

# Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Regime Review

## Industry Advisory Group – Terms of Reference

### 1. Purpose

The Terms of Reference provide information for the Industry Advisory Group (IAG) and outline its expected function.

### 2. Background

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act) forms a significant part of New Zealand's framework to combat money laundering, terrorism financing, and otherwise keep illicit funds out of the economy. The purposes of the Act are to:

- detect and deter money laundering and terrorism financing;
- to maintain and enhance New Zealand's international reputation by adopting, where appropriate in the New Zealand context, recommendations issued by the Financial Action Task Force; and
- to contribute to public confidence in the financial system.

Accordingly, the Act facilitates cooperation among reporting entities, AML/CFT supervisors, and various government agencies, in particular law enforcement and regulatory agencies.

Section 156A of the Act contains a requirement for the Ministry of Justice to review the operation of the Act and consider whether any amendments are required. This review must commence no later than 1 July 2021 and must be completed by no later than 30 June 2022.

The overall objective of this review is to assess the operation of the AML/CFT Act and associated legislative instruments<sup>1</sup> so that New Zealand becomes the hardest place in the world for money laundering, terrorism financing, and financing the proliferation of weapons of mass destruction. In doing so, the AML/CFT regime will help maintain a safe, trusted, and legitimate economy.

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<sup>1</sup> This will include all AML/CFT Regulations as well as any Codes of Practice and Class Exemptions issued under section 157 of the Act.

### 3. Role of the IAG

To support the Statutory Review process, the Ministry of Justice has established an IAG with representatives from key industry stakeholders and peak bodies from across the AML/CFT regime. The IAG has been established to assist the Ministry and other AML/CFT agencies<sup>2</sup> in conducting the review.

The role of the IAG is to:

- Provide advice to officials on the issues and topics that members think are necessary to ensure an effective and comprehensive review of the Act and the broader regime; and
- Review and provide feedback to officials on draft material before it is released for general or targeted consultation.

The IAG is a time-specific entity that is intended to cease functioning at 1 July 2022 (following the conclusion of the review), unless otherwise advised.

### 4. Guiding principles

The IAG is committed to:

- working together with integrity to achieve the IAG's role;
- sharing knowledge and expertise with IAG members and officials;
- free and frank exchange of views and ideas; and
- maintaining confidentiality.

### 5. Authority and accountability

The IAG is not a decision-making body. Accountability and authority for decision-making for the review resides with Ministers and government agencies.

### 6. Frequency and mode of meetings

Meetings will be timed to coincide with milestones in the project to enable the IAG to fulfil its stated role. The intention is to allow for flexibility in how and when they are scheduled while being mindful of the workload and time commitments for members. Meetings are intended to be conducted through Microsoft Teams, with members videoconferencing to participate.

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<sup>2</sup> Department of Internal Affairs, Financial Markets Authority, Reserve Bank of New Zealand, New Zealand Police, New Zealand Customs Service, and the Ministry of Business, Innovation and Employment.

Meetings will ordinarily be expected to take between one and three hours. Meetings will be hosted and moderated by the Ministry of Justice, with some or all of the other AML/CFT agencies also in attendance.

## **7. Anticipated workload and time commitment**

The estimated workload for the IAG is approximately 5-10 hours per month. This time commitment assumes approximately one to three hours of meetings per month (possibly spread across multiple dates) as well as time to review material and provide comment.

## **8. Travel policy and reimbursement of expenses**

Where meetings are attended in person, the Ministry of Justice will pay reasonable **domestic** travel costs for participating in the IAG meetings, as set out in the attached travel policy, attached as Appendix 1. The requirements below are consistent with government agency travel policies. The Ministry of Justice will not pay for any international travel costs.

The Ministry will pay IAG members' actual and reasonable expenses incurred in relation to any IAG meetings, as set out in Appendix 2.

## **9. Financial Gain and Confidentiality**

All information and material IAG members receive must be kept confidential and not disseminated further until the review is concluded, unless otherwise notified.

Prior to the review being finalised, IAG members are not to use the knowledge or benefits from being members of the IAG for financial gain.

## **10. Conflicts of interest**

IAG members are participating as individual experts and professionals rather than representatives of their organisations. Membership in the IAG does not restrict the ability of members to:

- provide advice to third parties, provided that advice is not based on confidential information obtained in their position as IAG member; or
- otherwise participating in the review, including as a representative of their organisation or through any professional body, as appropriate.

IAG members should notify the Ministry of Justice as soon as possible of any potential conflict of interest they may have that may impact their ability to contribute to and/or participate in the IAG.

## 11. Communication

The Ministry of Justice will be responsible for all public communication about IAG's role and work. All questions from the media and other such request for information should be referred to: [media@justice.govt.nz](mailto:media@justice.govt.nz)

## 12. Personal and official information

The Ministry of Justice will hold any personal information in accordance with the Privacy Act 2020. The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including the Ministry of Justice. Any personal information supplied in the course participating in the IAG only be used for the purpose of supporting the operation of the IAG.

Any advice received by the Ministry of Justice or other Government agencies from IAG Members will become official information. The Ministry of Justice may be required to release all or part of the information received as a result of a request made under the Official Information Act 1982, unless there is a suitable ground to withhold information that outweighs the public's interest in that information.

## 13. Agreement

I agree to comply with the above Terms of Reference and join as a member of the Industry Advisory Group.

Signature: \_\_\_\_\_

Name:

Date:        /    / 2021

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## Appendix 1: Travel policy

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The Ministry of Justice will pay reasonable domestic travel costs for participating in the IAG meetings, as set out below. The requirements below are consistent with government agency travel policies.

### *Booking travel*

IAG members are responsible for booking their own travel to attend the IAG meetings (and if necessary, for the purpose of attendance at the IAG meetings, their own accommodation).

Actual and reasonable expenses incurred in attending the IAG meetings will be reimbursed by the Ministry of Justice (the Ministry) – refer to section on ‘Reimbursement of Expenses’ below.

### *Airfares*

Flights should be booked as far in advance as possible at the best available fare.

Flights to and from main centres should be fixed and not fully-flexible. Flights for participants returning from Wellington (after the IAG meetings) to smaller regional centres (i.e. outside the main centres), may be fully-flexible.

We suggest that members avoid changes to travel arrangements wherever possible. If changes to members’ travel arrangements are necessitated by the actions and/or requirements of the Ministry, the Ministry will reimburse the costs associated with making those changes. If changes to travel arrangements are for members’ personal convenience, the members themselves will be required to cover the cost of those changes.

### *Accommodation*

Accommodation must be for the purpose of attendance at the IAG meetings (for example, in some cases accommodation the night before a meeting may be necessary to ensure arrival at the designated start-time for the IAG meetings).

Where accommodation is necessary for the purposes of attendance at the IAG meetings, a per night accommodation expenditure cap of \$200.00 (including GST) should not be exceeded.

### *Meals and incidentals*

Refreshments will be provided at the IAG meetings.

Where it is necessary for members to stay in Wellington overnight (either before or after a meeting), valid expenses for meals and incidentals (outside the IAG meetings) will be reimbursed on an actual and reasonable basis. Expenses for meals and incidentals must be at a reasonable level. The cost of alcohol will not be reimbursed.

*Taxis*

Taxi fares incurred for the purpose of attendance at the meetings will be reimbursed on an actual and reasonable basis.

*Mileage*

Mileage incurred for the purpose of attendance at the IAG meetings will be reimbursed on an actual and reasonable basis, at the rate of 73 cents per kilometre.

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## **Appendix 2: Reimbursement of Expenses**

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### *Actual and reasonable — expenses*

The Ministry will pay IAG members' actual and reasonable expenses incurred in relation to any IAG meetings, provided that:

- a. the expense is charged at actual and reasonable cost, and
- b. the claim for expense is supported by GST receipts.

### *Invoices*

IAG members must send the Ministry one invoice for all the charges relating to the meetings at the end of the month, for attendance to the satisfaction of the Ministry during that month. This should include confirmation of the time and date of the meeting(s) attended.

The IAG members must include the following references on their invoices to the Ministry:

Ref No: M75103

Attn: Brendan Gage,  
19 Aitken Street,  
Wellington

Please send through any invoices relating to this service to [Accounts.Payable@justice.govt.nz](mailto:Accounts.Payable@justice.govt.nz) and [ODS\\_POLICY@justice.govt.nz](mailto:ODS_POLICY@justice.govt.nz)

Please ensure the following matters are covered in the invoices:

1. The words "tax invoice".
2. Name and GST number of the supplier.
3. The date the invoice was issued.
4. A clear description of the goods/services supplied
5. The total amount to pay.
6. A statement that GST is included.

IAG – 1	Introduction - Meeting	10 June 2021
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1. Introduction to the Statutory Review:
  - a. The Ministry has briefed our Minister on the outcome of the MER;
  - b. The Ministry has advised the expected outcomes from the statutory review process (including that we can engage in early regulatory change working in parallel to the legislative review). Early regulatory change can include clarifying the scope and addressing compliance headaches, ensuring that we are capturing what is required by the FATF. The Minister has agreed to 'receive advice' as a result of this process;
  - c. The Minister is open and engaged with issues to AML/CFT issues broadly.
2. The Ministry of Justice would like the IAG to support the review. However, we are open to discussion about how the IAG would add value to the statutory review. Some key questions we would like to discuss are:
  - a. How often would the IAG like to meet, and in what format?
  - b. What other specific resources can the IAG bring to the review?
3. Thoughts from IAG members:
  - a. **Format of the IAG.** Some members (Lloyd Kavanagh / Ross Carter Brown / Clyde Peterson / Richard) suggested that there is benefit to having a meeting the full size of the IAG, however creating sub-groups will be more agile in progressing issues.
  - b. **Issues that the IAG would like to provide input into.** These include:
    - i. Janine, Easy Crypto: How vulnerable communities are affected by the AML/CFT Act. For example, should the Act have 6 – 8 principles that we can use the Act through those lenses.
    - ii. Lloyd Kavanagh, MERW: The purposes of balancing the objectives in the regime with the need for financial inclusion.
    - iii. Lloyd Kavanagh: The impact of innovation in FinTech.
    - iv. Ross Carter-Brown: How different members users of the AML/CFT are impacted.
    - v. Ross Carter-Brown: What are the varied approaches of different jurisdictions?
    - vi. Ross: Ross – There are a lot of parts of the Act that are vestiges of the pre-internet age. There could be a number of improvements that are more appropriate for the current technological client. Allowances should be made for this type of improvement. Simon: following on from this, are we going to create a regime that is flexible and allows for change in technology.
    - vii. Alfred, TAB: the government didn't think about what they could do to shape the framework when the AML/CFT Act was implemented. In particular, what the privacy culture and expectations of New Zealanders' is. Has the government over prioritised satisfying the FATF requirements, without looking at the effectiveness of things.
    - viii. Simon Haines: recommend carrying out a survey of population to ascertain costs and see what the industry pain points are. More information to businesses about what information is useful to the Police/enforcement agencies.
    - ix. Bridget: we need more prescriptive information about how to apply the Act in certain circumstances.
  - c. The IAG discussed the Terms of Reference:
    - i. Richard Abel: The AML/CFT Act review has a purpose of 'becoming the hardest place for ML/TF.' The problem is, it is the most expensive place in the world to do business. There has to be a way to make it more efficient.



- ii. Marvin: Important to ensure that we don't have bad-actors. Need to ensure that this is an attractive place to do business and the impact of the review is positive.
- iii. Gary Hughes Barrister: These purpose statements could be usefully expanded to incorporate the perspective of this group.
- iv. Gary: useful to look at the exemptions process.
- v. MOJ: Important that the Terms of Reference do not pre-suppose discussion points.
- d. Other perspectives were also raised by MOJ
- i. What is the right balance between risk based approach and prescription?
  - ii. Should there be more codes of practice and interpretation guides?
  - iii. What approach enables better outcomes for the Sector?
  - iv. How should we ask questions so that we can ensure we get full responses?
4. The Ministry of Justice has prepared a draft consultation document, that will be released publicly. The Ministry is interested in obtaining the views of the IAG before this is released. Consultation document is quite long, and the Ministry is flexible on how the IAG want to engage in it. When reviewing the document, keep in mind how industry will engage with it. The information provided is confidential until it goes to cabinet on 11 August.
- a. IAG comment:
    - i. Andrew: Is there an opportunity to provide further feedback when it is out for consultation?
    - ii. Alfred: it is important to locate and review the original submissions to the Select Committee.
    - iii. Karen McWilliams: some IAG members will provide more personal views, but that is the nature of discussion.
    - iv. Gary: Domestic PEPs issue, and are there any other issues that the Minister has indicated is off limits?
    - v. Simon: What is the level of confidentiality?
  - b. Action points:
    - i. The Ministry will circulate the Terms of Reference and discussion document and provide further information about the timeframes for the review.
    - ii. Submitters will circulate feedback on the document (if they want to) to encourage discussion.
    - iii. The Ministry will set up a couple of in-person meetings.
5. Lastly, the Ministry has received an OIA requesting the release of information that includes names of stakeholders to the IAG. If any members of the IAG had any issues with that course of action they are to contact the Ministry separately.

**AML/CFT Act Statutory Review – Industry Advisory Group Members**

<b>Name</b>	<b>Organisation</b>
Abel, Richard	Accounting and Taxation Centre Nelson
Arbab, Dilawar	Orbit Remit
Bennett, Mark	Victoria University Wellington
Bergin, Tim	Christchurch Casino
Boyd, Alfred	TAB
Carter-Brown, Ross	Bitprime
Caskey, Judith	Citi
Cox, Anne	NBS
Dilly, Martin	Martin Dilly AML
Hall, Fiona	Fiona Hall Law
Flood, Mark	ANZ
Geary, Sam	ASB
Grainger, Janine	EasyCrypto
Grimsey, Sharon	MTF Finance
Haines, Simon	Nikko Asset Management
Haughey, Chris	SkyCity
Hughes, Gary	Gary Hughes Barrister
Hunt, Adam	Clavis
Kavanagh, Lloyd	MinterEllisonRuddWatts
Kilpin, Richard	Financial Services Council
Le Quesne, Katherine	Kiwibank
MacDonald, Bridget	Securities Industry Association
Madison, Trish	Accounta
Milne, Paula	Paula Milne Consulting
McMorran, Lyn	Financial Services Federation
McWilliams, Karen	CA ANZ
Ogilvie, Angus	Generate Accounting
Pederson, Clive	Heartland Bank
Ping, Anna	MUFG Bank
Proud, Jo	MUFG Bank
Purdon, Geoff	Grand Casino
Robson, Phil	Credit Union Baywide
Rybakova, Anna	Bitprime
Shanks, Katrina	Financial Advice NZ
Simons, Neil	Latitude Financial
Sims, Alex	University of Auckland
Steed, Greg	Institute of Certified New Zealand Bookkeepers
Stephens, Angela	Westpac
Stockdale, Mark	Motor Industry Association
Tregunna, Alice	TICC.NZ
Toal, Mark	ASB
Yee, Marvin	Crown Financial
Young, Andrew	BNZ