New Zealand Law Society
Te Kāhui Ture o Aotearoa

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

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

21 August 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**the Law Society**) welcomes the opportunity to comment on the Anti-Money Laundering and Countering Financing of Terrorism (Supervisor, Levy, and Other Matters) Amendment Bill (**the Bill**), which proposes to amend the Anti-Money Laundering and Countering Financing of Terrorism Act (the **Act**).

1.2 This submission has been prepared with the assistance of the Law Society's Public Law Committee. It focuses primarily on the proposed amendments to:

(a) The onsite inspection powers of the Supervisor.

(b) The provisions establishing the industry levy.

(c) The absence of consultation requirements in respect of the National Strategy and Regulatory Work Programme.

1.3 The Law Society wishes to be heard on this submission.

2 Address verification: clause 6

2.1 The Law Society supports the proposed amendment to section 16 of the Act, to remove the requirement for a reporting entity to take steps to verify address information when undertaking standard customer due diligence.

2.2 This change is consistent with the recommendations of the Ministry of Justice in the 2022 Statutory Review of the AML/CFT regime, which noted that address verification requirements for standard customer due diligence have a '*negative impact on financial inclusion and disproportionate compliance costs*.'[1]

3 Powers of the AML/CFT supervisor: clause 21

3.1 The Law Society welcomes the addition of new sections 132(3B) and (3C), which reflect existing provisions that apply during on-site inspections by the Supervisor (sections 133(3) and (4)). We recommend that an equivalent of section 133(5) is also inserted.

3.2 Noting that proposed section 132(ba) is to be exercised where the Supervisor 'reasonably suspects [a person] has knowledge of a possible contravention' of the Act, the Law Society considers section 132 should also reference the right to have a lawyer present at the meeting. Without access to legal advice during questioning, where that questioning is specifically prompted by the possibility that the Act has been contravened, a person may not be able to genuinely protect themself against self-incrimination, as protected under new subsection 3B. The AML/CFT regime can be complex and technical, and a person may not realise that in answering certain questions, they risk self-incrimination.

4 On-site inspection powers: clause 23

4.1 The requirement to obtain a warrant before entering a dwellinghouse to conduct an on-site inspection is appropriate, given the significantly higher privacy interests involved in

[1] Ministry of Justice *Report on the review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (2022), at [679], Recommendation 114.

entering a person's home. It is also consistent with, for example, the power to enter a home for the purpose of monitoring compliance with resource consents (see s 332 of the Resource Management Act, which does not allow warrantless entry to a dwellinghouse), entry to detect breach of a bylaw (see s 172 of the Local Government Act 2002), and under section 159 of the Electricity Act 1992 (for example, when inspecting electrical work).

4.2 The Law Society also acknowledges the policy objective underlying the proposed amendment: those who work from home and store relevant information there should not receive the benefit of lesser monitoring than those who undertake the same work from an office, simply because of where they decide to carry out their business. That said, it is not clear how likely it is to be that a person maintains only a physical copy of records (and keeps them in their home), such that they can only be accessed via physical inspection at a dwellinghouse, rather than electronic access at the office (if the person has a hybrid working arrangement) or remote access from elsewhere.

4.3 Proposed section 133A(3) provides the Supervisor may only carry conduct the on-site inspection in parts of the dwellinghouse where the reporting entity carries out work. This raises several practical issues that are not addressed by the present drafting:

(a) Although 'dwellinghouse' is defined in the Act, it is defined only for subpart 4 of Part 3. New section 133A will be placed in Part 4. If it is intended for the section 116 definition to apply to new section 133A, that will need to be specified.

(b) It is not clear what must be specified in the warrant, and to what degree of detail. The limitations prescribed in proposed section 133A are clear that only the areas in which the reporting entity works may be inspected. It is not clear how detailed this would need to be, to comply with both section 133A and the requirement under section 98 of the Search and Surveillance Act 2012 to describe in 'reasonable detail' the place that it is proposed to enter. For example, would the precise area of the dwellinghouse need to be prescribed, and would this be known to the Supervisor? Unlike circumstances in which a dwellinghouse is entered, for example, to identify compliance with a resource consent condition (e.g., confirming that a kitchen has not been installed in a sleepout), the boundaries of on-site inspection by the AML/CFT Supervisor are less clear.

(c) If it is expected to be sufficient that the application for a warrant simply refers to 'parts of the dwellinghouse where the reporting entity carries out work,' this could result in uncertainty, and the risk of unintentional (or intentional) breach by those carrying out the inspection. For example, how much of the home may the supervisor in this instance be permitted to look, to determine the areas in which the reporting entity works? Given some individuals may work in multiple areas throughout their home, would the supervisor be permitted to look at unidentifiable paperwork on a kitchen table, to determine whether the reporting entity has carried out work there, or open cupboards and drawers outside of a clear working space, to identify records?

(d) It is unusual that new section 133A(3) would confine the scope of the warrant, but not the terms of the warrant itself. It should be clarified that section 133A(3) applies to both the supervisor and issuing officer.

4.4 Overall, the drafting of this provision requires material improvement.

5 The levy provisions: clause 30

5.1 The Law Society is of the view that there are significant issues with the present drafting of the levy provisions. These issues are set out below, however we do not make recommendations for improvement. In our view, they require wholesale redrafting.

5.2 The Law Society does not consider a proper justification has been provided for the inclusion of the levy-making power in new section 155A. The broad discretion left to officials about how the levy is calculated or imposed is not justifiable in circumstances where it may be applied broadly and across a wide range of sectors, and similarly exempted with such breadth. While the Crown may, through legislation, impose levies, those levies should be imposed with due care for the constitutional constraints on the Crown in these circumstances. The Law Society notes the detailed guidance provided by the Legislation Design and Advisory Committee (LDAC) in this respect.[2]

5.3 As set out in the LDAC guidance, a levy that is not properly defined and calculated risks being set aside by the Courts as an unlawful tax. Parliamentary authority is required before a levy may be issued,[3] and a levy-making power must be given by clear words; only rarely will it be taken to arise by necessary implication.[4] If a levy is imposed in excess of what would be a proportionate charge (on a cost-recovery basis), the excess is unlawful and the levied person has a right to repayment of the excess (or the whole levy, if the levy is itself unlawful).[5]

5.4 There are several issues with the proposed levying power. First, the levy is not targeted. As LDAC notes, levies are traditionally levied on specific sectors of the economy, with the levy payable for services delivered to that sector of the economy. LDAC gives the example of commodity levies. The Law Society does not consider it correct that a levy can be charged to "the private sector"; that is not a coherent definition of a sector of the economy. A 'levy' that purports to levy 'the private sector' is a tax, not a levy, and officials may not tax.

5.5 Clause 155A(6) is highly unusual in allowing the Crown in regulations to specify what "classes" of entities must pay the levy. LDAC states that "Legislation must clearly identify who may be charged the fee or levy". It is similarly NZLS' view that the 'who' of 'who should pay' should be set in primary legislation. It is doubtful whether this level of delegation of a levy-setting power is lawful, as it delegates to the Crown complete discretion over who is required to pay the levy. Given the breadth of potential payees (the "private sector"), there is no ability for prediction as to what organisations might be

2 LDAC Guidelines, Chapter 17.
3 Constitution Act 1986, section 22.
4 *Harness Racing New Zealand v Kotzikas* [2005] NZAR 268 (CA); *McCarthy & Stone (Developments) Ltd v Richmond Upon Thames London Borough Council* [1992] 2 AC 48 (HL).
5 *Waikato Regional Airport Ltd v Attorney-General* [2004] 3 NZLR 1 (PC); *Waikato Regional Airport Ltd v Comptroller of Customs* [2011] NZAR 43 (HC).

required to pay — nor how much they are required to pay. The Financial Markets Authority Act 2011, referenced in the Regulatory Impact Statement as being a similar arrangement to the proposed AML/CFT levy, is in fact dissimilar in this respect. It provides that a levy is payable by 'specified persons,' being a comprehensive definition contained in primary legislation (defined in section 68(2) and restricted to (primarily) financial markets participants).

5.6 Second, the Bill delegates the setting of the levy without prescribing any detail about how the levy should be calculated. LDAC states "legislation must set out the manner by which the levy is determined". This includes ensuring the amount of a levy imposed "on a particular group" is "commensurate with the degree of connection between the group and the objective or function concerned". All proposed section 155A(6) does is permit regulations to specify how the levy should be calculated. It does not even require that the Regulations themselves set out how the levy is calculated. This is not consistent with lawful levy-setting and amplifies the problems of sectoral definition just mentioned: the Bill does not attempt to specify any details about how levies should be charged to particular groups, because it does not define those groups.

5.7 As noted, levies need to properly reflect the costs of delivering the regulation or service. They cannot be unmoored from public benefit or they risk being set aside as unlawful. In the Law Society's view, the lack of any prescription for the calculation of a levy in the Bill means it is unable to properly ensure that any corresponding regulations will be properly lawful. Both the courts and the Regulations Review Committee are likely to have serious concerns about any levy imposed accordingly.

5.8 This problem is highlighted by proposed section 155B. This clause requires a reporting entity that is in two "classes" to pay two levies (unless exempted). It cannot be possible to properly ascertain a rational connection between the "group and the objective or function concerned" if the approach taken in the Bill (by default) is to simply require the group to pay twice. Again, this is not consistent with proper, lawful levy-setting.

5.9 It is not clear whether officials have considered the guidance available on this topic. Nor is it clear whether LDAC or Crown Law has been consulted on the statutory design of this levy. The Law Society notes officials' advice in the DDS that the Bill does not impose a levy (ostensibly because the levy is limited to cost-recovery (at 9), though we note the unclear parameters of also 'recovering' the cost of policy development). This is an incorrect statement of law for the reasons outlined: a levy must be limited to cost-recovery else it risks being declared unlawful.

5.10 Finally, proposed section 155A(4) contradicts subsection (3). Whereas subsection (3) refers to recovery of a 'portion' of the costs specified in subsections (3)(a) and (b), subsection (4) appears to contemplate the Minister determining that 'the whole' costs will be met by the levy. It is also contrary to the basis on which the levy has been premised, from policy development through to Cabinet approval. That is, a *partial* cost recovery, in recognition of the fact that much of the AML/CFT regime benefits are a public, not private good, and that the costs of certain functions such as enforcement are not appropriately recovered by levy.

5.11 Enclosed with this submission is a copy of the Law Society's submission on the Ministry of Justice's initial consultation on design of the industry level (May 2025). This sets out a range of further challenges associated with fairly levying the legal profession,

6 Consultation requirements

6.1 There are no consultation requirements in respect of the National Strategy (proposed section 149A) and the Regulatory Work Programme (proposed section 149D), though the DDS, at 4.8, states they will be prepared in consultation with industry. We recommend that a requirement to consult is inserted into the provision, particularly as both initiatives will inform work that is recoverable by the proposed levy (see proposed sections 155A(3)(b) and 155C).

6.2 In terms of required review of the levy regulations after three years, proposed section 149F states the Ministry 'may consult the persons or bodies that the Ministry thinks fit to consult in the circumstances as representatives of reporting entities.' The review will be an important, ongoing mechanism for post-legislative scrutiny of how the levy has been designed and implemented. Consultation should be a requirement, not an option, akin to section 69 of the Financial Markets Authority Act.[6] This is particularly important given that officials will be reviewing levy regulations that they themselves have created, under what are presently drafted as very broad powers.

David Campbell
Vice-President

[6] Though slightly difference, this requires consultation with those liable to pay the levy, in advance of submitting a request to the Minister seeking an appropriation of public money for the following year, or any change to an appropriation for the current year, that relates to costs that are intended to be recovered by way of levies.