New Zealand Banking Association
Te Rangapū Pēke

Submission

to the

Economic Development, Science and Innovation Committee

on the

Anti-Money Laundering and Countering Financing of Terrorism (Supervisor, Levy and Other Matters) Amendment Bill

21 August 2025

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About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following seventeen registered banks in New Zealand are members of NZBA:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
- Bank of New Zealand
- China Construction Bank (New Zealand) Limited
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- Industrial and Commercial Bank of China (New Zealand) Limited
- JPMorgan Chase Bank N.A.
- KB Kookmin Bank Auckland Branch
- Kiwibank Limited
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

Contact details

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Introduction

4. NZBA welcomes the opportunity to provide feedback to Economic Development, Science and Innovation Committee (**Committee**) on the Anti-Money Laundering and Countering Financing of Terrorism (Supervisor, Levy and Other Matters) Amendment Bill (**Bill**). NZBA commends the work that has gone into developing the Bill.

5. We acknowledge the Bill's intent to streamline supervision, improve regulatory responsiveness, and align with international standards. If done well, improvements to regulation in this space will enable a more modern, efficient, and safe anti-money laundering / countering financing of terrorism (**AML/CFT**) regime for New Zealand and its citizens. However, the Bill proposes to give significant power to the new single supervisor, yet does not provide for any checks and balances on that increased power.

6. We also observe, as a general comment, that the Bill does not include the necessary detail to effect the implementation of its proposed intent. In effect, the Bill legislates the broad concept of a single AML/CFT supervisor, and an industry-funded levy. It does not detail critical areas such as the new supervisory model's implementation mechanics, nor the methodology for calculating and charging the proposed industry levy.

7. Certainty and stability in AML/CFT requirements are essential to a well-functioning AML/CFT regime that protects the integrity of New Zealand's financial system and New Zealand's international reputation. More broadly, the Legislative Design Advisory Committee's commentary on high-quality legislation includes that, to be fit for purpose, legislation should provide certainty as to rights and obligations, while allowing sufficient flexibility to enable them to last.[1]

8. Legislation that leaves detail to be confirmed by subsequent regulations, which in some cases can be determined unilaterally with minimal – or no – requirements for consultation, risks undermining this certainty and stability.

9. Our submission addresses the following aspects of the Bill:

    9.1. Rule-making powers

    9.2. Levy provisions

    9.3. National strategy and work programme

    9.4. Reporting by persons in trade

    9.5. Other drafting comments.

[1] See, for example, *Legislation Guidelines: 2021 Edition*, Chapter 1.

Rule-making powers

10. Under the proposed sections 156B – 156J, the new AML/CFT supervisor and the Commissioner would be empowered to make binding rules without Ministerial approval.

11. Both can decide who to consult, and consultation is not mandatory for changes that are minor in effect or that correct a minor or technical error. Previous amendments to the AML/CFT regime have evidenced that what can be deemed technical or non-controversial changes by the public sector can have significant and material unintended consequences on reporting entities.

12. The proposal to empower the new AML/CFT supervisor and the Commissioner to make binding rules centralises power and limits external oversight. This in turn could lead to regulatory overreach, reduced industry confidence, and increased uncertainty and complexity on how to interpret the AML/CFT Act, along with its associated regulations, codes of practice (**Codes**) and industry guidance.

13. NZBA therefore submits that the provisions relating to new rule-making powers should include a requirement to consult with affected industries before publishing any proposed rules, notices or Codes.

14. If this approach is not ultimately taken, we consider that at a minimum, meaningful consultation is required to understand the intended scope of a change that is "minor in effect" or "corrects a minor or technical error".

15. We also strongly oppose the proposal that it should be the AML/CFT supervisor or the Commissioner that makes such rules and notices under these provisions. It is, in our view, more appropriate for responsibility for developing AML/CFT requirements, which may significantly impact banks, to sit with the Minister, with support from the Ministry of Justice. This would ensure connectedness across all levels of legislation.

    15.1. In addition to the complexity of introducing another form of secondary legislation to the AML/CFT regime, the ability to make rules is proposed to be shared across two separate public sector entities – the AML/CFT supervisor and New Zealand Police – which adds additional layers to the policy-making process that the Bill is intended to simplify.

16. Similarly, Codes have previously required Ministerial approval. The Bill proposes to amend s 64 of the Act to enable the chief executive of the AML/CFT supervisor to issue Codes directly.

17. While this increased autonomy might be intended to reduce friction in the system, or time delays with waiting for Ministerial approval, it also gives significant power to the single supervisor, and we are not convinced the Bill provides sufficient protections against that power. For example:

17.1. While there is a requirement to consult on new Codes, this is limited only to those who the chief executive considers will be substantially affected.

17.2. As with the rule-making powers, it is unclear what is meant by "minor or technical" amendments, or who determines whether this threshold is met. We consider that consultation with impacted industries should be mandated, or at least that guidance is needed on these terms before the usual requirement to consult is removed.

17.3. The new s 64 does not explicitly provide direction on how the consultation with affected parties should be undertaken – for example, whether a copy of the draft Code needs to be provided, or whether there is a minimum consultation period. We recommend that these provisions are retained to ensure adequate consultation is undertaken prior to the introduction of any new or amended Codes.

Levy provisions

18. The Bill inserts a new s 155A which provides that key levy details are to be determined via regulations, including the classes of entities who will be required to pay a levy, the investments, costs and regulatory priorities that will be funded by the levy and the amounts payable.

19. We submit that key changes of this nature require consultation and appropriate transition periods. Consultation is essential to ensure that levies reflect efficient costs underpinned by effective policy.

20. Further, we strongly oppose the new s 156(2)(c), which allows the Minister to forgo consultation on levy regulations if "necessary or desirable in the public interest that the amendments be made urgently". Levy regulations will have a significant impact on reporting entities, so consultation is critical. The test in s 156(2)(c) is subjective, and we do not see good rationale for including it – in our view, levy regulations should never need to be changed urgently. Such an approach is also at odds with the cabinet paper submitted by the Associate Minister of Justice, in which she stated that "the levy regulation-making power will require that consultation with reporting entities and other industry stakeholders be undertaken before setting the levy".[2]

21. We also oppose the proposed s 155A(4). We submit that reporting entities should only be liable up to a maximum percentage of the regime (to be defined), as the Crown receives benefit from the effective operation of the AML/CFT regime, and should therefore contribute an appropriate proportion to the overall cost.

[2] Cabinet paper: *Anti-Money Laundering and Countering Financing of Terrorism: reforming the supervisory model and establishing a sustainable funding mechanism*, at para 43.

22. To reiterate our submission in relation to the previous consultation on the AML/CFT levy, we consider that the levy should be risk-based, and proportionate to that risk, rather than simply earnings-based, which would result in the burden primarily falling on highly compliant reporting entities such as banks. We are also concerned about using prescribed transaction reports as a factor to determine the levy given the known issues with that requirement.

23. A risk-based levy is the most appropriate funding model, given the cost-recovery objective of the Bill. In this regard, the general policy statement of the explanatory note to the Bill states in its final paragraph that "An industry levy is being introduced for partial cost recovery for regulatory services … The levy is being introduced on the basis of principles for cost recovery …"

24. That objective is expressed through the proposed new s 155A(3), which provides for levies to cover a portion of the costs incurred by the Ministry, the AML/CFT supervisor and Commissioner in performing or exercising their functions, powers and duties under the Act.

25. In this cost-recovery context, we submit that an appropriate levy should be based on the level of ML/FT risk that a sector poses, and particularly the extent to which any given sector is abused for high-risk crimes. This is because regulation and monitoring of those entities is more resource-intensive and therefore more costly compared to the regulation of those entities which pose lower risk. There is support for this position in the July 2019 *Review of the AUSTRAC Industry Contribution Levy Arrangements,* which observed that a funding model based on entities which have a higher risk of potential ML/TF activities (and therefore generate higher operational costs for the AML/CFT regulator) "*has merit in a cost-recovery context"*.

26. The levy which is likely to be imposed does not, however, appear to reflect the cost-recovery objective described in the Explanatory Note, and instead appears to be a revenue-raising instrument where the risk level of entities is irrelevant compared with their capacity to pay and the availability of a suitable levy base (such as earnings and the transactions reports volume and value data collected as part of transactions monitoring). Such an approach does not, in our view, fairly distribute the cost of the levy. In particular, it does not recognise that some sectors are genuinely more at risk of facilitating the transfer or placement of proceeds of crime, compared with the banking sector. Under this proposal, those higher-risk sectors will not have to pay proportionately higher levies. It also does not recognise that the banking sector has also put in place strong control measures – in this regard, the banking sector was identified in the 2024 AML/CFT National Risk Assessment published by the New Zealand Police Financial Intelligence Unit as having the strongest control measures of any sector to mitigate AML/CFT vulnerabilities.

27. Applying a risk-based levy should be a straightforward exercise given risk-rating categories are already established under the AML/CFT National Risk Assessments, which identify sectors abused for high-risk crimes and compare the relative strength of

each sector's control measures. The 2024 National Risk Assessment supports a model where funding is more equitably distributed by reference to ML/TF risk and less weighted to bank-sourced funding:

SECTORS ABUSED FOR HIGH-RISK CRIMES

– facilitating transfer or placement of proceeds of crime.

- Real estate sector
- High value dealers
- Casinos
- Law firms and accounting practices
- NBDT (Non-Bank Deposit Takers) to a lesser extent

HIGH-RISK SECTORS

- Banks
- MVTS (sectors offering remittance services)
- VASPs (Virtual Asset Service Providers)

28. At the very least, we submit that the levy should not be exclusively revenue-based (in which case the banks will pay) but also include a significant risk-weighting which can be determined periodically by reference to sources such as the National Risk Assessment and Sector Risk Assessments which "provide generic levels of risk that can help inform a levy." [3]

National strategy and work programme

29. NZBA submits that further amendments are needed to enable the proposed national strategy to achieve its intended purpose.

30. As noted at paragraph 7, certainty and stability are essential to a well-functioning AML/CFT regime. If the Committee intends to proceed with the proposal to adopt a national strategy, we submit that further requirements are put in place to facilitate the development of a practical and impactful strategy in an informed and efficient manner, mitigating risk of uncertainty and variability. This should be achieved through, at a minimum:

    30.1. Requiring consultation with reporting entities on the national strategy and work programme.

[3] AML/CFT Stage 1 Cost Recovery Impact Statement (CRIS) - Proactive release - AML CFT Reform issued 25 February 2025. It is also worth noting that the CRIS states that "*Police consider the risks posed by Virtual Asset Service Providers (VASPs) are significantly understated and that a higher levy apportionment would better reflect their risk level and likely consumption of regulatory services*."

30.2. Requiring the Ministry of Justice to review the work programme – at a minimum where there has been a review or amendment to the overall national strategy.

30.3. Increasing the cadence of reviewing the national strategy by mandating additional review points to ensure that the strategy remains fit for purpose. For example, there could be additional reviews at the mid-point between Financial Action Task Force (**FATF**) mutual evaluation reports, after a material change to the National Risk Assessment, and after material amendment to the FATF standards that the AML/CFT legislation is based off.

30.4. Broadening the focus to include, beyond regulatory change, guidance, Codes, threat assessments, law enforcement prioritisation and building out the capability and capacity of the Financial Crime Prevention Network to mirror more closely those of equivalent jurisdictions (e.g. FINTEL and FINTRAC).

30.5. Requiring transparency on the use of levy funding in annual reporting.

Reporting by persons in trade

31. We support the proposed changes to enable persons in trade to report suspicious activities. However, we consider further work is needed to ensure these changes are effectively implemented. For example:

31.1. Making reporting voluntary, as set out at the new s 40A(2), may lead to inconsistent reporting and enforcement.

31.2. The extension to persons in trade should also cover other relevant requirements of the Act, such as tipping-off provisions.

Other drafting comments

32. Set out below are our comments on provisions of the Bill that are not directly related to the above themes:

32.1. **Section 16(1A)**: It is unclear what the proposed s 16(1A) does in addition to those changes already captured under the Statutes Amendment Bill.

32.2. **Section 132(2)(ba)**: The intention behind this proposed subsection is unclear – is this intended to apply outside of the onsite inspection powers under s 133 of the Act? If so, clarity is required as to who "any person" is in this context. This is potentially a significant expansion of AML/CFT supervisory powers, and further clarity is required on the intent behind this proposed insertion.

32.3. **Section 132(3)(3A)**: We query how this requirement interacts with the AML/CFT Amendment Bill and its proposed amendment to s 52 of the Act. In particular, we believe the premise behind the 10 working day requirement is that it is consistent with former record-keeping requirements. However, the

proposed amendment to s 52 under the AML/CFT Amendment Bill extends the timing to produce records within 20 working days. We submit that the proposed s 132(3)(3A) should align with this 20 working day requirement.

32.4. **Section 149F**: We submit that the reference at subsection (2) that the Ministry "may" consult on levy funding be replaced with "must". We also note that the reference to subsection (1) at s 149F(4) does not appear to connect properly, and query whether this is a drafting error.