to act on behalf of the customer so that the reporting entity is satisfied it knows who the person is and that the person has authority to act on behalf of the customer; and 35

- (d) verify any other information prescribed by regulations.
- (2) Except as provided in **subsection (3)**, a reporting entity must carry out verification of identity before establishing a business relationship or conducting an occasional transaction.
- (3) Verification of identity may be completed after the business relationship has been established ~~or the occasional transaction conducted~~ if—
 - (a) it is essential not to interrupt normal business practice; and
 - (b) money laundering and financing of terrorism risks are effectively managed through procedures of transaction limitations and account monitoring; and
 - (c) verification of identity is completed ~~within 5 days of the business relationship being established or the occasional transaction being conducted~~ as soon as is practicable once the business relationship has been established.

15 Standard customer due diligence: other requirements

A reporting entity must also obtain—

- (a) information on the nature and purpose of the proposed business relationship between the customer and the reporting entity; and
- (b) sufficient information to determine whether the customer should be subject to enhanced customer due diligence.

Simplified customer due diligence 25

16 Circumstances when simplified customer due diligence applies

- (1) ~~A reporting entity may conduct simplified customer due diligence if it establishes a business relationship with one of the following customers or one of the following customers conducts an occasional transaction through the reporting entity:~~
 - (a) ~~a company that is listed on an exchange registered under Part 2B of the Securities Markets Act 1988;~~
 - (b) ~~a government department named in Schedule 1 of the State Sector Act 1988;~~

- (c) a local government organisation as defined in section 124 of the Local Government Act 2002:
- (d) the New Zealand Police:
- (e) the New Zealand Security Intelligence Service Act 1969: 5
- (f) any other entity specified in regulations:
- (1A) A reporting entity may conduct simplified customer due diligence if—
- (a) it establishes a business relationship with one of the customers specified in **subsection (1B)**; or 10
- (b) one of the customers specified in **subsection (1B)** conducts an occasional transaction through the reporting entity; or
- (c) a customer conducts a transaction or provides a product or service specified in regulations through the reporting entity. 15
- (1B) The following are customers for the purposes of **subsection (1A)**:
- (a) a company that is listed on an exchange registered under Part 2B of the Securities Markets Act 1988: 20
- (b) a government department named in Schedule 1 of the State Sector Act 1988:
- (c) a local authority as defined in section 5 of the Local Government Act 2002:
- (d) the New Zealand Police: 25
- (e) the New Zealand Security Intelligence Service:
- (f) any other entity or class of entities specified in regulations.
- (2) A reporting entity may also conduct simplified customer due diligence on a person who purports to act on behalf of a customer when— 30
- (a) the reporting entity already has a business relationship with the customer at the time the person acts on behalf of the customer; and
- (b) the reporting entity has conducted one of the specified types of customer due diligence on the customer in accordance with this Act and the regulations (if any). 35
- (3) For the avoidance of doubt, nothing in this subpart requires identification or verification of identity of a beneficial owner of

a customer in respect of whom a reporting entity may conduct simplified customer due diligence.

17 Simplified customer due diligence: identity requirements

A reporting entity must obtain the following identity information in relation to a person acting on behalf of the customer: 5

- (a) the person's full name; and
- (b) the person's date of birth; and
- (c) the person's relationship to the customer; and
- (d) any information prescribed by regulations.
- ~~(e) any other information that, according to the level of risk involved, could reasonably be obtained.~~ 10

18 Simplified customer due diligence: verification of identity requirements

(1) A reporting entity must, according to the level of risk involved, verify the identity of a person acting on behalf of a customer and that person's authority to act for the customer so that it is satisfied it knows who the person is and that the person has authority to act on behalf of the customer. 15

(2) Verification of identity must be carried out before the business relationship is established or the occasional transaction is conducted or the person acts on behalf of the customer. 20

(3) For the purposes of verifying a person's authority to act in the circumstances described in **section 16**, a reporting entity may rely on an authority provided in an application form or other document provided to the reporting entity that shows a person's authority to act or transact on an account. 25

19 Simplified customer due diligence: other requirements

~~A reporting entity must also obtain—~~

- ~~(a) information on the nature and purpose of the proposed business relationship between the customer and the reporting entity; and~~ 30
- ~~(b) sufficient information to determine whether the customer should be subject to enhanced customer due diligence.~~

19 Simplified customer due diligence: other requirements

In the circumstances described in **section 16(1A)(a)**, a reporting entity must also obtain information on the nature and purpose of the proposed business relationship between the customer and the reporting entity.

5

Enhanced customer due diligence

20 **Circumstances when enhanced customer due diligence applies**

(1) A reporting entity must conduct enhanced customer due diligence in accordance with **sections 21 and 22** in the following circumstances:

10

(a) if the reporting entity establishes a business relationship with a customer or if a customer seeks to conduct an occasional transaction through the reporting entity and that customer is—

15

(i) a trust or another vehicle for holding personal assets:

(ii) a non-resident customer from a country that has insufficient anti-money laundering or countering financing of terrorism systems or measures in place:

20

(iii) a company with nominee shareholders or shares in bearer form:

(aa) if the reporting entity establishes a business relationship with a customer that is—

25

(i) a trust or another vehicle for holding personal assets:

(ii) a non-resident customer from a country that has insufficient anti-money laundering and countering financing of terrorism systems or measures in place:

30

(iii) a company with nominee shareholders or shares in bearer form:

(ab) if customer seeks to conduct an occasional transaction through the reporting entity and that customer is—

35

(i) a trust or another vehicle for holding personal assets:

- (ii) a non-resident customer from a country that has insufficient anti-money laundering and counter-
ing financing of terrorism systems or measures
in place:
- (iii) a company with nominee shareholders or shares
in bearer form: 5
- (b) if a customer seeks to conduct, through the reporting entity, a complex, unusually large transaction or unusual pattern of transactions that have no apparent or visible economic or lawful purpose: 10
- (c) when a reporting entity considers that the level of risk involved is such that enhanced due diligence should apply to a particular situation:
- (d) any other circumstances specified in regulations.
- (2) A reporting entity must conduct enhanced customer due diligence in accordance with ~~section 23~~ **sections 21, 22, and 23** if it establishes a business relationship with a customer who is a politically exposed person or if a customer who is a politically exposed person seeks to conduct an occasional transaction through the reporting entity. if— 20
- (a) it establishes a business relationship with a customer who it has determined is a politically exposed person;
or
- (b) a customer who it has determined is a politically exposed person seeks to conduct an occasional transaction through the reporting entity. 25
- (3) A reporting entity must conduct enhanced customer due diligence in accordance with **sections 24 and 25** if it is an ordering institution, an intermediary institution, or a beneficiary institution in relation to a wire transfer. 30
- (4) A reporting entity must conduct enhanced customer due diligence in accordance with **section 26** if it has, or proposes to have, a correspondent banking relationship.
- (5) A reporting entity must conduct enhanced due diligence in accordance with **section 21, 22, and 27** if it establishes a business relationship with a customer, or if a customer seeks to conduct an occasional transaction through the reporting entity, that involves new or developing technologies and products that might favour anonymity. if— 35

- (a) it establishes a business relationship with a customer that involves new or developing technologies, or new or developing products, that might favour anonymity;
or
- (b) a customer seeks to conduct an occasional transaction through the reporting entity that involves new or developing technologies, or new or developing products, that might favour anonymity. 5
- 21 Enhanced customer due diligence: identity requirements**
In relation to a person referred to in **section 9(1)**, a reporting entity must, in relation to a person referred to in **section 9(1)**, obtain the information required under **section 13** and the following additional information: 10
- (a) information relating to the source of the funds or the wealth of the customer; and 15
- (b) any ~~other~~ additional information prescribed by regulations.
- 22 Enhanced customer due diligence: verification of identity requirements**
- (1) ~~A reporting entity must, according to the level of risk involved,~~ 20
- (a) take all reasonable steps to satisfy itself that the information provided under **section 21** is current and correct; and
- (b) take all reasonable steps to verify any beneficial owner's identity so that the reporting entity is satisfied that it knows who the beneficial owner is; and 25
- (c) if a person is acting on behalf of the customer, verify the customer's identity and the identity of the person acting on behalf of the customer in accordance with **section 21** and that person's authority to act on behalf of the customer, so that the reporting entity is satisfied it knows who the person is and that the person has authority to act on behalf of the customer; and 30
- (d) take all reasonable steps to verify the source of wealth or funds of the customer; and 35

- (c) ~~verify any other information prescribed by regulations or required by codes of practice.~~
- (1) A reporting entity must—
 - (a) conduct the verification of identity requirements for standard customer due diligence set out in **section 14**; and 5
 - (b) according to the level of risk involved, take reasonable steps to verify the information obtained under **section 21(a)**; and
 - (c) verify any other information prescribed by regulations. 10
- (2) Except as provided in **subsection (3)**, a reporting entity must carry out verification of identity before establishing a business relationship or conducting an occasional transaction.
- (3) Verification of identity may be completed after the business relationship has been established ~~or the occasional transaction conducted~~ if— 15
 - (a) it is essential not to interrupt normal business practice; and
 - (b) money laundering and financing of terrorism risks are effectively managed through procedures of transaction 20 limitations and account monitoring; and
 - (c) verification of identity is completed ~~within 5 days of the business relationship being established or the occasional transaction being conducted~~ as soon as is practicable once the business relationship has been established. 25

22A **Enhanced customer due diligence: other requirements**
In the circumstances described in **section 20(1)(aa), 20(2)(a), and 20(5)(a)**, a reporting entity must also obtain information on the nature and purpose of the proposed business relationship between the customer and the reporting entity. 30

23 **Politically exposed persons**
Before a reporting entity establishes a business relationship or conducts an occasional transaction that involves a customer or a beneficial owner who is a politically exposed person, the reporting entity must, in addition to the requirements in **sections 21 and 22**, 35

- (a) have approval from its senior management for establishing the business relationship in accordance with the regulations (if any); and
- (b) meet any other requirements prescribed by regulations and that apply to politically exposed persons. 5

23 Politically exposed person

- (1) The reporting entity must, as soon as practicable after establishing a business relationship or conducting an occasional transaction, take reasonable steps to determine whether the customer or any beneficial owner is a politically exposed person. 10
- (2) If a reporting entity determines that a customer or beneficial owner with whom it has established a business relationship is a politically exposed person, then—
 - (a) the reporting entity must have senior management approval for continuing the business relationship; and 15
 - (b) the reporting entity must obtain information about the source of wealth or funds of the customer or beneficial owner and take reasonable steps to verify the source of that wealth or those funds. 20
- (3) If a reporting entity determines that a customer or beneficial owner with whom it has conducted an occasional transaction is a politically exposed person, then the reporting entity must, as soon as practicable after conducting that transaction, take reasonable steps to obtain information about the source of wealth or funds of the customer or beneficial owner and verify the source of that wealth or those funds. 25

24 Wire transfers: identity requirements

- (1) A reporting entity that is an ordering institution must identify the originator of a wire transfer that is over the applicable threshold value by obtaining the following information: 30
 - (a) the originator’s full name; and
 - (b) the originator’s account number or other identifying information that may be prescribed and allows the transaction to be traced back to the originator; and 35
 - (c) one of the following:
 - (i) the originator’s address:

- (ii) the originator's national identity number;
- (iii) the originator's customer identification number;
- (iv) the originator's place and date of birth; and
- (d) any information prescribed by regulations; ~~and~~
- (e) ~~any other information that, according to the level of risk involved, could reasonably be obtained.~~ 5
- (2) However, if the wire transfer is a domestic wire transfer, a reporting entity that is an ordering institution may identify the originator by obtaining the originator's account number or other identifying information that may be prescribed and allows the transaction to be traced back to the originator if the reporting entity that is the ordering institution is able to provide the information specified in **subsection (1)(a) and (c) to (e)** within 3 working days of a request being made by the beneficiary institution. 10 15
- (3) Regulations may be made under **section 147(g) 148(1)(ac)** exempting the reporting entity from the obligation to obtain some or all of the information set out in **subsection (1)** in relation to a specified transfer or transaction.
- (4) The information obtained by the reporting entity (the ordering institution under **subsection (1) or (2)**, as the case may be) must accompany the wire transfer. 20
- (5) ~~A reporting entity that is a beneficiary institution must take all practicable steps to ensure that the information specified in **subsection (1) or (2)**, as the case may be, accompanies the wire transfer.~~ 25
- (6) ~~A reporting entity that is an intermediary institution must transfer the information specified in **subsection (1)** to the next reporting entity in the chain unless it has a reasonable belief that the final destination of the wire transfer is to a beneficiary institution resident in New Zealand, in which case it may transfer the information specified in **subsection (2)**.~~ 30
- (5) A reporting entity that is a beneficiary institution must—
- (a) use effective risk-based procedures for handling wire transfers that are not accompanied by all the information specified in **subsection (1)**; and 35
- (b) consider whether the wire transfers constitute a suspicious transaction.

- (6) Any information obtained by a reporting entity that is an intermediary institution must be maintained by that reporting entity with the wire transfer accompanying the information.
- (7) For the purposes of this section, a **domestic wire transfer** is a wire transfer where the ordering institution, the intermediary institution, and the beneficiary institution are all in New Zealand. 5
- 25 Wire transfers: verification of identity requirements**
- (1) The ordering institution must, according to the level of risk involved,— 10
- (a) verify the originator’s identity so that the reporting entity is satisfied that the information provided under **section 24** is current and correct; and
- (b) verify any other information prescribed by regulations.
- (2) Verification of the originator’s identity must be carried out before the wire transfer is ordered. 15
- 26 Correspondent banking relationships**
- (1) A financial institution (the **correspondent**) that has, or proposes to have, a correspondent banking relationship with a respondent financial institution (the **respondent**) must, according to the level of risk involved, conduct enhanced customer due diligence as set out in **subsection (2)** in relation to correspondent accounts that are used, or are proposed to be used, for payments to, or receipts from, foreign financial institutions. 20
- (2) The correspondent must— 25
- (a) gather enough information about the respondent to understand fully the nature of the respondent’s business; and
- (b) determine from publicly available information the reputation of the respondent and whether and to what extent the respondent is supervised for AML/CFT purposes, including whether the respondent has been subject to a money laundering or financing of terrorism investigation or regulatory action; and 30
- (c) assess the respondent’s anti-money laundering and countering financing of terrorism controls to ascertain that those controls are adequate and effective; and 35

- (d) have approval from its senior management before establishing a new correspondent banking relationship; and
- (e) document the respective AML/CFT responsibilities of the correspondent and the respondent; and
- (f) be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent—
- (i) has verified the identity of, and conducts ongoing monitoring in respect of, those customers; and
- (ii) is able to provide to the correspondent, on request, the documents, data, or information obtained when conducting the relevant customer due diligence and ongoing customer due diligence; and
- (g) meet any other requirements prescribed by regulations and that apply to correspondent banking relationships.
- (3) For the purposes of this Act, a **correspondent banking relationship** means a relationship that involves the provision of banking services by a financial institution (the **correspondent**) to another financial institution (the **respondent**) if—
- (a) the correspondent carries on an activity or business at or through a permanent establishment of the correspondent in a particular country; and
- (b) the respondent carries on an activity or business at or through a permanent establishment of the respondent in another country; and
- (c) the correspondent banking relationship relates, in whole or in part, to those permanent establishments; and
- (d) the relationship is not of a kind specified in regulations; and
- (e) the banking services are not of a kind specified in regulations.
- 27 New or developing technologies, ~~and~~ or products, that might favour anonymity**
- Before a reporting entity establishes a business relationship or conducts an occasional transaction that involves new or developing technologies, ~~and~~ or new or developing products, that

might favour anonymity, the reporting entity must, in addition to the requirements in **sections 21 and 22 13 and 14**.—

- (a) take any additional measures that may be needed to ~~pre-~~vent mitigate and manage the risk of any new or developing technologies ~~and, or new or developing~~ products, that might favour anonymity from being used in the commission of a money laundering offence or for the financing of terrorism; and 5
- (b) meet any other requirements prescribed by regulations and that apply to the particular technology or product. 10

Ongoing customer due diligence and account monitoring

28 Ongoing customer due diligence and account monitoring

- (1) This section applies to a business relationship between a reporting entity and a customer. 15
- (2) A reporting entity must conduct ongoing customer due diligence and undertake account monitoring in order to—
 - (a) ensure that the business relationship and the transactions relating to that business relationship are consistent with the reporting entity’s knowledge about the customer and the customer’s business and risk profile; and 20
 - (b) identify any grounds for reporting a suspicious transaction under **section 37(1)(b)**.
- (3) When conducting ongoing customer due diligence and undertaking account monitoring, the reporting entity must have regard to— 25
 - (a) the type of customer due diligence conducted when the business relationship with the customer was established; and
 - (b) the level of risk involved. 30
- (4) When conducting ongoing customer due diligence and undertaking account monitoring, a reporting entity must do at least the following:
 - (a) regularly review the customer’s account activity and transaction behaviour; and 35
 - (b) regularly review any customer information obtained under **sections 13, 15, 17, 19, 21, 22A, 23, 24, 26,**

- and 27**, or, in relation to an existing customer, any customer information the reporting entity holds about the customer; and
- (c) anything prescribed by regulations.

Reliance on third parties

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29 Reliance on member of designated business group

- (1) A reporting entity (**member A**) that is a member of a designated business group may—
- (a) rely on another member of the group (**member B**) to conduct any customer due diligence procedures required for customer due diligence under this Act or ~~the~~ regulations as long as—
- (i) any identity information is given to member A by member B before member A establishes a business relationship or an occasional transaction is conducted; and 15
- (ii) any verification information is given to member A by member B as soon as practicable, but no later than 5 working days, after the business relationship is established or the occasional transaction is conducted: 20
- (b) adopt that part of an AML/CFT programme of another member of the group that relates to record keeping, account monitoring, ongoing customer due diligence, and annual reporting ~~subject to any conditions prescribed by regulations~~ and share and use the procedures, policies, and controls relating to those parts of the programme subject to any conditions prescribed by regulations: 25
- (c) use another member of the group's risk assessment if that risk assessment is relevant to member A's business: 30
- (d) make a suspicious transaction report on behalf of any other member or all members of the designated business group.
- (1A) Despite **subsection (1)**, a reporting entity, and not the member of the designated business group relied on by the reporting entity, is responsible for ensuring that it is complying with this Act and regulations. 35

- (1B) An AML/CFT supervisor for a reporting entity that is part of a designated business group may require the reporting entity to undertake its own risk assessment or develop its own AML/CFT programme if the AML/CFT supervisor is of the view that the risk assessment or AML/CFT programme being, or proposed to be, relied on by the reporting entity is not appropriate for that entity. 5
- (2) This section is subject to **section 33**, which relates to the protection of personal information. 10
Compare: Anti-Money Laundering and Counter-Terrorism Financing Act 2006 s 36(4) (Aust)
- 30 Reliance on other reporting entities or persons in another country**
- (1) Subject to the conditions in **subsection (2)**, a reporting entity may rely on another person (who is not an agent) to conduct the customer due diligence procedures required for customer due diligence under this Act or ~~the~~ regulations. 15
- (2) The conditions are that—
- (a) the person being relied on is either—
 - (i) a reporting entity; or 20
 - (ii) a person who is resident in a country with sufficient anti-money laundering and countering financing of terrorism systems and measures in place and who is supervised or regulated for AML/CFT purposes; and 25
 - (b) the person has a business relationship with the customer concerned; and
 - (c) the person has conducted relevant customer due diligence procedures to at least the standard required by this Act and regulations and has provided to the reporting entity—
 - (i) relevant identity information before the reporting entity establishes a business relationship or an occasional transaction is conducted; and
 - (ii) relevant verification information as soon as practicable, but no later than 5 working days, after the business relationship is established or the occasional transaction is conducted; and 30 35

- (d) the person ~~has consented~~ consents to conducting the customer due diligence procedures for the reporting entity and to providing all relevant information to the reporting entity; and
- (e) any other conditions prescribed by regulations are complied with. 5
- (3) Despite **subsection (1)**, a reporting entity relying on a third party to conduct the customer due diligence procedure, and not the person carrying out the customer due diligence procedure, is responsible for ensuring that customer due diligence is carried out in accordance with this Act. 10
- 31 Reliance on agents**
- Subject to any conditions that may be prescribed by regulations, a reporting entity may authorise a person to be its agent and rely on that agent to conduct the customer due diligence procedures and obtain any information required for customer due diligence under this Act or ~~the~~ regulations. 15
- 32 Use of information obtained from third party conducting customer due diligence**
- Information obtained ~~from~~ by a third party conducting customer due diligence under **sections 29 to 31** for a reporting entity may only be used by ~~that entity~~ that third party for the purpose of complying with this Act and ~~the~~ regulations. 20
- 33 Protection of personal information and designated business groups** 25
- (1) This section applies to personal information that is either—
- (a) identity or verification information received for the purposes of **section 29(1)(a)**; or
- (b) information received for the purposes of **section 29(1)(b)**. 30
- (2) Any information supplied by any member of a designated business group to another member of that group must be subject to privacy protections at least equivalent to those set out in privacy principles 5 to 11 in section 6 of the Privacy Act 1993. 35

- (3) Each member of the designated business group must agree, in writing, to comply with privacy principles 5 to 11 in section 6 of the Privacy Act 1993 or their equivalent if the member is resident overseas.
- (4) The ~~reporting~~ entity that provides information to another member of its designated business group remains responsible for the use or disclosure of that information. 5
- (5) A reporting entity may use or disclose information to which this section applies only as follows:
 - (a) it may use identity and verification information received for the purposes of **section 29(1)(a)** in a suspicious transactions report: 10
 - (b) it may disclose information for the purposes of **section 29(1)(b)** to another member of the designated business group unless such disclosure is likely to result in a suspicious transaction report being filed in an overseas jurisdiction by the member to whom the information is disclosed. 15

Prohibitions

- 34 Prohibitions if customer due diligence not conducted** 20
- If, in relation to a customer, a reporting entity is unable to conduct customer due diligence in accordance with this subpart, the reporting entity—
- (a) must not establish a business relationship with the customer; and 25
 - (b) must terminate any existing business relationship with the customer; and
 - (c) must not carry out ~~a~~ an occasional transaction with or for the customer; and
 - (d) must consider whether to make a suspicious transactions report; and 30
 - (e) may disclose the possibility of making a suspicious transaction report only to a person referred to in **section 43(2)**.

35 Prohibition on false customer names and customer anonymity

- (1) A reporting entity must not,—
- (a) knowingly or recklessly, set up a facility for a customer on the basis of customer anonymity: 5
 - (b) without lawful justification or reasonable excuse, set up a facility for a customer under a false customer name.
- (2) **Subsection (1)** does not apply to a facility—
- (a) that has a number or other identifier allocated to it and the customer or the person who is authorised to act on behalf of the customer in respect of the facility has had their identity verified in accordance with the relevant customer due diligence requirements; or 10
 - (b) that has been set up for the Commissioner or for the New Zealand Security Intelligence Service for law enforcement purposes. 15

36 Prohibition on establishing or continuing business relationship involving shell bank

- (1) A reporting entity must not establish or continue a business relationship with, or allow an occasional transaction to be conducted through it by,— 20
- (a) a shell bank; or
 - (b) a financial institution that has a correspondent banking relationship with a shell bank.
- (2) For the purposes of **subsection (1)**, a **shell bank** is a corporation that— 25
- (a) is incorporated in a foreign country; and
 - (b) is authorised to carry on banking business in its country of incorporation; and
 - (c) does not have a physical presence in its country of incorporation; and 30
 - (d) is not an affiliate of another corporation that—
 - (i) is incorporated in a particular country; and
 - (ii) is authorised to carry on banking business in its country of incorporation; and 35
 - (iii) is sufficiently supervised and monitored in carrying on its banking business; and

- (iv) has a physical presence in its country of incorporation.
- (3) For the purposes of **paragraph (d)** of the definition of **shell bank** in **subsection (2)**, a corporation is affiliated with another corporation ~~if, and~~ only if— 5
- (a) the corporation is a subsidiary of the other corporation; or
- (b) both corporations are under common effective control; or
- (c) both corporations are declared to be affiliated in accordance with regulations (if any). 10
- (4) For the purposes of the definition of **shell bank** in **subsection (2)**, a corporation has a physical presence in a country if, and only if,— 15
- (a) the corporation carries on banking business at a place in that country; and
- (b) banking operations of the corporation are managed ~~or~~ and conducted from that place.
- Compare: Anti-Money Laundering and Counter-Terrorism Financing Act 2006 ss 15, 95 (Aust) 20

Subpart 2—Suspicious transaction reports

37 Reporting entities to report suspicious transactions

- (1) Despite any other enactment or any rule of law, but subject to **section 39** of this Act and to section 44(4) of the Terrorism Suppression Act 2002, this section applies if— 25
- (a) a person conducts or seeks to conduct a transaction through a reporting entity; and
- (b) the reporting entity has reasonable grounds to suspect that the transaction or proposed transaction is or may be— 30
- (i) relevant to the investigation or prosecution of any person for a money laundering offence; or
- (ii) relevant to the enforcement of the Misuse of Drugs Act 1975; or
- (iii) relevant to the enforcement of the Terrorism Suppression Act 2002; or 35

- (iv) relevant to the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009; or
- (v) relevant to the investigation or prosecution of a serious offence within the meaning of section 243(1) of the Crimes Act 1961. 5
- (2) If this section applies, the reporting entity must, as soon as practicable, but no later than 3 working days after forming its suspicion, report the transaction or proposed transaction to the Commissioner, in accordance with **section 38.** 10
- (3) Nothing in **subsection (2)** requires any lawyer to disclose any privileged communication (as defined in **section 39**).
Compare: 1996 No 9 ss 15(1), 19(1)
- 38 Nature of suspicious transaction report**
- (1) Except as provided in **subsection (2)**, a report under **section 37** must— 15
- (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 **section 37(1)(b)**; and 20
- (d) be signed by a person authorised by the reporting entity to sign suspicious transaction reports (unless the report is forwarded by email or another similar means of communication); and 25
- (e) be forwarded, in writing, to the Commissioner—
- (i) by way of secure electronic transmission by a means specified or provided by the Commissioner for this 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. 30
- (2) However, if the urgency of the situation requires, a suspicious transaction 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, forward to the Commissioner a 35

suspicious transaction report that complies with the requirements in **subsection (1)**.

- (3) The Commissioner may confer the authority to receive a suspicious transaction report under **subsection (2)** on—
- (a) any specified Police employee; or 5
 - (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.

Compare: 1996 No 9 s 15(2)–(4) 10

39 Privileged communication defined

- (1) For the purposes of **section 37(3)**, a communication is a **privileged communication** only if—
- (a) it is a confidential communication, whether oral or written, passing between— 15
 - (i) a lawyer in his or her professional capacity and another lawyer in that capacity:
 - (ii) a lawyer in his or her professional capacity and his or her client:
 - (iii) ~~an agent of~~ any person described in **subparagraph (i) or (ii)** and the agent of the other person described in that paragraph, or between the agents of both the persons described, either directly or indirectly; and 20
 - (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and 25
 - (c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.
- (2) However, where the information consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or 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. 30 35

- (3) For the purposes of this section, references to a lawyer include a firm in which he or she is a partner or is held out to be a partner.

Compare: 1996 No 9 s 19(2)–(4)

40 **Auditors may report suspicious transactions** 5

- (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 transaction, that the transaction is— 10

(a) relevant to the investigation or prosecution of any person for a money laundering offence; or

(ab) relevant to the enforcement of the Misuse of Drugs Act 1975; or

(b) relevant to the enforcement of the Terrorism Suppression Act 2002; or 15

(c) relevant to the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009; or

(d) relevant to the investigation or prosecution of a serious offence within the meaning of section 243(1) of the Crimes Act 1961. 20

- (2) A person may report a transaction referred to in **subsection (1)** to the Commissioner.

Compare: 1996 No 9 s 16 25

41 **Protection of persons reporting suspicious transactions**

- (1) **Subsection (2)** applies to a person who—

(a) discloses or supplies any information in any suspicious transaction report; or

(b) supplies any information in connection with any suspicious transaction report, whether at the time the report is made or afterwards. 30

- (2) No civil, criminal, and 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 40** to any Police employee by any person, no civil, criminal, or disciplinary proceedings lie against that person— 5
 - (a) in respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or
 - (b) for any consequences that follow from the disclosure or supply of that information. 10
- (4) However, **subsections (2) and (3)** do not apply if the information was disclosed or supplied in bad faith.
- (5) Nothing in this section applies in respect of proceedings for an offence under any of **sections 90 to 95**. 15
Compare: 1996 No 9 s 17

42 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 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(a) 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 35
 - (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.

- (2) If this section applies, then, without limiting **section 41** and despite 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, 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.
- Compare: 1996 No 9 s 18

43 Disclosure of information relating to suspicious transaction reports

- (1) This section and **section 44** apply in respect of the following information:
- (a) any suspicious transaction 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 transaction report was made; or
- (ii) as a person who has prepared a suspicious transaction report; or
- (iii) as a person who has made a suspicious transaction report:
- (c) any information that discloses, or is reasonably likely to disclose, the existence of a suspicious transaction report.
- (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
- (c) an officer or employee of the reporting entity, for any purpose connected with the performance of that person's duties; or
- (d) a barrister or solicitor, 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 to decide whether to make a suspicious transaction report.
- (3) A Police employee may only disclose information to which this section applies for law enforcement purposes. 5
- (4) An AML/CFT supervisor may only disclose information to which this section applies to the Police for law enforcement purposes.
- (4A) A person to whom a function or power has been delegated under **section 130A** may disclose information to which this section applies only to the AML/CFT supervisor that made the delegation. 10
- (5) 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 disclose that information except to another person of the kind referred to in that subsection for the purpose of— 15
- (a) the performance of person A’s duties; or
- (b) obtaining legal advice or representation in relation to the matter. 20
- (6) A person referred to in **subsection (2)(d)** 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. 25
- (7) Any other person who has information to which this section applies may only disclose that information to the Police for law enforcement purposes.

Compare: 1996 No 9 s 20

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44 Disclosure of information in proceedings

- (1) No person may disclose, in any judicial proceeding (within the meaning of section 108 of the Crimes Act 1961), any information to which this section applies 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. 35

- (2) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against **section 91 or 92**.

Compare: 1996 No 9 s 21

45 Disclosure of personal information relating to employees or senior managers 5

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:

- (a) law enforcement purposes:
- (b) the detection, investigation, and prosecution of any offence under the following Acts:
 - (i) the Companies Act 1993:
 - (ii) the Financial Advisers Act 2008:
 - (iii) the Financial Service Providers (Registration and Dispute Resolution) Act 2008: 20
 - (iv) the Gambling Act 2003:
 - (v) the Reserve Bank of New Zealand Act 1989:
 - (vi) the Securities Act 1978:
 - (vii) the Securities Markets Act 1988.

Subpart 3—Record keeping 25

46 Obligation to keep transaction records

- (1) In relation to every transaction that is conducted through a reporting entity, the reporting entity must keep those records that are reasonably necessary to enable that transaction to be readily reconstructed at any time. 30
- (2) Without limiting **subsection (1)**, records must contain the following information:
- (a) the nature of the transaction:
 - (b) the amount of the transaction and the currency in which it was denominated: 35
 - (c) the date on which the transaction was conducted:

- (d) the parties to the transaction:
 - (e) if applicable, the facility through which the transaction was conducted, and any other facilities (whether or not provided by the reporting entity) directly involved in the transaction: 5
 - (f) the name of the officer or employee or agent of the reporting entity who handled the transaction, if that officer, employee, or agent—
 - (i) has face-to-face dealings in respect of the transaction with any of the parties to the transaction; and 10
 - (ii) has formed a suspicion (of the kind referred to in **section 37(1)(b)**) about the transaction:
 - (g) any other information prescribed by regulations.
- (3) A reporting entity must retain the records kept by that reporting entity, in accordance with this section, in relation to a transaction for— 15
- (a) a period of at least 5 years after the completion of that transaction; or
 - (b) any longer period that the AML/CFT supervisor for the reporting entity, or the Commissioner, specifies. 20

Compare: 1996 No 9 s 29

47 Obligation to keep identity and verification records

- (1) In respect of each case in which a reporting entity is required, under **subpart 1 of this Part**, to identify and verify the identity of a person, the reporting entity must keep those records that are reasonably necessary to enable the nature of the evidence used for the purposes of that identification and verification to be readily identified at any time. 25
- (2) Without limiting **subsection (1)**, those records may comprise— 30
 - (a) a copy of the evidence so used; or
 - (b) if it is not practicable to retain that evidence, any information as is reasonably necessary to enable that evidence to be obtained. 35
- (3) A reporting entity must retain the records kept by that reporting entity for,—

- (a) in the case of records relating to the identity and verification of the identity of a person in relation to establishing a business relationship, a period of at least 5 years after the end of that business relationship; or
- (b) in the case of records relating to the identity and verification of the identity of a person in relation to conducting an occasional transaction, a period of at least 5 years after the completion of that occasional transaction; or 5
- (c) in the case of records relating to the identity and verification of the identity of an originator in relation to a wire transfer,— 10
 - (i) if the wire transfer is conducted by a customer with whom the reporting entity has a business relationship, a period of at least 5 years after the end of that business relationship; or 15
 - (ii) if the wire transfer is an occasional transaction, a period of at least 5 years after the completion of the wire transfer.

Compare: 1996 No 9 s 30

- 48 Obligation to keep other records** 20
- (1) A reporting entity must keep the following records in addition to the records referred to in **sections 46 and 47**:
 - (a) records that are relevant to the establishment of the business relationship; and
 - (ab) records relating to risk assessments, AML/CFT programmes, and audits; and 25
 - (b) any other records (for example, account files, business correspondence, and written findings) relating to, and obtained during the course of, a business relationship that are reasonably necessary to establish the nature and purpose of, and activities relating to, the business relationship. 30
 - (2) The records must be kept in accordance with **section 49** for a period of at least 5 years after the end of the business relationship. 35

- (3) A reporting entity must make records relating to risk assessments, AML/CFT programmes, and audits available to its AML/CFT supervisor on request.

Compare: 1996 No 9 s 31

49 How records to be kept 5

Records required by this subpart to be kept by a reporting entity must—

- (a) be kept either in written form in the English language, or so as to enable the records to be readily accessible and readily convertible into written form in the English language; and 10
- (b) be kept in the manner prescribed by regulations (if any).

Compare: 1996 No 9 s 32

50 When records need not be kept

- (1) Nothing in this subpart requires the retention of any records kept by a reporting entity that has been liquidated and finally dissolved except as provided in **subsection (2)**. 15

- (2) The High Court may, in relation to a reporting entity that is being or has been liquidated, make an order requiring that any or all of the records referred to in **sections 47 and 48** be kept for any period it thinks fit. 20

Compare: 1996 No 9 s 33

51 Destruction of records

- (1) Subject to **subsection (2)**, a reporting entity must take all practicable steps to ensure that every record retained by that reporting entity under this subpart, and every copy of that record, is destroyed as soon as practicable after the expiry of the period for which the reporting entity is required to retain that record. 25

- (2) Nothing in this section requires the destruction of any record, or any copy of any record, in any case where there is a lawful reason for retaining that record. 30

- (3) Without limiting **subsection (2)**, there is a lawful reason for retaining a record if the retention of that record is necessary—

- (a) in order to comply with the requirements of any other enactment; or 35

- (b) to enable a reporting entity to carry on its business; or
- (c) for the purposes of the detection, investigation, or prosecution of any offence.

Compare: 1996 No 9 s 34

52 Other laws not affected 5

Nothing in this subpart limits or affects any other enactment that requires any reporting entity to keep or retain a record.

Compare: 1996 No 9 s 35

Subpart 4—Compliance with AML/CFT requirements 10

53 Reporting entity must have AML/CFT programme and AML/CFT compliance officer

- (1) A reporting entity must establish, implement, and maintain a compliance programme (an **AML/CFT programme**) that includes internal procedures, policies, and controls to— 15
 - (a) detect money laundering and the financing of terrorism; and
 - (b) manage and mitigate the risk of money laundering and financing of terrorism.
- (2) A reporting entity must designate an employee as an AML/CFT compliance officer to administer and maintain its AML/CFT programme. 20
- (2A) In the case of a reporting entity that does not have employees, the reporting entity must appoint a person to act as its AML/CFT compliance officer. 25
- (3) The AML/CFT compliance officer must report to a senior manager of the reporting entity.

54 Minimum requirements for AML/CFT programmes

A reporting entity's AML/CFT programme must be based on the risk assessment undertaken in accordance with **section 55** and include adequate and effective procedures, policies, and controls for— 30

- (a) vetting—
 - (i) senior managers: 35
 - (ii) the AML/CFT compliance officer:

-
- (iii) any other employee that is engaged in AML/CFT related duties; and
 - (b) training on AML/CFT matters for the following employees:
 - (i) senior managers: 5
 - (ii) the AML/CFT compliance officer:
 - (iii) any other employee that is engaged in AML/CFT related duties; and
 - (c) complying with customer due diligence requirements (including ongoing customer due diligence and account monitoring); and 10
 - (d) reporting suspicious transactions; and
 - (e) record keeping; and
 - (f) setting out what the reporting entity needs to do, or continue to do, to manage and mitigate the risks of money laundering and the financing of terrorism; and 15
 - ~~(g) account monitoring; and~~
 - (h) examining, and keeping written findings relating to,—
 - (i) complex or unusually large transactions; and
 - (ii) unusual patterns of transactions that have no apparent economic or visible lawful purpose; and 20
 - (iii) any other activity that the reporting entity regards as being particularly likely by its nature to be related to money laundering or the financing of terrorism; and 25
 - (i) monitoring, examining, and keeping written findings relating to business relationships and transactions from or in countries that do not have or have insufficient anti-money laundering or countering financing of terrorism systems in place and have additional measures for dealing with or restricting dealings with such countries; and 30
 - (j) preventing the use, for money laundering or the financing of terrorism, of products (for example, the misuse of technology) and transactions (for example, non-face-to-face business relationships or transactions) that might favour anonymity; and 35

- (k) determining when enhanced customer due diligence is required and when simplified customer due diligence might be permitted; and
 - (l) providing when a person who is not the reporting entity may, and setting out the procedures for the person to, 5
conduct the relevant customer due diligence on behalf of the reporting entity; and
 - (m) monitoring and managing compliance with, and the internal communication of and training in, those procedures, policies, and controls. 10
 - ~~(n) any other matters prescribed by regulations; and~~
 - ~~(o) any other matters that may be provided for in the guidance produced by the AML/CFT supervisor for the reporting entity or by the Commissioner.~~
- 55 Risk assessment** 15
- (1) Before conducting customer due diligence or establishing an AML/CFT programme, a reporting entity must first undertake an assessment of the risk of money laundering and the financing of terrorism (a **risk assessment**) that it may reasonably expect to face in the course of its business. 20
 - (2) In assessing the risk, the reporting entity must have regard to the following:
 - (a) the nature, size, and complexity of its business; and
 - (b) the products and services it offers; and
 - (c) the methods by which it delivers products and services 25
to its customers; and
 - (d) the types of customers it deals with; and
 - (e) the countries it deals with; and
 - (f) the institutions it deals with; and
 - (g) any applicable guidance material produced by 30
AML/CFT supervisors or the Commissioner relating to risk assessments; and
 - (h) any other factors that may be provided for in regulations.
 - (3) The risk assessment must be in writing and— 35
 - (a) identify the risks faced by the reporting entity in the course of its business; and

- (b) describe how the reporting entity will ensure that the assessment remains current; and
- (c) enable the reporting entity to determine the level of risk involved in relation to relevant obligations under this Act and the regulations.

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56 Review and audit of risk assessment and AML/CFT programme

- (1) A reporting entity must ~~conduct~~ a review of its risk assessment and AML/CFT programme to—
 - (a) ensure the risk assessment and AML/CFT programme remain current; and
 - (b) identify any deficiencies in the effectiveness of the risk assessment and the AML/CFT programme; and
 - (c) make any changes to the risk assessment or AML/CFT programme identified as being necessary under **paragraph (b)**.
- (2) A reporting entity must ensure its risk assessment and AML/CFT programme are audited every 2 years or at any other time at the request of the relevant AML/CFT supervisor.
- (3) The audit must be carried out by an independent person appointed by the reporting entity who is appropriately qualified to conduct the audit.
- (4) A person appointed to conduct an audit is not required to be—
 - (a) a chartered accountant within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996; or
 - (b) qualified to undertake financial audits.
- (5) A person appointed to conduct an audit must not have been involved in—
 - (a) the establishment, implementation, or maintenance of the reporting entity's AML/CFT programme;
 - (b) the undertaking of the reporting entity's risk assessment.
- (6) The audit of the risk assessment is limited to an audit of whether the reporting entity's risk assessment fulfils the requirements in **section 55(3)**.

~~(7) As soon as practicable after conducting an audit, the reporting entity must provide a copy to the relevant AML/CFT supervisor.~~

(7) A reporting entity must provide a copy of any audit to its AML/CFT supervisor on request.

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57 Annual AML/CFT report

(1) The reporting entity must prepare an annual report on its risk assessment and AML/CFT programme.

(2) An annual report must—

- (a) be in the prescribed form; and
- (b) take into account the results and implications of ~~the review required by section 56(1)~~ or the audit required by **section 56(2)**; and
- (c) contain any information prescribed by regulations.

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(3) The reporting entity must provide the annual report to its AML/CFT supervisor at a time ~~agreed between the reporting entity and~~ appointed by the AML/CFT supervisor.

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(4) The AML/CFT supervisor must give the reporting entity reasonable notice of the requirement to provide the annual report.

58 Reporting entities to ensure that branches and subsidiaries comply with AML/CFT requirements

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(1) A reporting entity must ensure that its branches and subsidiaries that are in a foreign country apply, to the extent permitted by the law of that country, measures ~~at least broadly~~ equivalent to those set out in this Act and the regulations with regard to the requirements for customer due diligence (including ongoing customer due diligence), risk assessments, AML/CFT programmes, and record keeping.

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(2) If the law of the foreign country does not permit the application of those equivalent measures by the branch or the subsidiary located in that country, the reporting entity must—

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- (a) inform its AML/CFT supervisor accordingly; and
- (b) take additional measures to effectively handle the risk of a money laundering offence and the financing of terrorism.

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- (3) A reporting entity must communicate (where relevant) the policies, procedures, and controls that it establishes, implements, and maintains in accordance with this subpart to its branches and subsidiaries that are outside New Zealand.

Subpart 5—Codes of practice 5

59 Interpretation

In this Part, unless the context otherwise requires,—

code of practice means a code of practice approved by the responsible Minister under **section 61**, as amended from time to time

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proposed code of practice means a document prepared under **section 60(1)**.

60 AML/CFT supervisors to prepare codes of practice for relevant sectors

- (1) An AML/CFT supervisor must, if directed to do so by the Minister responsible for that AML/CFT supervisor (the **responsible Minister**), prepare—

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- (a) 1 or more codes of practice for the sector of activity of the reporting entities for which it is the supervisor under **section 127** or in respect of different reporting entities specified by the responsible Minister:

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- (b) an instrument that amends a code of practice or revokes the whole or any provision of a code of practice prepared under **paragraph (a)**.

- (2) The purpose of a code of practice is to provide a statement of practice that assists reporting entities to comply with their obligations under this Act and the regulations.

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- (3) A direction under **subsection (1)** may (without limitation)—

- (a) relate generally to the obligations imposed on the relevant reporting entities by or under this Act or the regulations or specify particular aspects of those obligations that are to be covered by the code of practice:

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- (b) specify the amendments to be made or their intended effect, and specify the extent of the revocation to be made:

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- (c) indicate the date by which the responsible Minister wishes the code of practice to be provided to him or her;
- (d) include details about the recommendation that the AML/CFT supervisor is required to provide under **section 61(1)(a)**. 5
- (4) An AML/CFT supervisor must comply with a direction under **subsection (1)** as soon as practicable.
- (5) No code of practice has legal effect until approved by the responsible Minister under **section 61(6)**. 10
- 61 Procedure for approval and publication of codes of practice**
- (1) The responsible Minister must not approve a code of practice prepared by an AML/CFT supervisor unless—
- (a) the AML/CFT supervisor has made a recommendation that the Minister should approve the code of practice; 15
and
- (b) the AML/CFT supervisor has consulted the persons and organisations that the Minister thinks appropriate, having regard to the subject matter of the proposed code of practice. 20
- (2) In consulting under **subsection (1)(b)**, the AML/CFT supervisor must ensure that—
- (a) a copy of the proposed code of practice or a summary of its contents, in hard copy or electronic format, is provided to the persons and organisations being consulted; 25
and
- (b) the persons and organisations being consulted have at least 20 working days to make submissions or representations about the proposed code of practice. 30
- (3) The responsible Minister may direct the AML/CFT supervisor to reconsider any aspect of the proposed code of practice and to make any amendments that the Minister considers necessary.
- (4) Despite **subsection (3)**,—
- (a) if the AML/CFT supervisor does not amend the proposed code of practice as directed by the Minister or 35

- within the time specified by the Minister, the Minister may make those amendments:
- (b) the Minister may, after consultation with the AML/CFT supervisor, make any further amendments to the proposed code of practice that he or she considers necessary. 5
- (5) The responsible Minister must—
- (a) approve the proposed code of practice as prepared by the AML/CFT supervisor; or
 - (b) approve the proposed code of practice as amended by the AML/CFT supervisor; or 10
 - (c) approve the proposed code of practice as amended by the Minister after consultation with the AML/CFT supervisor.
- (6) The responsible Minister approves a code of practice by notice in the *Gazette*, and the notice— 15
- (a) must either set out the code of practice or state where copies of the code of practice in hard copy or electronic format may be obtained or viewed:
 - (b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989, but is a regulation for the purposes of the Regulations (Disallowance) Act 1989. 20
- 62 Amendment and revocation of codes of practice**
- (1) A code of practice may be amended or revoked in the same manner as that in which it was made. 25
 - (2) **Sections 60, 61, 63, and 64** apply with the necessary modifications to the amendment or revocation of a code of practice.
- 63 Proof of codes of practice**
- Publication in the *Gazette* of a notice under **section 61(6)** is conclusive evidence that the requirements of **sections 61(1) to (5) and 62** have been complied with in respect of the approval specified in the notice. 30

64 Legal effect of codes of practice

- (1) A reporting entity complies with an obligation imposed on it by or under this Act or ~~the~~ regulations by—
- (a) complying with those provisions of a code of practice that state a means of satisfying the obligation; or 5
 - (b) complying with the obligation by some other equally effective means.
- (2) However, a reporting entity may not rely on **subsection (1)(b)** as a defence to an act or omission on its part unless it has, by notice in writing given before the act or omission occurred, advised the AML/CFT supervisor that it has opted out of compliance with the code of practice and intends to satisfy its obligations by some other equally effective means. 10
- (3) If a person is charged with an offence in respect of a failure to comply with any provision of this Act, a court must, in determining whether that person has failed to comply with the provision, have regard to any code of practice in force under **section 61(6)** at the time of the alleged failure relating to matters of the kind to which the provision relates. 15
- (4) If an application for an injunction against a person has been made under this Act, a court must, in determining whether to grant the injunction, have regard to any code of practice in force under **section 61(6)**. 20
- (5) If an application for a pecuniary penalty against a person has been made under this Act, a court must, in determining whether to impose a pecuniary penalty, have regard to any code of practice in force under **section 61(6)** at the time the person engaged in conduct that constituted the relevant civil liability act. 25

Subpart 6—Cross-border transportation of cash 30

65 Reports about movement of cash into or out of New Zealand

- (1) A person must not move cash into or out of New Zealand if—
- (a) the total amount of the cash is more than the applicable threshold value; and 35

- (b) the person has not given a report in respect of the movement of that cash in accordance with this subpart; and
- (c) the movement of that cash is not exempted under this Act or regulations (if any).
- (2) For the purposes of this Act, a person moves cash into New Zealand if the person brings or sends the cash into New Zealand. 5
- (3) For the purposes of this Act, a person moves cash out of New Zealand if the person takes or sends the cash out of New Zealand. 10
- Compare: Anti-Money Laundering and Counter-Terrorism Financing Act 2006 ss 53(3), 57(2), 58 (Aust)
- 66 Reports about receipt of cash from outside New Zealand**
- A person must not receive cash moved to the person from outside New Zealand if— 15
- (a) the total amount of the cash is more than the applicable threshold value; and
- (b) the person has not given a report in respect of the movement of that cash in accordance with this subpart; and
- (c) the movement of that cash is not exempted under this Act or regulations (if any). 20
- Compare: Anti-Money Laundering and Counter-Terrorism Financing Act 2006 s 55(3) (Aust)
- 67 Reporting requirements**
- A report under this subpart must— 25
- (a) be in writing in the prescribed form; and
- (b) contain the prescribed information; and
- (c) be completed in accordance with regulations (if any); and
- ~~(d) be provided to a Customs officer before the cash leaves the control of the Customs.~~ 30
- (d) be provided to a Customs officer,—
- (i) in the case of accompanied cash, at the same time as a departure card is presented in accordance with section 126(2) of the Immigration Act 1987: 35

(ii) in the case of unaccompanied cash, before the cash leaves New Zealand.

Compare: 1996 No 9 s 37; Anti-Money Laundering and Counter-Terrorism Financing Act 2006 s 55(5) (Aust)

- 68 Information to be forwarded to Commissioner** 5
- (1) If a report is made to a Customs officer under this subpart, that officer must, as soon as practicable, forward the report to the Commissioner.
- (2) If, in the course of conducting a search under this Act, a Customs officer discovers any cash in respect of which a report is required to be made under this subpart but has not been made, that officer must, as soon as practicable, report the details of the search, and of the cash, to the Commissioner. 10
- (3) Every report made under **subsection (2)** must be in the form that the Commissioner may determine after consultation with the chief executive of the New Zealand Customs Service. 15
- (4) The chief executive of the New Zealand Customs Service must—
- (a) cause a record to be made and kept of—
- (i) each occasion on which a cash report is made to a Customs officer; and 20
- (ii) the details of the identity of the person making the cash report; and
- (iii) the date on which the cash report is made; and
- (b) ensure that the record is retained for a period of not less than 1 year after the date on which the cash report is made. 25

Compare: 1996 No 9 s 42

Part 3 Enforcement

Subpart 1—General provisions relating to Part

- Proceedings for civil penalties* 5
- 69 When and how civil penalty proceedings brought**
- (1) An application for a civil penalty under this Part may be made no later than 6 years after the conduct giving rise to the liability to pay the civil penalty occurred.
- (2) In proceedings for a civil penalty under this Part,— 10
- (a) the standard of proof is the standard of proof that applies in civil proceedings; and
- (b) the relevant AML/CFT supervisor may, by order of the court, obtain discovery and administer interrogatories.
- Relationship between civil penalty and criminal proceedings* 15
- 70 Relationship between concurrent civil penalty proceedings and criminal proceedings**
- (1) Criminal proceedings for an offence under this Part may be commenced against a person in relation to particular conduct whether or not proceedings for a civil penalty under this Part have been commenced against the person in relation to the same or substantially the same conduct. 20
- (2) Proceedings under this Part for a civil penalty against a person in relation to particular conduct are stayed if criminal proceedings against the person are or have been commenced for an offence under this Part in relation to the same or substantially the same conduct. 25
- (3) After the criminal proceedings referred to in **subsection (2)** have been completed or withdrawn, a person may apply to have the stay lifted on the civil penalty proceedings referred to in that subsection. 30
- 71 One penalty only rule**
- (1) If civil penalty or criminal proceedings under this Part are brought against a person in relation to particular conduct, a 35

court may not impose a penalty (whether civil or criminal) on the person if a court has already imposed a penalty under this Part in proceedings relating to the same or substantially the same conduct.

- (2) If a person is or may be liable to more than 1 civil penalty under this Part in respect of the same or substantially the same conduct, civil penalty proceedings may be brought against the person for more than 1 civil penalty, but the person may not be required to pay more than 1 civil penalty in respect of the same or substantially the same conduct. 5
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72 Restriction on use of evidence given in civil penalty proceedings

- (1) Evidence of information given, or evidence of production of documents, by a person is not admissible in criminal proceedings against the person for an offence under this Part or any other enactment if— 15
- (a) the person previously gave the evidence or produced the documents in civil penalty proceedings under this Part against him or her, whether or not a civil penalty was imposed; and 20
- (b) the proceedings for the civil penalty related to conduct that was the same or substantially the same as the conduct constituting the offence.
- (2) This section does not apply to criminal proceedings in respect of the falsity of the evidence given by the person in the proceedings for the civil penalty. 25

Immunities

72A Protection for AML/CFT supervisors

No civil or criminal proceedings may be brought against an AML/CFT supervisor or a person who is or has been an officer, employee, member of, or member of the board of, an AML/CFT supervisor for anything done or omitted to be done in the course of the performance or exercise of the AML/CFT supervisor's functions or powers under this Act unless it is shown that the AML/CFT supervisor or the person concerned acted in bad faith. 30
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72B Protection for reporting entities, officers, etc, acting in compliance with this Act

No reporting entity, or person who is, or has been, an officer, an employee, or a member of the governing body of the reporting entity, or person appointed under **section 53(2A)** is criminally or civilly liable for any action taken in order to comply with this Act or regulations if the action—

- (a) was taken in good faith; and
- (b) was reasonable in the circumstances.

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Liability of senior managers

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73 Criminal liability of senior managers

(1) A senior manager of a body corporate commits an offence if—

- (a) the body corporate commits an offence under this Part; and
- (b) the manager knew that the offence was being or would be committed; and
- (c) the manager was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
- (d) the manager failed to take all reasonable steps to prevent the commission of the offence.

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(2) The maximum penalty for an offence under this section is the maximum penalty that could have been imposed if an individual had been convicted of the offence that the body corporate committed.

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(3) An offence under this section is triable in whatever manner the offence that the body corporate has committed could be tried.

74 Liability of senior managers to civil penalty

(1) A senior manager of a body corporate is liable to a civil penalty if—

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- (a) the body corporate engages in conduct that constitutes a civil liability act; and
- (b) the manager knew that the civil liability act was occurring or would occur; and

- (c) the manager was in a position to influence the conduct of the body corporate in relation to the civil liability act; and
 - (d) the manager failed to take all reasonable steps to prevent the civil liability act. 5
- (2) The maximum civil penalty for a civil liability act under this section is the maximum civil penalty that could have been imposed if an individual had engaged in the conduct constituting the civil liability act that the body corporate engaged in.
- 75 How to establish whether senior manager took all reasonable steps** 10
- (1) For the purposes of **sections 73 and 74**, in determining whether a senior manager of a body corporate failed to take all reasonable steps to prevent the commission of an offence or a civil liability act, a court must have regard to the following:
- (a) what action (if any) the manager took to ensure that the body corporate’s employees, agents, and contractors had a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, so far as they affect the employees, agents, or contractors concerned: 20
 - (b) what action (if any) the manager took when he or she became aware that the body corporate was committing an offence or a civil liability act under this Act. 25
- (2) This section does not limit the generality of **sections 73 and 74**.

Subpart 2—Civil liability

- 76 Meaning of civil liability act** 30
- In this Part, a **civil liability act** occurs when a reporting entity fails to comply with any of the AML/CFT requirements, including, without limitation, when the reporting entity—
- (a) fails to conduct customer due diligence as required by **subpart 1 of Part 2**:
 - (b) fails to adequately monitor accounts and transactions: 35

- (c) enters into or continues a business relationship with a person who does not produce or provide satisfactory evidence of the person's identity:
- (d) enters into or continues a correspondent banking relationship with a shell bank: 5
- (e) fails to keep records in accordance with the requirements of **subpart 3 of Part 2**:
- (f) fails to establish, implement, or maintain an AML/CFT programme:
- (g) fails to ensure that its branches and subsidiaries comply with the relevant AML/CFT requirements. 10

77 Possible responses to civil liability act

If a civil liability act is alleged to have occurred, the relevant AML/CFT supervisor may do 1 or more of the following:

- (a) issue a formal warning under **section 78**: 15
- (b) accept an enforceable undertaking under **section 79** and seek an order in the court for breach of that undertaking under **section 80**:
- (c) seek an injunction from the High Court under **section 83 or 85**: 20
- (d) apply to the court for a pecuniary penalty under **section 88**.

Formal warnings

78 Formal warnings

- (1) The relevant AML/CFT supervisor may issue 1 or more formal warnings to a person if the AML/CFT supervisor has reasonable grounds to believe that that person has engaged in conduct that constituted a civil liability act. 25
- (2) A formal warning must be—
 - (a) in the prescribed form; and 30
 - (b) issued in the manner specified in regulations (if any).

*Enforceable undertakings***79 Enforceable undertakings**

- (1) The relevant AML/CFT supervisor may accept a written undertaking given by a person in connection with compliance with this Act or the regulations (if any). 5
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the relevant AML/CFT supervisor.

80 Enforcement of undertakings

- (1) If the relevant AML/CFT supervisor considers that a person who gave an undertaking under **section 79** has breached 1 or more of its terms, the relevant AML/CFT supervisor may apply to the court for an order under **subsection (2)**. 10
- (2) If the court is satisfied that the person has breached 1 or more of the terms of the undertaking, the court may make any or all of the following orders: 15
- (a) an order directing the person to comply with any of the terms of the undertaking:
- (b) an order directing the person to pay to the AML/CFT supervisor an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach: 20
- (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach.
- ~~(d) any other order that the court considers appropriate:~~ 25

81 Assessment of compensation for breach of undertakings

- For the purposes of **section 80(2)(c)**, in determining whether another person (**person A**) has suffered loss or damage as a result of the breach, and in assessing the amount of compensation payable, the court may have regard to the following: 30
- (a) the extent to which any expenses incurred by person A are attributable to dealing with the breach:
- (b) the effect of the breach on person A's ability to carry on business or other activities:
- (c) any damage to the reputation of person A's business that is attributable to dealing with the breach: 35

- (d) any loss of business opportunities suffered by person A as a result of dealing with the breach:
- (e) any other matters that the court considers relevant.

Injunctions

- 82 Powers of High Court not affected** 5
The powers in **sections 83 to 87** are in addition to, and do not derogate from, any other powers of the High Court relating to the granting of injunctions.
- 83 Performance injunctions**
- (1) The High Court may, on the application of the relevant AML/CFT supervisor, grant an injunction requiring a person to do an act or thing if—
 - (a) that person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do that act or thing; and
 - (b) the refusal or failure was, is, or would be a civil liability act.
 - (2) The court may rescind or vary an injunction granted under this section.
- 84 When High Court may grant performance injunctions** 20
- (1) The High Court may grant an injunction requiring a person to do an act or thing if—
 - (a) it is satisfied that the person has refused or failed to do that act or thing; or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing.
 - (2) **Subsection (1)(a)** applies whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing. 25
 - (3) **Subsection (1)(b)** applies—
 - (a) whether or not the person has previously refused or failed to do that act or thing; or

- (b) where there is an imminent danger of substantial damage to any other person if that person refuses or fails to do that act or thing.

85 Restraining injunctions

- (1) The High Court may, on the application of the relevant AML/CFT supervisor ~~or any other person~~, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention of a provision of this Act. 5
- (2) The court may rescind or vary an injunction granted under this section. 10

86 When High Court may grant restraining injunctions and interim injunctions

- (1) The High Court may grant an injunction restraining a person from engaging in conduct of a particular kind if—
- (a) it is satisfied that the person has engaged in conduct of that kind; or 15
- (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if, in its opinion, it is desirable to do so. 20
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind. 25
- (4) **Subsections (1)(b) and (2)** apply—
- (a) whether or not the person has previously engaged in conduct of that kind; or
- (b) where there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind. 30

87 Undertaking as to damages not required by AML/CFT supervisor

- (1) If the relevant AML/CFT supervisor applies to the High Court for the grant of an interim injunction under this subpart, the 35

court must not, as a condition of granting an interim injunction, require the AML/CFT supervisor to give an undertaking as to damages.

- (2) However, in determining the AML/CFT supervisor's application for the grant of an interim injunction, the court must not take into account that the AML/CFT supervisor is not required to give an undertaking as to damages. 5

Pecuniary penalties

88 Pecuniary penalties for civil liability act

- (1) On the application of the relevant AML/CFT supervisor, the High Court may order a person to pay a pecuniary penalty to the Crown, or to any other person specified by the court, if the court is satisfied that that person has engaged in conduct that constituted a civil liability act. 10
- (2) For a civil liability act specified in **section 76(b), (c), (d), or (g)**, the maximum amount of a pecuniary penalty under this Act is,— 15
- (a) in the case of an individual, \$100,000; and
 - (b) in the case of a body corporate, \$1 million.
- (3) For a civil liability act specified in **section 76(a), (e), or (f)**, the maximum amount of a pecuniary penalty under this Act is,— 20
- (a) in the case of an individual, \$200,000; and
 - (b) in the case of a body corporate, \$2 million.
- (4) In determining an appropriate pecuniary penalty, the court must have regard to all relevant matters, including— 25
- (a) the nature and extent of the civil liability act; and
 - (b) the likelihood, nature, and extent of any damage to the integrity or reputation of New Zealand's financial system because of the civil liability act; and 30
 - (c) the circumstances in which the civil liability act occurred; and
 - (d) whether the person has previously been found by the court in proceedings under this Act to have engaged in any similar conduct. 35

Subpart 3—Offences

*Offence and penalties relating to civil liability
act***89 Offence and penalties for civil liability act**

- (1) A reporting entity that engages in conduct constituting a civil liability act commits an offence if the reporting entity engages in that conduct knowingly or recklessly. 5
- (2) ~~It is a defence to the offence under **subsection (1)** if the reporting entity proves that the reporting entity took all reasonable steps to prevent the commission of the offence.~~ 10

*Offences relating to suspicious transaction
reports***90 Failing to report suspicious transaction**

A reporting entity commits an offence if—

- (a) a transaction is conducted or is sought to be conducted through the reporting entity; and 15
- (b) the reporting entity has reasonable grounds to suspect that the transaction or the proposed transaction is or may be—
- (i) relevant to the investigation or prosecution of any person for a money laundering offence; or 20
- (ia) relevant to the enforcement of the Misuse of Drugs Act 1975; or
- (ii) relevant to the enforcement of the Terrorism Suppression Act 2002; or 25
- (iii) relevant to the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009; and
- (iv) relevant to the investigation or prosecution of a serious offence within the meaning of section 243(1) of the Crimes Act 1961; and 30
- (c) the reporting entity fails to report the transaction or the proposed transaction to the Commissioner as soon as practicable, but no later than 3 working days, after forming that suspicion. 35

Compare: 1996 No 9 s 22(1)

91 Providing false or misleading information in connection with suspicious transaction report

A person commits an offence who, in making a suspicious transaction report or in supplying information in connection with that report,—

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- (a) makes any statement that the person knows is false or misleading in a material particular; or
- (b) omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular.

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Compare: 1996 No 9 s 22(3)

92 Unlawful disclosure of suspicious transaction report

(1) A person commits an offence who contravenes **section 43**—

- (a) for the purpose of obtaining, directly or indirectly, an advantage or a pecuniary gain for that person or any other person; or
- (b) with intent to prejudice any investigation into—
 - (i) the commission or possible commission of a money laundering offence; or
 - (ii) the financing of terrorism or the possible financing of terrorism.

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(2) A person commits an offence who—

- (a) is an officer or employee or a former officer or employee of a reporting entity, a person appointed as an AML/CFT compliance officer under **section 53(2A)**, or an auditor for a reporting entity; and
- (b) has become aware, or became aware, in the course of that person's duties as such an officer or employee, that any investigation into any transaction or proposed transaction that is the subject of a suspicious transaction report is being, or may be, conducted by the Police; and
- (c) knows that he or she is not legally authorised to disclose the information; and
- (d) discloses that information to any other person—
 - (i) for the purpose of obtaining, directly or indirectly, an advantage or a pecuniary gain for that person or any other person; or
 - (ii) with intent to prejudice any investigation into—

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- (A) the commission or possible commission of a money laundering offence; or
(B) the financing of terrorism or the possible financing of terrorism.
- Compare: 1996 No 9 s 22(4), (5) 5
- 93 Failure to keep or retain adequate records relating to suspicious transaction**
A reporting entity commits an offence if the reporting entity fails to keep or retain adequate records relating to a suspicious transaction. 10
- 94 Obstruction of investigation relating to suspicious transaction report**
A person commits an offence if the person obstructs any investigation relating to any suspicious transaction report without lawful justification or excuse. 15
- 95 Contravention of section 44(1)**
A person commits an offence if the person acts in contravention of **section 44(1)** without lawful justification or excuse.
Compare: 1996 No 9 s 22(8)
- 96 Defence** 20
- (1) It is a defence to a charge against a person in relation to a contravention of, or a failure to comply with, **subpart 4 of Part 2** if the defendant proves that—
- (a) the defendant took all reasonable steps to ensure that the defendant complied with that ~~subpart~~ **Part**; or 25
- (b) in the circumstances of the particular case, the defendant could not reasonably have been expected to ensure that the defendant complied with ~~the subpart~~ **that Part**.
- (2) In determining, for the purposes of **subsection (1)(a)**, whether or not a defendant took all reasonable steps to comply with **subpart 4 of Part 2**, the court must have regard to— 30
- (a) the nature of the reporting entity and the activities in which it engages; and

- (b) the existence and adequacy of any procedures established by the reporting entity to ensure compliance with that subpart.
- (3) Except as provided in **subsection (4)**, **subsection (1)** does not apply unless, within 21 days after the service of the summons, or within such further time as the court may allow, the defendant has delivered to the prosecutor a written notice—
- (a) stating that the defendant intends to rely on the defence referred to in **subsection (1)**; and
- (b) specifying the reasonable steps that the defendant will claim to have taken.
- (4) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by **subsection (3)** is not, except with the leave of the court, admissible for the purpose of supporting a defence under **subsection (1)**.
- Compare: 1996 No 9 s 23

97 Time limit for prosecution of offences relating to civil liability act and suspicious transaction reports

A prosecution against a reporting entity or a person for an offence under any of **sections 89 to 94 and 93 to 95** must be commenced—

- (a) within 6 months of the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but
- (b) not later than 3 years after the offence was committed.

Despite anything in section 14 of the Summary Proceedings Act 1957, any information in respect of an offence under any of **sections 89 to 95** may be laid at any time within 3 years after the time when the matter of the information arose.

98 Penalties

- (1) A reporting entity or person who commits an offence under any of **sections 89 to 94 and 93 to 95** is liable, on conviction, to,—
- (a) in the case of an individual, either or both of the following:
- (i) a term of imprisonment of not more than 2 years;
- (ii) a fine of up to \$300,000; and

- (b) in the case of a body corporate, a fine of up to \$5 million.
- (2) A person who commits an offence under **section 92** is liable, on summary conviction, to,—
- (a) in the case of an individual, a fine of up to \$10,000;
- (b) in the case of a body corporate, a fine of up to \$100,000. 5

*Other offences relating to non-compliance with
AML/CFT requirements*

99 Structuring transaction to avoid application of AML/CFT requirements

A person commits an offence if the person structures a transaction (other than a transaction that involves the cross-border transportation of cash) to avoid the application of any AML/CFT requirements. 10

100 Offence to obstruct AML/CFT supervisor

A person commits an offence if the person wilfully obstructs any AML/CFT supervisor in the exercise of any power conferred or the performance of any function imposed on that supervisor by this Act. 15

101 Offence to provide false or misleading information to AML/CFT supervisor

A person commits an offence if, without reasonable excuse, the person provides information to an AML/CFT supervisor knowing that information to be false or misleading in any material respect. 20

102 Time limit for prosecution of offences relating to non-compliance with AML/CFT requirements 25

(1) A prosecution against a person for an offence under any of **sections 99, 100, and 101** must be commenced—

(a) within 6 months of the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but 30

(b) not later than 3 years after the offence was committed.

(2) Despite anything in section 14 of the Summary Proceedings Act 1957, any information in respect of an offence under any

of sections 89 to 95 may be laid at any time within 3 years after the time when the matter of the information arose.

103 Penalties

- (1) A person who commits an offence under **section 99** is liable, on conviction, to,— 5
- (a) in the case of an individual, either or both of the following:
 - (i) a term of imprisonment of not more than 2 years:
 - (ii) a fine of up to \$300,000; and
 - (b) in the case of a body corporate, a fine of up to \$5 million. 10
- (2) A person who commits an offence under either of **sections 100 or and 101** is liable, on conviction, to,—
- (a) in the case of an individual, either or both of the following:
 - (i) a term of imprisonment of not more than 3 15 months:
 - (ii) a fine of up to \$10,000; and
 - (b) in the case of a body corporate, a fine of up to \$50,000.

*Offences relating to cross-border transportation
of cash* 20

104 Failure to report cash over applicable threshold value moved into or out of New Zealand

A person commits an offence if the person fails, without reasonable excuse, to make or cause to be made a cash report, in accordance with **subpart 6 of Part 2**, concerning cash over the applicable threshold value that the person has moved into or out of New Zealand. 25

105 Failure to report cash over applicable threshold value received by person in New Zealand from overseas

A person commits an offence if the person fails, without reasonable excuse, to make or cause to be made a cash report, in accordance with **subpart 6 of Part 2**, concerning cash over the applicable threshold value that the person has received in New Zealand from overseas. 30

- 106 Structuring cross-border transportation to avoid application of AML/CFT requirements**
A person commits an offence if the person structures a cross-border transportation of cash to avoid the application of any AML/CFT requirements. 5
- 107 Defence**
It is a defence to an offence under **section 104 or 105** in relation to a failure to make or cause to be made a cash report to a Customs officer ~~under section 67(d) before cash leaves the control of the Customs~~ if the defendant proves that— 10
- (a) the failure was due to some emergency or to any other circumstances outside the reasonable control of the defendant; and
 - (b) the defendant made or caused to be made a report in respect of that cash as soon as practicable after the obligation to make the report arose. 15
- Compare: 1996 No 9 s 40(3)
- 108 Providing false or misleading information in connection with cash report**
A person commits an offence if, without reasonable excuse, the person makes or causes to be made a cash report knowing it is false or misleading in any material respect. 20
- Compare: 1996 No 9 s 40(1)(b)
- 109 Offence to obstruct or not to answer questions from Customs officer** 25
- (1) A person commits an offence if the person wilfully obstructs any Customs officer in the exercise of any power conferred or performance of any duty imposed on that officer by this Act.
 - (2) A person commits an offence if, without reasonable excuse, the person fails to answer questions from a Customs officer. 30
- Compare: 1996 No 9 s 40(2)
- 110 Penalties**
A person who commits an offence under any of **sections 104, 105, 106, 108, and 109** is liable, on summary conviction, to,— 35

- (a) in the case of an individual, either or both of the following:
 - (i) a term of imprisonment of not more than 3 months;
 - (ii) a fine of up to \$10,000; and
- (b) in the case of a body corporate, a fine of up to \$50,000.

111 Chief executive of New Zealand Customs Service may deal with cash reporting offences

- (1) This section applies if, in any case to which **section 104 or 105** applies, a person admits in writing that he or she has committed the offence and requests that the offence be dealt with summarily by the chief executive of the New Zealand Customs Service. 10
 - (2) If this section applies, the chief executive of the New Zealand Customs Service may, at any time before an information has been laid in respect of the offence, accept from that person a sum, not exceeding \$500, that the chief executive of the New Zealand Customs Service thinks just in the circumstances of the case, in full satisfaction of any fine to which the person would otherwise be liable under **section 110**. 15 20
 - (3) If the chief executive of the New Zealand Customs Service accepts any sum under this section, the offender is not liable to be prosecuted for the offence in respect of which the payment was made. 25
- Compare: 1996 No 9 s 41

Relationship with Customs and Excise Act 1996

112 Relationship with Customs and Excise Act 1996

- (1) Nothing in this Act limits or affects the Customs and Excise Act 1996.
- (2) The movement of cash in breach of any requirement of this Act or any regulations is, for the purposes of the Customs and Excise Act 1996, the importation or exportation of a prohibited good. 30
- (3) It is the duty of every Customs officer to prevent the movement of cash that is in breach of any requirement of this Act or any regulations. 35

- (4) For the purpose of carrying out the duty in **subsection (3)**, a Customs officer may exercise his or her powers under the following sections of the Customs and Excise Act 1996 in relation to uncustomed or prohibited goods:
- (a) section 145 (questioning persons about goods and debt): 5
 - (b) section 148 (detention of persons questioned about goods or debt):
 - (c) sections 149, 149A, 149B, 149C(1) and (2), and 149D (which relate to search and seizure):
 - (d) sections 151 and 152 (which relate to examination of goods): 10
 - (e) section 161 (further powers in relation to documents):
 - (f) section 165 (copying of documents obtained during search):
 - (g) section 166 (retention of documents and goods obtained during search): 15
 - (h) sections 166A to 166F (which relate to seizure and detention of goods suspected to be tainted property):
 - (i) sections 167 to 172 (which relate to search warrants and use of aids by Customs officers). 20

Computer searches by Customs officer

112A Duty of persons with knowledge of computer or computer network or other data storage devices to assist access to Customs officer

- (1) A Customs officer exercising a search or examination power under **section 112(4)** may require a specified person to provide access information and other information or assistance that is reasonable and necessary to allow the Customs officer to access data held in, or accessible from,—
- (a) a computer: 30
 - (b) any other data storage device.
- (2) In this section,—
- access information** includes access codes, passwords, encryption keys, and any related information that enables access to a computer or other data storage device 35

- specified person** is a person who—
- (a) is the owner or lessee of the computer or other data storage device, or is in possession or control of the computer or other data storage device, is an employee of any of the above, or is a service provider who provides service to the above and holds access information; and 5
 - (b) has relevant knowledge of—
 - (i) the computer or a computer network of which the computer or other data storage device forms a part; or 10
 - (ii) measures applied to protect data held in, or accessible from, the computer or other data storage device.
- (3) A specified person may not be required under **subsection (1)** to give any information tending to incriminate the person. 15
- (4) **Subsection (3)** does not prevent a Customs officer exercising a search power from requiring a specified person to provide information that—
- (a) is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from, a computer or other storage device that contains or may contain information tending to incriminate the specified person; but 20
 - (b) does not itself tend to incriminate the specified person.
- (5) **Subsection (3)** does not prevent a Customs officer exercising a search power from requiring a specified person to provide assistance that is reasonable and necessary to allow the Customs officer exercising the search power to access data held in, or accessible from, a computer or other storage device that contains, or may contain, information tending to incriminate the specified person. 25 30
- (6) **Subsections (1), (4), and (5)** are subject to section 162 of the Customs and Excise Act 1996 (which relates to privilege and confidentiality).

Subpart 4—Search and seizure 35

113 **Definitions**

In this subpart, unless the context otherwise requires,—

document—

- (a) means any record of information; and
- (b) includes—
 - (i) anything on which there is writing or any image; and 5
 - (ii) anything on which there are marks, figures, symbols, or perforations that have a meaning for persons qualified to interpret them; and
 - (iii) anything from which sounds, images, or writing can be reproduced, with or without the aid of anything else 10

dwellinghouse means a building, or an apartment, a flat, or a unit within a building, that is used as a private residence

enforcement officer means the relevant AML/CFT supervisor or the Commissioner (as the case may require) and includes a person appointed under **section 135** by an AML/CFT supervisor 15

evidential material means any thing that there are reasonable grounds for believing is or may be evidence, or may provide or contain evidence, of— 20

- (a) an offence under this Part; or
- (b) an attempt to commit an offence under this Part; or
- (c) a civil liability act

occupier, in relation to any place, includes—

- (a) a person who is present at the place and is in apparent control of it; and 25
- (b) any person acting on behalf of the occupier

place—

- (a) means anywhere on, under, or over any land or water; and 30
- (b) includes all or any part of a building, structure, or conveyance

seize includes to secure against interference

thing includes—

- (a) any substance, article, document, container, or equipment; and 35
- (b) anything in electronic or magnetic form.

Search warrants

114 Search warrant

- (1) An enforcement officer may apply for a search warrant in respect of a place.
- (2) The application must be made in writing, on oath, by an enforcement officer. 5
- (3) A District Court Judge, Justice of the Peace, Community Magistrate, or Registrar may issue a search warrant in respect of a place if satisfied that there are reasonable grounds for believing that there is evidential material at that place. 10
- (4) Every search warrant must be in the form prescribed by regulations and be directed to—
 - (a) an enforcement officer by name; or
 - (b) a constable by name; or
 - (c) every constable. 15
- (5) Despite a warrant being directed to another person under **subsection (4)**, it may be executed by any constable.
- (6) The Judge, Justice of the Peace, Community Magistrate, or Registrar issuing the warrant may impose reasonable conditions on its execution. 20

115 Powers under search warrant

- (1) A search warrant issued under **section 114** authorises the enforcement officer or constable who is executing it, and any person called on by that officer or constable to assist, to do any of the following: 25
 - (a) enter and search the place at any reasonable time, on 1 occasion within 14 days after the date of the warrant being issued:
 - (b) use reasonable force to—
 - (i) make entry (for example, by breaking open a door); and 30
 - (ii) open any thing at the place that it is reasonable in the circumstances to open:
 - (c) search for and seize any evidential material at the place:
 - (d) inspect and copy any document; and for that purpose 35 also do any of the following:

- (i) require any person at the place to produce a particular document:
- (ii) require any person at the place who has control or knowledge of a document to reproduce, or assist in reproducing, the document in usable form: 5
- (iii) operate any equipment at the place:
- (iv) remove a document temporarily to another place in order to copy it:
- (e) take into or onto the place whatever equipment and materials the enforcement officer or constable requires for the search: 10
- (f) require the occupier of the place to answer any questions put by the enforcement officer or constable.
- (2) An enforcement officer or constable may require the occupier of the place to do the following: 15
 - (a) hold any thing at the place in an unaltered state for a specified period of up to 5 working days:
 - (b) provide a copy of particular documents within a specified period (which must be a period that is reasonable in the circumstances). 20
- (3) Nothing in this section limits or affects the privilege against self-incrimination.

Conduct of entry, search, and seizure

116 Assistance with searches

- (1) An enforcement officer or constable may ask any person to assist the enforcement officer or constable with a search under this subpart. 25
- (2) A person who assists an enforcement officer or constable must be under the supervision of an enforcement officer or constable. 30

117 Enforcement officers to show identity card on request

- (1) An enforcement officer must produce his or her identity card (as issued under **section 135(2)**) for inspection—
 - (a) on entering a place under this subpart; and
 - (b) at any later time, on request, during a search under this subpart. 35

- (2) An enforcement officer who fails to comply with **subsection (1)** ceases to be authorised to enter the place or to exercise any power under this Act or any regulations with respect to the search.

118 Announcement before entry 5

- (1) This section applies whenever an enforcement officer or constable enters a place under this subpart, unless the entry is made by consent.
- (2) Before entering the place, the enforcement officer or constable must— 10
- (a) announce that he or she is authorised to enter the place; and
 - (b) give any person at the place an opportunity to consent to the entry.
- (3) However, **subsection (2)** does not apply if the enforcement officer or constable believes on reasonable grounds that— 15
- (a) announcing entry would frustrate the purpose of the entry; or
 - (b) immediate entry to the place is required to ensure the safety of any person. 20

119 Details of warrant to be given to occupier

If a place is being searched under a warrant, the enforcement officer or constable must give a copy of the warrant to the occupier or, if no person is present at the time, must leave a copy of the warrant in a prominent situation, marked for the attention of the occupier. 25

120 Occupier entitled to be present during search

- (1) The occupier of a place that is subject to a search under this subpart, and who is present at any time during the search, is entitled to observe the search as it is being carried out. 30
- (2) The right to observe the search ceases if the person observing impedes the search.
- (3) This section does not prevent 2 or more parts of the place being searched at the same time.

121 Use of electronic equipment

- (1) If an enforcement officer, a constable, or a person assisting a search operates electronic equipment found at a place during a search, the officer, constable, or person must take all reasonable care not to damage the equipment or corrupt information stored on it. 5
- (2) If, as a result of a failure to take the care required by **subsection (1)**, the owner of the equipment or information, or the occupier of the place that was searched, suffers damage, the owner or occupier may seek damages from the relevant AML/CFT supervisor or the Police (as the case may require) in respect of that damage. 10

122 Copies of documents seized to be provided

- (1) When a document that is capable of being copied is seized from a place, it must (if practicable) be copied before the original is removed, and the copy must be left at the place. 15
- (2) If it is not practicable to copy the document before removing it, it must be copied as soon as practicable after it is removed, and (if practicable) the copy must be promptly delivered to the occupier of the place. 20
- (3) **Subsection (1)** does not apply—
- (a) to documents obtained as a result of operating electronic equipment found at the place if the equipment is not seized and the documents remain stored on it; or
 - (b) if an order under **subsection (4)** has been made. 25
- (4) A District Court Judge, Community Magistrate, or Justice of the Peace may make an order waiving the application of **subsections (1) and (2)** if satisfied that the volume of material to be copied is such that copying it will involve substantial cost and that the cost is not justified. 30
- (5) An order under **subsection (4)** may be subject to whatever conditions the person making the order thinks are necessary to protect the interests of the person from whom the documents have been seized.

123 Receipts for things seized

- (1) A person who seizes any thing during a search under this sub-part must provide the occupier with a receipt for the thing seized.
- (2) A single receipt may be given for more than 1 thing. 5

124 Application of sections 198A and 198B of Summary Proceedings Act 1957

- (1) Section 198A of the Summary Proceedings Act 1957, so far as applicable and with all necessary modifications, applies in respect of the seizure of any documents under any search warrant as if the search warrant had been issued under section 198 of that Act. 10
- (2) Section 198B of the Summary Proceedings Act 1957, so far as applicable and with all necessary modifications, applies in respect of accessing any documents under any search warrant as if the search warrant had been issued under section 198 of that Act. 15

Compare: 1996 No 9 s 50

Return and retention of things seized

125 Return and retention of things seized 20

- (1) An enforcement officer or constable must (subject to any order of a court) immediately return any thing seized under this sub-part to the person from whom it was seized if the reason for the thing's seizure no longer exists or it is decided that the thing is not to be used in evidence. 25
- (2) If a thing has not been returned under **subsection (1)** within 90 days of its seizure, the enforcement officer or constable must return the thing unless—
 - (a) proceedings in respect of which the thing may afford evidence were instituted within 90 days of its seizure, and those proceedings (including any appeal) have not been completed, or the time within which an appeal may be lodged in those proceedings has not expired; or 30
 - (b) there is an order in force under **section 126** in respect of the thing; or 35

- (c) the enforcement officer or constable is otherwise authorised to retain, destroy, or dispose of the thing other than by returning it to the person from whom it was seized; or
- (d) the person to whom it is to be returned cannot be found or does not wish to take back the thing. 5
- (3) A thing may be returned conditionally or under such terms and conditions as the relevant AML/CFT supervisor or the Commissioner (as the case may require) thinks fit.
- (4) A thing may not be returned if it is, or is liable to be, forfeited to the Crown. 10

126 Order to retain things seized

- (1) If an enforcement officer or constable wishes to retain any thing seized under this subpart for more than 90 days, he or she may apply to a District Court for an order under this section. 15
- (2) A District Court Judge, Community Magistrate, or Justice of the Peace may make an order under this section if he or she is satisfied that retention of the thing is necessary—
 - (a) for the purpose of investigating an alleged offence or a civil liability act under this Part; or
 - (b) as evidence of an alleged offence or a civil liability act under this Part; or
 - (c) to secure evidence of an alleged offence or a civil liability act under this Part. 25
- (3) An order made under this section may be made for any period of up to 4 years.
- (4) If made for a shorter period, the order may be renewed at any interval, but the total period of the order, with any renewals, may not exceed 4 years. 30
- (5) Before making an application, the enforcement officer or constable must—
 - (a) take reasonable steps to discover who has an interest in the thing; and
 - (b) if practicable, notify each person whom the enforcement officer or constable believes has such an interest 35

in the proposed application and any application for a renewal.

Part 4
**Institutional arrangements and
miscellaneous provisions**

5

Subpart 1—Institutional arrangements

AML/CFT supervisors

127 AML/CFT supervisors

- (1) The AML/CFT supervisors are as follows:
- (a) for banks, life insurers, and non-bank deposit takers, the Reserve Bank of New Zealand (**Reserve Bank**) is the relevant AML/CFT supervisor: 10
 - (b) for issuers of securities, trustee companies, futures dealers, collective investment schemes, brokers, and financial advisers, the Securities Commission is the relevant AML/CFT supervisor: 15
 - (c) for casinos, non-deposit-taking lenders, money changers, and other reporting entities that are not covered by **paragraph (a) or (b)**, the Department of Internal Affairs is the relevant AML/CFT supervisor. 20
- (2) If the products or services provided by a particular reporting entity are covered by more than 1 AML/CFT supervisor,—
- (a) the AML/CFT supervisors concerned may agree on the relevant AML/CFT supervisor that will be the reporting entity's AML/CFT supervisor for the purposes of this Act; and 25
 - (b) the relevant AML/CFT supervisor will notify the reporting entity accordingly.
- (2A) If a reporting entity is a member of a designated business group and the products and services provided by members of that designated business group are covered by more than 1 AML/CFT supervisor,— 30
- (a) the AML/CFT supervisors concerned may agree on 1 AML/CFT supervisor that will be the AML/CFT supervisor for all the reporting entities that are members of 35

- the designated business group for the purposes of this Act; and
- (b) that AML/CFT supervisor will notify the reporting entities accordingly.
- (3) If the AML/CFT supervisors cannot agree on which AML/CFT supervisor is to be a reporting entity's supervisor under **subsections (2) or (2A)**, then the AML/CFT co-ordination committee must appoint the AML/CFT supervisor for that entity. 5
- (4) A reporting entity may have only 1 AML/CFT supervisor. 10

128 Functions

The functions of an AML/CFT supervisor are to—

- (a) monitor and assess the level of risk of money laundering and the financing of terrorism across all of the reporting entities that it supervises: 15
- (b) monitor the reporting entities that it supervises for compliance with this Act and ~~the~~ regulations, and for this purpose to develop and implement a supervisory programme:
- (c) provide guidance to the reporting entities it supervises in order to assist those entities to comply with this Act and ~~the~~ regulations: 20
- (d) investigate the reporting entities it supervises and enforce compliance with this Act and ~~the~~ regulations:
- (e) co-operate through the AML/CFT co-ordination committee (or any other mechanism that may be appropriate) with domestic and international counterparts to ensure the consistent, effective, and efficient implementation of this Act. 25

129 Powers 30

- (1) An AML/CFT supervisor has all the powers necessary to carry out its functions under this Act.
- (2) Without limiting the power conferred by **subsection (1)**, an AML/CFT supervisor may,—
- (a) on notice, require production of, or access to, all records, documents, or information relevant to its 35

- supervision and monitoring of reporting entities for compliance with this Act; and
- (b) conduct on-site inspections in accordance with **section 130**; and
- (c) provide guidance to the reporting entities it supervises 5
by—
- (i) producing guidelines; and
- (ii) preparing codes of practice in accordance with **section 60**; and
- (iii) providing feedback on reporting entities' compliance with obligations under this Act and ~~the~~ regulations; and 10
- (iv) undertaking any other activities necessary for assisting reporting entities to understand their obligations under this Act and ~~the~~ regulations, including how best to achieve compliance with those obligations; and 15
- (d) co-operate and share information in accordance with **sections 43 and 45, 45, and 131 to 134** by communicating or making arrangements to communicate information obtained by the AML/CFT supervisor in the performance of its functions and the exercise of its powers under this Act; and 20
- (e) in accordance with this Act and any other enactment, initiate and act on requests from any overseas counterparts; and 25
- (f) approve the formation of, and addition of members to, designated business groups.
- (3) An AML/CFT supervisor may only use the powers conferred on it under this Act and ~~the~~ regulations for the purposes of this Act. 30

130 Matters relating to conduct of on-site inspections

- (1) An AML/CFT supervisor may, at any reasonable time, enter and remain at any place (other than a dwellinghouse or a marae) for the purpose of conducting an on-site inspection of a reporting entity. 35
- (2) During an inspection, an AML/CFT supervisor may require any employee, officer, or agent of the reporting entity to an-

swer questions relating to its records and documents and to provide any other information that the AML/CFT supervisor may reasonably require for the purpose of the inspection.

- (3) A person is not required to answer a question asked by an AML/CFT supervisor under this section if the answer would or could incriminate the person. 5
- (4) Before an AML/CFT supervisor requires a person to answer a question, the person must be informed of the right specified in **subsection (3)**.
- (5) Nothing in this section requires any lawyer to disclose any privileged communication (as defined in **section 39**). 10

130A Delegation of supervisory function and powers

- (1) An AML/CFT supervisor may delegate the following function and powers to a person who, by reason of his or her training or experience, is suitably qualified to perform that function and exercise those powers: 15
- (a) its function under **section 128(d)** of investigating the reporting entities it supervises;
- (b) its powers under **section 129(2)(a) and (b)**, for the purpose only of performing the function of investigation under **section 128(b)**. 20
- (2) A delegation under **subsection (1)**—
- (a) must be made by the chief executive of the AML/CFT supervisor in writing; and
- (b) may be made subject to any restrictions and conditions that the AML/CFT supervisor thinks fit; and 25
- (c) may be revoked at any time by written notice to the delegate.
- (3) A person to whom a function or power of the AML/CFT supervisor is delegated under this section— 30
- (a) may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, and with the same effect, as if the delegate were the AML/CFT supervisor; and
- (b) must disclose to the AML/CFT supervisor and manage appropriately any conflict of interest that might arise in 35

relation to the performance of the function or exercise of the power; and

- (c) must not disclose any information obtained under **sub-section (1)** other than to the AML/CFT supervisor.

130B Authority to act as delegate 5

(1) The chief executive of the AML/CFT supervisor must issue a written authorisation to every person to whom a delegation is made under **section 130A** stating—

- (a) the name of the authorised person; and
(b) the function that he or she is authorised to perform; and 10
(c) the powers that he or she may exercise.

(2) The delegate, when acting in the capacity of a delegate of the AML/CFT supervisor,—

- (a) must carry on him or her—
(i) the written authorisation provided under **sub-section (1)**; and 15
(ii) evidence of his or her identity; and
(b) must produce the written authorisation and evidence referred to in **paragraph (a)**, if requested to do so by a reporting entity that is subject to the delegated function or powers being performed or exercised by the delegate. 20

(3) The delegate must return the written authorisation to the AML/CFT supervisor as soon as his or her delegation is revoked.

130C Effect of delegation 25

(1) No delegation under **section 130A**—

- (a) affects or prevents the performance of any function or the exercise of any power by the AML/CFT supervisor;
or
(b) affects the responsibility of the AML/CFT supervisor for the performance of its functions and the exercise of its powers. 30

(2) Every person to whom a function or power is delegated under **section 130A** has the same immunities in relation to the performance of that function or the exercise of that power as the AML/CFT supervisor that made the delegation. 35

*Use and disclosure of information***131 Power to use information obtained as AML/CFT supervisor in other capacity and vice versa**

- (1) This section applies to information other than personal information. 5
- (2) The Reserve Bank may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under the Reserve Bank of New Zealand Act 1989 for the purpose of exercising its powers or performing its functions and duties under this Act as an AML/CFT supervisor. 10
- (3) The Reserve Bank may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under this Act as an AML/CFT supervisor for the purpose of exercising its powers or performing its functions and duties under the Reserve Bank of New Zealand Act 1989. 15
- (4) The Securities Commission may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under the Securities Act 1978, the Securities Markets Act 1988, and the Financial Advisers Act 2008 for the purpose of exercising its powers or performing its functions and duties under this Act as an AML/CFT supervisor. 20
- (5) The Securities Commission may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under this Act as an AML/CFT supervisor for the purpose of exercising its powers or performing its functions and duties under the Securities Act 1978, the Securities Markets Act 1988, and the Financial Advisers Act 2008. 25
- (6) The Department of Internal Affairs may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under the Gambling Act 2003 for the purpose of exercising its powers or performing its functions and duties under this Act as an AML/CFT supervisor. 30
- (7) The Department of Internal Affairs may use any information obtained or held by it in the exercise of its powers or the 35

performance of its functions and duties under this Act as an AML/CFT supervisor for the purpose of exercising its powers or performing its functions and duties under the Gambling Act 2003.

- 132 Restriction on power to use information under section 131** 5
 An AML/CFT supervisor may only use information obtained under **section 131** if the person providing the information was advised of the purpose or purposes for which the information was obtained at the time he or she provided that information. 10
- 133 Power to disclose information supplied or obtained as AML/CFT supervisor**
 The Commissioner, the New Zealand Customs Service, or an AML/CFT supervisor may disclose any information (that is not personal 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 government agency for law enforcement purposes if it is satisfied that the agency has a proper interest in receiving such information. 15
- 134 Power to use and disclose information supplied or obtained under other enactments for AML/CFT purposes** 20
- (1) A government agency or an AML/CFT supervisor may disclose to any other AML/CFT supervisor or government agency any information supplied or obtained under an enactment listed in **subsection (2)** if the disclosure of that information is necessary or desirable for the purpose of ensuring compliance with this Act and the regulations. 25
- (2) The enactments referred to in **subsection (1)** are—
- (a) the Companies Act 1993:
 - (b) the Criminal Proceeds (Recovery) Act 2009: 30
 - (c) the Customs and Excise Act 1996:
 - (ca) the Financial Advisors Act 2008:
 - (d) the Financial Service Providers (Registration and Dispute Resolution) Act 2008:
 - (e) the Financial Transactions Reporting Act 1996: 35
 - (f) the Gambling Act 2003:

- (g) the New Zealand Security Intelligence Service Act 1969:
- (h) the Proceeds of Crime Act 1991:
- (i) the Reserve Bank of New Zealand Act 1989:
- (j) the Securities Act 1978: 5
- (k) the Securities Markets Act 1988:
- (l) the Terrorism Suppression Act 2002.

135 Enforcement officers

- (1) For the purposes of this Act, an AML/CFT supervisor may appoint any employee as an enforcement officer, on a permanent or temporary basis, to exercise the powers conferred on the AML/CFT supervisor by this Act. 10
- (2) An AML/CFT supervisor must issue its enforcement officers with an identity card.
- (3) An enforcement officer must— 15
 - (a) carry his or her identity card at all times when acting as an enforcement officer under this Act or the regulations; and
 - (b) return his or her identity card to the relevant AML/CFT supervisor immediately upon ceasing to be an enforcement officer. 20

*Financial intelligence functions of
Commissioner***136 Financial intelligence functions of Commissioner**

- The financial intelligence functions of the Commissioner are 25
to—
- (a) receive suspicious transaction reports:
 - (b) produce guidance material, including—
 - (i) typologies of money laundering and financing of terrorism transactions: 30
 - (ii) information for reporting entities on their obligations to report suspicious transactions and how to meet those obligations:
 - (c) provide feedback to reporting entities on the quality and timeliness of their suspicious transaction reporting: 35

- (d) enforce requirements to provide suspicious transaction reports:
- (e) analyse suspicious transaction reports to assess whether any should be referred to investigative branches of the New Zealand Police and to other law enforcement agencies for criminal investigation: 5
- (f) access, directly or indirectly, on a timely basis the financial, administrative, and law enforcement information that the Commissioner requires to properly undertake his or her financial intelligence functions, including the analysis of suspicious transaction reports: 10
- (g) refer to investigative branches of the New Zealand Police and to other law enforcement agencies any suspicious transaction reports that, in the view of the Commissioner, indicate grounds for criminal investigation: 15
- (h) refer suspicious transaction reports and feedback provided to reporting entities on any suspicious transaction reports to AML/CFT supervisors:
- (i) receive, analyse, and (if appropriate) refer to law enforcement agencies any cash reports: 20
- (j) receive, analyse, and (if appropriate) refer to law enforcement agencies any suspicious property reports:
- (k) produce risk assessments relating to money laundering offences and the financing of terrorism to be used by the Ministry, the Ministry of Justice, AML/CFT supervisors, and the New Zealand Customs Service: 25
- (l) co-operate with the Ministry, the Ministry of Justice, AML/CFT supervisors, the New Zealand Customs Service, and any other relevant agencies to help ensure the effective implementation of the requirements under this Act and the regulations. 30

137 Powers relating to financial intelligence functions of Commissioner

The Commissioner may—

- (a) order production of or access to all records, documents, or information from any reporting entity that is relevant to analysing a suspicious transaction report received by the Commissioner, with or without a court order; and 35

- (b) share suspicious transaction reports, cash reports, suspicious property reports, and other financial information and intelligence with domestic and international authorities for the purposes of this Act and the regulations.

- 138 Delegation of powers of Commissioner** 5
- (1) The Commissioner may from time to time in writing, either generally or particularly, delegate to a constable of a level of position not less than inspector the Commissioner's powers under **section 137(a)**.
- (2) Where any constable exercises any power conferred under **subsection (1)**, that constable must, within 5 days after the day on which the constable exercises the power, give the Commissioner a written report on the exercise of that power and the circumstances in which it was exercised. 10
- (3) A constable who purports to perform a power under a delegation— 15
- (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
- (b) must produce evidence of his or her authority to do so, if reasonably requested to do so. 20
- (4) Every delegation under this section is revocable at will and does not prevent the exercise of any power by the Commissioner.
- 139 Guidelines relating to reporting of suspicious transactions** 25
- (1) Subject to **section 140**, the Commissioner must issue, in respect of each kind of reporting entity to which this Act applies, guidelines—
- (a) setting out any features of a transaction that may give rise to a suspicion that the transaction is or may be— 30
- (i) relevant to the investigation or prosecution of any person for a money laundering offence; or
- (ia) relevant to the enforcement of the Misuse of Drugs Act 1975; or
- (ii) relevant to the enforcement of the Terrorism Suppression Act 2002; or 35

- (iii) relevant to the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009; or
 - (iv) relevant to the investigation or prosecution of a serious offence within the meaning of section 243(1) of the Crimes Act 1961; and 5
 - (b) setting out any circumstances in which a suspicious transaction report relating to such a transaction may be made orally in accordance with **section 38(2)**, and the procedures for making such an oral report. 10
 - (2) Suspicious transaction guidelines must be issued in such manner as the Commissioner from time to time determines.
 - (3) The Commissioner may issue an amendment or revocation of any suspicious transaction guidelines.
 - (4) Without limiting **subsection (1)**, suspicious transaction guidelines issued under this section may relate to 1 or more kinds of reporting entities, and such guidelines may make different provision for different kinds of reporting entities and different kinds of transactions. 15
- Compare: 1996 No 9 s 24 20

140 Consultation on proposed guidelines

- (1) The Commissioner must, before issuing any suspicious transaction guidelines,—
 - (a) consult with, and invite representations from, the Privacy Commissioner under the Privacy Act 1993, and must have regard to any such representations; and 25
 - (b) give public notice of the Commissioner’s intention to issue the guidelines, which notice must contain a statement—
 - (i) indicating the Commissioner’s intention to issue the guidelines; and 30
 - (ii) inviting reporting entities that are likely to be affected by the proposed guidelines, and industry organisations that are representative of those reporting entities, to express to the Commissioner, within any reasonable period that is specified in the notice, their interest in being consulted in the course of the development of the guidelines; and 35

- (c) consult with, and invite representations from, those reporting entities and industry organisations who express such an interest, and must have regard to any such representations.
- (2) Nothing in **subsection (1)** prevents the Commissioner from adopting any additional means of publicising the proposal to issue any suspicious transaction guidelines or of consulting with interested parties in relation to such a proposal. 5
- (3) This section applies to any amendment or revocation of any suspicious transaction guidelines. 10
Compare: 1996 No 9 s 25

141 Availability of guidelines

On a request by any reporting entity in respect of which any suspicious transaction guidelines are for the time being in force, or by any industry organisation that represents the reporting entity, the Commissioner must, without charge,— 15

- (a) make those guidelines, and all amendments to those guidelines, available for inspection by that reporting entity or, as the case requires, that industry organisation at Police National Headquarters; and 20
- (b) provide copies of those guidelines, and all amendments to those guidelines, to that reporting entity or, as the case requires, that industry organisation.

Compare: 1996 No 9 s 26

142 Review of guidelines 25

- (1) The Commissioner must review from time to time any suspicious transaction guidelines for the time being in force.
- (2) **Sections 139 and 140** apply, with all necessary modifications, in relation to any such review as if the review were a proposal to issue suspicious transaction guidelines. 30

Compare: 1996 No 9 s 27

Co-ordination

143 Role of Ministry

The Ministry, in consultation with other agencies with AML/CFT roles and functions, is responsible for advising 35

on the overall effectiveness and efficiency of the AML/CFT regulatory system, including—

- (a) advising the Minister on outcomes and objectives for AML/CFT regulation and how best to achieve these (including links to other ~~Ministry~~ Government initiatives relevant to the purposes of this Act); and 5
- (b) monitoring, evaluating, and advising the Minister on the performance of the AML/CFT regulatory system in achieving the Government's outcomes and objectives for it; and 10
- (c) advising the Minister on any changes necessary to the AML/CFT regulatory system to improve its effectiveness; and
- (d) administering the relevant AML/CFT legislation.

144 AML/CFT co-ordination committee 15

- (1) The chief executive must establish an AML/CFT co-ordination committee consisting of—
 - (a) a representative from the Ministry; and
 - (b) a representative from the New Zealand Customs Service; and 20
 - (c) every AML/CFT supervisor; and
 - (d) a representative of the Commissioner; and
 - (e) such other persons as are invited from time to time by the chief executive in accordance with **subsection (2)**.
- (2) Any person invited under **subsection (1)(e)** must be employed in a government agency. 25
- (3) The chair of the AML/CFT co-ordination committee is the chief executive.

145 Role of AML/CFT co-ordination committee

The role of the AML/CFT co-ordination committee is to ensure that the necessary connections between the AML/CFT supervisors, the Commissioner, and other agencies are made in order to ensure the consistent, effective, and efficient operation of the AML/CFT regulatory system. 30

146 Functions

The functions of the AML/CFT co-ordination committee are to—

- (a) facilitate necessary information flows between the AML/CFT supervisors, the Commissioner, and other agencies involved in the operation of the AML/CFT regulatory system: 5
- (b) facilitate the production and dissemination of information on the risks of money-laundering offences and the financing of terrorism in order to give advice and make decisions on AML/CFT requirements and the risk-based implementation of those requirements: 10
- (c) facilitate co-operation amongst AML/CFT supervisors and consultation with other agencies in the development of AML/CFT policies and legislation: 15
- (d) facilitate consistent and co-ordinated approaches to the development and dissemination of AML/CFT guidance materials and training initiatives by AML/CFT supervisors and the Commissioner:
- (e) facilitate good practice and consistent approaches to AML/CFT supervision between the AML/CFT supervisors and the Commissioner: 20
- (f) provide a forum for examining any operational or policy issues that have implications for the effectiveness or efficiency of the AML/CFT regulatory system. 25

Subpart 2—Miscellaneous provisions

*Regulations***147 Regulations**

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 30

- (a) prescribing requirements (generic and sector-specific) for standard, simplified, enhanced, and ongoing customer due diligence and any other AML/CFT requirements, including, but not limited to, the following:
 - (i) information to be provided or obtained for the purposes of identification and verification: 35

- (ii) the circumstances in which a particular type of customer due diligence must be conducted:
- (iii) specifying entities or classes of entities, or products, services, or transactions for which a reporting entity may conduct simplified customer due diligence: 5
- (iv) the conditions in which third parties may be relied on to conduct customer due diligence:
- (v) the conditions on which a member of a designated business group may adopt ~~the AML/CFT programme of another member of the group:~~ an AML/CFT programme of another member of the group and share and use the policies, controls, and procedures of that programme: 10
- (vi) ~~requirements for AML/CFT programmes:~~ 15
- (vii) the circumstances in which corporations are deemed to be affiliated:
- (viii) the factors that a reporting entity must have regard to when assessing risk:
- (b) ~~excluding certain relationships or banking services from the application of **section 26** (which relates to correspondent banking relationships):~~ 20
- (c) prescribing instruments to be bearer-negotiable instruments for the purposes of this Act:
- (d) prescribing the forms of, and the information to be included in, applications, warrants, reports, and other documents required under this Act: 25
- (e) prescribing amounts or thresholds that are required to be prescribed for the purposes of this Act:
- (f) prescribing the information to be included in records and the manner in which records are to be kept by reporting entities, or any specified class or classes of reporting entities: 30
- (g) ~~exempting a reporting entity from its obligation to obtain some or all of the information set out in **section 24(1)** in relation to a specified transfer or transaction:~~ 35
- (h) prescribing other identifying information that allows a transaction to be traced back to the originator for the purposes of **section 24(1)**:

- (i) ~~exempting certain movements of cash from the application of **subpart 6 of Part 2**:~~
- (j) ~~prescribing matters that apply to politically exposed persons:~~
- (k) prescribing the manner in which any notice, report, or other document required by this Act is to be given or served: 5
- (l) prescribing for the form of a formal warning and the manner in which it must be issued:
- (m) specifying Acts for which disclosure of personal information may be made by an AML/CFT supervisor for the purposes of the detection, investigation, and prosecution of offences under the specified Act: 10
- (n) ~~prescribing offences in respect of the contravention of, or non-compliance with, any provision of any regulations made under this section, and prescribing fines, not exceeding \$2,000, that may, on conviction, be imposed in respect of any such offences:~~ 15
- (o) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect. 20

Compare: 1996 No 9 s 56

148 Regulations relating to application of Act

- (1) The Governor-General may, by Order in Council on the recommendation of the Minister, make regulations for the following purposes: 25
 - (a) exempting or providing for the exemption of any transaction, product, or service or class of transactions, products, or services from all or any of the provisions of this Act: 30
 - (ab) excluding certain relationships or banking services from the application of **section 26** (which relates to correspondent banking relationships):
 - (ac) exempting a reporting entity from its obligation to obtain some or all of the information set out in **section 24(1)** in relation to a specified transfer or transaction: 35
 - (ad) exempting certain movements of cash from the application of **subpart 6 of Part 2**:

- (b) prescribing threshold values for the purposes of **sections 65 and 66** and the person or class of persons, transaction or class of transactions, financial activity or class of financial activities to which that threshold value applies: 5
- (c) declaring an account or arrangement to be, or not to be, a facility and the circumstances and conditions in which an account or arrangement is to be, or not to be, a facility for the purposes of this Act:
- (d) declaring a person or class of persons to be, or not to be, a reporting entity and the circumstances and conditions in which a person or class of persons is to be, or not to be, a reporting entity for the purposes of this Act: 10
- (e) declaring a transaction or class of transactions to be, or not to be, an occasional transaction and the circumstances and conditions in which a transaction or class of transactions is to be, or not to be, an occasional transaction for the purposes of this Act: 15
- (f) declaring a transfer or transaction or a class of transfers or transactions not to be a wire transfer and the circumstances and conditions in which a transfer or transaction or class of transfers or transactions is not a wire transfer for the purposes of this Act: 20
- (g) declaring a person or class of persons to be, or not to be, a customer and the circumstances and conditions in which a person or class of persons is to be, or not to be, a customer for the purposes of this Act: 25
- (ga) declaring an entity or class of entities (whether domestic or overseas) to be a member of a specified designated business group: 30
- (h) declaring a person or class of person to be, or not to be, a financial institution for the purposes of this Act.
- (2) The Minister must, before making any recommendation, have regard to—
 - (a) the purposes of this Act and the Financial Transactions Reporting Act 1996; and 35
 - (b) the risk of money laundering and the financing of terrorism; and

- (c) the impact on the prevention, detection, investigation, and prosecution of offences; and
- (d) the level of regulatory burden on a reporting entity; and
- (e) whether the making of the regulation would create an unfair advantage for a reporting entity or would disadvantage other reporting entities; and 5
- (f) the overall impact that making the regulation would have on the integrity of, and compliance with, the AML/CFT regulatory regime.
- (3) The Minister must also, before making any recommendation,— 10
- (a) do everything reasonably possible on the Minister’s part to advise all persons who in the Minister’s opinion will be affected by any regulations made in accordance with the recommendation, or representatives of those persons, of the proposed terms of the recommendation and of the reasons for it; and 15
- (b) give such persons or their representatives a reasonable opportunity to consider the recommendation and to make submissions on it to the Minister, and the Minister must consider those submissions; and 20
- (c) give notice in the *Gazette*, not less than 28 days before making the recommendation, of the Minister’s intention to make the recommendation and state in the notice the matters to which the recommendation relates; and 25
- (d) make copies of the recommendation available for inspection by any person who so requests before any regulations are made in accordance with the recommendation.
- (4) Failure to comply with **subsection (3)** does not affect the validity of any regulations made under this section. 30
- (5) Any regulations made under this section expire on the day that is 5 years after the date on which ~~the~~ regulations come into force.
- 149 Regulations relating to countermeasures** 35
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for, or in relation to, prohibiting or regulating the entering into of trans-

actions or business relationships between a reporting entity and any other person.

- (2) Regulations made for the purposes of **subsection (1)**—
- (a) may be of general application; or
 - (b) may be limited by reference to any or all of the following:
 - (i) a specified transaction;
 - (ii) a specified party;
 - (iii) a specified overseas country.
- (3) The Governor-General may, by Order in Council, declare a country outside New Zealand to be a prescribed overseas country for the purposes of this section.
- (4) Any regulations made under **subsection (1)** expire on the day that is 5 years after the date on which ~~the~~ regulations come into force.

Compare: Anti-Money Laundering and Counter-Terrorism Financing Act 2006 s 102 (Aust)

150 Consultation not required for consolidation of certain regulations and minor amendments

The Minister is not required to comply with **section 148(3)** in respect of the making of any regulations to the extent that ~~the~~ regulations—

- (a) revoke any regulations made under **section 148** and, at the same time, consolidate the revoked regulations, so that they have the same effect as those revoked regulations; or
- (b) make minor amendments to regulations.

Compare: 1996 No 9 s 56A

Ministerial exemptions

151 Minister may grant exemptions

- (1) The Minister may, in the prescribed form, exempt any 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; or
 - (b) a transaction or class of transactions
- (2) The Minister may grant the exemption—

- (a) unconditionally; or
- (b) subject to any conditions the Minister thinks fit.
- (3) Before deciding to grant an exemption and whether to attach any conditions to the exemption, the Minister must have regard to the following: 5
- (a) the intent and purposes of the Financial Transactions Reporting Act 1996:
- (b) the intent and purpose of this Act and any regulations:
- (c) 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: 10
- (d) the impacts on prevention, detection, investigation, and prosecution of offences: 15
- (e) the level of regulatory burden to which the reporting entity would be subjected in the absence of an exemption:
- (f) whether the exemption would create an unfair advantage for the reporting entity or disadvantage third party reporting entities: 20
- (g) the overall impact that the exemption would have on the integrity of, and compliance with, the AML/CFT regulatory regime.
- (4) Every exemption made under this section is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989. 25

152 Minister must consult before granting exemption

Before granting an exemption under **section 151**, the Minister must consult with—

- (a) the Ministers responsible for the AML/CFT supervisors; and 30
- (b) any other persons the Minister considers appropriate having regard to those matters listed in **section 151(3)**.

153 Requirements relating to exemptions

- (1) The exemption must include an explanation of the reason for granting the exemption. 35
- (2) The exemption—

- (a) must be granted for a period specified by the Minister but that period must not be more than 5 years; and
 - (b) may, at any time, be varied or revoked by the Minister.
- (3) The exemption must be notified in the *Gazette*.

Transitional and savings provisions 5

154 Transitional and savings provisions

Transitional and savings provisions relating to the coming into force of this Act are set out in **Schedule 1**.

*Consequential amendments, repeals, and
revocation* 10

155 Amendments to other enactments

- (1) The enactments specified in **Part 1 of Schedule 2** ~~are~~is amended in the manner indicated in that part of that schedule (being consequential amendments relating to the bringing into force of provisions relating to cross-border transportation of cash). 15
- (2) The enactments specified in **Part 2 of Schedule 2** are amended in the manner indicated in that schedule (being consequential amendments to other enactments).
- (3) The regulations specified in **Part 3 of Schedule 2** are re- 20
voked.

156 Amendment to Financial Transactions Reporting Act 1996 consequential on bringing into force of Part 2

The Financial Transactions Reporting Act 1996 is amended by repealing paragraphs (a) to (f), (h), (i), and (k) of the definition of **financial institution** in section 3(1). 25

157 Amendment to Financial Transactions Reporting Act 1996 relating to cross-border transportation of cash

The Financial Transactions Reporting Act 1996 is amended by repealing Part 5. 30

Schedule 1**s 154****Transitional and savings provisions****1 Offences and breaches of Financial Transactions Reporting Act 1996**

- (1) This section clause applies to an offence under, or a breach of, the Financial Transactions Reporting Act 1996 that was committed before the commencement of this Act. 5
- (2) If this section clause applies, then for the purpose of doing the things specified in **subsection (3)**, the Financial Transactions Reporting Act 1996 continues to have effect as if this Act had not been enacted. 10
- (3) The things referred to in subclause (2) are as follows:
- (a) investigating the offence or breach:
 - (b) commencing, continuing, or completing proceedings for the offence or breach: 15
 - (c) imposing a penalty for the offence or breach (which, for the avoidance of doubt, must be the same as the penalty that applied to the offence or the breach before this Act was enacted).

2 Barred proceedings 20
Nothing in this Act enables any proceedings to be brought that were barred before the commencement of this Act.

3 Pending proceedings 25
Any proceedings that have been commenced under the Financial Transactions Reporting Act 1996 before the commencement of this Act may be continued and completed after that commencement as if this Act had not been enacted, and the Financial Transactions Reporting Act 1996 applies accordingly.

Schedule 2 **s 155**
Consequential amendments

Part 1

Amendments to Financial Transactions
Reporting Act 1996 relating to cross-border
transportation of cash 5

Section 2(1)

Definitions of **cash report**; **control of the Customs**; and **Customs officer**: repeal.

Definition of **cash**: omit “except in Part 5 of this Act,”. 10

Part 5

Repeat:

Part 2

Amendments to other enactments

Crimes Act 1961 (1961 No 43) 15

Section 244: insert after paragraph (b):

“(ba) the enforcement or intended enforcement of the Anti-Money Laundering and Countering Financing of Terrorism Act **2009**; or”.

Criminal Proceeds (Recovery) Act 2009 (2009 No 8) 20

Definition of **financial institution** in section 5(1): repeal and substitute:

“**financial institution** means either a person within the meaning of financial institution as defined in section 3 of the Financial Transactions Reporting Act 1993~~6~~ or as defined in **section 4** of the Anti-Money Laundering and Countering Financing of Terrorism Act **2009**”.

Customs and Excise Act 1996 (1996 No 27)

Section 166A(b)(ii): repeal and substitute:

“(ii) **subpart 6 of Part 2** and **sections 112 and 112A** of the Anti-Money Laundering and Countering Financing of Terrorism Act **2009**; and”.

Part 2—*continued***Customs and Excise Act 1996 (1996 No 27)**—*continued*

Section 166C(4): insert after paragraph (b):

“(ba) Anti-Money Laundering and Countering Financing of Terrorism Act **2009**.”.

Financial Transactions Reporting Act 1996 (1996 No 9)

Long Title: insert “**the Terrorism Suppression Act 2002 and**” after “**enforcement of**”. 5

Paragraph (b) of the Long Title: repeal.

Paragraphs (a) to (f), (h), (i), and (k) of the definition of **financial institution** in section 3(1): repeal.

Section 15(1)(b): insert after subparagraph (i): 10

“(ia) that the transaction or proposed transaction is or may be relevant to the enforcement of the Terrorism Suppression Act 2002; or”.

Section 16: insert after paragraph (a):

“(ab) that the transaction or proposed transaction is or may be relevant to the enforcement of the Terrorism Suppression Act 2002; or”. 15

Section 21(2): insert after paragraph (a):

“(ab) the enforcement of the Terrorism Suppression Act 2002.”. 20

Section 22(1)(b): insert after subparagraph (i):

“(ia) that the transaction or proposed transaction is or may be relevant to the enforcement of the Terrorism Suppression Act 2002; or”.

Section 24(1)(a): insert after subparagraph (i): 25

“(ia) that the transaction or proposed transaction is or may be relevant to the enforcement of the Terrorism Suppression Act 2002; or”.

Section 28: insert after paragraph (d):

“(da) the enforcement of the Terrorism Suppression Act 2002.”. 30

Section 56(1)(b): omit “Parts 2 and 5 of this Act” and substitute “Part 2”.

Part 2—*continued*

Misuse of Drugs Act 1975 (1975 No 116)

Section 12B(6): insert after paragraph (b):

“(ba) the enforcement or intended enforcement of the Anti-Money Laundering and Countering Financing of Terrorism Act **2009**; or”.

5

Mutual Assistance in Criminal Matters Act 1992 (1992 No 86)

Definition of **financial institution** in section 2(1): repeal and substitute:

“**financial institution** means either a person within the meaning of financial institution as defined in section 3 of the Financial Transactions Reporting Act 1996 or as defined in **section 4** of the Anti-Money Laundering and Countering Financing of Terrorism Act **2009**”.

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Terrorism Suppression Act 2002 (2002 No 34)

Section 44(1)(b): insert “or by a reporting entity” after “by a financial institution”.

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Section 44(1)(b): insert “or the reporting entity” after “the financial institution”.

Section 44(1)(d)(ii): insert “or reporting entity, as the case may be,” after “that Commissioner and the financial institution”.

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Section 44(2): insert “or the reporting entity” after “the financial institution”.

Section 44(4): insert “or reporting entity” after “financial institution” in each place where it appears.

Section 44(5): repeal and substitute:

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“(5) In this section, section 47, and Schedule 5,—

“(a) in the case of a financial institution to which the Financial Transactions Reporting Act 1996 applies, **facility**, **financial institution**, **suspicious transaction report**, and **transaction** have the meanings given to them in section 2(1) of that Act; and

30

“(b) in the case of a reporting entity to which the Anti-Money Laundering and Countering Financing of

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

Part 2—*continued*

Terrorism Suppression Act 2002 (2002 No 34)—*continued*

Terrorism Act **2009** applies, **facility**, **reporting entity**,
suspicious transaction report, and **transaction** have
the meanings given to them in **section 4** of that Act.”

Section 47(1)(b)(i): insert “or reporting entity” after “financial institution”.

5

Section 47A(1)(a): insert after subparagraph (i):

“(ia) **subpart 6 of Part 2** and **sections 112 and 112A** of the Anti-Money Laundering and Countering Financing of Terrorism Act **2009**; or”.

Section 47C(5): insert after paragraph (a):

10

“(ab) Anti-Money Laundering and Countering Financing of Terrorism Act **2009**.”.

Schedule 5: insert “or reporting entity” after “financial institution” in each place where it appears.

Part 3

15

Regulations revoked

Financial Transactions Reporting (Interpretation) Regulations 1997 (SR 1997/48)

Legislative history

25 June 2009
30 June 2009

Introduction (Bill 46–1)
First reading and referral to Foreign Affairs,
Defence and Trade Committee
