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ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM (SUPERVISOR, LEVY, AND OTHER MATTERS) AMENDMENT BILL

SUBMISSIONS ON BEHALF OF THE LAW ASSOCIATION OF NEW ZEALAND BY ITS AML & CFT COMMITTEE

I. INTRODUCTION

1.1 The Law Association of New Zealand (TLANZ) is an independent membership organisation representing more than 8,000 legal professionals nationwide. Through its specialist committees, TLANZ contributes actively to law reform, policy development, and the promotion of high professional standards within the legal profession.

1.2 This submission has been prepared by the TLANZ Anti-Money Laundering and Countering the Financing of Terrorism (AML & CFT) Committee (the Committee). The Committee comprises senior practitioners, compliance professionals, in-house counsel, and members of the independent bar. Collectively, our members have many decades of practical experience with the AML/CFT framework, both as reporting entities and as advisers across the regulated sector.

1.3 Our expertise is grounded in daily engagement with the regime: developing and implementing compliance programmes for law firms, advising on enforcement matters, liaising with supervisors, and contributing to legislative consultations. This breadth of experience equips the Committee to provide informed analysis of the Bill's proposals and their practical implications for the legal profession and, indirectly, for consumers of legal services and other financial services.

1.4 While the levy framework forms the primary focus of our submission, we also comment on other significant aspects of the Bill, including the consolidation of supervisory functions, the expansion of supervisory powers, the new process for codes of practice and rules, and the introduction of a statutory AML/CFT strategy and regulatory work programme

II. EXECUTIVE SUMMARY

2.1 The Committee supports the Government's aim of delivering a sustainable, effective AML/CFT system that upholds New Zealand's international obligations. We recognise the potential benefits of a single supervisor model and agree that greater regulatory coherence could improve consistency and efficiency. However, these benefits must translate into tangible reductions in burden for low-risk sectors such as small law practices.

2.2 We have serious concerns about the proposed levy framework in sections 155A–155E. Legal practitioners, including small or low-risk firms, already shoulder significant compliance costs. The Bill introduces a further levy without robust cost–benefit analysis or evidence of sector-specific benefit. Absent safeguards, the levy risks imposing disproportionate costs on those least able to bear them. We provided a detailed evaluation and critique of the levy proposals to the Ministry of Justice recently (**copy attached**). It does not appear the Bill as now introduced has made material improvement to those problematic elements in the consultation draft.

2.3 We therefore recommend that the levy framework be underpinned by statutory principles of equity, proportionality, and risk sensitivity. It should include mandatory exemptions for low-risk small/medium business entities. Transparency over levy allocation and use is also essential to maintain confidence in the system.

2.4 Beyond the levy, the Committee highlights the need for safeguards around expanded supervisory powers to recognise and protect legal professional privilege and client confidentiality.

2.5 We also have concerns about the vast breadth of matters on which the Chief Executive of the new single supervisor may issue rules or other delegated instruments. Codes of practice and rules must be developed through meaningful consultation, ensuring that significant compliance obligations are not introduced without parliamentary scrutiny or bypassing other checks with conventional Regulation-making processes.

2.6 In short, the Committee welcomes reform aimed at improving efficiency and sustainability but considers that targeted amendments are required to ensure fairness, accountability, and constitutional safeguards. We expand on those issues in clause-by-clause analysis below.

III. SUBMISSIONS

Clause 6 – Section 16 amended (Standard customer due diligence: verification of identity requirements)

3.1 The Committee supports the inclusion of the words after section 16(1) to remove the requirement for a reporting entity to verify the address or registered office of those persons referred to in section 11(1) which must be obtained under section 15(d).

3.2 This carve out will apply when a reporting entity is conducting standard due diligence under section 15 after obtaining identity information which includes obtaining a person's address or registered office under subsection 15(d). Person in section 15 refers to section 11(1) (namely a customer, a beneficial owner of a customer, and any person acting on behalf of a customer).

3.3 This amendment means that reporting entities are not required to verify the address or registered office of a customer, a beneficial owner of a customer, or any person acting on behalf of a customer when conducting standard due diligence under section 15.

3.4 We note an existing amendment to this same provision was earlier proposed in the Statutes Amendment Bill as already reported back to the House by the Governance and Administration Committee. We assume this second proposed amendment to section 16(1) is intended to complement that other Bill, and we support this overall revised version of section 16 (address verification removed) that will result.

Clause 7 – Section 39A amended (Interpretation) *and* ***Clause 8 – New section 40A inserted (Certain persons in trade may report suspicious activities)***

3.5 The Committee supports the replacement of the definition of suspicious activity to broaden the definition to include activities undertaken in circumstances not involving a reporting entity, if that person (who is not a reporting entity nor a high-value dealer) will not be committing an offence (civil or otherwise) under the Act for failure to report the activity or the proposed activity.

3.6 Subject to the above proviso, the Committee supports the insertion of new section 40A to enable persons who are not reporting entities and/or high-value dealers to make suspicious activity reports to the Commissioner of Police.

3.7 From 11 May 2023, the section 67A prohibition stated that businesses dealing in certain high-value goods (like jewellery, watches, gold, silver or other precious metals, diamonds, sapphires, or other precious stones or vehicles) are no longer allowed to accept a cash payment or a series of cash payments totalling $10,000.

3.8 However, with the 2023 prohibition now preventing these transactions, these persons in trade/businesses will no longer be high-value dealers under the AML/CFT Act and will not have to comply with these requirements.

3.9 The broadening of the definition of suspicious activity and the enactment of new section 40A means that any persons who trade in one or more of the articles described in section 67A may report an activity that occurs in the course of carrying out their business if that person has reasonable grounds to suspect that the activity is or may be relevant to the matters described in paragraph (a)(ii)(A) to (E).

3.10 The Committee notes that the requirement to report is not mandatory, as "a person to whom this section applies may report any suspicious activity". The Committee further submits that

a person who is neither a reporting entity nor a high-value dealer should not be liable for failing to report suspicious activity or proposed activity under the Act (civil or otherwise).

Clause 9 – Section 41 amended (Nature of suspicious activity report)

3.11 The Committee supports the consequential amendments to reflect the insertion of new section 40A.

Clause 10 – Section 46 amended (Disclosure of information relating to suspicious activity reports)

3.12 The Committee supports the amendments to section 46, which clarify that while reporting entities are generally prohibited from disclosing information relating to suspicious activity reports, they may disclose such information to any Police employee who is authorised by the Commissioner to receive it, or to the AML/CFT supervisor. This reflects the change to a single AML/CFT supervisor.

Clause 11 – Section 60 amended (Annual AML/CFT report)

3.13 Section 60 requires reporting entities to prepare annual reports on their risk assessment and AML/CFT programmes. Clause 11 adds a new requirement for reporting entities to provide any sector-specific information required by the AML/CFT supervisor by rules made under new section 156B (inserted by clause 32).

3.14 Requiring reporting entities to provide sector-specific information in itself seems reasonable, as the supervisor may need to collect information relevant to that particular sector.

Clause 13 – Section 64 replaced (Procedure for approval and publication of codes of practice)

3.15 The Committee respectfully refers to our comments made in our submission on Clause 32 relating to consultation. The Committee submits that consultation is considered best practice before making secondary legislation. In the absence of wide public consultation as required under primary legislation, we would encourage the Chief Executive or Commissioner respectively, to consult more widely before making codes of practice.

3.16 The Committee respectfully proposes that section 64 wording be replaced by the following:

64 Chief executive of AML/CFT supervisor may make codes of practice

(1) The chief executive of the AML/CFT supervisor may make one or more codes of practice for the following:
(a) all reporting entities:
(b) specific classes of reporting entities:
(c) specific activities or classes of activities regulated by this Act or its regulations or rules.

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

(3) Before making a code of practice, the chief executive must consult any persons, or representatives of those persons (which may include industry bodies, national regulators, industry representative bodies, societies, associations and organisations), that the chief executive thinks will be substantially affected by the code of practice.

(4) A code of practice made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Clause 19 – Section 130 repealed (AML/CFT supervisors) *– No longer relevant*

Clause 20 – Replaces s 131 with a new s 131

3.17 The Committee supports the additional functions of the supervisor as set out in the new section 131, particularly:

- the inclusion in s 131(c) of the words “timely and up to date” before the word guidance; and
- the inclusion of s 131(e).

3.18 In the interests of clarity, the Committee would like to see included in this section or elsewhere in the Bill, clarification that the guidance provided by the supervisor is not mandatory.

Clause 21 – Section 132 amended (Powers)

Section 132(2)(ba):

3.19 The Committee submits that reasonable notice should be in writing and served on the person required to attend a meeting under s 132(2)(ba). Such notice to be given should be a minimum of 7 working days if the meeting is not urgent. (The default of 10 working days remains if no time frame is specified.) This notice period will give the person the opportunity to seek and obtain legal or other advice.

3.20 The Committee respectfully submits that section 132 does not take enough cognisance of the legal obligations’ lawyers have under rule 5.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC), which provides that “the relationship between lawyer and client is one of confidence and trust that must never be abused”. This subsection should be subject to the professional obligations of lawyers relating to privilege. We therefore submit that written notice served on the person in accordance with subsection (3A) should specify that the person is not required to provide privileged information or documents.

Recommended Amendments to Section 132

3.21 We submit that section 132 should read:

132 Powers

(1) The AML/CFT supervisor has all the powers necessary to carry out its functions under this Act or regulations.

(2) Without limiting the power conferred by subsection (1), the AML/CFT supervisor may,—

(a) on written notice served in accordance with subsection (3A), require production of, or access to, all records, documents, or information relevant to its supervision and monitoring of reporting entities for compliance with this Act; and

(b) conduct on-site inspections in accordance with section 133 (via audio or audiovisual link); and

(ba) require any person whom the AML/CFT supervisor reasonably suspects has knowledge of a possible contravention of this Act or regulations to attend a meeting (including via an audio or audiovisual link) with the AML/CFT supervisor to—

(i) answer any questions relating to a reporting entity’s records and documents; and

(ii) provide any other information that the AML/CFT supervisor considers necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act and regulations; and

I provide guidance to the reporting entities it supervises by—

(i) producing guidelines; and

(ii) preparing codes of practice in accordance with section 63; and

(iii) providing feedback on reporting entities’ compliance with obligations under this Act, regulations, and rules; and

(iv) undertaking any other activities necessary for assisting reporting entities to understand their obligations under this Act and regulations, including how best to achieve compliance with those obligations; and

(d) co-operate and share information in accordance with sections 46, 48, and 137 to 140 by communicating or making arrangements to communicate information obtained by the AML/CFT supervisor in the performance of its functions and the exercise of its powers under this Act; and In accordance with this Act and any other enactment, initiate and act on requests from any overseas counterparts; and

(f) approve the formation of, and addition of members to designated business groups.

(3) The AML/CFT supervisor may only use the powers conferred on it under this Act and regulations for the purposes of this Act.

(3A)The AML/CFT supervisor may require production of, or access to, records, documents, or information under subsection (2)(a)—
(a) as soon as possible after written notification is served on that person, if the AML/CFT supervisor considers that the production of, or access to, the records, documents, or information is a matter of urgency; or
(b) in any other case,—
(i) by any specified date that the AML/CFT supervisor considers reasonable in the circumstances, being at least 7 working days; or
(ii) if no specified date is given, within 10 working days.

(3B) A person is not required to answer a question asked by the AML/CFT supervisor under subsection (2)(ba) if the answer would or could incriminate the person, and such person should be informed of subsection (3B) in the written notification served on that person in accordance with subsection (3A).

(3C) Before the AML/CFT supervisor requires a person to answer a question under subsection (2)(ba), the person must be informed of the right specified in subsection (3B).

(4) Nothing in this section requires any person to disclose any privileged communication or privileged information, and written notification served in accordance with subsection (3A) should state that the person has a right to non-disclosure of privileged communication under this section.

Clause 26 – New sections 149A to 149F and cross-heading inserted

Section 149A(3)(2):

3.22 The Committee respectfully submits that any development of a national strategy should not be restricted to focus solely on the purposes of s 3 of the Act but should also refer to effective and efficient compliance by reporting entities and the New Zealand public as a whole.

Section 149A(3)(3):

3.23 The Committee respectfully submits that the development of the national strategy should include input from reporting entities, which may best be done through engagement with the supervisor. The Committee suggests the following alternative wording:

"In developing the national strategy, the Minister must have regard to any relevant risk assessments, intelligence or other relevant information provided by the Commissioner or the AML/CFT supervisor who may consult with reporting entities regarding the national strategy."

Clause 27 – Repeal of Co-ordination Committee (Sections 150–152)

3.24 The Committee recommends inserting a safeguard to ensure ongoing multi-agency and sector coordination despite the committee's repeal. For example, the Bill could be amended to require the AML/CFT supervisor (or Ministry) to convene a periodic AML/CFT advisory group including representatives from affected sectors (such as the legal profession) to consult on high-level strategy and emerging issues. This would institutionalise a replacement for the Co-ordination Committee's role in guiding policy coherence. At a minimum, the national strategy development process should involve consultation with the private sector and relevant agencies. Maintaining some formal mechanism for cross-sector dialogue will help preserve the integrity of regulatory processes and ensure the single supervisor continues to benefit from a wide range of expertise and perspectives.

3.25 In summary, while we do not oppose the repeal of sections 150–152 given the new supervisory model, we believe the Bill should be amended to guarantee ongoing structured collaboration. A possible amendment could be a new provision (perhaps in section 149 or 149A) along the lines of: "*The AML/CFT supervisor or the Ministry of Justice must establish a consultative group of public and private sector representatives to meet at least twice a year to assist in coordinating AML/CFT operational strategy and implementation*." Such a provision would reassure us that New Zealand's AML/CFT regime will remain inclusive and well-coordinated, even under the simplified one-supervisor framework.

Clauses 28–29 – Changes to Regulation-Making Powers (Sections 153–154)

3.26 We note that clause 28 deletes a large number of matters that the Governor General may make regulations on. The Committee acknowledges the value of using secondary legislation powers but remains concerned about the extensive scope of matters on which the Chief Executive of the new single supervisor may issue rules or other delegated instruments. To preserve accountability, we urge that any new rule-making powers be clearly defined and subject to robust oversight, including the following safeguards:

(i) Parliamentary Oversight: Amend the Bill to explicitly provide that all rules issued by the AML/CFT supervisor are disallowable instruments, consistent with the treatment of regulations. This would ensure that such rules remain subject to parliamentary scrutiny and can be disallowed, if necessary,

(ii) Mandatory Consultation and Impact Assessment: The Bill does impose consultation requirements for rules (new sections 156B(2) and 156C(3)) and notices (new section 156I), which we endorse. However, we recommend defining this consultation more robustly – for example, requiring adequate public notice of proposed rules/notices and reasonable timeframes for input. At minimum, the Act or regulations should specify that draft rules be published for public comment (except in urgent cases) for 30 working days and that the supervisor considers submissions. Additionally, for major new rules, the supervisor should publish a brief impact assessment or consultation summary explaining the expected compliance costs or other impacts, especially on different sizes/types of reporting entities. This would enhance transparency and ensure rules are justified and proportionate.

(iii) Limit Delegation to Technical Matters: We recommend that only genuinely technical or supplementary matters be delegated to rules or notices. Fundamental policy settings should remain in primary legislation or regulations. The Select Committee should carefully review the matters being shifted to rules under Clause 32 to ensure they are appropriate for delegation. If any provisions—such as those defining the scope of obligations or key terms—are too substantive, they should remain as regulation-making powers under sections 153–154. Retaining core obligations in the Act or in regulations ensures they are subject to full democratic scrutiny. In short, rules should clarify operational details within boundaries set by Parliament, not introduce significant policy changes.

3.27 Given the multiple layers of secondary instruments, it is essential that reporting entities can easily locate and understand all applicable requirements. The Committee recommends that the Department of Internal Affairs, as the future single supervisor, maintain a consolidated and regularly updated online register or handbook. This should include all relevant publications—such as guidance notes, codes of practice, regulations, rules, notices, and gazette notices—and provide direct links to each. While this is a practical implementation request rather than a legislative amendment, we seek assurance that it will be delivered. Notably, new section 131(c), which refers to providing "timely and up to date" guidance, supports this expectation. Subject to appropriate safeguards, the Committee supports the use of rules to provide flexibility and responsiveness within the regime. We note that new sections 156B and 156C appropriately classify these rules as secondary legislation and introduce baseline consultation requirements—an encouraging foundation. The additional recommendations outlined above are intended to strengthen this framework and ensure legal clarity, accountability, and robustness.

Clauses 30–31 – New Levy on Reporting Entities & Consultation Requirements

Sections 155A–155E, 156

3.28 The Committee acknowledges that the Amendment Bill introduces a permanent levy regime by amending sections 169–173 of the AML/CFT Act. In particular, the Bill establishes:

- A continuing power for regulations to prescribe levies on reporting entities (clause 41, inserting new section 169A).
- The ability for different classes of reporting entities to be levied on different bases (including size, transaction volume, or activity type).

- Provision for the levy to be collected by supervisors and paid into a designated Crown Bank Account; and
- A requirement for consultation with affected reporting entities before levy regulations are made (new section 169B).

3.29 While the Committee accepts the principle that supervisors should be sustainably funded, we remain concerned that the levy regime, as framed in the Bill, risks imposing disproportionate burdens on legal practices.

3.30 The Committee therefore reiterates and incorporates by reference the positions advanced in our earlier submission to the Ministry of Justice on the AML/CFT levy proposal (attached as Appendix 1). In that submission, we raised concerns regarding proportionality, the use of transaction-based metrics, the absence of exemptions for small entities, and the need for enhanced consultation and transparency safeguards. These concerns remain pertinent in light of the Bill now before Parliament.

3.31 To ensure that the levy framework reflects principles of fairness, transparency, and accountability, the Committee recommends the following amendments:

(i) **Insert a Proportionality Requirement**
We recommend amending section 155C to include an explicit requirement that any levy must be proportionate to the AML/CFT risk profile, compliance burden, and financial capacity of different sectors or classes of reporting entities. Consistent with our prior submission, the Minister should be required to confirm that the levy is equitable and risk-based before recommending regulations. This safeguard would help protect smaller low-risk legal practices and reporting entities from disproportionate costs and aligns with international best practice, which supports tailoring AML levies to entity size and risk exposure.

(ii) **Mandate Exemptions for Small, Low-Risk Entities**
Section 155E should be strengthened to require the Chief Executive to exempt certain low-impact entities from levy liability. Specifically, we propose that reporting entities assessed as low risk in the National Risk Assessment and falling below a defined revenue threshold be granted full or partial exemptions. This would codify relief for small law firms and similarly situated businesses, ensuring the levy does not unduly burden micro-enterprises. While the threshold and criteria can be set by regulation, the obligation to protect low-risk small entities should be embedded in primary legislation.

(iii) **Strengthen Consultation Requirements**
To ensure consultation under section 155D is meaningful, we recommend defining or elaborating the term “consult” either within section 155D or through an amendment to section 159 authorising consultation guidelines. At a minimum, the Bill should require that draft levy regulations or detailed proposals be published for public comment with adequate notice and a reasonable feedback period. We further recommend that key representative bodies—such as TLANZ, NZLS, and relevant sector associations—be explicitly included in the consultation process. For transparency, the Ministry should be required to publish a summary of submissions received and explain how they were considered.

Regarding Clause 31, which permits bypassing consultation for minor or urgent changes, we recommend narrowing this exception. The Minister should be required to publish reasons justifying the urgency or technical nature of the change and, where practicable, undertake consultation even within a shortened timeframe. For genuinely urgent and significant changes, a post-implementation consultation or sunset clause should be considered to maintain stakeholder trust and safeguard against misuse of the exception.

(iv) **Enhance Transparency in Levy Use**
Although not directly addressed in Clauses 30–31, we refer to related provisions in sections 149E–149F and recommend amendments to improve transparency and

accountability. Specifically, the annual report on levy usage should include sector-specific breakdowns and performance metrics. For example, reporting how much levy revenue was collected from the legal sector and what AML/CFT improvements were funded for that sector would demonstrate value and proportionality. Establishing a clear link between levy contributions and tangible outcomes will help legal professionals view the levy as a justified regulatory cost rather than an arbitrary financial burden.

3.32 With these amendments, the levy provisions would better support a fair and effective cost-recovery model. They would help preserve the viability of smaller legal practices and reporting entities and reinforce the principle that regulatory costs should be aligned with risk, benefit, and capacity to pay.

Clause 32 – New Rules and Notices Powers (Sections 156B – 156J)

3.33 Section 32 inserts new sections 156B to 156J empowering the chief executive of the AML/CFT supervisor and the Commissioner of the Police to respectively make rules and notices in respect of a number of different matters under the Act that were previously dealt with by regulations or by legislative amendment. The section also contains consultation requirements and provides that the rules are secondary legislation.

3.34 The different AML/CFT matters although summarised below are extensive:

(i) Chief executive of the AML/CFT Supervisor Rules (156B): The chief executive of the AML/CFT supervisor is authorized to create rules that govern various aspects of AML/CFT compliance. These include:

- Customer Due Diligence: Rules can specify requirements for standard, simplified, enhanced, and ongoing due diligence, including the type of information to be collected, conditions for relying on third parties, and risk assessment factors.
- Record-Keeping: Rules can prescribe the information to be included in records and the manner in which records must be maintained.
- Reporting Requirements: Rules can define the content of annual reports and other documents required under the Act.
- Technology and Products: Rules can address risks associated with new or developing technologies or products that may favour anonymity.

These rules are also classified as secondary legislation.

(ii) Commissioner Rules (156C): the Commissioner can create rules specifically for:

- Suspicious Activity Reports: Prescribing the information to be included and the manner of submission.
- Prescribed Transaction Reports: Defining the content and submission process.
- Cash Reports: Setting requirements for reporting cash movements.

These rules are also classified as secondary legislation.

(iii) Chief executive of the AML/CFT Supervisor Rules (156D):

- The chief executive of the Ministry of Justice can issue notices to prescribe amounts or thresholds required under the Act or regulations.
- These thresholds may apply to specific transactions, financial activities, or reporting entities.
- Notices cannot duplicate thresholds already set by regulations and are classified as secondary legislation.

(iv) Commissioner Notices (156G): The Commissioner can issue notices to exempt reporting entities or transactions from obligations related to:

- International wire transfers.
- Prescribed transaction reports.
- Cash movements.

These notices are secondary legislation.

3.35 Clause 32 represents a significant shift in regulatory authority by empowering the chief executive of the AML/CFT supervisor ("Chief Executive") and the Commissioner of the Police ("Commissioner") to make rules and notices—authority that was previously exercised through regulations made by the Governor-General under section 153 of the principal Act.

3.36 Under proposed sections 156B and 156C, the rules that the Chief Executive and the Commissioner, respectively, are empowered to make are deemed to be secondary legislation. In the same vein, under proposed sections 156D and 156G he notices Chief Executive and the Commissioner are empowered to make are deemed to be secondary legislation.

3.37 There is no general requirement under the Legislation Act 2019 for public consultation before secondary legislation is enacted. However, consultation requirements depend on the empowering legislation - the principal Act.

3.38 The Cabinet Manual 2023 emphasises the importance of consultation in the development of secondary legislation primarily in paragraphs 7.93 to 7.97. and related guidance (e.g., LDAC Guidelines) which emphasises the importance of consultation in the development of secondary legislation. This includes:

- Consultation with relevant government agencies.
- Consultation with caucuses and MPs.
- Consultation with affected groups, if required by statute or deemed appropriate by the Minister or department.

3.39 In addition, Parliament's Regulations Review Committee may scrutinize secondary legislation for failure to consult where required, among other grounds.

3.40 Proposed subsections 156B(2) and 156C(3) state that before making rules, the supervisor must consult affected reporting entities, other representatives of those persons who the Chief Executive or Commissioner respectively believes will be significantly affected, the Ministry, the Minister, the Commissioner or Chief Executive, and other relevant public service agencies or regulators who have an interest in the proposed rules. However, consultation is not required for minor amendments or corrections.

3.41 Sections 156B(2), 156C(3) and sections 156D to 156G delegate extensive powers to make secondary legislation and explicitly require consultation with affected parties or stakeholders and their representatives. These sections state that before making rules or making notices, the Chief Executive or Commissioner respectively must consult with affected reporting entities, other representatives of the reporting entities, the Ministry of Justice, the Commissioner, and other relevant agencies. However, consultation is not required for minor amendments or corrections to rules.

3.42 If the Chief Executive or Commissioner shift towards more prescriptive rulemaking or notice making these this undermines the foundational risk-based approach embedded in the AML/CFT regime. If they make increasingly rigid and detailed rules and/or notices, their ability to exercise discretion and tailor supervisory responses to actual risk profiles will be significantly constrained.

3.43 Departures from a risk-based framework is likely to result in increased compliance burdens for reporting entities and other affected persons (i.e. their customers)—both in terms of

financial cost and administrative time—without necessarily improving the effectiveness of AML/CFT outcomes.

3.44 Clause 32's empowerment of the chief executive marks a deliberate and modern shift from traditional regulation via the Governor-General. It embodies a risk-based, efficiency-driven approach to AML/CFT supervision that should enable faster, more targeted interventions. By embedding wider stakeholder consultation into the rule-making process, the framework ensures that regulatory decisions are informed, balanced, and responsive—while maintaining legal oversight and public accountability.

3.45 However, as submitted above we recommend that only genuinely technical or supplementary matters (ancillary, operational, or supportive in nature) be delegated to rules or notices. Fundamental policy settings should remain in primary legislation or regulations. The Select Committee should carefully review the matters being shifted to rules under Clause 32 to ensure they are appropriate for delegation. If any provisions—such as those defining the scope of obligations or key terms—are too substantive, they should remain as regulation-making powers under sections 153–154. Retaining core obligations in the Act or in regulations ensures they are subject to full democratic scrutiny. In short, rules should clarify operational details within boundaries set by Parliament, not introduce significant policy changes.

3.46 It is the Committee's position that the new rules and powers should take into consideration the following:

(i) Flexibility, Responsiveness, and Stakeholder Engagement: Empowering the chief executive to make rules—rather than relying on regulations made by the Governor-General in Council—enables a more agile and efficient response to emerging risks, evolving international standards, and sector-specific developments. This approach streamlines the legislative process and allows for timely interventions. Crucially, we submit should also facilitate meaningful consultation with stakeholders and their representatives, ensuring that rules are informed by practical insights and sector expertise while remaining proportionate to the risks involved.

(ii) Risk-Based Regulation with Inclusive Input: The Bill should promote a risk-based regulatory framework that reduces unnecessary compliance burdens and tailors obligations to the risk profiles of different sectors. Delegating rule-making authority to the chief executive supports this differentiated approach, allowing for more precise and proportionate requirements. Incorporating relevant and wider stakeholder consultation into this process ensures that the rules are not only risk-sensitive but also grounded in the realities of those affected, enhancing both legitimacy and effectiveness.

(iii) Retention of Legal Safeguards and Transparency: While the chief executive is granted rule-making powers, these rules remain secondary legislation and are subject to robust legal safeguards. They must be published, can be disallowed by Parliament, and are open to judicial review. These mechanisms ensure transparency, accountability, and public trust. Stakeholder consultation further reinforces these safeguards by promoting inclusive and transparent rule development.

3.47 Further Committee submits that proposed sections 156B(2), 156C(3) and 156I should be amended so that only genuinely technical or supplementary matters (ancillary, operational, or supportive in nature) be delegated to rules or notices. If these sections are not restricted to technical or supplementary matters, they should include a wider consultation with the following relevant stakeholders which include individuals, businesses, legal and financial professionals, regulators, national bodies and industry bodies which include:

- Law firms and legal professionals
- Accounting firms, accounting professionals and financial services
- Real estate agencies

- Trust and estate organisations (e.g., Trustees Executors Ltd, Public Trust, Trustees Corporations Association of NZ)
- Industry associations and regulators (e.g., including Financial Services Council, Insurance Council of NZ, Privacy Commissioner, Banking Ombudsman, NZ Society of Conveyancers, the New Zealand Law Society, The Law Association, Restructuring Insolvency and Turnaround Association of New Zealand
- Real Estate Authority
- Technology and fintech companies
- Real Estate Authority (REA)
- The New Zealand Law Society Te Kāhui Ture o Aotearoa
- The Law Association of New Zealand

3.48 The Committee respectfully proposes that proposed section 156B(2) wording is replaced by the following:

(2) Before making rules under this section, the chief executive of the AML/CFT supervisor must consult—
(a) the persons who the chief executive of the AML/CFT supervisor considers are able to represent the views of reporting entities that will be affected by the proposed rules bearing in mind the relevant sector and industry; and
(b) any other representatives of persons (which may include industry bodies, national regulators, industry representative bodies, societies, associations and organisations) who the chief executive of the AML/CFT supervisor believes will be significantly affected by the proposed rules; and
(c) the Ministry, the Commissioner, and any other public service agencies or regulators (whether public or private) that the chief executive of the AML/CFT supervisor considers has an interest in the proposed rules; and
(d) the Minister.

3.49 The Committee respectfully proposes that proposed section 156C(3) wording is replaced by the following:

(3) Before making rules under this section, the Commissioner must consult—
(a) the persons who the Commissioner considers are able to represent the views of reporting entities that will be affected by the proposed rules bearing in mind the relevant sector and industry; and
(b) any other representatives of persons (including industry bodies, national regulators, industry representative bodies, societies, associations and organisations) who the Commissioner believes will be significantly affected by the proposed rules; and
(c) the Ministry, the AML/CFT supervisor, and any other public service agencies or regulators (whether public or private) that the chief executive of the AML/CFT supervisor considers has an interest in the proposed rules; and
(d) the Minister.

3.50 The Committee respectfully proposes that the proposed section 156I wording be replaced by the following:

156I Maker must consult on proposed notice
(1) Before making a notice under sections 156D to 156G, the maker must—
(a) do everything reasonably possible on the maker's part to advise all persons,
or representatives of those persons (which may include industry bodies, national regulators, industry representative bodies, societies, associations and organisations), who, in the maker's opinion, will be affected by any notice of the proposed notice and of the reasons
for it; and
(b) give such persons or their representatives (including industry bodies, national regulators, industry representative bodies, societies, associations and organisations) a reasonable opportunity to consider the proposed notice and to make submissions on it to the maker,
and the maker must consider those submissions; and
(c) make copies of the proposed notice available for inspection by any person
who so requests before the notice is made.

3.51 If these sections are not restricted to technical or supplementary matters the Committee recommends a suite of measures be included to ensure the new rule/notice-making powers

are exercised in a manner that is transparent, consultative, and accountable, thereby protecting legal professionals from any unintended negative impacts:

(i) Subject Significant Instruments to Parliamentary Oversight: We submit that any rule or notice of general application with significant compliance impact should be formally notifiable to Parliament and subject to the disallowance regime (Legislation Act 2019). If the Bill does not already list these instruments as disallowable, it should be amended to do so. In our view, codes of practice and rules should clearly be disallowable instruments. This does not mean Parliament will routinely intervene, but the safeguard is crucial. It provides reassurance that if a rule or notice were to overstep or introduce onerous obligations beyond the Act's intent, a constitutional check is available.

(ii) Enhance Consultation Requirements: The Bill's consultation provisions for rules (and notices under 156D–156G) should be as rigorous as those for levy regulations. We propose writing into sections 156B and 156I that consultation must include public notification of proposed content and consultation with affected industry representatives. In practice, for any rule change that affects the legal profession, TLANZ and other legal sector stakeholders should be specifically consulted. A minimum consultation period (for example, 4–6 weeks for a draft rule) could be stipulated for non-urgent matters, to prevent token consultations. If urgent rules or notices must be issued (e.g. to address an unforeseen money laundering threat), the law could allow this without prior consultation but requires that stakeholders be consulted on any permanent or subsequent version. This approach balances agility with participation.

(iii) Require Impact Assessments: We endorse our earlier suggestion that an impact assessment or statement accompany new rules. Specifically, when the AML/CFT supervisor makes a rule, they should publish a brief explanation of its purpose and consider compliance cost implications for different types of reporting entities. This mirrors the rationale of section 156H (which lists factors for notices) and extends a similar discipline to rules, ensuring rule-makers weigh whether a proposed rule is proportionate and necessary.

(iv) Retain Ministerial Oversight for Codes of Practice: We are uneasy with removing ministerial sign-off for codes of practice (section 64). If possible, reintroducing a requirement that the Minister of Justice approves a code of practice could add a layer of oversight without unduly slowing things. Alternatively, require that the Minister and relevant sector stakeholders be notified in advance of any new code and given an opportunity to comment. This would ensure the supervisor does not act in isolation when issuing what are effectively quasi-regulatory guidelines.

(v) Maintain Clear Guidance and Education: We recommend that alongside any formal rules or notices, the AML/CFT supervisor commit to issuing plain-language guidance whenever an instrument is made or amended. Especially during the transition to this new framework, law firms will need education on where to find these rules/notices and how they differ from the previous regulations. A well-informed profession is better equipped to comply, ensuring the regulatory objectives are met without inadvertent breaches.

3.52 In summary, Clause 32's innovations can be positive for a more adaptive AML/CFT regime, but they must be coupled with robust safeguards to uphold transparency, consistency, and fairness. The legal profession stands ready to constructively engage in consultations on any rules or notices – we simply seek assurance that the framework will invite and respect that engagement.

Clauses 33–36 – Approval of Forms and Consequential Amendments (New Section 159B, Schedules 1–3)

3.53 The Committee supports Clauses 33–36 and offers the following suggestions to maximise clarity and fairness:

(i) Approved Forms: We recommend that when exercising the new section 159B power, the authorities commit to publishing any newly approved or amended form with reasonable lead time before it becomes mandatory. The Bill could be amended to require (or the supervisor could ensure) that reporting entities are given, say, at least 30 days' notice before a new form is required for use, except in urgent cases. Additionally, if a form is substantially changed, consider providing a brief explanatory note highlighting what is new. This will help law firms smoothly adapt their compliance processes and avoid inadvertent mistakes. We also suggest involving end-users in form design where possible – for instance, the FIU might consult with a small group of reporting entities (including law firm representatives) when updating the SAR form to ensure it is user-friendly and collects relevant information. While not a legislative mandate, such collaboration leads to better outcomes for both regulators and practitioners.

(ii) Transitional Communication: To supplement the Schedule 1 provisions, we recommend the Select Committee urge the AML/CFT supervisor to issue comprehensive guidance at the commencement of the new Act, explaining the practical implications of the single-supervisor model. This should include clear instructions on where firms should direct enquiries, how ongoing supervisory interactions will work, and reassurance that existing guidance (like the current AML/CFT handbook) remains in effect until updated. A well-managed transition, communicated in plain language, will uphold confidence in the system and ensure that compliance efforts by reporting entities continue uninterrupted.

(iii) No Further Amendments Needed: We note that Clauses 35 and 36 (and their related schedules) appear well-considered. We do not propose any amendments to those clauses beyond ensuring they correctly and comprehensively pick up all necessary reference changes. We do, however, support including a review mechanism (if not already present elsewhere) to monitor the impact of the single-supervisor model after implementation – for example, a post-implementation review in a couple of years could verify that the intended efficiency gains and risk-based improvements are being realized without unintended side effects on compliance costs or regulatory quality. This forward-looking safeguard would complement the transitional arrangements and further protect the interests of the legal profession and other sectors as we all adapt to the new regime.

3.54 The Committee appreciates the opportunity to provide feedback on Clauses 27–36 of the Bill. We acknowledge the Government's objectives of reducing compliance costs, enhancing regulatory effectiveness, and securing sustainable funding for New Zealand's AML/CFT system. Our submission is intended to support these goals by refining the proposed amendments to ensure they are workable in practice and uphold the integrity of the legal profession's role within the regime.

3.55 We have emphasised the importance of proportionate cost recovery, robust oversight of delegated powers, and clear, accountable processes for rulemaking and levy implementation. These recommendations reflect core principles of sound legislative design and aim to preserve the ability of legal practitioners—particularly small and low-risk firms—to comply effectively without undue burden.

IV. SUMMARY OF RECOMMENDATIONS

4.1 The Committee refer to its forgone submission and summaries the following key recommendations below.

4.2 Clause 6 – Section 16 (Standard CDD address verification)

- Support amendment removing the requirement to verify a customer's address or registered office when conducting standard CDD.

4.3 Clauses 7–10 – Suspicious Activity Reporting

- Support broadening the definition of "suspicious activity" and insertion of new section 40A, provided that:

    - Reporting by persons who are not reporting entities remains voluntary.
    - Such persons are not liable (civil or otherwise) for failing to report.
- Support consequential amendments to ss 41 and 46 clarifying disclosure provisions.

4.4 Clause 11 – Section 60 (Annual AML/CFT reports)

- Support the requirement for sector-specific information where needed.

4.5 Clause 13 – Section 64 (Codes of practice)

- Amend section 64 to require wide consultation with industry bodies, regulators, and affected stakeholders before codes are issued.
- Retain requirement that codes are treated as secondary legislation.

4.6 Clause 20 – Section 131 (Functions of supervisor)

- Support inclusion of “timely and up to date” guidance and the new function in s 131(e).
- Clarify that supervisor guidance is non-binding.

4.7 Clause 21 – Section 132 (Supervisory powers)

- Require compulsory attendance notices under s 132(2)(ba) to be: In writing, with at least 7 working days’ notice (10 days if unspecified), except in urgent cases.
- Preserve legal professional privilege: Written notices must specify that privileged communications/documents need not be disclosed.
- Add explicit protection against self-incrimination: Written notices must inform recipients of their right not to answer self-incriminating questions.
- Recommend redrafting s 132 to embed these safeguards.

4.8 Clause 26 – Sections 149A–149F (National AML/CFT Strategy)

- Ensure strategy scope extends beyond Act purposes to include efficient compliance by reporting entities and the public.
- Require consultation with reporting entities during strategy development.
- Amend wording to provide for input from the AML/CFT supervisor and reporting entities.

4.9 Clause 27 – Repeal of Co-ordination Committee

- Insert a safeguard requiring ongoing multi-agency and sector coordination.
- For example, establish a statutory advisory group convened by the supervisor or Ministry with representation from affected sectors (including the legal profession).
- Ensure national strategy development process includes structured consultation with private sector and agencies.

4.10 Clauses 28–29 – Regulation-Making Powers

- Ensure all rules made by the AML/CFT supervisor are explicitly disallowable instruments under the Legislation Act 2019.
- Strengthen consultation requirements:
    - Require publication of draft rules/notices, adequate consultation timeframes (30 working days for non-urgent rules), and consideration of submissions.
- Require publication of an impact assessment or consultation summary for major rules, including compliance cost implications.
- Limit delegation of powers to genuinely technical or supplementary matters; retain substantive policy settings in primary legislation or regulations.
- Require the supervisor to maintain an accessible, consolidated register/handbook of all AML/CFT obligations (Act, regulations, rules, notices, guidance).

4.11 Clauses 30–31 – Levy Framework

- Amend section 155C to require that levies are proportionate to risk, compliance burden, and capacity to pay.
- Amend section 155E to mandate exemptions/relief for small, low-risk entities (e.g. small law firms), defined by revenue threshold and risk assessment.

- Strengthen section 155D consultation:
  - Define “consult” in the Act or in guidelines.
  - Require publication of draft levy regulations with adequate time for feedback.
  - Mandate consultation with representative bodies (TLANZ, NZLS, sector associations).
  - Require publication of a summary of submissions and government response.
- Narrow Clause 31’s exceptions for minor/urgent changes:
  - Minister must publish reasons for bypassing consultation.
  - Require consultation where practicable, even in urgent cases.
  - Consider sunset clauses or post-implementation review for urgent significant changes.
- Enhance transparency of levy use (ss 149E–149F):
  - Annual reports must include sector-specific breakdowns of levy collection and expenditure, plus performance indicators demonstrating outcomes.

4.12 Clause 32 – Rule- and Notice-Making Powers

- Limit delegated powers to technical or supplementary matters only.
- Ensure all significant rules and notices are formally disallowable instruments.
- Strengthen consultation obligations (ss 156B, 156C, 156I):
  - Require public notification of draft content.
  - Mandate specific consultation with affected sectors (law firms, accountants, real estate, trustees, insurers, industry associations, TLANZ, NZLS, etc.).
  - Provide a minimum 4–6-week consultation period for non-urgent instruments.
  - Require publication of consultation outcomes.
- Require impact assessments for new rules, including compliance cost analysis.
- Retain ministerial oversight for codes of practice (s 64):
  - Preferably reinstate ministerial approval, or at minimum require advance notification to the Minister and stakeholders.
- Require the supervisor to issue plain-language guidance alongside all new rules and notices.

4.13 Clauses 33–36 – Forms and Consequential Amendments

- Require at least 30 days’ notice before new or amended forms become mandatory (except in urgent cases).
- Provide explanatory notes for substantive changes to forms.
- Encourage consultation with end-users (including law firms) when designing forms.
- Ensure transitional arrangements are supported with plain-language guidance on the single supervisor model and ongoing supervisory interactions.
- Include a post-implementation review to evaluate whether the new model achieves intended efficiencies and reduced compliance costs.

4.14 Overall Position

- Support reform objectives but emphasise need for proportionality, fairness, and transparency.
- The levy must be risk-based, equitable, and accompanied by exemptions for small/low-risk entities.
- Supervisory powers must respect privilege, client confidentiality, and rights against self-incrimination.
- Rule- and notice-making powers must be bounded, consultative, and subject to parliamentary oversight.
- Ongoing sector engagement and clear transitional arrangements are essential to preserve confidence in the AML/CFT regime.

4.15 By adopting the measures outlined above, the Select Committee can strengthen the fairness, transparency, and operability of the Bill. This will help ensure that New Zealand’s AML/CFT framework remains both effective and respectful of the legal sector’s critical role as a frontline reporting entity.

4.16 The Committee would welcome the opportunity to further assist the Select Committee or clarify any aspect of this submission.

V. CONCLUSION

5.1 The Committee supports the Government's objective of strengthening New Zealand's AML/CFT regime to ensure it remains sustainable, effective, and internationally credible. However, we consider that the Bill, in its current form, requires targeted amendments to ensure the proposed reforms are both fair and practically workable.

5.2 We reiterate that the levy framework must be proportionate, risk-sensitive, and equitable, with statutory relief for small and low-risk entities. Any expansion of supervisory powers must be exercised with due regard for legal professional privilege and fundamental rights. Rules, notices, and codes of practice should be subject to robust consultation and parliamentary oversight, supported by impact assessments and plain-language guidance to facilitate compliance. The repeal of the Co-ordination Committee must not result in a loss of structured engagement across sectors; safeguards are needed to preserve ongoing dialogue. Additionally, transitional arrangements must be clearly communicated and supported by a post-implementation review to ensure the single-supervisor model and levy framework deliver intended efficiencies without imposing unintended burdens.

5.3 With these amendments, the Bill will be better positioned to achieve its purpose of reinforcing the AML/CFT framework while upholding fairness, accountability, and constitutional safeguards. The Committee commends these recommendations to the Select Committee and remains available to provide further input or clarification as required.

5.4 Should the Select Committee require clarification on any aspect of this submission, please contact Moira McFarland, Executive of the TLANZ AML & CFT Committee, at moira.mcfarland@tlanz.nz

Ngā mihi / Regards,

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APPENDIX 1

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An Industry Levy to Sustainably fund New Zealand's AML/CFT System

Initial levy design consultation

Submissions on behalf of The Law Association of New Zealand by its AML & CFT Committee

INTRODUCTION

The Law Association of New Zealand (TLANZ), through its AML & CFT Committee (the Committee), welcomes the opportunity to provide feedback on the Ministry of Justice's April 2025 consultation paper concerning the proposed AML/CFT industry levy. TLANZ represents over 7,500 legal practitioners throughout New Zealand, spanning a broad spectrum of practice areas and firm sizes, with varying degrees of engagement with the AML/CFT regime.

The Committee draws on the collective expertise of senior practitioners, including partners and directors of both large and boutique firms, experienced in-house counsel, compliance professionals, and members of the independent bar. It also includes lawyers who routinely advise other regulated professions and financial institutions on their AML/CFT obligations. The breadth and depth of this experience ensure that the Committee's perspective is grounded in the practical realities of compliance and informed by longstanding professional engagement with the regulatory framework.

The Committee supports the Government's objective to provide sustainable, risk-based funding for New Zealand's AML/CFT system and acknowledges the importance of compliance with international obligations. However, we are not convinced that the case for a new levy has been demonstrated, and even if it can be, would strongly advocate that the levy must be designed with equity, proportionality, and operational feasibility at its core. Otherwise, it risks adding disproportionate costs to what is already an unduly costly regime for reporting entities and contradicts stated government policy to reduce the compliance burden.

EXECUTIVE SUMMARY

The Committee supports:

- The move to a single AML/CFT supervisor;

- The exclusion of criminal enforcement functions from levy funding (while noting it needs a better definition of what that carve-out extends to); and, most of all,

- Cabinet's position that low-risk small businesses should not bear disproportionate costs.

There has been expressed concerns that there has been inadequate discourse and proper consultation to establish whether a new levy is required at all. The current consultation paper simply assumes that to be the case and asserts "club good" public benefits that are by no means obvious or articulated.

The Committee does not, at this stage, see any broad consensus that:

- Reporting entities as a whole are 'users' who derive 'benefits' from a system that mandates them to implement a complex compliance process for, ultimately, intelligence benefits accruing to Police and law enforcement agencies; or

- Such a levy is necessary, or will lead to clear benefits after imposing it (presumably, some form of 'returns' to those supposedly benefiting as users?)

Without a broad platform of consensus that a levy is justified, this risks being seen by industry and the public as another cost imposition on the private sector. The AML/CFT Statutory Review report released in 2022 noted that private sector firms are already picking up around 95% of the total costs of the

AML/CFT regime,[1] onto which this levy now proposes more. While no public data sets out how the levy funds raised would be used to make practicable, measurable, accountable improvements to the system.

Regarding the consultation details about what and how a levy should look like (since the Cabinet decision that a levy is justified is presented as *fait accompli*) the Committee notes problem areas such as:

- The use of financial scale metrics (e.g. EBITDA) is incongruous for law firms, because metrics like that are poorly aligned with AML/CFT risk, and much of the work of a firm may be out of scope;
- The absence of sector-specific treatment for legal services, or a detailed understanding of the composition of work and degree of captured activities;
- Insufficient risk calibration in the proposed levy model, which may lead to unfair cost distribution;
- The potential impact on law practices that are already subject to high compliance burdens, given the cumulative weight of other compliance obligations and the debatable 'club benefits'.

Our key recommendations include:

- Adopt a stepped levy structure to support certainty and proportionality
- Introduce high dollar exemption thresholds and sector-specific metrics, with detailed investigation to set a suitable size of small/medium business that should not attract any levy;
- Ensure transparency in levy allocation and data use;
- Phase implementation with guidance and mock assessments to support compliance readiness;
- Lay out transparently to the public and reporting entities what supposed improvements or benefits in their interactions with the AML/CFT system are anticipated to flow from levy funding.

SUBMISSIONS

Primarily, we submit that no clear case exists for needing or justifying a levy at all, as opposed to funding governmental financial crime-fighting salaries/institutions from taxpayer money in the traditional way. However, since the current consultation paper wishes not to engage with that fundamental issue, we now turn to address the matters of design and quantification on which feedback is requested.

1. Theme 1: Levy Design Principles

- What is your view of the proposed levy design principles?
- Are there other principles or considerations we should add?
- Where trade-offs and tensions arise between the principles, do you have views on how the principles should be prioritised or reconciled?

1.1 The Committee is broadly supportive of the Ministry's proposed levy design principles—namely, proportionality and equity, simplicity and predictability, cost-effectiveness, and the avoidance of unintended consequences. These principles provide a sound framework for the development of

[1] Report on the Review of the AML/CFT Act July 2022, at [226] to [242], describing work by Deloitte for MOJ, showing approximately $246m total private sector cost and between $10.09 and $14.21m public sector costs.

a sustainable AML/CFT funding model. However, their effective application will depend on careful and transparent implementation including much clearer explanation of how DIA will spend funds.

1.2 The levy design must avoid inadvertently imposing disproportionate burdens on businesses that present minimal AML/CFT risk and have limited capacity to absorb additional compliance costs. Some small reporting entities are struggling to properly resource even the current copious compliance demands made by the Act, Regulations, and Guidance. At the other end of the scale, although sophisticated businesses might have very fulsome AML/CFT processes in place, those systems would have come at a huge cost, to which they are now going to be 'rewarded' by an additional tax imposed. This needs extremely careful consideration and skill to be applied in balancing the calculation of levies, if the overarching equity of design principles is to be met.

Equity and Proportionality

1.3 The levy design must differentiate more clearly between sectors and entities with high AML/CFT risk exposure and those with lower risk or minimal involvement in AML-regulated activities. Legal practitioners—particularly sole practitioners and small firms—are often low-risk participants in the AML system. Many such firms have a negligible AML footprint and do not regularly engage in international financial transfers, high-value transactions, or dealings with complex ownership structures. Part of the same conversation since the AML/CFT Statutory Review of 2022 has acknowledged that some trusts and estates are low risk and it has been wrong to deem all under the law with high-risk Enhanced CDD obligations. Equally, many law firms heavily engaged in small family trusts, property, estate or small business work are lower risk. A flat or earnings-based model that fails to reflect this diversity in risk profiles would result in systemic unfairness, undermining the levy's legitimacy.

Simplicity and Cost-Effectiveness

1.4 The compliance burden associated with the levy must be proportionate, both in terms of reporting obligations and cost recovery measures. Legal practices do not have the same economies of scale or dedicated compliance resources as large financial institutions. A modern bank has many customer touch-points or facilities and can develop large customer data collection and analysis methods. Few if any law firms can operate like that. The design of the levy must not introduce complex data collection or reporting systems that would create additional regulatory overhead for legal service providers, particularly those that conduct only occasional AML/CFT-regulated work and may not have resources for a dedicated compliance team.

Avoiding Unintended Consequences

1.5 New Zealand already has a growing access to justice problem. Many clients cannot get access to advice and services at the price they need, with legal aid highly restricted, and some end up endlessly in the courts or legal system acting for themselves. Legal professionals still have to run a profit and may need to re-examine whether the compliance cost of some areas of work makes it unviable to offer certain services.

1.6 The levy must not compound this problem or disincentivise legal professionals from remaining in or entering into regulated practice areas. There is a growing concern within the profession about the cumulative weight of compliance obligations across legal aid, privacy, trust law, and AML regimes. Adding a blanket inflexible levy to this burden risks driving small providers out of regulated work or deterring others from areas such as conveyancing or trust management that are important to many New Zealand families. The levy must be designed in a way that protects participation in the AML regime while supporting sustainable compliance across the sector.

Transparency and Accountability

1.7 The Committee suggests that transparency in levy use and ongoing supervisory accountability should be added as an explicit design principle. If lawyers and other DNFBPs are expected to contribute financially to the AML/CFT supervisory regime, they should be able to understand how funds are allocated, what proportion is devoted to needs of their sector, and what measurable outputs look like - in the form of better guidance, supervisor understanding of various sectors, or training and development of more meaningful risk assessments. At present there is no reporting framework, sector-specific updates, KPIs or stakeholder engagement mechanisms to evaluate supervisor performance, outside FATF evaluation many years apart. Reporting and accountability will be critical to maintaining confidence that a levy regime has made any difference.

Reconciling Trade-offs

1.8 Where tensions arise—particularly between proportionality and simplicity—the Committee strongly recommends that simplicity not come at the expense of equity. It would be administratively easier to impose a uniform levy or financial threshold across all sectors, but such simplicity risks disproportionately impacting low-risk entities. It is essential that any broad assumptions or simplifications in the model are tested against risk data and actual system usage, with clear exemptions or thresholds be developed accordingly.

2. Theme 2: Options for Levy Metrics

Financial Scale Metrics

- Do you agree that a measure of financial scale should be the primary base for calculating reporting entities' AML/CFT industry levy liabilities?
- What is your view of our preference to use pre-tax earnings as the financial scale metric, adopting the approach used for the AUSTRAC Industry Contribution Levy?
  - Profit before tax, depreciation, and amortisation (PBTDA) for banks and licensed non-bank deposit takers, and any related leviable entity, and
  - Earnings before net financing costs, tax, depreciation, and amortisation (EBITDA) for all other leviable entities.
- Should the PBTDA earnings measure be applied to any other classes of businesses in addition to banks and licensed non-bank deposit takers?
- Do you have any specific concerns or questions about how the AUSTRAC methodology for calculating leviable earnings would work if applied to your organisation?

2.1 The Committee does **not support** the use of pre-tax earnings (whether PBTDA or EBITDA) as the primary metric for calculating levy liability in the legal sector. While earnings-based models may be appropriate for financial institutions, they are poorly suited to the structural and operational realities of legal practices, especially small and medium-sized firms.

2.2 Legal practices differ fundamentally from financial institutions in both their business model and their AML risk exposure. Legal fees may include funds received into trust accounts that does not reflect retained revenue or profit in a manner that correlates meaningfully with AML risk. Most are private partnerships that cannot limit some liability risks, even by incorporation. Further, the profit margins of legal practices are highly variable, especially for sole practitioners and small firms. That can be significantly impacted by location, areas of work, degrees of staff skills shortages or many factors unrelated to AML/CFT activity. The use of a blunt profitability metric such as EBITDA could create arbitrary and disproportionate burdens.

2.3 Moreover, many legal practices operate entirely within domestic markets, conduct no or minimal international transactions, and may never submit a prescribed transaction report (PTR). They may never encounter a PEP customer in their lifetime. Yet under an earnings-based model, these firms may be required to pay a levy disproportionate to their AML footprint, effectively subsidising high-risk entities in other sectors, such as those who deal with a lot of foreign customers.

2.4 We therefore recommend the Ministry consider the following alternatives:

- **Flat, banded charges** based on turnover or staffing levels (e.g., number of principals or fee-earners), with **high exemption thresholds** to exclude practices with limited or no AML/CFT activity.
- A **PTR-linked levy component**, however, this should be capped at a reasonable level so as to not unduly prejudice those legal practices that are engaged in significant volumes of AML-relevant transactions but otherwise have low risk profile overall.
- Retaining **sector-specific calibrations** so that financial scale metric, if used at all, are only applied where there is a clear, demonstrable link between the metric and AML system costs or benefits.

2.5 The AUSTRAC model is not directly transferable to New Zealand's legal sector. It is tailored to a deeper financial services environment with large, high-volume actors and does not reflect the decentralised, service-based, and often low-volume nature of legal practice in New Zealand. Applying the AUSTRAC methodology to law firms would be both inequitable and operationally burdensome.

2.6 We do not support the extension of PBTDA to legal practices or professional service providers.

Activity Metrics Based on Prescribed Transaction Reports (PTRs)

- Would adding a levy component based on prescribed transaction reports(PTRs) improve proportionality, by reflecting reporting entities' differing levels of AML-related activity and associated benefits, costs, and risks?
- What is your view of our proposal to include a levy component based on transaction reports only if future modelling shows it will improve the proportionality of levy shares between reporting entities and sectors, compared to a simple levy based on entities' financial scale?
- What risks or undesirable behavioural responses may arise if the levy includes a transaction reporting component, and how might these be mitigated?

2.7 We consider that PTR-based metrics are more closely aligned with actual AML system usage and, when properly implemented, can promote a more proportionate distribution of levy costs.

2.8 The Committee supports further exploration of a PTR-based levy component, but only if the following safeguards are met:

- **Fair application across sectors**: PTR volumes vary significantly not only by entity but also due to inconsistent supervisory expectations. Supervisor and FIU interpretations of PTR rules and complexities has been notoriously inconsistent in the last few years, acknowledged as a problem during the Statutory Review A PTR-based levy must only be implemented if the reporting rules are harmonised across all regulated sectors to ensure that some do not bear disproportionate liability due to stricter enforcement or receipt of more formalistic guidance.
- **Exclusion of Suspicious Activity Reports (SARs)**: SARs must be excluded to avoid disincentivising proper reporting. Anything linking SARs to performance or funding in the

regime risks creating perverse incentives where entities suppress or under-report suspicious activity to reduce levy liability.

- **Introduction of a materiality threshold**: A reasonable threshold under which financial obligations (e.g. 100 PTRs annually) do not apply, so that firms with only incidental or modest AML/CFT engagement are not captured. Many law firms may only submit a handful of PTRs in a year, if any. Requiring these firms to contribute based on PTR volume would be counterproductive and inequitable.

2.9 We acknowledge the potential benefits of a PTR component in improving proportionality and aligning levy costs with AML system usage. However, this must be carefully modelled to avoid unintended distortions and must be supported by transparent and equitable supervisory policy.

Risk Metrics and Cost Metrics

- In principle, should levies be based in part on measures of subsectors' AML/CFT risks?

2.10 While difficult to implement immediately, we support the eventual use of residual risk ratings and sectoral cost allocations once a consistent single supervisor model is established. Legal services do not pose the same systemic risks as banks or remitters. The large time gap between the publication of meaningful sector risk assessments and minimal actual consultation by supervisors whilst preparing those, has not instilled confidence in the reporting entity community.

2.11 In principle, we support the longer-term inclusion of residual risk and sectoral cost metrics once the single supervisor model is in place and reliable comparative data is available. Risk-weighted levies that are grounded in sectoral risk assessments or real supervisory costs are conceptually a better pathway toward more sophisticated and fair funding models.

2.12 However, at present, the information required to support a robust risk-based model is lacking. We therefore support the Ministry's pragmatic approach to defer risk and cost metrics for now but recommend these be detailed as a second phase of refinement after the single supervisor commences and once the supervisory system has matured enough to be reliably evaluated.

2.13 Legal practices may carry targeted AML risks, but they do not pose the same systemic risk profile as banks, money remitters, or high-volume financial services. Sectoral allocations and residual risk assessments should ultimately reflect this in future levy adjustments.

Base Charge

- Should there be a universal fixed base charge on all but the smallest reporting entities?

2.14 No, the Committee does not think this should be done. We strongly support the Ministry's current proposal ***not*** to impose a base charge across all reporting entities.

2.15 A flat charge, even if small, would impose disproportionate hardship on sole practitioners and small legal firms, many of whom operate on narrow margins. Some may engage in only occasional AML-regulated activity, or routine low risk captured work for local families, such as conveyancing. The rationale for AML/CFT cost-recovery must remain aligned with system usage, risk, and capacity to pay. A universal base charge would violate all three principles. Therefore, we support its exclusion from the proposed levy structure.

3. Theme 3: Levy Structure (Rate Design)

- What is your view of our proposal that the initial AML/CFT industry levy design should not include a cap for any individual reporting entity?
- How might a cap be applied at the level of a sector or sub-sector?
- Which levy structure best suits our levy principles: especially in balancing proportionality and equity with simplicity and predictability
    - fixed rate charges (entities charged in direct proportion to their scale);
    - variable rate charges (entities charged at a diminishing marginal rate based on their scale); or
    - stepped charges (entities grouped in size categories with all entities in each category charged the same dollar amount)?

3.1 The Committee favours the adoption of a stepped charge model as the most appropriate structure for the AML/CFT industry levy. Of the models presented (fixed rate, variable rate, and stepped charges) the stepped approach best balances the key principles of proportionality, equity, simplicity, and predictability - particularly as they relate to the legal profession.

3.2 A stepped structure provides clarity and certainty to small and medium-sized practices regarding their potential levy obligations. Predictability is essential for business planning and regulatory compliance. By grouping entities according to scale and applying consistent charges within each band, the stepped model avoids the disproportionate impacts that can result from marginal variations in revenue or earnings, as seen under fixed or variable rate systems.

3.3 From the perspective of the legal sector, a stepped approach also facilitates the setting of meaningful exemption thresholds that reflect both risk exposure and ability to pay. In particular, the Committee recommends the establishment of a high earnings threshold, at least NZ$50 million revenue, beneath which most DNFBP practices should be excluded from levy liability. This would recognise that the vast majority of law firms in New Zealand operate at a scale and level of risk that does not warrant inclusion in the levy base.

3.4 Moreover, a stepped model allows for differential treatment between sectors. Applying a uniform rate across all sectors would ignore distinctions and result in manifest inequity, whilst stepping it at least enables a levy framework that can account for the structural and operational differences between:

- financial institutions—where scale, profitability, and AML/CFT risk are significantly higher; and
- professional service providers, such as legal practitioners, who often present lower risks and operate with fewer compliance resources.

3.5 In respect of the proposal not to impose a cap on any individual entity's levy, the Committee agrees this may be appropriate in the context of a well-calibrated stepped model. If the levy design already incorporates sector-appropriate thresholds and scaled tiers, there should be no need to impose an artificial ceiling on contribution levels. However, if detailed investigation to how to calibrate steps is not carried out, consideration could be given to capping levy obligations – and may be desirable anyway within particular sub-sectors where high profitability does not equate to high AML/CFT risk, arises from litigation or non-captured work, or attracts minimal supervisory workload/demand.

3.6 The Committee considers that a stepped charge model with robust exemption criteria and sector-specific calibration is the most practicable and equitable structure for an industry levy.

4. Theme 4: Exclusions and Thresholds

- In balancing our levy design principles, do you agree that minimum thresholds should exclude most reporting entities from levy liability?
- For a levy component based on reporting entities' pre-tax earnings,
  - Should the pre-tax earnings threshold for levy liability be set lower than AUSTRAC's AUD$100 million threshold (at which the minimum AUSTRAC levy payable at is $150,000)?
- Would setting different pre-tax earnings thresholds for reporting entities in different sectors improve proportionality and equity of levy charges without adding undue complexity to the levy design?
- If a levy component based on prescribed transaction reports is used:
  - Would a NZD$1,000 minimum levy threshold (excluding entities that would pay less than this) strike the right balance in minimising compliance and collection costs while achieving a broad enough levy base?
- Are there classes of reporting entity that should be explicitly excluded from any liability to pay a levy? On what grounds?

4.1 The Committee supports the use of minimum thresholds to exclude low-risk and small-scale reporting entities from levy liability. Such an approach is not only administratively efficient but also essential to uphold proportionality and equity principles in the levy design framework. It was never the legislative intent of the AML/CFT regime to impose disproportionate burdens on sole practitioners or small legal practices conducting negligible AML/CFT activity.

4.2 Based on operational realities and consultation with members, we recommend that:

- For legal service providers, the earnings threshold should be significantly lower than the AUSTRAC benchmark of AUD$100 million. The markets are different here and not as deep, and profitability levels vary widely. Time should be taken to develop a bespoke New Zealand earnings threshold exemption threshold likely to strike a more appropriate balance between small and larger firms contribute and wholly exempting micro-practices with minimal AML exposure.
- Sector-specific thresholds should be adopted across the board. A "*one size fits all*" approach to earnings thresholds or report volumes would unfairly affect certain sectors, particularly those—like legal services—characterised by small operators and infrequent involvement in international transactions or prescribed transaction reporting (PTRs).
- The Ministry should consider explicitly excluding not-for-profit and community law practices, whose services are offered in the public interest and whose AML risk profile is generally low.

4.3 Consistent with what has been seen in other fields of regulation, Committee members cautioned against the risk of "levy creep." Noting our view that no case has been made that even an initial levy is required to enable government to meet its core international commitments to the FATF, the progressive expansion of an initial levy base to include low-risk entities over time without any noticeable improvement in supervisory performance would be a disaster and damage a lot of private sector goodwill. A robust exemption framework must therefore be baked into the initial regulatory design to ensure it remains principled, targeted, and proportionate over time.

4.4 The Committee, at this stage, say that there must be wholesale exclusion of the legal sector or any specific class of legal reporting entities. However, we do suggest there has been little or no attempt the investigate the usage demands the sector places upon the system. That is likely to be relatively lower than most financial or gaming sectors. And therefore, regulation-making powers must allow for (indeed, require) MOJ to investigate and set targeted exemptions as justified on the basis of risk and system usage.

5. Implementation, Data Collection and Privacy

5.1 The Committee urges the MOJ to adopt a pragmatic and minimally intrusive approach to data collection for the purposes of levy implementation. Any data sharing arrangements must be governed by clear statutory authorisations, particularly if involving Inland Revenue (IRD), the NZ Law Society, or other supervisory agencies with punitive powers. And it goes without saying there should be robust safeguards under the Privacy Act 2020 and consultation with the Office of the Privacy Commissioner.

5.2 To this end, we recommend that:

- MOJ consult with other bodies already collecting information about their sectors, including for lawyers the NZ Law Society) to identify existing data sources that could reduce or eliminate duplicative reporting obligations. Legal practices already face considerable compliance overhead. Additional burdens for the sole purpose of levy administration should be avoided.
- Guidance and data submission templates be issued well in advance of the levy's implementation date. Members expressed concern at the May 2025 meeting that the absence of clear advance materials can cause operational disruption, particularly in small firms without dedicated compliance officers.
- MOJ should provide confirmation that any data collected for levy purposes will not be used for enforcement or supervisory purposes unless expressly permitted by law. This will help maintain confidence in the integrity and limited scope of the levy regime.

5.3 Finally, the Committee supports a slowly phased implementation of the levy, including the proposed delay to 2027. We suggest that only after more detailed investigation of sector differences and circumstances, then early mock assessments or illustrative estimates of expected liabilities be provided to the sector in late 2026. This would allow reporting entities to prepare adequately and raise any issues with practical application of the regime before it commences.

CONCLUSION

We thank the Ministry for the opportunity to provide feedback on this important matter.

The Committee does not, at this stage, agree that there is a demonstrable need for a levy to run the core government functions of a Police Financial Intelligence Unit and an AML/CFT Supervisor. Those are commitments the government gave to the international body FATF upon becoming a member, without consulting the public, or warning the business community that it would then be required to later pay for those functions. Directly, none of our members derive benefit from the AML framework – the benefits are diffused throughout society in terms of crime reduction and prevention. But our members, with all reporting entities, already bear 95% of the costs of how the government chooses to run that framework.

If there is to be a new levy, then our Committee supports sustainable and fair funding of the AML/CFT system. But we caution that without careful calibration and detailed rounds of investigation/consultation, any levy risks disproportionately affecting legal practitioners who pose minimal risk, take up little time of the Supervisors and derive no specific benefit from the AML/CFT framework (whilst exposed to heavy-handed enforcement action even in the absence of actual risk).

Finally, our members noticed a distinct lack of innovative or lateral thinking in the consultation paper, which proceeds from an assumption that there must be a new levy, to then canvas various methodologies built around the premise that it must be current reporting entities who are forced to find additional funds for a levy. We would urge the exploration of additional ways to raise institutional funding or target potentially higher-risk sectors, which might include (merely by way of example):

- applying an AML/CFT levy to all new FSP business registrations where the business is ultimately owned or based overseas; or
- including AML/CFT auditors in the catchment of a levy, since there is now a sizable cottage industry that has developed to manage that statutory task, but it is completely unregulated.

We are available to discuss our submissions, if required. Should clarification be required with regards to any matters raised, please contact Moira McFarland, the TLANZ Committee Executive at moiramcfarland@thelawassocation.nz .

Ngā mihi

Ngā mihi / Regards

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