

Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill

**Submission by The Law Association of New
Zealand AML & CFT Committee**

AML/CFT Statutory Review Consultation 2021

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1.0 Introduction

- 1.1** TLANZ represents around 6,750 lawyers located all over New Zealand. The TLANZ AML & CFT Committee ("Committee") appreciates the opportunity to submit on the proposed Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill ("Bill"). This full submission document now follows by way of Addendum to our summary cover submission of 28 March 2025.
- 1.2** The Committee comprises senior lawyers with extensive experience in AML/CFT, financial crime and regulatory law, professional services and corporate governance, as well as trusts, conveyancing and other specialist areas. We offer a perspective on legislative amendments that is informed by both compliance experts within law firms which are regulated AML reporting entities and also practicing lawyers with expertise advising other professional services firms and a range of 'phase 1' financial institution reporting entities. Our comments below mainly concern those amendments affecting the legal profession but sometimes also broader cross-sector issues.

2.0 AML/CFT Background

- 2.1** In 2017 the AML/CFT regime was significantly extended to capture 'designated non-financial businesses and professions' ("DNFBPs") otherwise known as 'phase 2' entities. Lawyers were the first of three professional sectors brought under the umbrella of the regime but also potentially the most complex, given the professional duties and obligations owed to clients. In relation to property conveyancing lawyers were given more onerous obligations than real estate agents whose AML capture points are currently confined to only vendors of property, not purchasers.
- 2.2** Many of the problems arising since 2017 have been caused by the original AML/CFT legislation being (understandably) written for banks and financial institutions in 2009 but then receiving minimal adjustment or tailoring when it was broadened to DNFBPs. As a consequence, statutory language has not always translated effectively to the legal context. Legal practitioners operate under unique duties stricter than other sectors — such as obligations of confidentiality, fiduciary duties, and legal privilege—that complicate the application of AML/CFT obligations. The Committee still sees many small to medium-sized legal practices face disproportionate compliance burdens, stemming from ambiguous definitions, regulatory uncertainty, and guidance not prepared with practical professional services firm environments in mind.
- 2.3** With little AML case law (to date, most cases have proceeded on uncontested or agreed penalty basis) and limited DNFBP sector tailored guidance, the legal profession continues to have to stretch and apply terminology or financial concepts not consistent with professional services (such as occasional transactions, or wire transfer chain of transactions), whilst also balancing their clients' legitimate interests and managing access to justice problems.
- 2.4** This Bill implements a range of reforms originating in the Ministry of Justice's 2022 Statutory Review of the AML/CFT Act ("Statutory Review") and subsequent Cabinet Paper recommendations. Some are routine, including definitional clarifications, some shift to a more risk-based approach in certain areas, or align with standards set internationally by the Financial Action Task Force ("FATF"), but some are more contentious.

3.0 Executive Summary

- 3.1** TLANZ firmly supports the anti-financial crime and terrorist-funding objectives of the law, including need to monitor and potentially report non-privileged client activities for suspicious activity. However, we also strongly support the Associate Minister’s view that the time is nigh for clarification and simplification of the regime. That includes rejection of the current prevailing ‘one size fits all’ attitude to compliance standards, which appears to often lead to disproportionate outcomes and compliance work not truly directed at realistic risk levels.
- 3.2** The Committee also supports the overarching intent of the Bill to modernise and clarify New Zealand’s AML/CFT framework. But we have concerns that some of the proposed changes in this Bill could actually worsen the current situation, rather than simplifying or reducing costs.
- 3.3** In the specific comments below, we emphasise the need for proportionality and practicality in applying the AML regime, particularly for small legal practices and other low-risk firms. The Committee supports several proposed changes—such as clarifying the definition of “beneficial owner,” aligning legislative language with the Exemptions Regulations, and formalising governance standards for compliance officers. But we do have corresponding concerns about supposed ‘simplifications’ or proposed wording changes that may actually introduce ambiguity or impose impractical standards. Examples include:
- Introducing the phrase “preparing to carry out” into section 5(1)(a)(vi);
 - A new rigid requirement to “determine” with finality a PEP status in section 26; and
 - The continued mandatory application of enhanced due diligence for some low-risk trusts.
- 3.4** In these areas, the Committee recommends clearer drafting would help help avoid unnecessary compliance burdens and uphold the risk-based flexible ethos of the AML regime.
- 3.5** Our strongest concerns arise in relation to clauses 23/24 and 36/38 (censures) and clause 15 (guidance about risk assessments), which are amendments we recommend do not proceed – for the reasons explained below.
- 3.6** Please note there are a number of clauses in the Amendment Bill that cover mechanical or technical updates or primarily affect financial services businesses rather than professional service firms (e.g. stored value instruments). We do not specifically comment upon those clauses below but can make the expertise of our Committee available to answer questions.

DETAILED SUBMISSIONS

4.0 Clause 4: various amendments to Section 5 (Interpretation)

4.1 Clause 4(1): Definition of Beneficial Owner

- 4.1.1 The Committee acknowledges that the proposed amendment to the “beneficial owner” definition in section 5(1) seeks to implement Recommendations 116 and 118 of the Statutory Review, which would dial back a confusing concept known as POWBATICS. Recommendation 116 would apply the definition only to individuals with ultimate ownership or control, and only to “persons on whose behalf a transaction is conducted” (POWBATIC) if they exercise such control. Regulations were then issued under Recommendation 118 to clarify that the term “beneficial owner” includes those with ultimate ownership or control and only covers POWBATICS when that threshold is met.
- 4.1.2 The Committee notes that while the proposed section 5(1)(b) appears consistent with that new Regulation 5AA of the **AML / CFT (Definitions) Regulations 2011**, that drafting lacks clarity and was not closely consulted upon. In our view it does not clearly reflect the intent of either recommendation. In particular, taking that definition into the Act carried an element of circularity, and fails to clearly distinguish POWBATICS who should be excluded from the

beneficial ownership definition unless they exercise ultimate ownership or control. This omission risks continued interpretational uncertainty and inconsistent application across reporting entities and regulators.

4.1.3 To improve clarity and consistency with the Statutory Review recommendations, we propose that the definition of “beneficial owner” be redrafted to explicitly exclude all POWBATICS in general terms, followed by a carve-out to bring back in **only** those who meet the threshold of ultimate ownership or control. This is, after all, only a third catch-all limb to the overall definition, and our suggested approach would eliminate ambiguity while ensuring that only those individuals who genuinely present a risk from an AML/CFT perspective are captured.

4.1.4 To achieve this, the Committee suggests the following revised wording for section 5(1)(b):

(b) includes an individual with ultimate ownership or control of the customer, whether directly or indirectly; and

(c) only applies to an individual on whose behalf a transaction is conducted if the individual exercises ultimate ownership or control over the customer.

4.1.5 Alternatively, the Committee proposes this more comprehensive wording structure:

beneficial owner –

(a) means the individual who—

(i) has effective control of a customer; or

(ii) owns a prescribed threshold of the customer; and

(b) includes an individual with ultimate ownership or control of the customer, whether directly or indirectly; and

(c) includes an individual who—

(i) has effective control of a person on whose behalf a transaction is conducted; or

(ii) owns a prescribed threshold of the person on whose behalf a transaction is conducted; but only if the individual exercises ultimate ownership or control over the customer.

4.1.6 This revised definition reflects the Statutory Review’s intent and provides a clearer legislative basis for excluding POWBATICS who do not control the customer, while including only those who do. It avoids the risk that due to unclear wording or risk-averse behaviour; entities would end up defaulting back to the present status quo - overreaching in their compliance by applying enhanced due diligence to individuals who do not pose a significant risk. We consider either wording above better to reduce unnecessary compliance costs and enhances consistent practice.

4.1.7 The Committee further recommends that any legislative revision be supported by practical guidance to be issued from AML/CFT Supervisors, including worked examples, to help reporting entities interpret and apply the definition in real-world contexts. That can be particularly needed in situations of complex trust or layered corporate structures.

4.2 Clause 4(2): Definition of Designated Non-Financial Business or Profession

4.2.1 Section 5(1)(a)(iv): Clarification of Disbursements / Alignment with Exemptions Regulations

4.2.1.1 The Committee supports the proposed amendment to section 5(1)(a)(iv), which responds to Statutory Review Recommendation 115. That recommendation recognised the need to clarify the meaning of “professional services” and to align the Act with Regulation 24AB of the **AML / CFT (Exemptions) Regulations 2011**. Regulation 24AB exempts certain low-risk services provided by DNFBPs in respect of third-party transactions— particularly payments made to government departments, local authorities, the New Zealand Police, barristers, and other professionals operating solely within New Zealand. The exemption also applies where the payment is wholly ancillary to a non-relevant service, or where the transaction is below \$1,000.

- 4.2.1.2 This wording is important for legal practitioners and other DNFBPs, who often deal with client disbursements in various forms as part of regular transaction processes.
- 4.2.1.3 The proposed amendment achieves this clarification by ensuring that the exclusion for sums paid does not inadvertently extend to disbursements that are captured under the exemptions regime. It appears to reflect operational guidance issued by the Department of Internal Affairs (“DIA”), which distinguishes between when a disbursement constitutes the “management of client funds” and when it does not. Specifically, when a reporting entity receives funds in advance from a client for disbursements—e.g. for payments to third parties on the client’s behalf—this has been regarded as “managing client funds” under the AML/CFT Act. Conversely, if the entity pays the disbursement from its own funds first and is subsequently reimbursed, this is considered repayment of a debt and falls outside the definition.
- 4.2.1.4 We consider the amendment clarifies the situation and will help reduce ambiguity, so long as it is read alongside existing Reg 24AB (and not in place of it) – which seems the intention. Aligning the statutory language with the exemptions framework in place allows a principled and risk-based approach to AML/CFT obligations while ensuring low-risk, ancillary activities are not unduly burdened in situations where professionals are holding funds for settling disbursements.
- 4.2.2 **Section 5(1)(a)(vi): Concerns Regarding the Term “Preparing to Carry Out”**
- 4.2.2.1 The Committee does not support the proposed changes to section 5(1)(a)(vi), which introduce the phrase “preparing to carry out” in reference to relevant activities carried out by DNFBPs. While these changes were recommended in the Statutory Review as part of a broader effort to clarify the scope of activities captured by the Act, the Committee believes the proposed amendment fails to provide the clarity required and may, in fact, increase uncertainty.
- 4.2.2.2 The Statutory Review highlighted the difficulties faced by legal practitioners and other DNFBPs in determining whether they are “engaging in or giving instructions on behalf of a customer to another person.” Statutory Review paragraphs 544-545 stated the Ministry intended to clarify these activities, whether addressed through clearer legislative drafting or supplementary regulations, and consider “opportunity to narrow its scope”.
- 4.2.2.3 The current drafting—particularly the equally vague phrase “preparing to carry out”—does not resolve the underlying problem and does not narrow its scope. The phrase lacks a defined legal meaning and creates an open-ended standard susceptible to varying interpretations. It is likely more activities will be captured, not less. Without a clear and objective threshold, entities may find it difficult to determine whether their preliminary activities (such as reviewing documents, drafting communications, or initial scoping consultations) are now considered ‘preparatory’ and so within scope of the AML/CFT regime. The wording undermines the point of this amendment and may result in overcompliance, uncertainty, and unnecessary administrative costs.
- 4.2.2.4 The Committee is concerned that introducing vague or undefined terms into section 5(1)(a)(vi) may inadvertently broaden the regime beyond its intended reach, potentially capturing low-risk or preparatory activities that do not involve the management of client funds or a genuine risk of money laundering. Such an outcome creates more work and does not align with the risk-based approach central to the AML/CFT framework. It would disproportionately affect DNFBP groups.
- 4.2.2.5 To address this, the Committee recommends that the current wording (“engaging in or giving instructions on behalf of a customer to another person”) be retained but supplemented with a clear and specific statement of the circumstances in which this provision does or does not apply. For example, clarification could specify that where there is no management of client funds, capture is only where a DNFBP *is engaging in or giving instructions on behalf of a customer to another person for the purpose of executing a financial transaction*. This would narrow the scope to meaningful involvement in transactional activity without encompassing preparatory or preliminary administrative tasks.

- 4.2.2.6 Alternatively, if the Ministry is asking Parliament to expand the scope of the provision to capture additional conduct, this should be done via much greater consultation with the affected sectors. The question should be posed how that aligns with the Associate Ministers' desire to simplify and reduce regulatory capture, as extending it to unspecified types of preparatory conduct for a transaction appears to shift in the opposite direction. Again, detailed guidance could elaborate on what would be considered relevant and what types of work are excluded – using illustrative examples and with experts working in DNFBP reporting entities having input.
- 4.2.2.7 The Committee reiterates that any expansion of obligations must be consistent with the risk-based principles underpinning the Act. Overly broad or vague definitions risk capturing low-risk professional services, increasing compliance costs, and creating enforcement challenges. Legal practitioners and other DNFBPs (indeed all reporting entities) should be able to confidently determine when AML/CFT obligations are triggered. A failure to delineate clearly between relevant and non-relevant services may lead to de facto regulatory overreach and compliance uncertainty, undermining the operational effectiveness of the regime. In this context, bringing in vague language of “preparing to carry out” is counterproductive to the stated goal of improving definitional clarity.

4.3 Clause 4(3) Definition of Trust and Company Service Provider

- 4.3.1 The Committee supports the amendment proposed in clause 4(3) of the Bill, which introduces a revised definition of “trust and company service provider” (TCSP). This revision clarifies the delineation between financial institutions (FIs) and designated non-financial businesses or professions (DNFBPs), a step toward addressing long-standing regulatory uncertainty.
- 4.3.2 Under the proposed definition, a trust and company service provider is explicitly defined as a person who carries out activities described in paragraphs (a)(i) to (vi) of the DNFBP definition, with certain exceptions. Notably, the amended definition excludes law firms, conveyancing practitioners, incorporated conveyancing firms, accounting practices, and real estate agents. Furthermore, it stipulates that financial institutions are not considered TCSPs if their sole activity under the relevant paragraphs is managing client funds, accounts, securities, or other assets, provided these do not include sums paid as fees for professional services.
- 4.3.3 This change is consistent with the policy intent outlined in the Cabinet Paper for the Regulatory Systems (Justice) Amendment Bill Package. By excluding financial institutions from the TCSP definition in cases where their only relevant activity is the management of client funds and assets, the amendment removes the potential for dual classification of a financial institution as both an FI and a DNFBP. It appears consistent with the thrust of section 6 changes too (below).
- 4.3.4 The Committee agrees that the proposed wording in clause 4(3) achieves its intended purpose and does not recommend any further changes. The amendment provides the necessary clarity without altering the obligations for law firms and other professionals already outside the TCSP definition. As such, this adjustment is a welcome improvement.

4.4 Clause 4(4) Definition of Life Insurer and Money Value Transfer Service

- 4.4.1 No comment required.

5.0 Clause 5: Section 6 amended

5.1 Application of this Act to Reporting Entities

- 5.1.1 We support this amendment.
- 5.1.2 In simple terms if a business primarily falls under one category but also conducts activities that are typically associated with another type of reporting entity, the changes mean it must now comply with the AML/CFT obligations of both categories. We support this amendment so long as attention remains on clean delineations between FIs and DNFBPs (as above). This ensures that businesses engaging in multiple regulated activities, where the overlap or definition is clear, should comply with the appropriate AML/CFT obligations. If so, entities with activities outside their primary business category will be held to the same compliance standards as those fully operating in that sector.

6.0 Clause 6: Section 14 Amended

6.1 Circumstances when Standard Customer Due Diligence Applies

- 6.1.1 In the AML/CFT Act, customer refers to a new or existing customer (meaning, individuals or entities with whom the reporting entity has a business relationship or who engage in transactions with the entity). Changing “customer” to “person” will widen the scope of who the reporting entity must conduct CDD on and ensure all relevant transactions trigger AML/CFT checks. Overall, we support the trust CDD change, which will also be welcomed by most reporting entities, in the interests of consistency. This also reflects a change that had been included in draft Amendment Regulations some time ago but was removed as it had to be done via legislative change. At the time, that high-level and early-stage proposal was leaving open for consultation the question of how to define a “low-risk trust”, but it was well-received even then. That proposal has played out eventually in a way that leaves each entity in future to consider and determine for themselves what areas are low risk.
- 6.1.2 We see this change as at one level unobjectionable and therefore support terminology of “person” as a sensible way to ensure both individual natural persons and corporates (or unincorporated) bodies have consistent scrutiny applied.
- 6.1.3 However, in some situations this could also include irrelevant third parties as a potential “person” linked to a client and may force reporting entities to do extra unnecessary CDD on unrelated parties, delaying transactions and increasing compliance costs. That might to some extent cut across the stated aims of the Bill, and we invite the Select Committee to explore with Officials and other submitters scenarios where that could be a drawback.

7.0 Clause 7: Section 18 Amended

7.1 Circumstances Where Simplified Customer Due Diligence Applies

- 7.1.1 As above, replacing "customer" with "person" means that all levels of CDD (simplified, standard and enhanced CDD) may apply to any "person" who is linked to a client. That is on one level unobjectionable as a person would be a sensible way of ensuring both individual natural persons and corporate (or unincorporated) bodies have the same level of scrutiny applied.
- 7.1.2 However, some on the Committee noted this could also include irrelevant third parties as a potential “person” linked to a client, particularly with the extended definition of “Beneficial Owner” (clause above). There is some risk it may force reporting entities to do extra unnecessary CDD on unrelated parties, delaying transactions and increasing compliance costs.
- 7.1.3 We believe changing "customers" as listed in subsection (2) under simplified CDD is potentially fine, but note below the additional complexities if to ensure that only those who have a direct relationship with the reporting entity benefit from simplified CDD keeping "customers."

8.0 Clause 8: Section 22 Amended

8.1 Circumstances where Enhanced Customer Due Diligence Applies

- 8.1.1 As above, this proposed changes in clause 8 of the Bill, to amend section 22 of the Act, follows others by replacing the term “customer” with “person” in certain provisions. This seemingly minor adjustment addresses an important regulatory gap and ensures that the language in the Act aligns more accurately with its intended scope.
- 8.1.2 However, the Committee also thinks the importance of additional measures within the context of enhanced CDD requires more careful consideration. Given the intention is that one or more of the additional regulatory steps to achieve enhanced CDD apply only if and when it is necessary, it submits it would be desirable to reconsider other aspects of section 22 in light of this minor change or take the opportunity to reconstruct that section in more fundamental ways.
- 8.1.3 That could include reconsidering how the new inclusion of “person” which draws in all kinds of corporate entities also, is meant to interact with the blanket requirement for enhanced CDD, premised on the basis that all trusts are inherently high-risk, that has been a point of contention from the outset of the regime. Also, it could revisit whether the new extended “Beneficial Owner” change above in this Bill is going to undermine in some situations the alterations to allow more flexibility around low-risk trusts (which is now left undefined). Since the Statutory Review (at paragraph 701) confirmed that “[n]ot all trusts or other vehicles for holding personal assets are inherently high risk” and mandatory enhanced CDD for trusts is not required by the FATF Standards there is scope for reworking section 22 towards a more nuanced approach to mitigating the risks realistically posed by different types of trusts.
- 8.1.4 New Zealanders make widespread use of trusts, so they are a common customer type, and the more intensive requirements are a noticeable burden on many reporting entities. The question of how exactly low-risk trusts may be treated in future, or to what extent the DIA as Supervisor will perceive “person” as opening up entities to more compliance obligations than a “customer” is perhaps too important to be left to future guidance material, when the Act could address it.

9.0 Clause 9: Section 24 Amended

9.1 Enhanced Customer Due Diligence: Verification of Identity Requirements

- 9.1.1 To align fully with the intent of the Cabinet Paper and the Statutory Review, it is critical that clause 9 of the Bill be amended to provide clear, risk-based flexibility. The current drafting appears to maintain a mandatory requirement for reporting entities to conduct enhanced customer due diligence (EDD) in addition to standard customer due diligence (CDD) for low-risk trusts.
- 9.1.2 We are not sure the current drafting, especially the two subparagraphs to new 24(4) actually do what the Ministry envisaged.
- 9.1.3 This draft wording may perpetuate a one size-fits-all approach, contradicting recommendations from both the Cabinet Paper and the Statutory Review, which sought to streamline compliance for lower-risk entities while preserving rigorous oversight for genuinely high-risk situations.
- 9.1.4 The Cabinet Paper on the Regulatory Systems (Justice) Amendment Bill Package explicitly states that a key goal is to introduce a relief measure for low-risk trusts. It identifies a need to exempt these trusts from EDD requirements, acknowledging that not all trusts present high risks. For example, family trusts—frequently used for managing personal assets—are not inherently high risk. Under the current framework, these trusts are subjected to the same rigorous EDD measures as complex or high-risk structures. This creates unnecessary compliance burdens for reporting entities, diverting resources and attention away from higher-risk cases. The Cabinet Paper further highlights the absence of a mechanism to adjust CDD measures based on risk.

Such a mechanism would reduce the compliance load on firms handling low-risk trusts.

- 9.1.5 The Statutory Review echoes this view, specifically addressing the need for greater risk-based discretion. In paragraph 702, the review outlines the possibility of repealing mandatory EDD requirements for low-risk trusts altogether, instead allowing reporting entities to apply enhanced measures only when warranted by the level of risk. This reflects a more nuanced approach: standard CDD under sections 15 and 16 of the Act could suffice for lower-risk customers, reserving EDD under sections 23 and 25 for situations where higher risk is identified. By recommending the removal of a blanket EDD requirement, the Statutory Review acknowledges that enhanced measures should be justified by the nature of the trust and its risk profile, rather than being a mandatory, one-size-fits-all solution.
- 9.1.6 The Committee therefore proposes adding a new subsection after section 24(3) of the Act:
- (4) However, a reporting entity is not required to comply with subsection (1)(b) if the customer or person is a trust described in section 22(1)(a)(i) or (b)(i) and the reporting entity is satisfied that any risks have been mitigated by conducting standard customer due diligence under sections 15 and 16.*
- 9.1.7 Alternatively, it may be the case that current proposed (24(4) needs to at least use the word “or” instead of “and” in between its sub-paragraphs (a) and (b).
- 9.1.8 Either of those changes would allow reporting entities to focus their enhanced CDD efforts on trusts or customers that pose genuine risks, while ensuring that lower-risk trusts remain subject to proportionate and appropriate scrutiny. The result would be a more efficient allocation of compliance resources, reducing unnecessary burdens without compromising AML effectiveness.
- 9.1.9 Thus, the current wording of clause 9 does not quite fulfill the Cabinet Paper’s intent to introduce meaningful relief for low-risk trusts. Although well-intentioned (which we support), by continuing to mandate **both** standard and enhanced due diligence for these entities, the proposed amendment fails to deliver the flexibility and proportionality envisioned. Amending clause 9 to provide discretion in applying EDD, based on the level of risk associated with the trust, is essential to ensure that the AML/CFT framework remains both effective and efficient. This approach would align with international best practices, uphold the principles outlined in the Statutory Review, and better achieve the policy objectives of the Cabinet Paper.

10.0 Clause 10: Section 26 Amended

10.1 Politically Exposed Person

- 10.1.1 The proposed amendments and introduction of section 26(1A) place an increased burden on reporting entities, particularly smaller practitioners. This cuts against the declared intention of the Bill to reduce compliance cost. This clause removes the current standard of taking “reasonable steps” to identify politically exposed persons (PEPs) and instead mandates that reporting entities “must determine” whether a customer or beneficial owner is a PEP. The new language suggests a requirement for absolute certainty in every instance, which is neither practical nor proportionate.
- 10.1.2 This shift in language from “take reasonable steps to determine” to “must determine” in effect sets a threshold that will be nearly impossible to meet in some cases. Practitioners, particularly those with limited resources or on low-value transactions, in the face of significant difficulty or cost to meet the expectation of 100% certainty might shy away from accepting such work or offering low-value services. The desired outcome of this amendment seems to be to compel entities to invest in one or multiple PEP commercial databases, even for relatively low-risk clients. Even then, sometimes PEP status cannot be conclusively verified due to incomplete or unavailable information. As a result, this amendment does not improve the quality of

compliance; rather, it burdens reporting entities with new operational challenges.

10.1.3 The Committee recommends keeping the original current standard, which allowed for “reasonable steps to determine” PEP status. This allows reporting entities to approach due diligence with a clear, risk-based methodology while acknowledging the practical limitations faced by smaller entities (many of whom are never likely in practice to encounter an actual PEP. By retaining “reasonable steps” as the benchmark, the law can still hold entities accountable for conducting checks appropriate to the situation, rather than prescriptive finality of obligation.

10.1.4 If not simply keeping the status quo, an alternative proposed section 26(1A) wording for is:

(1A) The reporting entity must, when establishing a business relationship or conducting an occasional transaction or activity, take reasonable steps to determine whether the customer or any beneficial owner is a politically exposed person in accordance with its risk management system.

10.1.5 This wording strikes a balance between maintaining rigorous AML standards and recognising the practical realities faced by reporting entities, especially small firms. Also noting it would import the new expanded “beneficial owner” definition (see submission 4.1 above) so is not entirely neutral for the entity either, there will be more work under that expanded definition. And the compliance burden will be raised again in future if PEP-checking is extended to domestic persons as well (another different Statutory Review recommendation).

11.0 Clause 11: Section 29 Amended

11.1 Correspondent Banking Relationship

11.1.1 No comment required.

12.0 Clause 12: Section 37 Amended

12.1 Prohibition if Customer Due Diligence Not Conducted

12.1.1 Section 37 is an important and troublesome part of the AML regime. It requires entities if they cannot complete due diligence to not establish or to terminate a client service or transaction. The Committee readily acknowledges the need for that requirement, as a core FATF expectation in its international standards. However, it proves troublesome in a large number of practical scenarios. So it is desirable to have a clear and workable standard for when those obligations are triggered.

12.1.2 This amendment proposes to replace the current s 37 language of being “unable to” conduct client due diligence with an entity trigger standard if it “does not” conduct that due diligence. Our Committee has canvassed a range of views, some considering that this is merely a semantic change, through to others who potentially see an even harder legal trigger point in future. If reporting entities perceive it to be harsher or less clear, given the risk of breach, in reality they are more likely to withdraw from providing services, or to themselves face the growing threat of ‘debanking’ by major banks withdrawing/closing accounts.

12.1.3 We suggest a need for more probing and consideration of the underlying trigger points and timing for when an entity would need to take action under s37(1) (a) to (e) as a result of this seemingly minor wording change. There is scope for unintended consequences to arise. This obligation becomes even worse for legal practitioners than other reporting entity sectors, because in some scenarios a lawyer’s ethical rules of conduct and client care mean they cannot simply exit the client’s retainer (without facing regulatory or disciplinary repercussions).

13.0 Clause 13: Section 52 Amended

13.1 How Records to be Kept

- 13.1.1 This amendment traces to Recommendation 146 in the Statutory Review. Paragraph 744 of that Review suggested any legislative change would “specify the timeframe within which businesses are required to comply with requests to produce records.”
- 13.1.2 A proposal to introduce specific record-keeping timeframes might possibly enhance compliance clarity, but the current proposal falls short of that. Changing the current requirement for records to be “immediately accessible” (as the High Court has already held) could end up simply swapping one ambiguous phrase with another. The Committee is doubtful that requiring records to be produced “swiftly” is going to be any more concrete a standard – and may in fact prove more onerous on entities. The change could be modest, provided this is interpreted flexibly and realistically within operational constraints by the DIA in future. However, it may well take further court consideration to provide any working principles for any given situation – unless the intention is for regulations or a Code of Practice following this amendment to the Act to define more clearly what factors will constitute “swiftly.”
- 13.1.3 In practical terms locating, checking and providing records takes time (and in the case of lawyers they face a further hurdle/task, in the need to review and potentially redact privileged information belonging to the client). Setting realistic timeframes proportionate to the nature and size of the reporting entity should be the goal, not introducing another vague standard.

14.0 Clause 14: Section 56 Amended

14.1 Reporting Entity Must Have AML/CFT Programme and AML/CFT Compliance Officer

- 14.1.1 Clause 14 proposes amendments to section 56 of the AML/CFT Act to enhance the governance obligations relating to AML/CFT compliance officers. Specifically, the clause updates the language to require that a reporting entity must appoint an “individual” (rather than a “person”) as its compliance officer, and that this individual must either be a senior manager or report directly to a senior manager.
- 14.1.2 The Committee recognises that these amendments are consistent with international best practice and aim at promoting accountability and oversight within reporting entities. Clarifying that the compliance officer must be a natural person and cannot be assigned to a corporate entity or left ambiguous is a helpful step. Further, requiring the compliance officer to be either a senior manager or to report directly to one will appropriately embed AML/CFT governance within an entity’s decision-making structure and executive oversight of compliance programmes.
- 14.1.3 However, concerns were raised with the Committee regarding the practical application of these amendments – especially to sole practitioners, small partnerships, and other low-risk, small-entities with flat management structures. In such cases, the reporting entity often consists of a single individual who both owns and operates the business. That person might be the compliance officer, governance body, director and junior all in one – wearing many hats. These micro-structures may not formally designate “senior managers” or may lack hierarchies that allow one individual to “report to” another internally.
- 14.1.4 The proposed requirement, while appropriate for larger or more complex organisations, pays little heed to whether the operational realities of these smaller entities might need special arrangements or have difficulty implementing AML/CFT compliance programmes that designate themselves or their partners/directors as both entity owner and its compliance officer. Some have concerns that DIA expectations (and in the past raised by the FMA as well) are to impose a technical requirement that the compliance officer must have reporting links and governance feedback loops to/from a senior manager. That could inadvertently become impractical for sole

practitioners or entities without additional management layers, and worst case we have heard of some micro-entities having to create an artificial reporting relationship to/amongst themselves, to meet DIA or auditor expectations in such circumstances.

- 14.1.5 This amendment would have been a good opportunity to investigate and then accommodate the reality of smaller, low-risk entities and suggest a proportionate, risk-based compliance officer/governance model. Perhaps regulators may provide further worked examples in accompanying guidance or codes of practice to illustrate how this requirement can be met by a variety of tiny reporting entities, but nothing engages with proportionality and nuance in compliance requirements appears in the current proposed amendment.
- 14.1.6 Accordingly, the Committee supports the rationale underpinning this proposed change to section 56, but urges that additional clarification or guidance be provided to accommodate the operational structures of smaller, low-risk reporting entities. It was a missed opportunity to prepare this clause 14 without looking at firms where there is no other senior manager, or separate compliance officer, they happen to also be the principal/sole operator of the business.

15.0 Clause 15: Section 58 Amended

15.1 Risk Assessment

- 15.1.1 The Committee has serious concerns about the proposed amendment under Clause 15 of the Bill, at a core policy and constitutional level. This clause would change the current requirement in section 58 of the AML/CFT Act that entities need to “have regard to” agency-issued AML/CFT risk assessments to a stricter requirement in sub-clause (2A) that entities “must undertake” their risk assessments “in accordance with” applicable guidance material.
- 15.1.2 There is no evidence of a problem in the current AML CFT legislation that requires entities to have regard to several important factors, including guidance from the AML/CFT Supervisors or the Police Commissioner (in practice, the Police FIU). That current legal obligation and policy setting is appropriate. However, guidance documents are only one perspective on a problem and need to be balanced with other factors that may be unique to each entity and the specific risks it faces. That flexibility and tailoring is, in fact, the essence of the ‘risk-based approach’ that all government agencies endorse.
- 15.1.3 Not only is the current wording and setting working well, but insofar as this amendment seeks to elevate guidance documents to give them the force of law (regarding risk assessments) it is highly problematic and open to challenge on a number of grounds. The AML/CFT law is primarily the Act of Parliament, supplemented by any valid created delegated legislation or instruments made under the Act. But guidance documents prepared by officials in not law, merely the Supervisor’s opinion as to what it means - unless and until a Court later declares it to be the law. It should never be mandatory, merely advisory.
- 15.1.4 Past experience with Supervisor and Police guidance under the AML/CFT regime to date has been that it is almost always helpful and frequently highlights key issues, but can sometimes:
- Be too generic to apply to all entities, sectors or situations;
 - Import questionable and untested interpretations of law, or outright errors;
 - Be issued without any or adequate consultation, and updated/changed whenever officials so choose;
 - End up sitting for years without update or evolution, becoming out of date (e.g. the recent Police 2025 National Risk Assessment is a fine piece of advisory guidance, but is the first new iteration for over 6 years).
- 15.1.5 For the good of the AML regime, those risks suggest it is not appropriate to change the status of guidance. Whilst entities must read and have regard to guidance documents – and that is

entirely appropriate – those Police or Supervisor opinions should not be made a mandatory document in the same way as a Regulation or formal delegated instrument like a Code of Practice.

- 15.1.6 More fundamentally, guidance is in effect a form of second or third tier ‘soft law’ produced without the constitutional constraints and balances applicable to legislation or delegated legislation. For example, there is no requirement to consult upon it in advance, there may be no recourse to the Regulations Review Committee of Parliament, and affected entities disadvantaged by it have little remedy other than judicial review or other court proceedings. That cannot be acceptable. This is a constitutional problem not merely a technical objection.- the reality is guidance does not have the benefit of the rigour those processes have, and as a result often misses the consequences.
- 15.1.7 Although the Committee understands that the intention may be to ensure a tiny minority of entities do not ignore government guidance, our experience is that no reasonable entity would disregard such guidance altogether. And anybody in that category can be (and is currently) dealt with by Supervisor enforcement options. If that is the policy concern, we caution that this proposed change may unintentionally reduce flexibility for reporting entities, undermine the risk-based approach that is fundamental to AML/CFT compliance, and remove the necessary discretion reporting entities have in determining how best to manage their specific risks.
- 15.1.8 We are strongly opposed to this change that may take away sufficient discretion from the entities striving to apply guidance proportionately and practically according to their own particular circumstances.

16.0 Clause 16: Heading to Subpart 6 of Part 2 Amended

- 16.1.1 No comment required.

17.0 Clause 17: New Section 67B Inserted

17.1 Meaning of Stored Value Instrument

- 17.1.1 No comment required.

18.0 Clause 18: Section 68 Amended

18.1 Reports About Movement of Cash into or out of New Zealand

- 18.1.1 No comment required.

19.0 Clause 19: Section 69 Amended

19.1 Reports About Receipt of Cash from Outside New Zealand

- 19.1.1 No comment required.

20.0 Clause 20: Section 70 Amended

20.1 Reporting Requirements

20.1.1 No comment required.

21.0 Clause 21: Section 71 Amended

21.1 Information to be Forwarded to Commissioner

21.1.1 No comment required.

22.0 Clause 22: Section 78 Amended

22.1 Meaning of Civil Liability Act

22.1.1 The Committee supports the amendments in Clause 22 of the Bill, which amend section 78 of the Act to explicitly define specific compliance breaches—such as failing to submit suspicious activity reports (section 40), annual AML/CFT reports (section 60), or adequately conduct risk assessments (section 58)—as civil liability acts. By clearly identifying these breaches within the Act, reporting entities will benefit from greater clarity regarding their responsibilities and possible enforcement outcomes.

22.1.2 However, the Committee recommends that accompanying regulatory guidance should better outline thresholds or criteria that regulators must consider before initiating enforcement actions – including potentially a Code of Practice to co-ordinate the range of tools and penalties so they are proportionate, with minor or unintentional breaches being addressed through educational or low level outcomes. The Select Committee could instruct or at least recommend that the Ministry of Justice as sponsor of this Bill begin to carry out that work.

23.0 Clause 23: Section 79 Amended

23.1 Possible Responses to the Civil Liability Act

23.1.1 This proposed amendment would replace the terminology "formal warning" with "censure" in Section 79, and Section 80, and Schedule 3 of the AML/CFT Act. This change appears based upon an assumption made (with no evidential basis provided) that the current situation with Supervisors issuing 'warnings' is inadequate and needs to be sharpened or made stronger. While this may be seen by some as mere semantics, it is particularly relevant to the legal profession and may also affect other financial entities where they have licensing and ongoing certification regimes here in New Zealand or overseas. Our Committee submits this change is unnecessary, carries risk of adverse disproportionate consequences, and should not proceed.

23.1.2 The impact of this amendment is examined from lawyers' perspective in relation to:

- (i) The profession's obligations under the Lawyers and Conveyancers Act 2006 (LCA);
- (ii) The implications for professional indemnity insurance;
- (iii) Broader regulatory and reputational consequences for lawyers and law firms.

23.1.3 Under the LCA lawyers are subject to professional discipline via Lawyers Standards Committees and the Disciplinary Tribunal. A shift from "formal warning" to "censure" raises concerns about whether this change elevates the seriousness of the regulatory action in unpredictable ways, and may unfairly affect a lawyer's professional standing and ability to practice, including:

- Currently a formal warning serves as a cautionary measure and carries significant sanction and reputational risk, but does not formally impact a lawyer's disciplinary record - whereas

a "censure" can be a more severe disciplinary measure. The Lawyers Standards Committees use censures as a formal penalty for unsatisfactory conduct. The migration of this term into the AML/CFT framework could imply a finding of fault that may be interpreted as an adverse disciplinary outcome under the AML regime and potentially the LCA.

- It is important to realise that AML formal warning outcomes arise only from a Supervisor's investigation and opinions. That process may lack sufficient procedures, checks, or ability to test those opinions about potential breach of the Act that an independent hearing would bring. Only a Judge can determine an AML/CFT breach or produce a finding of fault, hence the level of a 'warning' is appropriate and reflects established New Zealand systems and role for a regulatory body.
- A public "censure" may result in unfair reputational harm for the lawyer, which could affect their ability to attract and retain clients, as well as their eligibility for certain legal roles or appointments. The Supervisors issuing a "censure" against a lawyer may lead to subsequent professional disciplinary investigations or consequences under the LCA. Other bodies such as the New Zealand Law Society (NZLS) may view a censure as indicative of conduct unbecoming of a lawyer, thus creating an unintended situation of "dual" penalty.

According to the *Penalty Guidelines for Lawyers Standards Committees*, censures are reserved for cases where conduct is more than a minor breach but does not rise to the level of serious misconduct. We have seen examples of current warnings for highly technical and arguably minor or unclear faults around Prescribed Transaction Reports, and replacement of "formal warning" with "censure" under the AML/CFT framework may elevate regulatory interventions to a more punitive status than Parliament has properly considered or intended.

- 23.1.4 Professional indemnity insurance policies for lawyers generally exclude coverage for fines, penalties, or intentional breaches of regulatory obligations. The shift from "formal warning" to "censure" has potential consequences with insurance providers, who may perceive a censure to be an indicator of increased risk, leading to higher premiums or exclusions from coverage.
- Many insurance policies require disclosure of regulatory actions, and if a censure comes to be seen as a material disciplinary finding that may affect the renewal and terms of policies.
 - If a lawyer is censured and then comes under risk of alleged failures (real or merely alleged) clients may attempt to take action or assert negligence, leading to potential liability claims. That all heightens the likelihood that Supervisors may find their investigation findings open to challenge and even litigation more readily.
- 23.1.5 The proposed change introduces an unnecessarily more punitive element into the regulatory framework, increasing the compliance burden on law firms. Particularly when there is no evidence that formal warnings do not already carry sufficiently serious sanction and 'bite', a heightened risk of censure may deter lawyers from taking on certain clients or transactions perceived as high AML risk, but also serious repercussions under the LCA as lawyers have an obligations to act in the best interest of their clients and assert their rights to the best of a lawyer's ability.
- 23.1.6 And outside of the legal profession, even for some financial service providers a formal "censure" can carry different meanings and connotations in overseas jurisdictions, particularly if needing to report complex financial transactions or cross-border enforcement action under regulatory licences or some country-specific listed company disclosure regimes. That would amount to over-the-top consequences for what remains (until a Court declares it so) only the regulator's untested allegations of breach of the law.
- 23.1.7 Given the above concerns, we do not see any convincing case for replacement of "formal warning" with "censure" and worrying consequences of that change that require reconsideration. We recommend maintaining the status quo of "warnings" which is a better fit

with New Zealand’s existing cross-sector regulatory regimes and traditional role for regulatory enforcement tools that fall short of legal proceedings.

24.0 Clause 24: Section 80 and Crossheading Replaced

24.1 Censures

24.1.1 Same as submission at [23] above – we disagree with change to “censure”.

25.0 Clause 25: New Section 90A Inserted

25.1 Court Must Order that Recovery from Pecuniary Penalty be Applied to AML/CFT Supervisor’s Actual Costs

25.1.1 No comment required.

26.0 Clause 26: Section 132 Amended

26.1 Powers

26.1.1 The Committee agrees that all Supervisors should have equal standing to recover penalties and costs. That will contribute positively to the deterrent and enforcement effectiveness of the AML/CFT regime. By providing the DIA with equivalent authority, the amendment corrects a legislative oversight that previously limited the DIA’s capability, although this is presumably a short-term measure as the Associate Minister has announced plans to soon introduce a more comprehensive amendment package to make the DIA the sole Supervisor in future.

26.1.2 However, the Committee urges caution and close monitoring of how the DIA will exercise these expanded powers in future, to ensure that they remain proportionate and fair as deployed in practice. To avoid the risk of overly punitive enforcement practices, it is important that clear criteria and transparent guidelines accompany these changes – perhaps by way of a formal Code of Practice that is consulted upon, rather than leaving it entirely to DIA discretion as both investigator and prosecutor in future. That could be particularly meaningful if the “censure” amendments proceed (which we are opposed to). A Code of Practice may help get industry support and sound footing for the DIA’s variety of mechanisms to resolve enforcement outcomes constructively, reserving formal enforcement and public actions for significant breaches and allowing less severe matters to be addressed through educational measures or warnings or modest administrative tools instead.

26.1.3 Additionally, the Committee highlights the importance of transparency in how recovered funds are applied by Supervisors after enforcement. Clear, publicly accessible policies detailing the handling and allocation of recovered penalties and costs would enhance accountability and public confidence in the AML/CFT enforcement framework.

27.0 Clause 27: Section 137 Amended

27.1 Power to Use Information Obtained as AML/CFT Supervisor in Other Capacity and Vice Versa

27.1.1 No comment required.

28.0 Clause 28: Section 153 Amended

28.1 Regulations

28.1.1 No comment required.

29.0 Clause 29: Principal Regulations

29.1 Sections 30 and 31

29.1.1 No comment required.

30.0 Clause 30: regulation 7 Revoked

30.1.1 Revocation clause 30 of the Regulation

30.1.2 No comment required.

31.0 Clause 31: Schedule Amended

31.1 Schedule Amendments

31.1.1 No comment required.

32.0 Clause 32: Principal Regulations

32.1 Sections 33 and 34 of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011

32.1.1 This Clause 32 of the Bill, amending sections 33 and 34 of the Regulations, appears to merely facilitate the revocation of existing definitions that are being incorporated directly into the primary legislation as part of the broader effort to consolidate and simplify the AML regime. While no substantive policy change is introduced by this clause, the Committee supports this move insofar as it promotes a more cohesive and accessible legislative framework. Where we take a different view on the substantive definitions, those comments are set out above.

32.1.2 To ensure a smooth transition, the Committee recommends that clear and accessible guidance be issued alongside the amendments, particularly for smaller reporting entities that may rely heavily on explanatory regulatory materials.

33.0 Clause 33: Regulation 5AA Revoked

33.1 Inclusion: Individual with Ultimate Ownership or Control of Customer or Person

33.1.1 The Committee supports Clause 33 of the Bill, which revokes Regulation 5AA of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011 as part of the legislative intent to relocate the definition of “beneficial owner” into the primary Act. We support consolidating key definitions within the main statute to enhance legal clarity and make the core provisions of the AML/CFT regime more accessible to reporting entities and the public.

34.0 Clause 34: Regulation 24A and Cross-Heading Revoked

34.1 Revoking Regulation 24A

34.1.1 The Committee supports Clause 34 of the Bill, which revokes Regulation 24A and cross-heading, in line with intentions to move the definition of “trust and company service provider” into the

principal Act. This is consistent with the goal of streamlining the legislative framework by centralising key definitions within the Act, reducing reliance on secondary legislation.

35.0 Clause 35: Principal Regulations

35.1 Sections 36 to 38

35.1.1 The Committee supports the goal of Clause 35 of the Bill, which amends the Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011 through Sections 36 to 38. Apart from our fundamental disagreement with the change from formal warning to “censure”, consequential amendments that are mechanical in nature and serve to align the existing regulatory framework with the updated provisions are unobjectionable.

36.0 Clause 36: Regulation 10 Amended

36.1 Prescribed Form for Formal Warnings

36.1.1 Same as submission at [23] above – disagree with “censure”.

37.0 Clause 37: Regulation 151 Revoked

37.1 Reporting Entity that Carries out Activities of Another Kind of Reporting Entity

37.1.1 The Committee supports the revocation of Regulation 151 as proposed in Clause 37 of the Bill, as part of a broader legislative intent to consolidate key regulatory provisions within the primary Act for greater clarity and consistency. In general, relocating the substance of a regulation into the Act should make the law better simplified and more accessible to reporting entities.

38.0 Clause 38: Schedule 3 Amended

38.1 Replace “Formal Warning” with Censure

38.1.1 Same as submission at [23] above – disagree with “censure”.

39.0 CONCLUSIONS

39.1 The Committee supports the Bill’s ambition to improve clarity, consistency, and effectiveness in the AML/CFT regime. In many parts, it is an improvement on the current situation. However, in some places it will harden the obligations for reporting entities or replace one vague concept with another equally vague wording. In two respects, the change to “censure” and the elevation of guidance to mandatory status, we are strongly opposed to what the Bill proposes.

39.2 Overall, the Committee considers that legislative reform must balance regulatory objectives and policing desires of more information gathering with the practical realities faced by reporting entities. Proposals that create uncertainty or impose inflexible obligations tend to undermine the risk-based approach at the heart of the regime. The Committee therefore asks this Select Committee to maintain a strong emphasis on proportionality, sector-specific risk, and clarity in legislative language.

39.2.1 The unique nature of the legal profession and the expectations placed upon lawyers by clients and by the New Zealand Law Society, particularly concerning client confidentiality and privilege, remains inadequately addressed by overall developments in the current legislation and the proposed Bill amendments. Regulations and guidance, for instance, appears to give little special regard to the fundamental rights-based importance of clients being able to access legal services

and to maintain secure and private rights of privileged discussions with a lawyer.

39.3 The Committee also acknowledges the valuable contributions to this submission made by the following members:

- Gary Hughes
- Claudia Shan
- Tom Swindells
- Gavin Jolliffe
- Katrina Wood
- Ziyad Matti
- Carol Wang
- Moira McFarland (Committee Secretary)

We thank the Ministry of Justice for the opportunity to contribute to this important legislative process. Should you have any questions or require further clarification, please contact Moira McFarland, Committee Secretary at moira.mcfarland@thelawassociation.nz or by direct dial on 09 306 5742.

Ngā mihi / Regards



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