

PRACTICE BRIEFING

AML/CFT- Annual reporting

This Practice Briefing does not constitute legal advice.

INTRODUCTION

The New Zealand Law Society remains proactive in assisting lawyers in compliance with their obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT). This Practice Briefing provides some practical guidance to assist law firms that are “reporting entities” for AML/CFT purposes in complying with their annual reporting obligations under the AML/CFT Act.

AML/CFT ANNUAL REPORTING REQUIREMENTS

Many (but not all) law firms are captured under the AML/CFT Act because in the ordinary course of business they carry out activities that are specified in the definition of “designated non-financial business or profession” (“DNFBP”) set out in [section 5](#) of the AML/CFT Act. These law firms are supervised by the Department of Internal Affairs (DIA) and have annual reporting obligations pursuant to [section 60](#) of the AML/CFT Act (discussed further below). The first annual report is due to be submitted to DIA no later than **31 August 2019**.

Some law firms may have previously determined that they are not DNFBPs (and are not otherwise considered to be “reporting entities” for the purposes of the AML/CFT Act). Such law firms are not subject to the AML/CFT Act and consequently do not have any reporting obligations, because of [section 6\(4\)](#) of the AML/CFT Act.

Nonetheless, all lawyers are encouraged to treat the annual reporting deadline as an opportunity to review their business activities and to determine if there have been any changes to the nature of their activities carried out in the ordinary course of business such that they are now required to be supervised by DIA as a reporting entity and to comply with the AML/CFT Act, including the resulting annual reporting obligations. Registration forms for DNFBPs are available at <https://www.dia.govt.nz/AML-CFT-Information-for-Lawyers-and-Conveyancers>

Section 60 of the AML/CFT Act provides as follows:

60 Annual AML/CFT report

- (1) The reporting entity must prepare an annual report on its risk assessment and AML/CFT programme.

- (2) An annual report must –
 - (a) be in the prescribed form; and
 - (b) take into account the results and implications of the audit required by section 59(2); and
 - (c) contain any information prescribed by regulations.
- (3) The reporting entity must provide the annual report to its AML/CFT supervisor at a time appointed by the AML/CFT supervisor.
- (4) The AML/CFT supervisor must give the reporting entity reasonable notice of the requirement to provide the annual report.

ANNUAL REPORTING – HOW TO START THE PROCESS

This year you will be able to complete your annual AML/CFT report online using AML Online. AML Online is a new secure platform for businesses to engage with DIA online. It's important that you register with DIA and activate your AML Online account in time to submit your annual report. See the DIA website about AML Online for more information and [how to logon](#).

There is information about how to submit your annual report on the DIA website, which includes a [user guidance document](#), and a step by step video about how to complete the annual report using AML Online.

If, for whatever reason, you are unable to complete or upload your annual AML/CFT report, contact DIA at amlcft@dia.govt.nz before the 31 August deadline.

WHAT HAPPENS IF LAWYERS DO NOT MEET ANNUAL REPORTING REQUIREMENTS?

Failure to file an annual report is a “civil liability act” and may attract fines of up to \$200,000 for an individual or \$2 million for a body corporate or partnership (see section 78(f) and section 90 of the AML/CFT Act). Alternatively, knowingly or recklessly failing to do so may be considered an offence pursuant to section 91 of the AML/CFT Act, punishable in the case of an individual by either or both of a term of imprisonment of not more than 2 years or a fine of up to \$300,000 and in the case of a body corporate or partnership, a fine of up to \$5 million (section 100 of the AML/CFT Act).

A person commits an offence if, without reasonable excuse, the person provides information to an AML/CFT supervisor knowing that information to be false or misleading in any material respect (section 103 AML/CFT Act), punishable in the case of an individual by either or both of a term of imprisonment of not more than 3 months or a fine of up to \$10,000 and in the case of a body corporate or partnership, a fine of up to \$50,000 (section 105 AML/CFT Act).

PRACTICAL CONSIDERATIONS

Law firms should approach the annual reporting process as an opportunity to identify and remedy any areas of their risk assessments that may need to be updated due to changes in

circumstances during the reporting period (for example, if activities that were not being undertaken in the ordinary course of business now are or if there has been a change in relative risk – such as, where a predominantly domestic practice has seen a significant increase in the number of overseas clients).

Law firms should treat their risk assessments and compliance programmes as “living documents” and, for example, should ensure that the type of services that are anticipated to be provided to each client are known and understood. This will assist with annual report completion in future years and ensure that any significant changes in activities conducted in the ordinary course of business are promptly identified.

Firms that are registered as reporting entities will be aware of the requirement (*section 59(2)* of the AML/CFT Act) for biennial audit of their risk assessment and AML/CFT programmes (this is separate to the desk top and on site audits DIA as supervisor carries out). There is no statutory requirement to wait until the end of the 2-year cycle to conduct an audit, and firms that are reporting entities may wish to arrange for their audits to take place shortly after the filing of their first annual report. This would have the advantage of providing a third party “cross-check” to any areas of improvement or optimisation identified in the course of preparing the first annual report, as suggested above.

WHERE TO GO FOR ASSISTANCE

The DIA website has a page dedicated to information about the Annual reporting: www.dia.govt.nz/Annual-AML-CFT-Report. This includes FAQ’s about the process.

For general AML information see:

- » DIA’s website and general FAQ’s updated May 2019: www.dia.govt.nz/AML-CFT-Frequently-Asked-Questions-for-DIA-Reporting-Entities.
- » The Law Society’s website contains a section on AML/CFT including Practice Briefings, templates and articles see: www.lawsociety.org.nz/practice-resources/practice-areas/aml-cft.
- » The Law Society has a dedicated email address nzls.aml@lawsociety.org.nz. for general enquiries.

Lawyers can contact DIA as supervisor for technical support and guidance at Amlcft@dia.govt.nz.

NEW ZEALAND LAW SOCIETY

Law Society Building
26 Waring Taylor Street
WELLINGTON 6011

PO Box 5041
Lambton Quay
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to the legal profession. This briefing is intended to provide guidance and information on good practices. Some of the information and requirements may change over time and should be checked before any action is taken.

Updated July 2019