

FINANCIAL TRANSACTIONS REPORTING BILL

AS REPORTED FROM THE JUSTICE AND LAW REFORM COMMITTEE

COMMENTARY

Recommendation

The Justice and Law Reform Committee has examined the Financial Transactions Reporting Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Financial Transactions Reporting Bill was introduced and referred to the Justice and Law Reform Committee on 4 April 1995. The closing date for submissions was 19 May 1995. The committee received and considered 15 submissions from financial organisations and other interested groups and individuals. Twelve submissions were heard orally. Two and three-quarters hours were spent on the hearing of evidence and consideration took three and a half hours.

Advice was received from the Department of Justice, later the Ministry of Justice, the Police and the Reserve Bank of New Zealand (the Reserve Bank). The Regulations Review Committee reported to the committee on the powers contained in clauses 20 and 52.

This commentary sets out the details of the committee's consideration of the bill and the major issues addressed by the committee.

Background

The 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. It is a companion measure to the money laundering offences created in the Crimes Amendment Act 1995 and seeks to satisfy New Zealand's obligations as a member of the Financial Action Task Force (FATF), regarding the prevention of money laundering.

Money laundering

Money laundering is the process by which income and assets derived from criminal activity are converted to, or disguised as, apparently legitimate income.

Money laundering has attracted growing international attention since the 1980s, especially due to its frequent connection with drug trafficking. There has also been increasing recognition of the use of financial institutions in money laundering and the need to introduce measures which minimise the scope for abuse of the financial system.

FATF programme

The FATF programme was established in 1989 by the leaders of the seven major industrial nations and the Presidents of the Commission of European Communities to combat international money laundering. New Zealand agreed to implement the FATF programme on 3 April 1991 and thereby became a member of the task force. New Zealand has already implemented many of the FATF recommendations. The bill implements recommendations regarding the detection of money laundering through financial institutions. The main features of the FATF programme which are reflected in the bill are:

- a broad range of institutions to which anti-money laundering measures apply;
- the requirements for institutions to verify customer identity, keep records and report suspicious transactions; and
- the introduction of measures to monitor cash at the border.

Commencement date

The bill, as introduced, was due to come into force on 1 January 1996, while the offence provisions (clauses 11, 18 and 32) were to come into force on 1 July 1996. The bill will now come into force on a date to be appointed by Order in Council, and the offence provisions will come into force six months after this commencement date.

Definitions

Clause 3 of the bill defines a 'financial institution'. Institutions whose core business is financial are specifically defined. Others such as lawyers and accountants are included to the extent that they receive funds from clients for deposit or investment. The definition also includes casinos, real estate agents and the Totalisator Agency Board (TAB) because international experience has shown these types of business are particularly vulnerable to use in money laundering operations. In addition, persons whose business or a principal part of whose business involves borrowing, lending or investing money or managing funds on behalf of others are covered by the definition.

The Motor Vehicle Dealers Institute submitted that motor vehicle dealers should be included in the definition and thereby covered by the bill. However, direct purchase of goods using the proceeds of crime is more readily detected than where the proceeds of crime are first laundered through the financial system. Motor vehicle dealers have not been included under other FATF member jurisdictions. The intent of the bill is to prevent the use of the financial system for the purposes of money laundering rather than to cover situations where the proceeds of crime are used in direct purchases of goods. Therefore, we recommend that motor vehicle dealers remain outside the bill's definition of a financial institution.

Armourguard Security Services Limited submitted that an organisation involved only in cash carrying, management and distribution services should not be defined as a financial institution. Security firms which only transport cash are unlikely to be used to launder money, except to transport funds in a wider money laundering scheme. In such a case, the responsibility for verifying identity would still rest with the financial institution which employed the security firm. We

recommend that a provision be inserted in the bill which expressly excludes security firms from the definition of 'financial institution'.

Trustees and managers of superannuation schemes are defined as financial institutions. The term 'superannuation scheme' is defined in clause 2 of the bill. The Association of Superannuation Funds of New Zealand (ASFONZ) submitted that because employer/employee superannuation is an incident of the employment relationship which is generally long-term, customer verification should only be required if a suspicious transaction occurs. However, employer/employee schemes are as open to abuse as any other scheme, except where contributions to the scheme can only be made by deduction from salary and where interests in the scheme cannot be assigned.

ASFONZ also submitted that the definition of 'superannuation scheme' was unclear in relation to employer/employee schemes, as it was not clear that offering such a scheme to an employee could be regarded as making an 'offer to the public', as contained in the definition. However, we accepted advice from the Ministry of Justice that case law establishes that 'offers to the public' include offers to sections of the public where the precise composition of that section cannot be precisely ascertained at the time the offer is made. Factors which may determine whether or not an 'offer to the public' has been made include the size of a scheme and the purpose of the legislation in which the term is employed. The concept of an 'offer to the public' has not been used in legislation of this type before and we accept that this may give rise to some uncertainty. The intention of the definition of a superannuation scheme was to exclude small private schemes. We recommend that the definition of 'superannuation scheme' be amended to clarify the intended application. The amended definition specifically excludes:

- employer/employee schemes where contributions to the scheme are made only by way of deduction from salary or wages; and
- employer/employee schemes where a scheme member may not assign his or her interest in the scheme to any other person; or
- superannuation schemes which have 7 or fewer members and which have not been advertised to the public.

The Real Estate Institute of New Zealand submitted that the property management activities of real estate agents should not be subject to the customer verification requirements. Overseas experience showed that, while real estate is an attractive means to launder money, there is little evidence of property management accounts being used in the process. We accepted advice that it would be difficult for such accounts to be used for the purpose of money laundering. We recommend that the definition of 'real estate agent' be amended to apply the bill only to the extent that real estate agents receive funds from clients for settling real estate transactions (as defined in clause 2). This amendment would remove property management activities from the regime.

Obligation to verify customer identity

Part II of the bill requires financial institutions to verify the identity of a customer in the following three main circumstances:

- when a person applies to become a facility holder (clause 6);
- when a person conducts an occasional transaction, or series of linked transactions, involving an amount of cash in excess of a prescribed sum (clause 7); and
- when a transaction is suspicious (clause 9).

Submissions identified compliance difficulties with regard to some aspects of the verification requirements. We accept that it is impractical to require verification of identity in cases where an occasional transaction is made in cash through one

institution directly to another institution. Verification is unnecessary as an institution which receives a cash payment is required to verify the identity of the person who makes the payment. We recommend that a provision be inserted into clause 7 which exempts financial institutions from the verification requirement where payments are made directly to another institution and where any cash contained in the transaction would require that other institution to verify the identity of the transactor.

Timing of verification

The bill requires the identity of a customer to be verified before that person becomes a facility holder or conducts an occasional transaction. The exception to this, in relation to facilities only, is where three or more persons are holders of the same facility. In such a case, the financial institution must only verify the identity of principal facility holders.

Submissions argued that the requirement to verify identity before a facility is established or a transaction is conducted is likely to create compliance difficulties and unacceptable delays where there is no face-to-face contact with customers. We accept that there may be difficulties with the timing of verification requirements in such cases. In the case of a transaction on behalf of another person, an institution may not be aware that the transaction was conducted on behalf of another person until a later time. We recommend amending the bill to provide that where there is no face-to-face contact with the customer and it is impractical to obtain prior evidence of identity, it shall be sufficient compliance to verify identity as soon as practicable after the facility is established or the transaction conducted.

'On behalf of' transactions

Clause 8 requires the verification of identity, with regard to a person on whose behalf a transaction is being conducted, when a financial institution has reasonable grounds to believe that:

- facility holder status is sought to enable a person to conduct transactions on behalf of another;
- occasional transactions in excess of a prescribed amount are conducted on behalf of another person by a facility holder through a facility; or
- a cash transaction in excess of a prescribed amount is conducted by a facility holder through a facility.

There is no need to verify the identity of a person on whose behalf a transaction is made if the customer is a financial institution or if the customer is an employee, partner, director or principal of another person whose identity has already been verified.

Submissions stated that there were practical difficulties and potentially high costs associated with compliance with the verification requirements for 'on behalf of' transactions. These difficulties and the committee's recommended solutions are discussed below.

Verification requirements to apply only to cash transactions

One of the effects of the broad range of financial institutions covered by the bill is that many institutions which operate nominee accounts are financial institutions. Where a financial institution operates a nominee account the owner of the funds will be identified in any case. Therefore we recommend that the requirements to verify identity be amended so that they apply only to cash transactions of amounts above the prescribed sum whether conducted through a facility or otherwise. The verification requirements would no longer apply to persons on whose behalf a facility is established.

Provisions to deal with structured transactions

Because verification requirements apply to transactions where the amount exceeds a prescribed limit, it may be possible to avoid such requirements by carrying out a number of smaller transactions rather than a single large one which would activate verification requirements. We recommend the insertion of provisions which require a person's identity to be verified in circumstances where an institution has reasonable grounds to believe that transactions are structured to avoid these verification requirements.

Application in relation to trusts

The Law Society submitted that clause 8 could apply in awkward and expensive ways, especially with regard to dealings with a trustee where the number of trust beneficiaries on whose behalf the trustee acts could be numerous. We recommend that a provision be inserted to preclude the requirement to verify identity where a transaction is being conducted on a person's behalf in his or her capacity as a beneficiary of a trust, where that person does not have a vested interest under the trust.

Procedures for verifying identity

The bill sets out procedures for verifying identity. The method of verification is flexible, requiring the provision of such evidence as is reasonably capable of establishing the identity of the person. It is an offence for an institution to fail to comply with any of the verification requirements. Such an offence is punishable by a maximum fine of \$20,000 in the case of an individual or \$100,000 in the case of a body corporate. However, a defence is available where the financial institution shows that it took reasonable steps to comply with the requirements. This is to cover institutions which have adequate verification measures in place but where liability arises due to the actions of an individual staff member.

We received evidence that the absolute requirement that an institution must use a certificate of incorporation to verify the identity of a corporate customer imposes unnecessary costs. It is not necessary to require this form of verification where a corporate customer is well known. Therefore, we recommend the removal of this requirement.

Previous verification

Submissions stated that the costs of the customer verification provisions were likely to be high and that there were practical difficulties with compliance because verification must be repeated time after time for an individual as each new facility is established, despite the fact that payment will normally be made through a facility at another institution which has already verified the customer's identity. We accepted submissions that the range of circumstances in which previous verification of identity by another institution could be relied upon could be increased, providing that adequate records are kept to identify the facility or transaction to which the verification evidence relates.

We recommend that clause 10 be amended to increase the range of circumstances in which one financial institution may rely on previous verification by another financial institution or on evidence it has previously obtained. We also recommend that the record keeping requirements of clause 26 be amended to include a requirement which applies specifically to circumstances where previous verification by another financial institution is relied upon.

Obligation to report suspicious transactions

The bill provides for mandatory reporting, by financial institutions, of suspicious transactions. The institution must report to the Commissioner of Police where a transaction is or may be relevant to prosecution of money laundering or where a

transaction is or may be relevant to the enforcement of the Proceeds of Crime Act 1991.

A person who reports a suspicious transaction is protected from civil and criminal liability for disclosure of that information if the disclosure was made in good faith. We recommend the insertion of an additional clause which provides specific immunity from liability for disclosure of information relating to money laundering transactions. This clause is based on section 257B of the Crimes Act 1961. This broader immunity is to ensure that there are no disincentives to reporting suspicious transactions.

Lawyers are not required to report any communication to which professional privilege applies and auditors are permitted but not required to report suspicious transactions.

The bill contains important privacy protections which provide that information regarding suspicious transactions shall only be gathered for specified purposes. The Privacy Commissioner submitted that through the operation of the clauses relating to the application of the Privacy Act 1993 and information privacy principles, which provide that personal information may only be used and disclosed for the purpose for which it was obtained, there is a mechanism that will prevent the information being used for other purposes.

Offences relating to disclosure

It is an offence to fail to comply with the requirements to report suspicious transactions. However, a defence of having reasonable systems and training programmes in place may apply to a financial institution. It is also an offence to disclose, without authority, that the Police are or may be investigating a suspicious transaction. We accepted advice from the Reserve Bank that banks should be able to disclose suspicious transactions to the Reserve Bank. This is for the purposes of the supervisory functions which the Reserve Bank exercises over other banks under the Reserve Bank of New Zealand Act 1989. Therefore, we recommend that clause 17 be amended accordingly.

A number of submissioners were concerned that including the details of the person reporting the suspicious transaction on the report form could lead to retribution against that person. We therefore recommend that a new clause be inserted to prevent the disclosure of suspicious transaction reports by the Police except with regard to the detection, investigation and prosecution of money laundering or other offences relating to the proceeds of crime. No person shall be required to disclose, in any judicial proceeding, any information relating to suspicious transaction reports unless the court orders otherwise.

Police to develop suspicious transaction guidelines

The bill does not define the term 'suspicious transaction'. Instead it places an obligation on the Commissioner of Police to develop and make available guidelines for the reporting of suspicious transactions. The guidelines are to be developed in consultation with financial institutions and the Privacy Commissioner. However, an institution is required to report a suspicious transaction whether or not it falls within the guidelines.

Submissions expressed concern over the status of the Police guidelines, suggesting that the guidelines are, essentially, rules. We do not consider that the guidelines are rules and it is important not to treat them as such. To do so could shift the focus from whether a transaction is truly suspicious to whether it falls within the guidelines. It is also important to restrict access to the guidelines to financial institutions in order to prevent criminals gaining access to them. Therefore, we recommend that a number of amendments be made to make it clear that the guidelines have no legal force in themselves.

Submissions expressed concern over the consultation process regarding the development of guidelines. We recommend that the Commissioner of Police be required to advertise an intention to develop or update guidelines and to consult with financial institutions which express interest.

Requirement to keep records

Part IV of the bill requires certain records to be kept for certain periods and then destroyed, unless required for some other lawful purpose. Records need not be kept if an institution has been liquidated and finally dissolved. Three types of records must be kept:

- transaction records sufficient to allow Police to reconstruct transactions;
- customer verification records; and
- other records prescribed in regulations.

It is an offence to fail to comply with the requirement to keep records. However, a defence applies where a financial institution has the correct procedures in place but where individual misjudgment would make the institution liable.

One submission was received on Part IV of the bill and the committee recommends an amendment to clause 26 regarding record keeping which has already been discussed under the heading 'previous verification'.

Obligation to report imports and exports of cash

Part V of the bill requires persons entering or leaving New Zealand to report cash in excess of a prescribed sum that is carried across the border. Officers of Customs are empowered to detain and search a person suspected of carrying unreported cash. Offences are prescribed in relation to failure to report excess cash or obstruction of an officer of Customs.

No submissions were received on Part V of the bill and only minor amendments are recommended.

Miscellaneous provisions

Clauses 40 to 53 of the bill contain miscellaneous provisions relating to the search powers of Police, the liability of employers for the actions of employees and the liability of directors and officers of a body corporate for the action of that body corporate.

Included in these provisions are wide-ranging regulation making powers. Concerns were expressed, in submissions and the report of the Regulations Review Committee, over the breadth of the regulation making powers.

We are satisfied of the need for broad regulation-making powers due to the fluid nature of the boundaries of the financial services industry, the speed of technological advances which may make it difficult to define 'facilities' and 'transactions' in the future and the deregulated nature of the industry.

The schedule sets out the details that are to be included in suspicious transactions reports. We accepted Police advice that the date of birth of a person making a suspicious transaction should be included in the report to assist in identification and recommend an amendment to give effect to this.

KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

The quick brown fox

Text struck out unanimously

New (Unanimous)

The quick brown fox

Text inserted unanimously

(The quick brown fox)

Words struck out unanimously

The quick brown fox

Words inserted unanimously

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—

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

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(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)* a date to be appointed by the Governor-General by Order in Council.

(3) **Sections 11, 18, and 32** of this Act shall come into force on the *(1st day of July 1996)* expiry of 6 months after the date appointed pursuant to **subsection (2)** of this section.

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PART I

PRELIMINARY PROVISIONS

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

“Cash”— 5

(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: 10

(ii) Travellers cheques:

(iii) Postal notes:

(iv) Money orders:

“Cash report” means a report made pursuant to section 33 of this Act: 15

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

“Commissioner” means the Commissioner of Police:

“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: 20

“Document” has the same meaning as it has in section 2 (1) of the Official Information Act 1982: 25

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

(a) Means any account or arrangement—

(i) That is provided by a financial institution; and 30

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

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

(i) A life insurance policy: 35

(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: 40

“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—

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

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

5 (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

10 (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:

15 “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:

20 “Lawyer” means a practitioner within the meaning of
section 2 of the Law Practitioners Act 1982:

“Life insurance policy” means a policy within the
meaning of section 2 of the Life Insurance Act 1908:

“Money laundering offence” means an offence against
section 257A of the Crimes Act 1961:

25 “Occasional transaction”, subject to any regulations made
under this Act, means any transaction—

(a) That involves the deposit, withdrawal,
exchange, or transfer of cash; and

30 (b) That is conducted by any person otherwise
than through a facility in respect of which that
person is a facility holder:

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

“Prescribed amount”,—

35 (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:

40 (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:

45 “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:

New (Unanimous)

“Real estate agent” has the same meaning as it has in section 3 of the Real Estate Agents Act 1976:

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Struck Out (Unanimous)

“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:

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New (Unanimous)

“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—

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(a) By or under the supervision of a lawyer who holds a current practising certificate; or

(b) By a real estate agent who holds a licence in force under the Real Estate Agents Act 1976:

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“Search warrant” means a warrant issued under section 40 of this Act:

Struck Out (Unanimous)

“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:

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New (Unanimous)

“Superannuation scheme” means a superannuation scheme within the meaning of the Superannuation Schemes Act 1989; but does not include—

- 5 (a) Any superannuation scheme established principally for the purpose of providing retirement benefits to employees (within the meaning of that Act), where—
- 10 (i) Contributions to the scheme by employees are made only by way of deduction from the salary or wages of those employees; and
- 15 (ii) The trust deed governing the scheme (or, as the case requires, the statute under which the scheme is constituted) does not permit a member to assign his or her interest in the scheme to any other person; or
- (b) Any superannuation scheme—
- 20 (i) That has no more than 7 members; and
- (ii) In respect of which no advertisement has been published inviting the public or any section of the public to become contributors to the scheme:

25 “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:

“Transaction”—

- 30 (a) Means any deposit, withdrawal, exchange, or transfer of funds (in whatever currency denominated), whether—
- (i) In cash; or
- 35 (ii) By cheque, payment order, or other instrument; or
- (iii) By electronic or other non-physical means; and
- (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
- 40 (c) Does not include any of the following:

- (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: 5
- (iii) Any transaction that is exempted from the provisions of this Act by or under regulations made under **section 52** of this Act. 10

Struck Out (Unanimous)

(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. 15

(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”—(1) 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: 20

- (a) A bank, being—
 - (i) A registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; or 25
 - (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: 30
- (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: 35
- (d) A friendly society or credit union registered or deemed to be registered under the Friendly Societies and Credit Unions Act 1982:
- (e) A licensed casino operator within the meaning of the Casino Control Act 1990: 40

- (f) A sharebroker within the meaning of section 2 of the Sharebrokers Act 1908:

Struck Out (Unanimous)

- 5 (g) A real estate agent within the meaning of section 3 of the Real Estate Agents Act 1976:

New (Unanimous)

- 10 (g) A real estate agent, but only to the extent that the real estate agent receives funds in the course of that person's business for the purpose of settling real estate transactions:

- (h) A trustee or administration manager or investment manager of a superannuation scheme:

- (i) A trustee or manager of a unit trust within the meaning of the Unit Trusts Act 1960:

- 15 (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:

- 20 (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:

- 25 (iiia) Dealing in life insurance policies:

- (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:

- 30 (l) A lawyer, but only to the extent that the lawyer receives funds in the course of that person's business—

- 35 (i) For the purposes of deposit or investment; or

- (ii) For the purpose of settling real estate transactions:

- (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.

New (Unanimous)

(2) A person shall not be regarded as a financial institution for the purposes of this Act merely because that person carries on business as a security guard within the meaning of section 4 of the Private Investigators and Security Guards Act 1974.

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 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.

(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 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

6. Financial institutions to verify identity of facility holders—(1) Subject to **(subsection (2) subsections (2) and (3))** 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 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.

New (Unanimous)

5 (1A) Where **subsection (1)** of this section applies in respect of any request for a person to become a facility holder in relation to a facility, the financial institution shall verify the identity of that person—

- (a) Before that person becomes a facility holder in relation to that facility; or
- (b) As soon as practicable after that person becomes a facility holder in relation to that facility, in any case where—
 - 10 (i) That person belongs to a class of persons with whom the financial institution does not normally have face to face dealings; and
 - 15 (ii) It is impracticable to undertake the verification before the person becomes a facility holder.

20 (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.

New (Unanimous)

25 (3) Notwithstanding anything in **subsection (1)** of this section, nothing in that subsection requires a trustee or administration manager or investment manager of a superannuation scheme to verify the identity of any person—

- 30 (a) Who becomes a member of that superannuation scheme by virtue of the transfer, to that scheme, of all the members of another superannuation scheme; or
- (b) Who becomes a member of a section of that superannuation scheme by virtue of the transfer, to one section of that scheme, of all the members of another section of the same scheme.

35 **7. Financial institutions to verify identity of persons conducting certain occasional transactions—**(1) Subject to subsection (1A) of this section, 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
 - (iii) The total amount of cash involved in those transactions exceeds the prescribed amount.

New (Unanimous)

(1A) Notwithstanding anything in **subsection (1)** of this section, nothing in that subsection requires a financial institution to verify the identity of a person who conducts an occasional transaction (in this subsection referred to as “the transactor”) through that financial institution in any case where,—

- (a) That financial institution is unable to readily determine whether or not the transaction involves cash because the funds involved in the transaction are deposited by the transactor into a facility (being a facility in relation to which that financial institution is a facility holder) provided by another financial institution; and
- (b) If those funds consisted of or included cash, that other financial institution would be required, under this Part of this Act, to verify the identity of the transactor.

(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) institution* 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,—

Struck Out (Unanimous)

5 (a) Where **paragraph (a)** of that subsection applies, before the transaction is conducted:

New (Unanimous)

(a) Where **paragraph (a)** of that subsection applies,—
 (i) Before the transaction is conducted; or
 10 (ii) As soon as practicable after the transaction is conducted, in any case where—
 (A) The person conducting the transaction belongs to a class of persons with whom the financial institution does not normally have face to face dealings; and
 15 (B) It is impracticable to undertake the verification before the transaction is conducted:

20 (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.

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

Struck Out (Unanimous)

30 **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—

35 (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

Struck Out (Unanimous)

or by means of the establishment, by that financial institution, of a new facility); and

- (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,—

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—

- (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
 (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—

- (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
 (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

Struck Out (Unanimous)

- 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.
- (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
- 10 either of the following cases:
- (a) Where **subsection (1)** of this section would, apart from this paragraph, apply, in any case where—
- 15 (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
- (ii) The financial institution has already verified the identity of the other person pursuant to this Part of
- 20 this Act:
- (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
- 25 (ii) The financial institution has already verified the identity of the other person pursuant to this Part of this Act.

New (Unanimous)

- 30 **8. Verification where persons acting on behalf of others in respect of occasional transactions**—(1) Subject to **subsection (6)** of this section, and without limiting **section 7** of this Act, where—
- 35 (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

New (Unanimous)

- (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 verify the identity of the other person or persons. 5
- (2) Without limiting **section 7** of this Act, where a person conducts an occasional transaction through a financial institution and the following conditions apply, namely,— 10
- (a) That person, or any other person, has also conducted or is conducting one or more other occasional transactions through that financial institution; and
- (b) The circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe— 15
- (i) That the person is conducting the transactions on behalf of any other person or persons; and
- (ii) That the transactions have been, or are being, structured to avoid the application of **subsection (1)** of this section; and 20
- (c) The total amount of cash involved in those transactions exceeds the prescribed amount,—
then, in addition to complying with the requirements of **section 7** of this Act, the financial institution shall verify the identity of the person or persons on whose behalf it is believed the transactions are being conducted. 25
- (3) Without limiting any other factors that a financial institution may consider for the purpose of determining whether or not any transactions have been structured to avoid the application of **subsection (1)** of this section, a financial institution shall consider, for that purpose, the following factors: 30
- (a) The time frame within which the transactions are conducted: 35
- (b) Whether or not the parties to the transactions are the same person, or are associated in any way.
- (4) Where **subsection (1)** of this section applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons— 40
- (a) Before the transaction is conducted; or

New (Unanimous)

(b) As soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, conducted on behalf of the relevant person or persons.

(5) Where **subsection (2)** of this section applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons as soon as practicable after the conditions specified in that subsection are satisfied.

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

(a) The person who is conducting the transaction is a financial institution; and

(b) The identity of the other person is required, by any provision of this Part of this Act, to be verified by that other financial institution.

8A. Verification where facility holders acting on behalf of others—(1) Subject to **subsections (6) and (7)** of this section, where—

(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

(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 verify the identity of the other person or persons.

(2) Where a person who is a facility holder in relation to a facility provided by a financial institution conducts a transaction through that facility, and the following conditions apply, namely,—

(a) That person, or any other person, has also conducted or is conducting one or more other transactions through that facility; and

(b) The circumstances in which those transactions have been, or are being, conducted provide reasonable grounds to believe—

New (Unanimous)

- (i) That the person is conducting the transactions on behalf of any other person or persons; and
- (ii) That the transactions have been, or are being, structured to avoid the application of **subsection (1)** of this section; and 5
- (c) The total amount of cash involved in those transactions exceeds the prescribed amount,—
the financial institution shall verify the identity of the other person or persons. 10
- (3) 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)** of this section, a financial institution shall consider, for that purpose, the following factors: 15
- (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. 20
- (4) Where **subsection (1)** of this section applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons—
- (a) Before the transaction is conducted; or
- (b) As soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, conducted on behalf of the relevant person or persons. 25
- (5) Where **subsection (2)** of this section applies in respect of any transaction, the financial institution shall verify the identity of the relevant person or persons as soon as practicable after the conditions specified in that subsection are satisfied. 30
- (6) Nothing in **subsection (1)** of this section requires a financial institution to verify the identity of any person in any case where— 35
- (a) The person who is conducting the transaction is a financial institution; and
- (b) The identity of the other person is required, by any provision of this Part of this Act, to be verified by the other financial institution. 40

New (Unanimous)

(7) Nothing in **subsection (1)** of this section requires a financial institution to verify the identity of any person (in this subsection referred to as the “other person”) where—

- 5 (a) The transaction is conducted by any person in his or her capacity as an employee of the other person, or as a director or principal or partner of the other person; and
- 10 (b) The financial institution has already verified the identity of the other person pursuant to this Part of this Act.

8B. Application of sections 8 and 8A in relation to beneficiaries under trust—Nothing in **section 8** or **section 8A** of this Act requires the verification of the identity of any person, in any case where it is believed—

- 15 (a) That a transaction is being, or has been, conducted on that person’s behalf in his or her capacity as the beneficiary under a trust; and
- (b) That the person does not have a vested interest under the trust.

20 **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—

- (a) Any person conducts any transaction through a financial institution (whether or not the transaction involves cash); and
- 25 (b) The financial institution has reasonable grounds to suspect—
- (i) That the 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 is or may be relevant to the enforcement of the Proceeds of Crime Act 1991,—

35 that financial institution shall(, *before the transaction is conducted*.) verify the identity of that person.

Struck Out (Unanimous)

(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.

5

New (Unanimous)

(2) Where **subsection (1)** of this section applies in respect of any transaction, the financial institution shall verify the identity of the person as soon as practicable after the financial institution has reasonable grounds to hold, with respect to that transaction, a suspicion of any kind referred to in that subsection.

10

15

Procedures For Verifying Identity

Struck Out (Unanimous)

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.

25

(3) Where—

30

(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

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

35

Struck Out (Unanimous)

- (c) Transactions may be conducted through that facility only by means of an existing facility provided by another financial institution,—
- 5 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.

10 *New (Unanimous)*

- 10. Procedures for verifying identity**—(1) Subject to subsections (3) to (5) 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
- 15 shall be done by means of such documentary or other evidence as is reasonably capable of establishing the identity of that person.
- (2) Without limiting the generality of subsection (1) of this section, in verifying the identity of any person, a financial
- 20 institution may rely (in whole or in part) on evidence used by that financial institution on an earlier occasion to verify that person's identity, if the financial institution has reasonable grounds to believe that the evidence is still reasonably capable of establishing the identity of that person.
- 25 (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
- (b) Transactions may be conducted through that facility by
- 30 means of an existing facility—
- (i) That is provided by another financial institution; and
- (ii) In relation to which that person is a facility holder,—
- 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.

New (Unanimous)

- (4) 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 an occasional transaction; and 5
- (b) That occasional transaction is conducted by means of an existing facility—
- (i) That is provided by another financial institution; and 10
- (ii) In relation to which that person is a facility holder,—
- 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 facility. 15
- (5) Where,—
- (a) By virtue of any provision of this Part of this Act, a trustee or administration manager or investment manager of a superannuation scheme is required to verify the identity of any person by reason that the person has become, or is seeking to become, a member of that scheme; and 20
- (b) The superannuation scheme is established principally for the purpose of providing retirement benefits to employees,— 25
- that trustee or manager shall be deemed to have complied with the requirement to verify the identity of that person if that person's identity has been verified by his or her employer. 30

Offences

- 11. Offences**—(1) Every financial institution commits an offence against this section who, (*without lawful excuse*,)—
- (a) In contravention of (**section 6 (1)**) **section 6 (1A) (a)** 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 35

New (Unanimous)

5 (aa) Where a person becomes a facility holder in relation to any facility provided by that financial institution, fails, in contravention of **section 6 (1A) (b)** of this Act, to verify the identity of that person as soon as practicable after that person becomes a facility holder in relation to that facility; or

10 (b) In contravention of **(section 7 (1)) section 7 (3) (a) (i)** 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

New (Unanimous)

15 (ba) Where an occasional transaction is conducted by any person through that financial institution, in any case where the amount of cash involved in the transaction exceeds the prescribed amount, fails, in contravention of **section 7 (3) (a) (ii)** of this Act, to verify the identity of that person as soon as practicable after the transaction is conducted; or

20

25 (c) Where an occasional transaction is conducted by any person through that financial institution, fails, in contravention of **(section 7 (1)) section 7 (3) (b)** 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

Struck Out (Unanimous)

30 (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

35 that person to conduct transactions on behalf of any

Struck Out (Unanimous)

- 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— 5
- (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,— 10
- without first having verified the identity of that other person or, as the case requires, those other persons; 15
- 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— 20
- (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,— 25
- 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— 30
- (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. 35 40

New (Unanimous)

(e) Where—

- (i) An occasional transaction is conducted by any person through that financial institution; and
- 5 (ii) The amount of cash involved in the transaction exceeds the prescribed amount; and
- (iii) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—
- 10 fails, in contravention of **section 8 (4)** of this Act, to verify the identity of that other person or, as the case requires, those other persons—
- (iv) Before the transaction is conducted; or
- 15 (v) As soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, so conducted; or

(ea) Where—

- (i) An occasional transaction is conducted by any person through that financial institution; and
- 20 (ii) The conditions specified in **paragraphs (a) to (c) of section 8 (2)** of this Act apply in respect of that transaction,—
- 25 fails, in contravention of **section 8 (5)** of this Act, to undertake the verification required by **section 8 (2)** of this Act as soon as practicable after the conditions specified in **section 8 (2)** of this Act are satisfied in respect of that transaction; or

(f) Where—

- (i) A person who is a facility holder in relation to a facility provided by that financial institution conducts a transaction through that facility; and
- 30 (ii) The amount of cash involved in the transaction exceeds the prescribed amount; and
- 35 (iii) The financial institution has reasonable grounds to believe that the person is conducting the transaction on behalf of any other person or persons,—
- 40 fails, in contravention of **section 8A (4)** of this Act, to verify the identity of that other person or, as the case requires, those other persons—
- (iv) Before the transaction is conducted; or

New (Unanimous)

(v) As soon as practicable after the financial institution has reasonable grounds to believe that the transaction is being, or has been, so conducted; or

(fa) Where— 5

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

(ii) The conditions specified in paragraphs (a) to (c) of section 8A(2) of this Act apply in respect of that transaction,— 10

fails, in contravention of section 8A(5) of this Act, to undertake the verification required by section 8A(2) of this Act as soon as practicable after the conditions specified in section 8A(2) of this Act are satisfied in respect of that transaction; or 15

(g) Where—

(i) A person conducts a transaction through that financial institution; and

(ii) The financial institution has reasonable grounds to suspect— 20

(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,— 25

fails, in contravention of section 9(2) of this Act, to verify the identity of that person as soon as practicable after the financial institution has reasonable grounds to hold that suspicion. 30

(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. 35

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—

(a) That the defendant took all reasonable steps to ensure that the defendant complied with that provision; or 40

- (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.
- 5 (2) In determining, for the purposes of **(subsection (2)) subsection (1)(a)** 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—
- 10 (a) The nature of the financial institution and the activities in which it engages; and
- (b) The existence and adequacy of any procedures established by the financial institution to ensure compliance with the provision, including (without limitation)—
- 15 (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) 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—
- 20 (a) Stating that the defendant intends to rely on **subsection (1)** of this section; and
- 25 (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.
- 30

PART III

OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS

Obligation to Report Suspicious Transactions

- 35 **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—
- 40 (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—

(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

(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.

(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
- (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

Struck Out (Unanimous)

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

New (Unanimous)

- (d) Be forwarded, in writing, to the Commissioner at Police National Headquarters at Wellington—
 - (i) By way of facsimile transmission; or
 - (ii) By such other means (including, without limitation, electronic mail or other similar means of communication) as may be agreed from time to time between the Commissioner and the financial institution concerned.

(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.

- (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.

Struck Out (Unanimous)

- (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—** 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,—
- (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.

- 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

5

(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.

10

New (Unanimous)

15A. Immunity from liability for disclosure of information relating to money laundering transactions—Without limiting section 15 of this Act, where—

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(a) Any person does any act that, apart from section 257A (6)(a) of the Crimes Act 1961, would constitute, or the person believes would constitute, an offence against subsection (2) or subsection (3) of section 257A of that Act; and

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(b) In respect of the doing of that act, that person would have, by virtue of section 257A (6)(a) of that Act, a defence to a charge under that section of that Act; and

(c) That person discloses, to any member of the Police, any information relating to a money laundering transaction (within the meaning of section 257A (4) of that Act), 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) of this section; and

25

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 257A (6)(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 otherwise howsoever) to maintain secrecy in relation to, or not to disclose, that information,—

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New (Unanimous)

5 then, notwithstanding that the disclosure would otherwise constitute a breach of that obligation of secrecy or non-disclosure, the disclosure by that person, to that member of the Police, 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.

10 **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—

15 (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

20 (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

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.

30 (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.

35 (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

40 **17. Suspicious transaction report not to be disclosed**—

(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—

- (a) The Commissioner or a member of the Police who is authorised by the Commissioner to receive the information; or 5
- (b) An officer or employee or agent of the financial institution, for any purpose connected with the performance of that person's duties; or 10
- (c) A barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the matter; or

New (Unanimous)

(d) The Reserve Bank of New Zealand, for the purpose of assisting the Reserve Bank of New Zealand to carry out its functions under Part V of the Reserve Bank of New Zealand Act 1989. 15

(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— 20

- (a) The performance of the first-mentioned person's duties; or
- (b) Obtaining legal advice or representation in relation to the matter. 25

(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. 30

(4) Subject to **section 17A** of this Act, 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. 35

Cf. 1991, No. 120, s. 80

New (Unanimous)

17A. Protection of identity of persons making suspicious transaction reports—(1) This section applies in respect of the following information:

- 5 (a) Any suspicious transaction report:
 (b) Any information that disclosure of which will identify, or is reasonably likely to identify, any person as a person who has made a suspicious transaction report.
- 10 (2) No member of the Police shall disclose any information to which this section applies except for one or more of the following purposes:
- (a) The detection, investigation, and prosecution of—
- 15 (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 (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:
- 25 (d) The administration of the Mutual Assistance in Criminal Matters Act 1992.
- (3) No person shall be required to 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.
- 30 (4) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against any of **subsections (3) to (5) of section 18** of this Act.
- 35

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

- 40 (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—

(i) For the purpose of obtaining, directly or indirectly, an advantage or a pecuniary gain for that person or any other person; or

5 (ii) With intent to prejudice any investigation into the commission or possible commission of a money laundering offence,—

discloses that information to any other person.

10 (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.

New (Unanimous)

15 (7) Every person who knowingly contravenes any of **subsections (1) to (3) of section 17** of this Act commits an offence and is liable,—

(a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000;

20 (b) In the case of a body corporate, to a fine not exceeding \$20,000.

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—

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

(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.

30 (2) In determining, for the purposes of **(subsection (2)) subsection (1)(a)** 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—

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

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

40 (i) Staff training; and

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

Struck Out (Unanimous)

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

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

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- (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.

15

Suspicious Transaction Guidelines

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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—

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

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(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.

5 (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.

Struck Out (Unanimous)

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

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

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

25 (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.

30 (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.

35 (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—

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

40 (b) Before the guidelines were issued, the industry organisation gave written notice to the Commissioner requesting to be consulted in relation

Struck Out (Unanimous)

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.

New (Unanimous)

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

(b) Give public notice of the Commissioner's intention to issue the guidelines, which notice shall contain a statement—

(i) Indicating the Commissioner's intention to issue the guidelines; and

(ii) Inviting financial institutions that are likely to be affected by the proposed guidelines, and industry organisations that are representative of those financial institutions, to express to the Commissioner, within such reasonable period as is specified in the notice, their interest in being consulted in the course of the development of the guidelines; and

(c) Consult with, and invite representations from, those financial institutions and industry organisations who express such an interest, and shall have regard to any such representations.

(2) Nothing in **subsection (1)** of this section 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.

(3) This section shall apply in respect of any amendment or revocation of any suspicious transaction guidelines.

5 **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,—

10 (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

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

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

Struck Out (Unanimous)

20 (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.

New (Unanimous)

25 (2) **Section 21** of this Act shall apply, with all necessary modifications, in relation to any such review as if the review were a proposal to issue suspicious transaction guidelines.

Application of Privacy Act 1993

30 **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)~~ obtained only for the following purposes:

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

(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: 5
- (c) The enforcement of the Proceeds of Crime Act 1991:
- (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: 10
- (e) The administration of the Mutual Assistance in Criminal Matters Act 1992.

PART IV

15

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. 20
- (2) Without limiting the generality of **subsection (1)** of this section, such records shall contain the following information:
- (a) The nature of the transaction:
 - (b) The amount of the transaction, and the currency in which it was denominated: 25
 - (c) The date on which the transaction was conducted:
 - (d) The parties to the transaction:
 - (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. 30
- (3) Every financial institution shall retain the records kept by 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. 35

- 26. Obligation to keep verification records**—(1) In respect of each case in which a financial institution is required, by **section 6 or section 7 or section 8 or section 8A 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 40

verification to be readily identified at any time by the Commissioner.

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

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

New (Unanimous)

10 (2A) Notwithstanding anything in **subsections (1) and (2)** of this section, in respect of each case in which a financial institution, in reliance on the provisions of **subsection (3) or subsection (4) of section 10** of this Act, verifies the identity of any person by confirming the existence of a facility provided by another
 15 financial institution, the first-mentioned financial institution shall keep such records as are reasonably necessary to enable—

- (a) The identity of the other financial institution; and
 (b) The identity of that facility—
 20 to be readily identified at any time by the Commissioner.

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

- 25 (a) In the case of records relating to the verification of the 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
 30 in relation to that facility:
 (b) In the case of records relating to the verification of the identity of any person in relation to any facility, where—
 35 (i) That person is not a facility holder in relation to that facility; and
 (ii) The verification is carried out, for the purposes of **(section 8 (1) or section 8 (3)) section 8A** of this Act, with respect to a person who is such a facility holder,—
 40 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.

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. 5

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. 10

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. 15

30. Destruction of records—(1) Subject to **subsection (2)** of this section, every financial institution shall ensure that— 20

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

(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. 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.

(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— 30

(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 35

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

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,—

- (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
- (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.

(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

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
- (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.

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

- (a) Shall be in writing in the prescribed form (if any); and
- (b) Shall contain the following details in relation to the cash to which the report relates:
 - (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.

(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. 5

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 10

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

Struck Out (Unanimous) 15

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

New (Unanimous)

(c) Either—

(i) That a cash report has not been made in respect of that cash; or 20

(ii) That a cash report made in respect of that cash is incomplete, incorrect, false, or misleading in any material respect,—

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. 25

(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. 30

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

(4) The following provisions shall apply in respect of any search conducted pursuant to this section: 35

(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:

- (b) The search shall be carried out only by a person of the same sex as the person to be searched:
- 5 (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:
- (d) The search shall be conducted with decency and sensitivity and in a manner that affords to the person
10 being searched the greatest degree of privacy and dignity consistent with the purpose of the search.
- (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.

15 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—

- 20 (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

Struck Out (Unanimous)

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

New (Unanimous)

- 30 (c) Either—
- (i) That a cash report has not been made in respect of that cash; or
 - (ii) That a cash report made in respect of that cash is incomplete, incorrect, false, or misleading in any material respect,—

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

(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

- 36. Offences—**(1) Every person commits an offence and is liable to a fine not exceeding \$2,000 who,— 5
- (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. 10
- (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. 15
- (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— 20
- (a) That the failure was due to some emergency or to any other circumstances outside the reasonable control of the defendant; and 25
 - (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.

- 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. 30 35
- (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. 40

Cf. 1966, No. 19, s. 266

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.

5 (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
10 discovered, to the Commissioner.

(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.

15 (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
20 period of not less than 1 year after the date on which the cash report is made.

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
25 Privacy Act 1993 and any code of practice issued pursuant to that Act, to be *(collected)* obtained by the Police only for the following purposes:

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

(i) Money laundering offences; and
30 (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
35 that serious offence:

(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
40 may reasonably give rise to, or form the basis of, any proceedings under that Act:

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

PART VI

MISCELLANEOUS PROVISIONS

Search Warrants

40. Search warrants—Any District Court Judge or Justice, or any Registrar (not being a member of the Police), who, on an application in writing made (*an*) on oath, is satisfied that there are reasonable grounds for believing that there is in or on any place or thing— 5

(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 10

(b) Any thing which there are reasonable grounds for believing will be evidence as to the commission of any such offence; or 15

(c) Any thing which there are reasonable grounds for believing is intended to be used for the purpose of committing any such offence—
may issue a search warrant in respect of that thing. 20

Struck Out (Unanimous) 20

(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. 25

(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. 30

(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: 35

(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:
- (d) The period during which the warrant may be executed, being a period not exceeding 14 days from the date of issue:
- 5 (e) Any conditions specified pursuant to **subsection (3)** of this section.

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—

- (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
- 15 (b) To use such assistants as may be reasonable in the circumstances for the purpose of the entry and search; and
- (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
- 20 (d) To search for and seize any thing referred to in any of **paragraphs (a) to (c) of (section 40 (1)) section 40** of this Act; and
- (e) In any case where any thing referred to in any of those
- 25 paragraphs is a document,—
- (i) To take copies of the document, or of extracts from the document:
- (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.

(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

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

- 40 (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

- (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

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 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.

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 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.

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.

(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.

5 (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 10 may make any order that a court may make under **subsection (2)** of this section.

(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 15 made under this section, the operation of the order shall be suspended—

(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 20 1961 for the filing of notice of appeal or an application for leave to appeal; and

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

25 (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 30 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

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

40 **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. 5

Struck Out (Unanimous)

(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. 10

New (Unanimous)

(3) In any proceedings under this Act against any person in respect of anything alleged to have been done or omitted 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 or omitting to do that thing, or from doing or omitting to do as an employee of that person things of that description. 15
20

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 or omission that constituted the offence took place with that person's knowledge, authority, permission, or consent. 25

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. 30

(2) No person shall be excused from compliance with any requirement of this Act by reason only that compliance with 35

that requirement would constitute breach of any contract or agreement.

Regulations

5 **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:

- (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:

Struck Out (Unanimous)

15 (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:

20 (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:

(e) Exempting or providing for the exemption of any transaction or class of transactions from all or any of the provisions of this Act:

25 (f) Prescribing, for the purposes of this Act, or any provision or provisions 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, or any provision or provisions 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, or any provision or provisions of this Act, what transactions shall be deemed to be or not to be occasional transactions, and the circumstances and conditions in which any

40

transaction shall be deemed to be or not to be an occasional transaction:

- (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) (e) to (h) of subsection (1) of this section except on the recommendation of the Minister of Justice, and before making any such recommendation, the Minister shall— 15
- (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 20
 - (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 consider any such submissions; and 25
 - (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 30
 - (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. 35
- (3) Failure to comply with subsection (2) of this section shall in no way affect the validity of any regulations made under this section. 40

Consequential Amendments

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”.

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

Section 13

DETAILS TO BE INCLUDED IN SUSPICIOUS TRANSACTION REPORTS

1. The name, address, date of birth, 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, date of birth, 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.