

Departmental Disclosure Statement

Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

December 2024

Contents

Contents.....2

Part One: General Policy Statement.....3

Part Two: Background Material and Policy Information4

Part Three: Testing of Legislative Content.....6

Part Four: Significant Legislative Features9

Part One: General Policy Statement

This is an amendment Bill, included in a package of Bills amending regulatory systems administered by the Ministry of Justice.

The package also contains the following Bills that will improve the quality of existing regulation, court timeliness, efficiency, and access to justice:

- the Regulatory Systems (Courts) Amendment Bill;
- the Regulatory Systems (Tribunals) Amendment Bill;
- the Regulatory Systems (Occupational Regulation) Amendment Bill.

These Bills will improve the effectiveness and efficiency of the courts and tribunals, occupational regulation, and the criminal law (anti-money laundering and countering financing of terrorism) regulatory areas.

Regulatory systems amendment bills capture the smaller issues and opportunities for improvement within the legislation governing regulatory systems. Opportunities to make these amendments may eventually come via bills progressing larger amendments to a specific Act. However, many years can elapse between Act-specific amendment bills. Regulatory systems amendment bills allow for an efficient use of House time as numerous amendments can be made across multiple pieces of legislation.

The Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill (the **Bill**) aims to improve New Zealand's anti-money laundering and terrorism financing regime to make the system more risk-based, efficient, and effective through making amendments to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **AML/CFT Act**). Those amendments are supported by the findings of 2 recent substantive reviews of the AMLCFT regime. The first review was New Zealand's assessment by the Financial Action Task Force in 2019–2021, and the second was a statutory review of the AML/CFT Act concluded in 2022. This Bill addresses recommendations from the statutory review.

The amendments made by the Bill—

- clarify existing obligations, which will help businesses apply rules with greater certainty; and
- strengthen enforcement provisions, which will ensure New Zealand can increase its compliance with international standards; and
- provide relief for businesses; and
- reduce compliance costs.

Cumulatively, the amendments will support the maintenance and continuous improvement of the AML/CFT regime, making it more efficient and effective at addressing organised crime.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Yes, the amendments in this Bill are the result of two recent substantive reviews of the AML/CFT regime.</p> <p>The first review was New Zealand's assessment by the Financial Action Task Force (FAFT) in 2019-2021. The review can be accessed through the following link: New Zealand's measures to combat money laundering and terrorist financing (fatf-gafi.org)</p> <p>The second review was a statutory review of the AML/CFT Act undertaken by the Ministry of Justice and concluded in 2022. The statutory review can be accessed through the following link: Report on the review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (www.parliament.nz)</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
<p>While New Zealand is subject to international Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) standards, this is not a treaty.</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Ministry of Justice produced a Regulatory Impact Statement on 19 June 2024: 'Regulatory Impact Statement: Regulatory Systems (Justice) Amendment Bill'. A copy of the Regulatory Impact Statement can be found on:</p> <ul style="list-style-type: none">the Ministry of Justice website: Regulatory Impact Assessments New Zealand Ministry of Justicethe Ministry for Regulation website: Regulatory impact statements (RISs) - Ministry for Regulation <p>The Treasury and the Ministry for Regulation granted exemptions for 11 of 26 proposals in this Bill.</p>	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIS identified above did not meet the threshold for receiving an independent opinion of the quality of the RIS from the RIA Team at the Ministry for Regulation. The Ministry of Justice's internal RIA panel provided an independent opinion on the quality of the RIS. It concluded the RIS met the Quality Assurance criteria.</p>	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>Where applicable, analysis on the expected benefits and costs for policy included in this Bill is available in the RIS, which can be found on:</p> <ul style="list-style-type: none"> the Ministry of Justice website: Regulatory Impact Assessments New Zealand Ministry of Justice the Ministry for Regulation website: Regulatory impact statements (RISs) - Ministry for Regulation <p>This information can also be found in the Cabinet paper 'Regulatory Systems (Justice) Amendment Bill Package: Policy Proposals' which is available on the Ministry of Justice website: Proactive-release-20240715-CAB-Regulatory-Systems-Justice-Amendment-Bill_Final.pdf</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Ministry of Justice has not identified any obligations that conflict with the policies contained in the Bill.

New Zealand is subject to international Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) standards set by the Financial Action Task Force (FAFT). Some of the policies in this Bill improve compliance with these standards.

The FAFT is an intergovernmental organisation, founded in 1989, to develop policies to combat money laundering and counter the financing of terrorism. It sets the AML/CFT standards with which each country in the world must comply (according to their level of risk). These standards reflect international best practice, and can be access here: [The FATE Recommendations \(fatf-gafi.org\)](https://www.fatf-gafi.org)

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Justice did not identify any inconsistency with the principles of the Treaty of Waitangi during the development of the Bill and its policy. The criteria¹ that amendments were assessed against for inclusion in this Bill ruled out proposals with significant implications on constitutional arrangements, including the Crown's Treaty obligations.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Crown Law has been provided with a draft of the Bill and has provided advice to the Attorney-General on consistency with the New Zealand Bill of Rights Act 1990.

A copy of their advice is available at:

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports>

¹ Amendments were deemed suitable for inclusion in the Bill if they make continuous improvements and repairs or maintain the regulatory system (without major policy or system design changes, or significant financial implications), can be progressed in the timeframes for the Bill, and can attract broad political support.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>Unlike the Reserve Bank of New Zealand (RBNZ) and the Financial Markets Authority (FMA), the Department of Internal Affairs (DIA) does not have the power to apply to a court to liquidate a business to recover penalties and costs obtained in proceedings undertaken under the Act. Clause 26(2) aims to clarify all supervisors' standing to recover pecuniary penalties and costs awarded in AML/CFT proceedings. This will ensure that DIA has the same powers as RBNZ and the FMA, who are the other two AML/CFT supervisors, to apply to liquidate a company that has not paid a pecuniary penalty.</p> <p>To align with other enactments permitting recovery of pecuniary penalties, clause 25 ensures that the AML/CFT supervisor's actual costs in bringing the proceedings be paid first.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was the lead agency developing this Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>Clause 27 amends section 137 of the AML/CFT Act to clarify that section 137 does not limit the Privacy Act 2020 (which permits certain disclosures in addition to those authorised under this section).</p> <p>The AML/CFT Act has wide information sharing provisions enabling agencies to share personal AML/CFT information for law enforcement purposes, but there is an anomaly related to the purposes for which DIA can use such information for law enforcement under the AML/CFT Act. The AML/CFT Act empowers the DIA to use non-personal AML/CFT information internally for enforcement of the Gambling Act, the Racing Act, and the Charities Act; and to share personal AML/CFT information to other agencies for law enforcement purposes and enforcement of the Gambling Act. This creates an anomaly whereby personal information can be shared with other law enforcement agencies (and used by those agencies), including for DIA lead law enforcement functions, but is not empowered to be used by DIA for the same purpose even where DIA is the lead law enforcement agency.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Office of the Privacy Commissioner (OPC) was consulted and provided feedback on the Cabinet papers seeking policy approvals and the RIS and confirmed that the changes clarify, rather than make changes to, the status quo and/or are within the scope of the privacy principles.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The amendments are informed by the statutory review of the AML/CFT Act which assessed the Acts performance and contemplated whether further amendments to it are required. The public were consulted as a part of this review. In addition, the amendments have been consulted on with industry stakeholders (via Industry Advisory Group²).</p> <p>The feedback received where appropriate has influenced drafting decisions.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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² The Industry Advisory Group contains representatives from key industry stakeholders and peak bodies from across the AML/CFT regime.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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