

FINANCIAL TRANSACTIONS REPORTING BILL

EXPLANATORY NOTE

THIS Bill aims to facilitate the prevention, detection, investigation, and prosecution of money laundering, and to facilitate the enforcement of the Proceeds of Crime Act 1991.

The Bill does this in 2 ways. First, the Bill imposes certain obligations on financial institutions in relation to the conduct of financial transactions. Second, the Bill requires persons entering or leaving New Zealand to declare cash in excess of a prescribed amount.

The Bill is a companion measure to the money laundering offences created in the Crimes Amendment Bill (No. 2) 1994, and seeks to satisfy New Zealand's international obligations as a member of the Financial Action Task Force on Money laundering.

Clause by Clause Commentary

Clause 1 relates to the Short Title and commencement. Except for *clauses 11, 18, and 32*, the Bill is to come into force on **1 January 1996**.

Clauses 11, 18, and 32 are to come into force on **1 July 1996**.

PART I

PRELIMINARY PROVISIONS

Clause 2 relates to interpretation. Of particular significance are the following definitions:

- (a) The definition of the term "facility". This means an account or arrangement that is provided by a financial institution and through which a facility holder may conduct 2 or more transactions. The term also includes a life insurance policy, membership of certain superannuation schemes, and the provision of facilities for safe custody:
- (b) The definition of the term "facility holder". This means a person in whose name a facility is established, and includes an assignee of a facility, and any person who is authorised to conduct transactions through the facility:
- (c) The definition of the term "occasional transaction". This means a transaction that involves the deposit, withdrawal, exchange, or transfer of cash, where the transaction is conducted by a person otherwise than through a facility in respect of which that person is a facility holder:

- (d) The definition of the term “transaction”. This means any deposit, withdrawal, exchange, or transfer of funds, and includes any payment made in satisfaction of any contractual or legal obligation. Certain transactions are excluded, including the placing of a bet.

Clause 3 defines the term “financial institution”. This means banks; life insurance companies; building societies; friendly societies; credit unions; licensed casino operators; sharebrokers; real estate agents; trustees, administration managers, and investment managers of certain superannuation schemes; trustees and managers of unit trusts; and the Totalisator Agency Board. Also included are—

- (a) Lawyers, but only to the extent that they receive funds in the course of their business for the purposes of deposit or investment, or for the purposes of settling real estate transactions:
- (b) Accountants, but only to the extent that they receive funds in the course of their business for the purposes of deposit or investment:
- (c) Persons whose business or a principal part of whose business consists of any of the following:
 - (i) Borrowing or lending or investing money:
 - (ii) Administering or managing funds on behalf of other persons:
 - (iii) Acting as trustee or custodian in respect of funds of other persons:
 - (iv) Providing financial services that involve the transfer or exchange of funds, including (without limitation) payment services, foreign exchange services, or risk management services (such as the provision of forward foreign exchange contracts); but not including the provision of financial services that consist solely of the provision of financial advice.

Clause 4 sets out a procedure for calculating the equivalent, in New Zealand currency, of an amount of cash that is denominated in a foreign currency.

Clause 5 provides that the Bill binds the Crown.

PART II

OBLIGATIONS ON FINANCIAL INSTITUTIONS TO VERIFY IDENTITY

Obligations on Financial Institutions to Verify Identity

Clause 6 imposes an obligation on financial institutions to verify the identity of facility holders. Such verification must be carried out before a person becomes a facility holder. However, where, in relation to a facility, there are 3 or more facility holders, the financial institution must only verify the identity of principal facility holders.

Clause 7 imposes an obligation on financial institutions to verify the identity of persons who conduct occasional transactions (as defined in *clause 2*) through the financial institutions in the following cases:

- (a) Where the amount of cash involved exceeds an amount prescribed by regulations made under the Bill:
- (b) Where the person conducting the transaction, or any other person, has also conducted or is conducting 1 or more other occasional transactions, the circumstances provide reasonable grounds to believe that the transactions have been, or are being, structured to avoid the application of this clause, and the total amount of the cash involved in those transactions exceeds the prescribed amount.

Clause 8 requires financial institutions to verify the identity of a person—

- (a) Where the financial institution has reasonable grounds to believe that facility holder status is being sought to enable transactions to be conducted on behalf of that person; or
- (b) Where an occasional transaction is conducted that involves an amount of cash that exceeds the prescribed amount, and the financial institution has reasonable grounds to believe that the transaction is being conducted on behalf of that person; or
- (c) Where a facility holder conducts a transaction through a facility, the amount of cash involved in the transaction exceeds the prescribed amount, and the financial institution has reasonable grounds to believe that the facility holder is conducting the transaction on behalf of the other person.

Verification of identity is not required in certain specified circumstances.

Clause 9 imposes an obligation on financial institutions to verify the identity of a person where—

- (a) The person conducts a transaction through a financial institution; and
- (b) The financial institution has reasonable grounds to suspect that the transaction may be relevant to the investigation or prosecution of a money laundering offence, or is or may be relevant to the enforcement of the Proceeds of Crime Act 1991.

Procedures for Verifying Identity

Clause 10 sets out how a financial institution is to verify identity for the purposes of the Bill. Verification is to be done by means of such documentary or other evidence as is reasonably capable of establishing the identity of the person concerned. If the person is a company or body corporate, the evidence must include a certified copy of its certificate of incorporation or other similar document.

In certain circumstances involving facilities through which transactions involving cash cannot be conducted and through which transactions may be conducted only by means of an existing facility provided by another financial institution, it is sufficient if the financial institution takes all such steps as are reasonably necessary to confirm the existence of the other facility.

Offences

Clause 11 creates offences relating to non-compliance with the verification requirements of *clauses 6 to 9*.

Clause 12 sets out a defence to a charge under *clause 11*.

PART III

OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS

Obligation to Report Suspicious Transactions

Clause 13 provides that where any person conducts or seeks to conduct a transaction through a financial institution, that financial institution must report that transaction or proposed transaction to the Commissioner of Police if the financial institution has reasonable grounds to suspect that the transaction or proposed transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence against **section 257A** of the Crimes Act 1961, or the enforcement of the Proceeds of Crime Act 1991.

A financial institution must have regard to any suspicious transaction guidelines relevant to that financial institution, when determining whether or not there are reasonable grounds to hold such a suspicion.

Every suspicious transaction report must be in the prescribed form, and contain the details specified in the *Schedule* to the Bill. However, where the urgency of the situation requires, a suspicious transaction report may be made orally to any authorised member of the Police.

Clause 14 provides that an auditor may report a transaction to any member of the Police if the auditor has reasonable grounds to suspect that the transaction is or may be relevant to the investigation or prosecution of any person for any money laundering offence against **section 257A** of the Crimes Act 1961, or the enforcement of the Proceeds of Crime Act 1991.

Clause 15 provides protection for persons reporting suspicious transactions. Where a person makes a report pursuant to *clause 13* or *clause 14*, no civil, criminal, or disciplinary proceedings may be brought against that person for the disclosure or supply of that information, or for any consequences that follow from that disclosure or supply. This protection does not apply if the information was disclosed or supplied in bad faith.

Clause 16 provides that a lawyer is not required to report, pursuant to *clause 13*, any communication to which legal professional privilege attaches. However, information that consists of or relates to receipts, payments, income, expenditure, or financial transactions of any person is not a privileged communication if it is contained in or comprises a lawyer's trust account records.

Clause 17 imposes restrictions on the disclosure of information relating to suspicious transaction reports that have been made or are contemplated.

Clause 18 creates offences in relation to non-compliance with, or contravention of, the requirements of *Part III*. It is also made an offence for an officer, employee, or agent of a financial institution to disclose, without authority, and for advantage or pecuniary gain, or with intent to prejudice any investigation into the commission or possible commission of a money laundering offence, that the Police are investigating, or may investigate, a transaction or proposed transaction that is the subject of a suspicious transaction report.

Clause 19 sets out a defence to a charge under *clause 18 (1)*.

Suspicious Transaction Guidelines

Clause 20 provides that the Commissioner of Police must issue, in respect of each kind of financial institution, guidelines setting out—

- (a) Any features of a transaction that may give rise to a suspicion that the transaction is or may be relevant to the investigation or prosecution of any person for any money laundering offence against **section 257A** of the Crimes Act 1961, or the enforcement of the Proceeds of Crime Act 1991;
- (b) Any circumstances in which a suspicious transaction report may be made orally, and the procedures for making such a report.

The Commissioner may amend or revoke these guidelines from time to time.

Clause 21 requires the Commissioner of Police to consult certain persons and organisations before issuing, amending, or revoking suspicious transaction guidelines.

Clause 22 requires the Commissioner of Police to make suspicious transaction guidelines available for inspection, and to provide copies of such guidelines, free of charge, at the request of a financial institution to which the guidelines relate or of an industry organisation that represents such a financial institution.

Clause 23 provides that the Commissioner must review suspicious transaction guidelines from time to time.

Application of Privacy Act 1993

Clause 24 specifies, for the purposes of the Privacy Act 1993 and any code of practice issued under that Act, the purposes for which information contained in a suspicious transaction report are deemed to be collected.

PART IV

RETENTION OF RECORDS

Clause 25 requires a financial institution to keep records of every transaction that is conducted through that financial institution. These records must be such as to enable the Commissioner of Police to readily reconstruct a transaction at any time. The records must be retained for not less than 5 years after the completion of the transaction.

Clause 26 requires a financial institution to keep records relating to the nature of the evidence used by it to verify the identity of any person in accordance with the requirements of *clauses 6 to 9*. The records must be kept for not less than 5 years.

Clause 27 requires a financial institution to keep such records as are prescribed by regulations made under the Bill, for such period as is so prescribed.

Clause 28 specifies how records must be kept by a financial institution.

Clause 29 provides that records need not be kept if the financial institution is a company and the financial institution has been liquidated and finally dissolved.

Clause 30 requires financial institutions to destroy records when the retention period specified in the Bill has expired. A financial institution may, however, retain a record if there is a lawful reason for doing so.

Clause 31 provides that nothing in *Part IV* of the Bill limits or affects any other enactment that requires a financial institution to keep or retain records.

Clause 32 creates offences in respect of failure to comply with the requirements of *clauses 25 to 27*.

PART V

OBLIGATION TO REPORT IMPORTS AND EXPORTS OF CASH

Clause 33 requires every person who—

- (a) Arrives in or leaves New Zealand; and
- (b) Has on his or her person, or in his or her baggage, an amount of cash that exceeds the prescribed amount,—

to report that cash to an officer of Customs. For the purposes of this clause, “cash” is defined as coin or paper money that is legal tender in the country of issue. The clause sets out the form of the report and the details that must be included in the report.

Clause 34 empowers an officer of Customs to detain and search any person, if that officer has reasonable cause to suspect that the person is carrying cash in respect of which a cash report is required but has not been made. Certain restrictions are imposed on the carrying out of such searches.

Clause 35 provides that an officer of Customs may detain a person and search that person’s baggage, if the officer of Customs has reasonable cause to suspect that the person’s baggage contains cash in respect of which a cash report is required but has not been made.

Clause 36 creates offences in respect of non-compliance with the requirements of *clause 33*, and a related offence of obstruction of an officer of Customs.

Clause 37 provides that a person may admit to the commission of an offence under *clause 36*, and request a Collector of Customs to deal with the offence summarily. In this case, the Collector may accept a sum (not exceeding \$200) in full satisfaction of any fine to which the person would otherwise be liable.

Clause 38 requires an officer of Customs to forward cash reports made under *clause 33* to the Commissioner of Police as soon as practicable. An officer of Customs must also report details of any search made under *clause 34* or *clause 35*, and of any cash discovered, to the Commissioner of Police as soon as practicable.

Clause 39 specifies, for the purposes of the Privacy Act 1993 and any code of practice issued under that Act, the purposes for which information contained in any reports made to the Commissioner under *clause 38* are deemed to be collected.

PART VI
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Clauses 40 to 47 provide for the issue of search warrants in respect of offences against the Bill.

Offences

Clause 48 provides that every offence against the Bill is punishable on summary conviction.

Clause 49 imposes criminal liability on employers and principals for the acts of their employees and agents.

Clause 50 imposes criminal liability on directors and officers of a body corporate in respect of offences committed by that body corporate.

Miscellaneous Provision

Clause 51 provides that a person may not contract out of any obligation imposed by the Bill, and that a person is not excused from compliance with any such obligation by reason that compliance would be a breach of any contract or agreement.

Regulations

Clause 52 empowers the making of regulations for the purposes of the Bill.

Of particular significance are the powers conferred by *paragraphs (f) to (h) of subclause (1)* of this clause. These paragraphs confer power to make regulations that further define, for the purposes of the Bill, the meaning of the terms “facility”, “financial institution”, and “occasional transaction”. Because of the significance of these powers, the Bill requires the Minister of Justice to consult with interested persons before recommending the making of regulations pursuant to any of those provisions.

Consequential Amendments

Clause 53 makes consequential amendments to **section 257A** of the Crimes Act 1961.

The *Schedule* sets out the details that are to be included in suspicious transaction reports.

FINANCIAL TRANSACTIONS REPORTING

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A BILL INTITULED

An Act to facilitate the prevention, detection, investigation, and prosecution of money laundering, and the enforcement of the Proceeds of Crime Act 1991, by—

(a) Imposing certain obligations on financial institutions in relation to the conduct of financial transactions; and

(b) Requiring persons entering or leaving New Zealand to declare cash in excess of a prescribed amount;—

and to provide for matters incidental thereto

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Financial Transactions Reporting Act 1995.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the 1st day of January 1996.

(3) Sections 11, 18, and 32 of this Act shall come into force on the 1st day of July 1996.

PART I

PRELIMINARY PROVISIONS

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Cash”—

(a) Means any coin or paper money that is designated as legal tender in the country of issue; and

(b) Except in Part V of this Act, includes—

(i) Bearer bonds:

(ii) Travellers cheques:

(iii) Postal notes:

(iv) Money orders:

5 “Cash report” means a report made pursuant to **section 33**
of this Act:

“Collector” has the same meaning as it has in section 2 (1)
of the Customs Act 1966:

“Commissioner” means the Commissioner of Police:

10 “Control of the Customs” has the same meaning as it has
in section 16 of the Customs Act 1966, except that,
for the purposes of this Act, references in that section
to goods shall be read as if they were references to
cash:

15 “Document” has the same meaning as it has in
section 2 (1) of the Official Information Act 1982:

“Facility”, subject to any regulations made under this
Act,—

(a) Means any account or arrangement—

20 (i) That is provided by a financial institution;
and

(ii) Through which a facility holder may
conduct 2 or more transactions; and

(b) Without limiting the generality of the
foregoing, includes—

25 (i) A life insurance policy:

(ii) Membership of a superannuation scheme:

(iii) The provision, by a financial institution, of
facilities for safe custody, including
(without limitation) a safety deposit box:

30 “Facility holder”, in relation to a facility,—

(a) Means the person in whose name the facility is
established; and

(b) Without limiting the generality of the
foregoing, includes—

35 (i) Any person to whom the facility is assigned;
and

(ii) Any person who is authorised to conduct
transactions through the facility; and

40 (c) In relation to a facility that is a life insurance
policy, means any person who for the time being is
the legal holder of that policy; and

(d) In relation to a facility that consists of
membership of a superannuation scheme, means any
person who is a member of the scheme within the

- meaning of section 2 (1) of the Superannuation Schemes Act 1989:
- “Financial institution” has the meaning given to it by **section 3** of this Act:
- “Industry organisation” means any organisation the purpose of which, or one of the purposes of which, is to represent the interests of any class or classes of financial institution: 5
- “Lawyer” means a practitioner within the meaning of section 2 of the Law Practitioners Act 1982: 10
- “Life insurance policy” means a policy within the meaning of the Life Insurance Act 1908:
- “Money laundering offence” means an offence against **section 257A** of the Crimes Act 1961:
- “Occasional transaction”, subject to any regulations made under this Act, means any transaction— 15
- (a) That involves the deposit, withdrawal, exchange, or transfer of cash; and
- (b) That is conducted by any person otherwise than through a facility in respect of which that person is a facility holder: 20
- “Officer of Customs” has the same meaning as it has in section 2 (1) of the Customs Act 1966:
- “Prescribed amount”,—
- (a) In relation to **Part II** of this Act, means such amount as is for the time being prescribed for the purposes of that Part of this Act by regulations made under **section 52** of this Act: 25
- (b) In relation to **Part V** of this Act, means such amount as is for the time being prescribed for the purposes of that Part of this Act by regulations made under **section 52** of this Act: 30
- “Principal facility holder”, in relation to a facility provided by a financial institution, means the facility holder or facility holders whom that financial institution reasonably regards, for the time being, as principally responsible for the administration of that facility: 35
- “Real estate transaction” means any matter that involves any work that, by virtue of section 65 of the Law Practitioners Act 1982, may be done only by a lawyer who holds a current practising certificate or by a real estate agent who holds a licence in force under the Real Estate Agents Act 1976: 40
- “Search warrant” means a warrant issued under **section 40** of this Act: 45

“Superannuation scheme” means a superannuation scheme within the meaning of the Superannuation Schemes Act 1989 in respect of which an offer to the public has been made:

5 “Suspicious transaction guideline” means any guideline for the time being in force pursuant to **section 20** of this Act:

“Suspicious transaction report” means a report made pursuant to **section 13 (1)** of this Act:

10 “Transaction”—

(a) Means any deposit, withdrawal, exchange, or transfer of funds (in whatever currency denominated), whether—

15 (i) In cash; or

(ii) By cheque, payment order, or other instrument; or

(iii) By electronic or other non-physical means; and

20 (b) Without limiting the generality of the foregoing, includes any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation; but

(c) Does not include any of the following:

25 (i) The placing of any bet:

(ii) Participation in any game of chance, New Zealand instant game, New Zealand lottery, or New Zealand prize competition, as those terms are defined in the Gaming and Lotteries Act 1977:

30 (iii) Any transaction that is exempted from the provisions of this Act by or under regulations made under **section 52** of this Act.

35 (2) For the purposes of this Act, a superannuation scheme shall be treated as having been offered to the public in any case where, if the scheme were a security within the meaning of the Securities Act 1978, the scheme would be treated, for the purposes of that Act, as having been offered to the public.

40 (3) For the purposes of this Act, a person becomes a facility holder in relation to a facility when that person is first able to use the facility to conduct transactions.

3. Definition of “financial institution”—In this Act, unless the context otherwise requires, and subject to any

regulations made under this Act, the term “financial institution” means any of the following:

- (a) A bank, being—
 - (i) A registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; or 5
 - (ii) The Reserve Bank of New Zealand continued by the Reserve Bank of New Zealand Act 1989; or
 - (iii) Any other person, partnership, corporation, or company carrying on in New Zealand the business of banking: 10
- (b) A life insurance company, being a company as defined in section 2 of the Life Insurance Act 1908:
- (c) A building society as defined in section 2 of the Building Societies Act 1965:
- (d) A friendly society or credit union registered or deemed to be registered under the Friendly Societies and Credit Unions Act 1982: 15
- (e) A licensed casino operator within the meaning of the Casino Control Act 1990:
- (f) A sharebroker within the meaning of section 2 of the Sharebrokers Act 1908: 20
- (g) A real estate agent within the meaning of section 3 of the Real Estate Agents Act 1976:
- (h) A trustee or administration manager or investment manager of a superannuation scheme: 25
- (i) A trustee or manager of a unit trust within the meaning of the Unit Trusts Act 1960:
- (j) The Totalisator Agency Board continued by section 62 of the Racing Act 1971:
- (k) Any person whose business or a principal part of whose business consists of any of the following: 30
 - (i) Borrowing or lending or investing money:
 - (ii) Administering or managing funds on behalf of other persons:
 - (iii) Acting as trustee or custodian in respect of funds of other persons: 35
 - (iv) Providing financial services that involve the transfer or exchange of funds, including (without limitation) payment services, foreign exchange services, or risk management services (such as the provision of forward foreign exchange contracts); but not including the provision of financial services that consist solely of the provision of financial advice: 40
- (l) A lawyer, but only to the extent that the lawyer receives funds in the course of that person’s business— 45

- (i) For the purposes of deposit or investment; or
 - (ii) For the purpose of settling real estate transactions:
- 5 (m) An accountant, but only to the extent that the
accountant receives funds in the course of that
person's business for the purposes of deposit or
investment.

10 **4. Amounts not in New Zealand currency**—(1) Where,
for the purposes of any provision of this Act, it is necessary to
determine whether or not the amount of any cash (whether
alone or together with any other amount of cash) exceeds the
prescribed amount, and the cash is denominated in a currency
other than New Zealand currency, the amount of the cash shall
15 be taken to be the equivalent in New Zealand currency,
calculated at the rate of exchange on the date of the
determination, or, if there is more than one rate of exchange
on that date, at the average of those rates.

20 (2) For the purposes of **subsection (1)** 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 one currency is equivalent to a specified sum
in terms of the currency of New Zealand shall be sufficient
evidence of the rate of exchange so prevailing and of the
25 equivalent sums in terms of the respective currencies.

5. Act to bind the Crown—This Act binds the Crown.

PART II

OBLIGATIONS ON FINANCIAL INSTITUTIONS TO VERIFY IDENTITY

Obligations on Financial Institutions to Verify Identity

30 **6. Financial institutions to verify identity of facility
holders**—(1) Subject to **subsection (2)** of this section, where any
request is made to a financial institution for a person to
become a facility holder (whether in relation to an existing
facility provided by that financial institution or by means of
35 the establishment, by that financial institution, of a new
facility), that financial institution shall, before that person
becomes a facility holder in relation to that facility, verify the
identity of that person.

40 (2) Notwithstanding anything in **subsection (1)** of this section, in
any case where, in relation to a facility provided by a financial
institution, there are 3 or more facility holders, it shall not be
necessary for that financial institution to have verified the

identity of every such facility holder, as long as the financial institution has verified the identity of every person who is, for the time being, a principal facility holder.

- 7. Financial institutions to verify identity of persons conducting certain occasional transactions—**
- (1) Where any person conducts an occasional transaction through a financial institution, that financial institution shall verify the identity of that person in any case where—
- (a) The amount of cash involved in the transaction exceeds the prescribed amount; or
 - (b) The following conditions apply, namely—
 - (i) That person, or any other person, has also conducted or is conducting one or more other occasional transactions through that financial institution; and
 - (ii) The circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe that the transactions have been, or are being, structured to avoid the application of **paragraph (a)** of this subsection; and
 - (iv) The total amount of cash involved in those transactions exceeds the prescribed amount.
- (2) Without limiting any other factors that a financial institution may consider for the purpose of determining whether or not any transactions are or have been structured to avoid the application of **subsection (1) (a)** of this section, a financial transaction shall consider, for that purpose, the following factors:
- (a) The time frame within which the transactions are conducted;
 - (b) Whether or not the parties to the transactions are the same person, or are associated in any way.
- (3) Where **subsection (1)** of this section applies in respect of any transaction, the financial institution shall verify the identity of the person conducting the transaction,—
- (a) Where **paragraph (a)** of that subsection applies, before the transaction is conducted;
 - (b) Where **paragraph (b)** of that subsection applies, as soon as practicable after the conditions specified in that paragraph are satisfied in respect of that transaction.
- (4) Where **subsection (1)** of this section applies in respect of any transaction, the financial institution shall also ask the person who is conducting or, as the case may be, conducted the

transaction whether or not the transaction is being conducted or was conducted on behalf of any other person.

(5) Nothing in **subsection (4)** of this section limits **section 8** of this Act.

5 **8. Verification where persons acting on behalf of others**—(1) Subject to **subsections (4) and (5)** of this section, and without limiting **section 6** of this Act, where—

10 (a) A request is made to a financial institution for a person to become a facility holder (whether in relation to an existing facility provided by that financial institution or by means of the establishment, by that financial institution, of a new facility); and

15 (b) The financial institution has reasonable grounds to believe that facility holder status is being sought, wholly or partly, to enable that person to conduct transactions on behalf of any other person or persons,—

20 then, in addition to complying with the requirements of **section 6** of this Act, the financial institution shall, before that person becomes a facility holder in relation to that facility, verify the identity of the other person or persons.

(2) Subject to **subsection (4)** of this section, and without limiting **section 7** of this Act, where—

25 (a) A person conducts an occasional transaction through a financial institution; and

 (b) The amount of cash involved in the transaction exceeds the prescribed amount; and

30 (c) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—

 then, in addition to complying with the requirements of **section 7** of this Act, the financial institution shall, before the transaction is conducted, verify the identity of the other person or persons.

(3) Subject to **subsections (4) and (5)** of this section, where—

35 (a) A person who is a facility holder in relation to a facility provided by a financial institution conducts a transaction through that facility; and

 (b) The amount of cash involved in the transaction exceeds the prescribed amount; and

40 (c) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—

 the financial institution shall, before the transaction is conducted, verify the identity of the other person or persons.

(4) Nothing in **subsection (1) or subsection (2) or subsection (3)** of this section requires a financial institution to verify the identity of any person in any case where—

- (a) The person in respect of whom facility holder status is sought (in any case where **subsection (1)** of this section applies) or the person who is conducting the transaction (in any case where **subsection (2) or subsection (3)** of this section applies) is a financial institution; and 5
- (b) The identity of the other person is required, by any provision of this Part of this Act, to be verified by the person referred to in **paragraph (a)** of this subsection. 10

(5) Nothing in **subsection (1) or subsection (3)** of this section requires a financial institution to verify the identity of any person (in this subsection referred to as the “other person”) in either of the following cases: 15

- (a) Where **subsection (1)** of this section would, apart from this paragraph, apply, in any case where—
 - (i) Facility holder status is sought in respect of a person for the purpose of enabling that person to conduct transactions in that person’s capacity as an employee of the other person, or as a director or principal or partner of the other person; and 20
 - (ii) The financial institution has already verified the identity of the other person pursuant to this Part of this Act: 25
- (b) Where **subsection (3)** of this section would, apart from this paragraph, apply, in any case where—
 - (i) The transaction is conducted by any person in any of the capacities referred to in **subparagraph (i) of paragraph (a)** of this subsection; and 30
 - (ii) The financial institution has already verified the identity of the other person pursuant to this Part of this Act.

9. Verification of identity where money laundering or proceeds of crime suspected—(1) Without limiting any other provision of this Part of this Act, where— 35

- (a) Any person conducts any transaction through a financial institution (whether or not the transaction involves cash); and
- (b) The financial institution has reasonable grounds to suspect— 40
 - (i) That the transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or

(ii) That the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—

5 that financial institution shall, before the transaction is conducted, verify the identity of that person.

(2) Without limiting any other matters that a financial institution may consider for the purpose of determining whether or not there any reasonable grounds to hold, with respect to any transaction, a suspicion of any kind referred to in subsection (1) of this section, a financial institution shall have regard, for that purpose, to any suspicious transaction guidelines relevant to that financial institution.

Procedures For Verifying Identity

15 **10. Procedures for verifying identity**—(1) Subject to subsections (2) and (3) of this section, where, by virtue of any provision of this Part of this Act, a financial institution is required to verify the identity of any person, that verification shall be done by means of such documentary or other evidence as is reasonably capable of establishing the identity of that person.

20 (2) Without limiting the generality of subsection (1) of this section, the evidence used to verify the identity of a company or other body corporate shall in every case include a certified copy of its certificate of incorporation or other similar document that evidences its incorporation.

(3) Where—

(a) By virtue of any provision of this Part of this Act, a financial institution is required to verify the identity of any person in relation to any facility; and

30 (b) Transactions involving cash cannot be conducted through that facility; and

(c) Transactions may be conducted through that facility only by means of an existing facility provided by another financial institution,—

35 the first-mentioned financial institution shall be deemed to have complied with the requirement to verify the identity of that person if that financial institution takes all such steps as are reasonably necessary to confirm the existence of the other facility.

40 *Offences*

11. Offences—(1) Every financial institution commits an offence against this section who, without lawful excuse,—

- (a) In contravention of **section 6 (1)** of this Act, permits a person to become a facility holder in relation to any facility (being a facility provided by that institution) without first having verified the identity of that person; or
- (b) In contravention of **section 7 (1)** of this Act, permits any person to conduct an occasional transaction through that financial institution, without first having verified the identity of that person, in any case where the amount of cash involved in the transaction exceeds the prescribed amount; or
- (c) Where an occasional transaction is conducted by any person through that financial institution, fails, in contravention of **section 7 (1)** of this Act, to verify the identity of that person as soon as practicable after the conditions specified in **section 7 (1) (b)** of this Act are satisfied in respect of that transaction; or
- (d) In contravention of **section 8 (1)** of this Act, permits any person to become a facility holder in relation to a facility (being a facility provided by that financial institution), in any case where the financial institution has reasonable grounds to believe that facility holder status is being sought, wholly or partly, to enable that person to conduct transactions on behalf of any other person or persons, without first having verified the identity of that other person or, as the case requires, those other persons; or
- (e) In contravention of **section 8 (2)** of this Act, permits any person to conduct an occasional transaction through that financial institution, in any case where—
- (i) The amount of cash involved in the transaction exceeds the prescribed amount; and
 - (ii) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—
- without first having verified the identity of that other person or, as the case requires, those other persons; or
- (f) In contravention of **section 8 (3)** of this Act, permits any person (being a facility holder in relation to a facility provided by that financial institution) to conduct a transaction through that facility, in any case where—
- (i) The amount of cash involved in the transaction exceeds the prescribed amount; and

(ii) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—

5 without first having verified the identity of that other person or, as the case requires, those other persons; or

(g) In contravention of **section 9 (1)** of this Act, permits any person to conduct a transaction through that financial institution, without first having verified the identity of that person, in any case where the financial institution has reasonable grounds to suspect—

10 (i) That the transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or

15 (ii) That the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991.

(2) Every financial institution who commits an offence against this section is liable to a fine not exceeding,—

20 (a) In the case of an individual, \$20,000:

(b) In the case of a body corporate, \$100,000.

12. Defence—(1) It is a defence to a charge against a person in relation to a contravention of, or a failure to comply with, any provision of this Part of this Act if the defendant proves—

25 (a) That the defendant took all reasonable steps to ensure that the defendant complied with that provision; or

30 (b) That, in the circumstances of the particular case, the defendant could not reasonably have been expected to ensure that the defendant complied with the provision.

(2) In determining, for the purposes of **subsection (2)** of this section, whether or not a financial institution took all reasonable steps to comply with a provision of this Part of this Act, the court shall have regard to—

35 (a) The nature of the financial institution and the activities in which it engages; and

40 (b) The existence and adequacy of any procedures established by the financial institution to ensure compliance with the provision, including (without limitation)—

(i) Staff training; and

(ii) Audits to test the effectiveness of any such procedures.

(3) Except as provided in **subsection (4)** of this section, **subsection (1)** of this section shall not apply unless, within 7 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—

5

- (a) Stating that the defendant intends to rely on **subsection (1)** of this section; 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)** of this section shall not, except with the leave of the court, be admissible for the purpose of supporting a defence under **subsection (1)** of this section.

10

PART III

15

OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS

Obligation to Report Suspicious Transactions

13. Financial institutions to report suspicious transactions—(1) Notwithstanding any other enactment or any rule of law, but subject to **section 16** of this Act, where—

20

- (a) Any person conducts or seeks to conduct any transaction through a financial institution (whether or not the transaction or proposed transaction involves cash); and

- (b) The financial institution has reasonable grounds to suspect—

25

- (i) That the transaction or proposed transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or

30

- (ii) That the transaction or proposed transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—

the financial institution shall, as soon as practicable after forming that suspicion, report that transaction or proposed transaction to the Commissioner.

35

(2) Subject to **subsection (3)** of this section, every suspicious transaction report shall—

- (a) Be in the prescribed form (if any); and

- (b) Contain the details specified in the Schedule to this Act; and

40

(c) Contain a statement of the grounds on which the financial institution holds the suspicion referred to in subsection (1) (b) of this section; and

5 (d) Be forwarded, in the prescribed manner, to the Commissioner at Police National Headquarters at Wellington.

(3) Notwithstanding paragraph (a) or paragraph (d) of subsection (2) of this section, where the urgency of the situation requires, a suspicious transaction report may be made orally to any member of the Police authorised for the purpose by the Commissioner, but in any such case the financial institution shall, as soon as practicable, forward to the Commissioner a suspicious transaction report that complies with the requirements of subsection (2) of this section.

10 (4) The Commissioner may confer the authority to receive a suspicious transaction report under subsection (3) of this section on any specified member of the Police or on members of the Police of any specified rank or class, or on any member or members of the Police for the time being holding any specified office or specified class of offices.

15 (5) Without limiting any other matters that a financial institution may consider for the purpose of determining whether or not there any reasonable grounds to hold, with respect to any transaction or proposed transaction, a suspicion of any kind referred to in subsection (1) of this section, a financial institution shall have regard, for that purpose, to any suspicious transaction guidelines relevant to that financial institution.

14. Auditors may report suspicious transactions—

30 Notwithstanding any other enactment or any rule of law, any 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,—

35 (a) That the transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or

(b) That the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—
may report that transaction to any member of the Police.

40 **15. Protection of persons reporting suspicious transactions—**(1) Where any information is disclosed or supplied in any suspicious transaction report made, pursuant

to **section 13** of this Act, by any person, no civil, criminal, or disciplinary proceedings shall lie against that person—

(a) In respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or

(b) For any consequences that follow from the disclosure or supply of that information,—

unless the information was disclosed or supplied in bad faith.

(2) Where any information is disclosed or supplied, pursuant to **section 14** of this Act, to any member of the Police by any person, no civil, criminal, or disciplinary proceedings shall lie against that person—

(a) In respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or

(b) For any consequences that follow from the disclosure or supply of that information,—

unless the information was disclosed or supplied in bad faith.

(3) Nothing in **subsection (1)** or **subsection (2)** of this section applies in respect of proceedings for an offence against **section 18** of this Act.

16. Legal professional privilege—(1) Nothing in **section 13** of this Act requires any lawyer to disclose any privileged communication.

(2) For the purposes of this section, a communication is a privileged communication only if—

(a) It is a confidential communication, whether oral or written, passing between—

(i) A lawyer in his or her professional capacity and another lawyer in such capacity; or

(ii) A lawyer in his or her professional capacity and his or her client,—

whether made directly or indirectly through an agent of either; and

(b) It is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) It is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(3) 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 shall not be 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 2 of the Law Practitioners Act 1982.

- 5 (4) 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.

Cf. 1990, No. 51, s. 24

17. Suspicious transaction report not to be disclosed—

- 10 (1) A financial institution that has made, or is contemplating making, a suspicious transaction report shall not disclose the existence of that report or, as the case requires, that the making of such a report is contemplated to any person except—

- 15 (a) The Commissioner or a member of the Police who is authorised by the Commissioner to receive the information; or

- (b) An officer or employee or agent of the financial institution, for any purpose connected with the performance of that person's duties; or

- 20 (c) A barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the matter.

- (2) No person referred to in **paragraph (b) of subsection (1)** of this section to whom disclosure of any information to which that subsection applies has been made shall disclose that information except to another person of the kind referred to in that subsection, for the purpose of—

- 25 (a) The performance of the first-mentioned person's duties; or

- 30 (b) Obtaining legal advice or representation in relation to the matter.

- (3) No person referred to in **paragraph (c) of subsection (1)** of this section to whom disclosure of any information to which that subsection applies has been made shall 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.

- 35 (4) Nothing in any of **subsections (1) to (3)** of this section shall prevent the disclosure of any information in connection with, or in the course of, proceedings before a court.

40 Cf. 1991, No. 120, s. 80

18. Offences—(1) Every financial institution commits an offence against this section who, in any case where—

- (a) A transaction is conducted or is sought to be conducted through that financial institution; and
- (b) That financial institution has reasonable grounds to suspect—
- (i) That the transaction or, as the case requires, the proposed transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or
- (ii) That the transaction or, as the case requires, the proposed transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—
- fails, in contravention of **section 13 (1)** of this Act, to report that transaction or, as the case requires, that proposed transaction to the Commissioner as soon as practicable after forming that suspicion.
- (2) Every financial institution who commits an offence against **subsection (1)** of this section is liable to a fine not exceeding,—
- (a) In the case of an individual, \$20,000;
- (b) In the case of a body corporate, \$100,000.
- (3) Every person commits an offence and is liable to a fine not exceeding \$10,000 who, in making a suspicious transaction report,—
- (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.
- (4) Every person commits an offence who,—
- (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 the commission or possible commission of a money laundering offence,—
- contravenes any of **subsections (1) to (3) of section 17** of this Act.
- (5) Every person commits an offence who,—
- (a) Being an officer or employee or agent of a financial institution; and
- (b) Having become aware, in the course of that person's duties as such an officer or employee or agent, 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) Knowing that he or she is not legally authorised to disclose the information; and

(d) Either—

5 (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 the commission or possible commission of a money laundering offence,—

10 discloses that information to any other person.

(6) Every person who commits an offence against **subsection (4) or subsection (5)** of this section is liable to imprisonment for a term not exceeding 2 years.

15 **19. Defence**—(1) It is a defence to a charge against a person in relation to a contravention of, or a failure to comply with, **section 13 (1)** of this Act if the defendant proves—

(a) That the defendant took all reasonable steps to ensure that the defendant complied with that provision; or

20 (b) That, in the circumstances of the particular case, the defendant could not reasonably have been expected to ensure that the defendant complied with the provision.

(2) In determining, for the purposes of **subsection (2)** of this section, whether or not a defendant took all reasonable steps to comply with **section 13 (1)** of this Act, the court shall have regard to—

(a) The nature of the financial institution and the activities in which it engages; and

30 (b) The existence and adequacy of any procedures established by the financial institution to ensure compliance with that provision, including (without limitation)—

(i) Staff training; and

35 (ii) Audits to test the effectiveness of any such procedures; and

(c) Any suspicious transaction guidelines relevant to the financial institution.

(3) Except as provided in **subsection (4)** of this section, **subsection (1)** of this section shall not apply unless, within 7 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 **subsection (1)** of this section; 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)** of this section shall not, except with the leave of the court, be admissible for the purpose of supporting a defence under **subsection (1)** of this section. 5

Suspicious Transaction Guidelines

20. Commissioner to issue guidelines relating to reporting of suspicious transactions—(1) Subject to **section 21** of this Act, the Commissioner shall from time to time issue, in respect of each kind of financial institution to which this Act applies, guidelines— 10

(a) Setting out any features of a transaction that may give rise to a suspicion— 15

(i) That the transaction is or may be relevant to the investigation or prosecution of any person for a money laundering offence; or

(ii) That the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991: 20

(b) Setting out any circumstances in which a suspicious transaction report relating to such a transaction may be made orally in accordance with **section 13 (3)** of this Act, and the procedures for making such an oral report. 25

(2) Suspicious transaction guidelines shall be issued in such manner as the Commissioner from time to time determines.

(3) The Commissioner may from time to time issue an amendment or revocation of any suspicious transaction guidelines. 30

(4) Without limiting **subsection (1)** of this section, suspicious transaction guidelines issued under this section may relate to 1 or more kinds of financial institution; and such guidelines may make different provision for different kinds of financial institution and different kinds of transactions. 35

21. Consultation on proposed guidelines—(1) The Commissioner shall, before issuing any suspicious transaction guidelines,—

(a) Consult with, and invite representations from, the Privacy Commissioner under the Privacy Act 1993, and shall have regard to any such representations; and 40

(b) Do everything reasonably possible on his or her part to advise such financial institutions as the

5 Commissioner considers will be affected by the proposed guidelines, or such industry organisations as the Commissioner considers to be representative of those financial institutions, of the proposed terms of the guidelines, and of the reasons for the guidelines, and shall—

10 (i) Give such persons or organisations a reasonable opportunity to consider the proposed guidelines and to make submissions on them to the Commissioner; and

(ii) Have regard to any such submissions.

15 (2) Nothing in **subsection (1)** of this section prevents the Commissioner from adopting any additional means of consulting with interested parties in relation to any proposal to issue any suspicious transaction guidelines.

(3) Failure to comply with **paragraph (b) of subsection (1)** of this section in respect of any industry organisation shall in no way affect the validity of any suspicious transaction guidelines unless the industry organisation shows that—

20 (a) The guidelines apply in respect of financial institutions that the organisation represents; and

25 (b) Before the guidelines were issued, the industry organisation gave written notice to the Commissioner requesting to be consulted in relation to any proposal to issue guidelines that apply in respect of such financial institutions.

(4) The provisions of **subsections (1) to (3)** of this section shall apply in respect of any amendment or revocation of any suspicious transaction guidelines.

30 **22. Commissioner to make guidelines available to financial institutions and industry organisations**—On request by any financial institution in respect of which any suspicious transaction guidelines are for the time being in force, or by any industry organisation that represents any such financial institution, the Commissioner shall, without charge,—

35 (a) Make those guidelines, and all amendments to those guidelines, available for inspection, by that financial institution or, as the case requires, that industry organisation, at Police National Headquarters at Wellington; and

40 (b) Provide copies of those guidelines, and all amendments to those guidelines, to that financial institution or, as the case requires, that industry organisation.

23. Review of guidelines—(1) The Commissioner shall from time to time review any suspicious transaction guidelines for the time being in force.

(2) In carrying out such a review, the Commissioner shall consult with, and invite submissions from, the Privacy Commissioner and such financial institutions, industry organisations, and other persons as the Commissioner considers have an interest in the guidelines being reviewed. 5

Application of Privacy Act 1993

24. Application of Privacy Act 1993—Any information contained in a suspicious transaction report shall be deemed, for the purposes of the Privacy Act 1993 and any code of practice issued pursuant to that Act, to be collected only for the following purposes: 10

(a) The detection, investigation, and prosecution of offences against this Act: 15

(b) The detection, investigation, and prosecution of—

(i) Money laundering offences; and

(ii) Any serious offence (within the meaning of **section 257A** of the Crimes Act 1961), in any case where any property (being property that is suspected of being connected with any money laundering transaction) is suspected of being the proceeds of that serious offence: 20

(c) The enforcement of the Proceeds of Crime Act 1991: 25

(d) The detection, investigation, and prosecution of any serious offence (within the meaning of the Proceeds of Crime Act 1991), in any case where that offence may reasonably give rise to, or form the basis of, any proceedings under that Act: 30

(e) The administration of the Mutual Assistance in Criminal Matters Act 1992.

PART IV

RETENTION OF RECORDS

25. Obligation to keep transaction records—(1) In relation to every transaction that is conducted through a financial institution, that financial institution shall keep such records as are reasonably necessary to enable that transaction to be readily reconstructed at any time by the Commissioner. 35

(2) Without limiting the generality of **subsection (1)** of this section, such records shall contain the following information: 40

(a) The nature of the transaction:

- (b) The amount of the transaction, and the currency in which it was denominated:
 - (c) The date on which the transaction was conducted:
 - (d) The parties to the transaction:
 - 5 (e) Where applicable, the facility through which the transaction was conducted, and any other facilities (whether or not provided by the financial institution) directly involved in the transaction.
- (3) Every financial institution shall retain the records kept by
10 that financial institution, in accordance with this section, in relation to a transaction for a period of not less than 5 years after the completion of that transaction.

26. Obligation to keep verification records—(1) In
15 respect of each case in which a financial institution is required, by **section 6 or section 7 or section 8 or section 9** of this Act, to verify the identity of any person, that financial institution shall keep such records as are reasonably necessary to enable the nature of the evidence used for the purposes of that verification to be readily
20 identified at any time by the Commissioner.

(2) Without limiting the generality of **subsection (1)** of this section, such records may comprise,—

- (a) A copy of the evidence so used; or
- 25 (b) Where it is not practicable to retain that evidence, such information as is reasonably necessary to enable that evidence to be obtained.

(3) Every financial institution shall retain the records kept by that financial institution, in accordance with this section, for the following period:

(a) In the case of records relating to the verification of the
30 identity of any person in relation to any facility, where the verification is carried out for the purposes of **section 6** of this Act, for a period of not less than 5 years after that person ceases to be a facility holder in relation to that facility:

35 (b) In the case of records relating to the verification of the identity of any person in relation to any facility, where—

(i) That person is not a facility holder in relation to that facility; and

40 (ii) The verification is carried out, for the purposes of **section 8 (1) or section 8 (3)** of this Act, with respect to a person who is such a facility holder,—
for a period of not less than 5 years after that facility

holder ceases to be a facility holder in relation to that facility:

- (c) In the case of any other records relating to the verification of the identity of any person, for a period of not less than 5 years after the verification is carried out. 5

27. Obligation to keep prescribed records—Every financial institution shall keep such records as may be prescribed by regulations made under **section 52** of this Act, and shall retain them for such period as may be prescribed by such regulations. 10

28. How records to be kept—Records required by **section 25** or **section 26** or **section 27** of this Act to be kept by any financial institution shall 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. 15

29. When records need not be kept—Nothing in **section 25** or **section 26** or **section 27** of this Act requires the retention of any records kept by a financial institution (being a company) in any case where that financial institution has been liquidated and finally dissolved. 20

30. Destruction of records—(1) Subject to **subsection (2)** of this section, every financial institution shall ensure that—

- (a) Every record retained by that financial institution pursuant to any provision of this Part of this Act; and 25

(b) Every copy of any such record—
is destroyed as soon as practicable after the expiry of the period for which the financial institution is required, by any provision of this Part of this Act, to retain that record. 30

(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.

(3) Without limiting the generality of **subsection (2)** of this section, there is a lawful reason for retaining a record if the retention of that record is necessary— 35

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

- (b) To enable any financial institution to carry on its business; or 40

- (c) For the purposes of the detection, investigation, or prosecution of any offence.

5 **31. Other laws not affected**—Nothing in this Part of this Act limits or affects any other enactment that requires any financial institution to keep or retain any record.

32. Offences—(1) Every financial institution commits an offence against this section who,—

- 10 (a) In contravention of **section 25** of this Act, fails, without reasonable excuse, to retain or to properly keep records sufficient to satisfy the requirements of that section; or
- 15 (b) In contravention of **section 26** of this Act, fails, without reasonable excuse, to retain or to properly keep records sufficient to satisfy the requirements of that section; or
- (c) In contravention of **section 27** of this Act, fails, without reasonable excuse, to retain or to properly keep records sufficient to satisfy the requirements of that section.

20 (2) Every financial institution who commits an offence against this section is liable to a fine not exceeding,—

- (a) In the case of an individual, \$20,000;
- (b) In the case of a body corporate, \$100,000.

PART V

25 OBLIGATION TO REPORT IMPORTS AND EXPORTS OF CASH

33. Persons arriving in or leaving New Zealand to report cash—(1) Every person who—

- (a) Arrives in New Zealand from another country or is leaving New Zealand; and
 - 30 (b) Has on his or her person, or in his or her accompanying baggage, or both, an amount of cash that, in total, exceeds the prescribed amount—
- shall make or cause to be made a report in accordance with this section.

35 (2) Every report required by **subsection (1)** of this section—

- (a) Shall be in writing in the prescribed form; and
- (b) Shall contain the following details in relation to the cash to which the report relates:
 - 40 (i) The nature and amount of each type of cash;
 - (ii) The total amount of the cash; and

(c) Shall be signed by the person making the report or, as the case requires, on whose behalf the report is made; and

(d) Shall be given to an officer of Customs before the cash leaves the control of the Customs. 5

(3) Where any person to whom **subsection (1)** of this section applies is, by reason of age or disability, incapable of complying with the requirements of this section, it shall be the responsibility of the parent or guardian or other person for the time being having the care of that person to comply with those requirements on that person's behalf. 10

34. Power to search persons—(1) Subject to this section, if any officer of Customs has reasonable cause to suspect—

(a) That any person who arrives in New Zealand from another country or is leaving New Zealand has, on his or her person, or in his or her accompanying baggage, or both, any cash; and 15

(b) That a cash report is required to be made in respect of that cash; and

(c) That a cash report has not been made in respect of that cash,— 20

the officer of Customs may cause that person to be detained and searched, and reasonable force may be used against that person to effect such detention or search.

(2) Any person detained pursuant to **subsection (1)** of this section may, before being searched, demand to be taken before a Justice of the Peace or a Collector. 25

(3) The Justice of the Peace or Collector may order the person so detained to be searched, or may discharge the person without search. 30

(4) The following provisions shall apply in respect of any search conducted pursuant to this section:

(a) The search shall not be conducted unless the person to be searched has first been informed of his or her right, under **subsection (2)** of this section, to be taken before a Collector or a Justice of the Peace: 35

(b) The search shall be carried out only by a person of the same sex as the person to be searched:

(c) The search shall not be carried out in view of any person who is not of the same sex as the person to be searched: 40

(d) The search shall be conducted with decency and sensitivity and in a manner that affords to the person

being searched the greatest degree of privacy and dignity consistent with the purpose of the search.

5 (5) Any officer of Customs who searches a person pursuant to this section may have the assistance of such assistants as the officer thinks necessary.

Cf. 1966, No. 19, s. 213; 1985, No. 131, s.2 (1)

35. Power to search accompanying baggage—(1) If any officer of Customs has reasonable cause to suspect—

10 (a) That there is, in any baggage that is accompanying any person who arrives in New Zealand from another country or who is leaving New Zealand, any cash; and

(b) That a cash report is required to be made in respect of that cash; and

15 (c) That a cash report has not been made in respect of that cash,—

that officer of Customs may detain that person and search that baggage, and may for that purpose open any package carried by that person.

20 (2) For the purposes of effecting the detention of any person, or the search of any baggage that is accompanying any person, pursuant to this section, an officer of Customs may use reasonable force against that person.

Cf. 1966, No. 19, s. 214

25 **36. Offences**—(1) Every person commits an offence and is liable to a fine not exceeding \$2,000 who,—

30 (a) In contravention of **section 33** of this Act, fails, without reasonable excuse, to make or cause to be made a cash report that satisfies the requirements of that section; or

(b) Without reasonable excuse, makes or causes to be made a cash report knowing that it is false or misleading in any material respect.

35 (2) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000 who, otherwise than by force, wilfully obstructs any officer of Customs in the exercise or performance of any power or duty conferred or imposed on that officer by this Part of this Act.

40 (3) It is a defence to a charge under this section against a person in relation to a failure to make or cause to be made a cash report to an officer of Customs before cash leaves the control of the Customs if the defendant proves—

- (a) That the failure was due to some emergency or to any other circumstances outside the reasonable control of the defendant; and
- (b) That the defendant made or caused to be made a cash report in respect of that cash as soon as practicable after the obligation to make the report arose. 5

37. Collector may deal with cash reporting offences—

(1) If, in any case to which **section 36 (1) (a)** of this Act applies, any person admits in writing that he or she has committed the offence, and requests that the offence be dealt with summarily by a Collector, the Collector may, at any time before an information has been laid in respect of the offence, accept from that person such sum, not exceeding \$200, as the Collector thinks just in the circumstances of the case, in full satisfaction of any fine to which the person would otherwise be liable under **section 36** of this Act. 10 15

(2) If a Collector accepts any sum pursuant to this section, the offender shall not be liable to be prosecuted for the offence in respect of which the payment was made.

Cf. 1966, No. 19, s. 266 20

38. Information to be forwarded to Commissioner—

(1) Where a cash report is made to an officer of Customs, that officer shall, as soon as practicable, forward the report to the Commissioner.

(2) Where, in the course of conducting a search pursuant to **section 34** or **section 35** of this Act, an officer of Customs discovers any cash in respect of which a cash report is required to be made but has not been made, that officer shall, as soon as practicable, report the details of the search, and of the cash discovered, to the Commissioner. 25 30

(3) Every report made pursuant to **subsection (2)** of this section shall be in such form as the Commissioner may from time to time determine after consultation with the Comptroller of Customs.

(4) The Comptroller of Customs shall cause to be made and kept a record of each occasion on which a cash report is made to an officer of Customs, together with details of the identity of the person making the report and the date on which the report is made, and shall ensure that such record is retained for a period of not less than 1 year after the date on which the cash report is made. 35 40

5 **39. Application of Privacy Act 1993**—Any information contained in any report made to the Commissioner pursuant to **section 38** of this Act shall be deemed, for the purposes of the Privacy Act 1993 and any code of practice issued pursuant to that Act, to be collected by the Police only for the following purposes:

- (a) The detection, investigation, and prosecution of—
 - (i) Money laundering offences; and
 - 10 (ii) Any serious offence (within the meaning of **section 257A** of the Crimes Act 1961), in any case where any property (being property that is suspected of being connected with any money laundering transaction) is suspected of being the proceeds of that serious offence:
- 15 (b) The enforcement of the Proceeds of Crime Act 1991:
- (c) The detection, investigation, and prosecution of any serious offence (within the meaning of the Proceeds of Crime Act 1991), in any case where that offence may reasonably give rise to, or form the basis of, any proceedings under that Act:
- 20 (d) The administration of the Mutual Assistance in Criminal Matters Act 1992.

PART VI

MISCELLANEOUS PROVISIONS

25 *Search Warrants*

40. Search warrants—(1) Any District Court Judge or Justice, or any Registrar (not being a member of the Police), who, on an application in writing made an oath, is satisfied that there are reasonable grounds for believing that there is in or on any place or thing—

- 30 (a) Any thing upon or in respect of which any offence against this Act or any regulations made under this Act has been, or is suspected of having been, committed; or
- 35 (b) Any thing which there are reasonable grounds for believing will be evidence as to the commission of any such offence; or
- (c) Any thing which there are reasonable grounds for believing is intended to be used for the purpose of committing any such offence—
- 40 may issue a search warrant in respect of that thing.

(2) An application for a warrant under **subsection (1)** of this section may be made only by a member of the Police who is of or above the rank of sergeant.

Cf. 1993, No. 94, s. 109

41. Form and content of search warrant—(1) Every search warrant shall be in the prescribed form. 5

(2) Every search warrant shall be directed to any member of the Police by name, or to any class of members of the Police specified in the warrant, or generally to every member of the Police. 10

(3) Every search warrant shall be subject to such special conditions (if any) as the person issuing the warrant may specify in the warrant.

(4) Every search warrant shall contain the following particulars: 15

(a) The place or thing that may be searched pursuant to the warrant:

(b) The offence or offences in respect of which the warrant is issued:

(c) A description of the articles or things that are authorised to be seized: 20

(d) The period during which the warrant may be executed, being a period not exceeding 14 days from the date of issue:

(e) Any conditions specified pursuant to **subsection (3)** of this section. 25

Cf. 1993, No. 94, s. 110

42. Powers conferred by warrant—(1) Subject to any special conditions specified in the warrant pursuant to **section 41 (3)** of this Act, every search warrant shall authorise the member of the Police executing the warrant— 30

(a) To enter and search the place or thing specified in the warrant at any time by day or night during the currency of the warrant; and

(b) To use such assistants as may be reasonable in the circumstances for the purpose of the entry and search; and 35

(c) To use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open anything in or on the place searched; and 40

(d) To search for and seize any thing referred to in any of paragraphs (a) to (c) of **section 40 (1)** of this Act; and

(e) In any case where any thing referred to in any of those paragraphs is a document,—

(i) To take copies of the document, or of extracts from the document:

5 (ii) To require any person who has the document in his or her possession or under his or her control to reproduce, or to assist the person executing the warrant to reproduce, in usable form, any information recorded or stored in the document.

10 (2) Every person called upon to assist any member of the Police executing a search warrant shall have the powers described in **paragraphs (c) and (d) of subsection (1)** of this section.

Cf. 1993, No. 94, s. 111

15 **43. Person executing warrant to produce evidence of authority**—Every member of the Police executing any search warrant—

(a) Shall have that warrant with him or her; and

(b) Shall produce it on initial entry and, if requested, at any subsequent time; and

20 (c) Shall, if requested at the time of the execution of the warrant or at any subsequent time, provide a copy of the warrant within 7 days after the request is made.

Cf. 1993, No. 94, s. 112

25 **44. Notice of execution of warrant**—Every member of the Police who executes a search warrant shall, not later than 7 days after the seizure of any thing pursuant to that warrant, give to the owner or occupier of the place or thing searched, and to every other person whom the member of the Police has reason to believe may have an interest in the thing seized, a

30 written notice specifying—

(a) The date and time of the execution of the warrant; and

(b) The identity of the person who executed the warrant; and

(c) The thing seized under the warrant.

35 Cf. 1993, No. 94, s. 113

45. Custody of property seized—Where property is seized pursuant to a search warrant, the property shall be kept in the custody of a member of the Police, except while it is being used in evidence or is in the custody of any court, until it is

40 dealt with in accordance with another provision of this Act.

Cf. 1993, No. 94, s. 114

46. Procedure where certain documents seized from lawyers' offices—Section 198A of the Summary Proceedings Act 1957, so far as applicable and with all necessary modifications, shall apply 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. 5

47. Disposal of things seized—(1) This section shall apply with respect to anything seized under a search warrant.

(2) In any proceedings for an offence relating to anything seized under a search warrant, the court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in such manner as the court thinks fit. 10

(3) Any member of the Police may at any time, unless an order has been made under **subsection (2)** of this section, return the thing to the person from whom it was seized, or apply to a District Court Judge for an order as to its disposal. On any such application, the District Court Judge may make any order that a court may make under **subsection (2)** of this section. 15 20

(4) If proceedings for an offence relating to the thing are not brought within a period of 3 months of seizure, any person claiming to be entitled to the thing may, after the expiration of that period, apply to a District Court Judge for an order that it be delivered to him or her. On any such application, the District Court Judge may adjourn the application, on such terms as he or she thinks fit, for proceedings to be brought, or may make any order that a court may make under **subsection (2)** of this section. 25

(5) Where any person is convicted in any proceedings for an offence relating to anything in respect of which a search warrant has been issued enabling seizure, and any order is made under this section, the operation of the order shall be suspended— 30

(a) In any case until the expiration of the time prescribed by the Summary Proceedings Act 1957 or, as the case may require, the time prescribed by the Crimes Act 1961 for the filing of notice of appeal or an application for leave to appeal; and 35

(b) Where notice of appeal is filed within the time so prescribed, until the determination of the appeal; and 40

(c) Where application for leave to appeal is filed within the time so prescribed, until the application is

determined and, where leave to appeal is granted, until the determination of the appeal.

(6) Where the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

Cf. 1993, No. 94, s. 118

Offences

48. Offences punishable on summary conviction— Every offence against this Act or any regulations made under this Act shall be punishable on summary conviction.

49. Liability of employers and principals—(1) Subject to subsection (3) of this section, anything done or omitted by a person as the employee of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, whether or not it was done with that other person's knowledge or approval.

(2) Anything done or omitted by a person as the agent of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, unless it is done or omitted without that other person's express or implied authority, precedent or subsequent.

(3) In proceedings under this Act against any person in respect of an act alleged to have been done by an employee of that person, it shall be a defence for that person to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing as an employee of that person acts of that description.

Cf. 1977, No. 49, s. 33

50. Directors and officers of bodies corporate— Where any body corporate is convicted of an offence against this Act or any regulations made under this Act, every director and every officer concerned in the management of the body corporate shall be guilty of the offence where it is proved that the act that constituted the offence took place with that person's knowledge, authority, permission, or consent.

Miscellaneous Provision

51. Non-compliance not excused by contractual obligations—(1) The provisions of this Act shall have effect

notwithstanding anything to the contrary in any contract or agreement.

(2) No person shall be excused from compliance with any requirement of this Act by reason only that compliance with that requirement would constitute breach of any contract or agreement. 5

Regulations

52. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 10

- (a) Prescribing the forms of applications, warrants, reports, and other documents required under this Act: 10
- (b) Prescribing amounts that are required to be prescribed for the purposes of **Parts II and V** of this Act:
- (c) Prescribing, for the purposes of **section 13 (2) (d)** of this Act, the manner in which suspicious transaction reports are to be forwarded to the Commissioner, including (without limitation) provision for forwarding such reports by electronic means: 15
- (d) Prescribing, for the purposes of **section 27** of this Act, records to be kept and retained by financial institutions, or any specified class or classes of financial institutions, and the periods for which those records are to be retained: 20
- (e) Exempting or providing for the exemption of any transaction or class of transactions from the provisions of this Act: 25
- (f) Prescribing, for the purposes of this Act, what accounts and arrangements shall be deemed to be or not to be facilities, and the circumstances and conditions in which any account or arrangement shall be deemed to be or not to be a facility: 30
- (g) Prescribing, for the purposes of this Act, what persons or classes of persons shall be deemed to be or not to be financial institutions, and the circumstances and conditions in which any persons or classes of persons shall be deemed to be or not to be financial institutions: 35
- (h) Prescribing, for the purposes of this Act, what transactions shall be deemed to be or not to be occasional transactions, and the circumstances and conditions in which any transaction shall be deemed to be or not to be an occasional transaction: 40

- (i) Prescribing the manner in which any notice or other document required by this Act to be given or served by, or to or on, any person is to be so given or served:
- 5 (j) 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:
- 10 (k) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for their due administration.
- (2) No regulations may be made pursuant to any of paragraphs (f) to (h) of subsection (1) of this section except on the recommendation of the Minister of Justice, and before making
- 15 any such recommendation, the Minister shall—
- (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
- 20 representatives of those persons, of the proposed terms of the recommendation, and of the reasons for it; and
- (b) Give such persons or their representatives a reasonable opportunity to consider the recommendation and to make submissions on it to the Minister, and shall
- 25 consider any such submissions; and
- (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
- 30 the notice the matters to which the recommendation relates; and
- (d) Make copies of the recommendation available for inspection by any person who so requests before any regulations are made in accordance with the
- 35 recommendation.
- (3) Failure to comply with subsection (2) of this section shall in no way affect the validity of any regulations made under this section.

Consequential Amendments

- 40 **53. Consequential amendments to Crimes Act 1961—**
(1) Section 257A (6) (a) of the Crimes Act 1961 (as inserted by section 5 of the Crimes Amendment Act (No. 2) 1995) is hereby amended by inserting, after subparagraph (ii), the following subparagraph:

“(iii) The enforcement or intended enforcement of the **Financial Transactions Reporting Act 1995**; or”.

(2) **Section 257B** of the Crimes Act 1961 (as so inserted) is hereby repealed.

SCHEDULE

Section 13

DETAILS TO BE INCLUDED IN SUSPICIOUS TRANSACTION REPORTS

1. The name, address, and occupation (or, where appropriate, business or principal activity) of each person conducting the transaction (if known to the person making the report).
2. The name, address, and occupation (or, where appropriate, business or principal activity) of any person on whose behalf the transaction is conducted (if known to the person making the report).
3. Where an account with a financial institution is involved in the transaction,—
 - (a) The type and identifying number of the account:
 - (b) The name of the person in whose name the account is operated:
 - (c) The names of the signatories to the account.
4. The nature of the transaction.
5. The amount involved in the transaction.
6. The type of currency involved in the transaction.
7. The date of the transaction.
8. The name of the officer, employee, or agent of the financial institution through which the transaction is conducted (if known to the person making the report).
9. The name of the person who prepared the report.