

17 December 2021

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

*Submission: Statutory Review of New Zealand's Anti-Money Laundering and  
Countering Financing of Terrorism (AML/CFT) Act 2009*

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Transparency International New Zealand (TINZ) is the recognised New Zealand Chapter of [Transparency International](https://www.transparency.org), the global civil society organisation against corruption. TINZ is a not-for-profit incorporated society with charitable status. TINZ is non-partisan, non-sectarian and objective. In our conduct, we are guided by the principles of the Human Rights Act and the Treaty of Waitangi. More information can be found here: <https://www.transparency.org.nz/our-story>

Through advocacy, campaigning and research, our global movement and local chapter have exposed systems and networks that enable global corruption to thrive. Transparency International is unrelenting in demanding greater transparency and integrity in all areas of public life and private business.

**Our expertise**

[Adam Hunt](#) is the governance lead on this submission for TINZ. Adam is an elected Director of TINZ with expertise/responsibility in the area of Anti Money Laundering. He has many years of public sector regulatory, and private sector operational and advisory experience in this area.

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## Submission

### Introduction

1. TINZ focuses on building resilience to corruption through institutional measures, and that theme runs through our submission points. We consider the global efforts to improve AML/CFT legislation to be one of the most significant mechanisms to tackle what is truly a global crime problem, and unashamedly advocate for it to be continuously strengthened.
2. The price of freedom is eternal vigilance. Part of that price is the cost of compliance. We agree this should be proportionate to the benefit realised – reducing the risks of crime, the reputational benefits of being a leading jurisdiction and minimising the pernicious economic efficiencies that arise from information asymmetry.

## Institutional arrangements and stewardship

3. We support measures to include the sanctions as they are updated so they are automatically included in NZ law without a requirement for a legal instrument. Currently this is a slightly grey area, and it would give certainty to reporting entities and customers alike.
4. We believe the risk-based model is appropriate and presents the best approach to allow proportionality, however it depends on a well-informed and capable professional workforce, together with public understanding of the importance of the mechanisms employed as a defence against ML/TF. We discuss this further below.
5. Reporting entities are required to review a variety of sources to establish and then continually update their risk position. The fragmentation of our supervisory regime hampers this process: we discuss this matter further below. Of note is that, without a well-resourced and proactive anti-corruption agency, often this aspect of risk is not expounded thoroughly, especially in a jurisdiction that has a low perception of corruption issues and so is not sensitized to the challenges.
6. The process for granting exemptions is opaque and fails to apply clear and justifiable reasoning. Due to the compliance burden of the regime, potentially it allows for competitive advantage to be gained unfairly. We would welcome a review and improvement of transparency and governance arrangements for this mechanism.
7. We discuss the supervisory regime, its powers, scope and gaps in more detail below as they cannot be addressed in the absence of the regulatory framework. The absence of a well-resourced intelligence focused anti-corruption agency in NZ is highlighted by the very low levels of utilisation of the AML/CFT regime in tackling this area of public policy<sup>1</sup>. We wish to be clear: this is not a criticism of the agencies involved. A lack of clarity and clear policy direction is the issue.

## Scope of the AML/CFT Act

8. A significant industry has developed to facilitate wealth management. While much of this is legitimate, its scale presents two specific risk areas. It is a well-resourced and connected sector, and as such can apply political pressure to resist transparency. And the sheer volume of entities, arrangements and actors in the sector provide opportunity to 'hide amongst the crowd'. Globally, Trust & Company Service Providers (TCSPs) are recognised as being crucial gatekeepers in the fight against ML, and this is reflected in the higher risk category. However, the endemic nature of Trusts in NZ means that many legal and accounting firms provide extensive services in these fields but operate at a lower level of scrutiny by being registered as professionals. Clearer definitions based on services provided would ensure high risk providers were correctly identified.

9. Immigration processes could provide a significant intelligence opportunity and are directly related to corruption risk: a specific typology is the use of children as a laundering channel. The PEP controls in this area would benefit from **review**. **TINZ would** prefer that the NZ residents' exemption from PEP checks be removed.

### Supervision, regulation, and enforcement

10. TINZ believes that the absence of clarity and accountability at a practical level leaves a strategic gap in the regulatory framework. While front line supervisors do their best within their remit, there is often conflicting messaging that creates regulatory grey areas.
11. This extends to clarity of focus to oversee domestic corruption risks, spreading responsibility and resourcing across multiple agencies.
12. The absence of clear strategic ownership of the policy stream damages the ability to prioritise harm reduction in the sector: the supervisors and other agencies have competing priorities that cause conflict and lead to resource duplication.
13. The theory that multiple supervisors reduce business compliance costs is not born out by real-world experience: in reality it leads to confusion across sectors. It is notable that AUSTRAC deal with this matter simply by taking a sector relationship management approach that appears to successfully address the concerns, while significantly mitigating risk of regulatory capture.
14. We believe that the benefits of a divided regime are outweighed by the costs arising from the protracted process required to issue consistent guidance to reporting entities, and the risks posed by resource duplication and lack of strategic focus, including on corruption matters and broader public education of why IDV and AML/CFT processes have been introduced.
15. We wish to re-iterate our support for a register of beneficial control, and suggest that this is carried out alongside a register of Trusts. This could be private and initially be voluntary allowing for trusts that have registered to no longer be subject to mandatory enhanced due diligence. With regards a register of Trusts such a register exists in Europe under the 5AMD, and in the UK as well.

End of Submission

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#### **General TINZ Contact**

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