Regulatory Impact Statement: Regulatory Systems (Justice) Amendment Bill package

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing Cabinet's decision to approve drafting of the proposed Bills.
Advising agencies:	Ministry of Justice
Proposing Ministers:	Minister of Justice and Associate Minister of Justice
Date finalised:	19 June 2024

Problem Definition
Legislation affecting the Criminal Law (Anti-Money Laundering), Courts and Tribunals, and Occupational Regulation regulatory areas contains some inconsistencies, gaps, errors, and barriers to achieving the original policy intent. If left unaddressed, these legislative problems may accumulate and cause regulatory systems to operate at suboptimal levels and lead to unnecessary costs being imposed on regulators and regulated parties in those systems.

Executive Summary

The legislation governing the Criminal Law (Anti-Monday Laundering), Courts and Tribunals, and Occupational Regulation regulatory areas contain some inconsistencies, gaps, and errors, creating barriers to achieving the regulatory systems' original policy intent. If these issues are left to accumulate and the legislation not updated, the cumulative impact could cause ongoing inefficiencies, unwarranted costs and delays and confusion around the intent of legislation.

The Regulatory Systems (Justice) Amendment Bill (the RSAB) package will undertake repairs and maintenance to address these concerns. This proposed package consists of four associated Bills (the Bills):

- a Regulatory Systems (Courts Improvement) Amendment Bill;
- a Regulatory Systems (Tribunals) Amendment Bill;
- a Regulatory Systems (Occupational Regulation) Amendment Bill; and
- an Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Amendment Bill.

Across the four Bills, there are 74 proposed amendments to 20 Acts. Based on input and advice from the Treasury and the Ministry for Regulation, 23 of the 74 proposed amendments for inclusion in the Bill package are required to be addressed in this RIS. The remaining amendments are exempt from the regulatory impact analysis requirements.

The overarching policy objective of the Bills is to improve the effectiveness and efficiency of these regulatory systems. An option was deemed suitable if it met the following criteria broadly accepted as being suitable for inclusion in Regulatory Systems Amendment Bills (RSABs):

- it would make continuous improvements and repairs, or maintain the regulatory

54qq9y3jt5 2024-12-06 11:51:05

system (without major policy or system design changes, or significant financial implications);

- it could be progressed in the timeframes for the other amendments in the Bill; and
- it would be able to attract broad political support.

Section 4 identifies the preferred options for the 23 amendments, including the costs, benefits, risks and risk mitigations, nature of impacts on different population groups, and information on other options considered. The options were assessed against the criteria of **effectiveness** (how well it delivered the policy intent of the relevant legislative regime), **efficiency** (whether it reduced the time, effort or resources needed to deliver the policy intent) and **equity** (whether it delivers fair and reasonable outcomes).

The analysis did not consider:

- options that would require significant policy changes, have significant financial implications, or require major legislative reform that is beyond the scope of RSABs; or
- non-legislative options, as there were no feasible non-legislative options available for these 23 proposed amendments.

The development of these amendments included consultation with other agencies and key stakeholders (see paragraphs 24, 28, 34, 41, and 42 for full lists). Overall, the feedback received was supportive of the proposed amendments. Substantive issues raised by agencies and stakeholders have been addressed.

Limitations and Constraints on Analysis

Limitations and constraints include:

- *Criteria for inclusion in RSABs:* As noted above, the criteria applied to proposals in RSABs largely narrow the scope of proposals to those that are relatively minor in nature. The criteria do, however, leave some room for variation in the size and scale of proposed amendments. The assumption that they would all be relatively minor contributed to limited consultation timeframes and stakeholder engagement.
- *Timeframes and scale:* The Government intends to introduce this package of Bills before the end of the year. This timeframe and the large number of proposals progressed in this Bill package limited the Ministry's capacity to undergo thorough exploration of alternative legislative options for the proposed amendments. It also impacted the depth of the Ministry's analysis, including Te Tiriti o Waitangi/ Treaty of Waitangi analysis. The nature of RSABs ruled out proposals with significant constitutional implications.
- *Fiscal constraints:* Proposals with significant financial impacts were considered out of scope. Options with financial impacts that could not be absorbed within baselines have been ruled out.

54qq9y3jt5 2024-12-06 11:51:05

Responsible Manager(s) (completed by relevant manager)
 Kathy Brightwell Acting Deputy Secretary, Policy Group Ministry of Justice 19 June 2024

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry of Justice
Panel Assessment & Comment:	The Ministry of Justice Regulatory Impact Analysis Quality Assurance Panel has reviewed the Regulatory Impact Statement (RIS) - *Regulatory Systems (Justice) Amendment Bill package* - prepared by the Ministry of Justice and consider that the information and analysis summarised in the RIS **meets** the Quality Assurance criteria. The Panel considers that the information and analysis summarised in the RIS is sufficient for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper. The Panel notes the unique features of this RIS, in that it covers 23 minor and largely unrelated changes to multiple Acts. This means that, for each of the proposals, a full analysis of all relevant costs and benefits and specific monitoring and implementation arrangements, outside of the Ministry's general review processes applying for the different underlying Acts, was not necessary. Overall, the Panel is satisfied that the RIS shows clearly that the options have been carefully considered and analysed, and implementation risks identified and mitigated. The Panel is also satisfied that, due to the minor nature of the proposals in relation to the Courts and Tribunals, and Occupational Regulation regulatory areas, full public consultation was not required, and the panel considered that appropriate targeted stakeholder consultation was undertaken instead. The Panel notes that proposals related to the Anti-Money Laundering system were subject to public consultation through two recent reviews of the AML/CFT regime.

Glossary, Acronyms and Abbreviations

Acronym	Meaning
AML/CFT	Anti-Money Laundering and Countering Financing of Terrorism
AML/CFT Act	Anti-Money Laundering and Countering Financing of Terrorism Act 2009
CDA	Criminal Disclosure Act 2008
CIPU	Complaints, Investigation and Prosecution Unit
CPD	Continuing Professional Development
DIA	Department of Internal Affairs
FATF	Financial Action Task Force
FMA	Financial Markets Authority
LAP	Legal Aid Providers team
LCA	Lawyers and Conveyancers Act 2006
LCDT	Lawyers and Conveyancers Disciplinary Tribunal
LCRO	Legal Complaints Review Officer
LCS	Lawyers Complaints Service
MBIE	Ministry of Business, Innovation and Employment
MVDT	Motor Vehicle Disputes Tribunal
NZLS	New Zealand Law Society
NZPB	New Zealand Parole Board
NZSOC	New Zealand Society of Conveyancers
PSPLA	Private Security Personnel Licensing Authority
PSPPI Act	Private Security Personnel and Private Investigators Act 2010
RBNZ	Reserve Bank of New Zealand
REA	The Real Estate Agents Authority
REAA	Real Estate Agents Act 2008
READT	Real Estate Agents Disciplinary Tribunal
REINZ	Real Estate Institute New Zealand
RIS	Regulatory Impact Statement
RSAB	Regulatory Systems (Justice) Amendment Bill
RSABs	Regulatory Systems Amendment Bills

Contents

Regulatory Impact Statement: Regulatory Systems (Justice) Amendment Bill package 1
Coversheet 1
Glossary 4
Section 1: Diagnosing the policy problem....6
What is the context behind the policy problem and how is the status quo expected to develop? 6
What is the policy problem or opportunity? 7
What objectives are sought in relation to the policy problem?....7
Section 2: Deciding upon an option to address the policy problem 8
What criteria will be used to compare options to the status quo? 8
What scope will options be considered within?....8
How will the outcomes of the chosen option be monitored, evaluated, and reviewed? 9
Section 3: Background to Regulatory Areas....10
Courts 10
Tribunals 10
Anti-Money Laundering and Countering Financing of Terrorism 11
Occupational Regulation 13
Section 4: What options are being considered?....14
Part I: Courts....14
Criminal Disclosure Act 2008....14
Part II – Tribunals....16
Private Security Personnel and Private Investigators Act 2010 16
Part III: Anti-Money Laundering and Countering Financing of Terrorism 19
Anti-Money Laundering and Countering Financing of Terrorism Act 2009 19
Part IV: Occupational Regulation 34
Lawyers and Conveyancers Act 2006 34
Real Estate Agents Act 2008....39

54qq9y3jt5 2024-12-06 11:51:05

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The Ministry of Justice (the Ministry) is responsible for 53 regulatory systems which are grouped into seven regulatory areas. Stewardship of these systems is an obligation under the Public Service Act 2020.

2. The Ministry's Policy Group collects and assesses information from the Judiciary, the wider Ministry, and stakeholders on inconsistencies, inefficiencies, gaps, or errors in the legislation governing regulatory areas, as part of these stewardship obligations.

3. The legislation in the Criminal Law (Anti-Money Laundering), Courts and Tribunals, and Occupational Regulation regulatory areas contain such issues, many of which are creating barriers to achieving the regulatory systems' original policy intent. If these issues are left to accumulate and the legislation not updated, the cumulative impact of these issues could cause ongoing inefficiencies, unwarranted costs and delays, and confusion around the intent of legislation.

4. Within these regulatory areas we have identified issues in the following Acts:

Courts
- Bail Act 2000
- Care of Children Act 2004
- Coroners Act 2006
- Courts Security Act 1999
- Criminal Disclosure Act 2008
- Criminal Procedure (Mentally Impaired Persons) Act 2003
- District Courts Act 2016
- Employment Relations Act 2000
- Juries Act 1981
- Protection of Personal and Property Rights Act 1988
- Senior Courts Act 2016

Tribunals
- Disputes Tribunal Act 1988
- Motor Vehicle Sales Act 2003
- Private Security Personnel and Private Investigators Act 2010
- Remuneration Authority Act 1977
- Unit Titles Act 2010

Criminal Law (Anti-Money Laundering)
- Anti-Money Laundering and Countering Financing of Terrorism Act 2009

Occupational Regulation
- Lawyers and Conveyancers Act 2006
- Real Estate Agents Act 2008
- Prostitution Reform Act 2003

5. The status quo is continuing to operate these regulatory areas without addressing the issues we have identified within the Acts above. Opportunities to resolve these issues may eventually come via inclusion in bills progressing larger amendments to a specific Act. Many years can, however, elapse between Act-specific amendment bills.

What is the policy problem or opportunity?

6. Section 4 provides detailed information on the issues identified in the Criminal Law (Anti-Money Laundering), Courts and Tribunals, and Occupational Regulation regulatory areas. If these issues are left unaddressed, the regulatory systems will continue to operate at suboptimal levels and impose unnecessary costs on regulators and regulated parties. The root cause of these problems is generally that the design and/or implementation of existing regulation does not support the original policy intent.

7. The Treasury paper "Starting out with regulatory stewardship: A resource" identifies that investing in regulatory stewardship is a way for agencies to identify and address problems and risks before they become full-blown failures.[1] Regulatory Systems Amendment Bills (RSABs) enable us to undertake the necessary repairs and improvements to the legislation governing these regulatory areas. These bills are supported by Standing Order 267, which enables an omnibus bill that amends more than one Act to be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

8. The RSAB package takes advantage of this opportunity to improve these regulatory systems. The proposed package consists of four associated Bills (the Bills):
   - the Regulatory Systems (Courts Improvement) Amendment Bill
   - the Regulatory Systems (Tribunals) Amendment Bill
   - the Regulatory Systems (Occupational Regulation) Amendment Bill
   - the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Amendment Bill.

9. The Treasury and the Ministry for Regulation assessed 23 of the 74 proposed amendments for inclusion in the RSAB package as requiring a RIS. This RIS includes:
   - One of the 22 court-related proposed amendments
   - Two of the 10 tribunals-related proposed amendments
   - Nine of the 17 occupational regulation proposed amendments; and
   - 11 of the 25 Anti-Money Laundering proposed amendments.

What objectives are sought in relation to the policy problem?

10. The overarching policy objective of the package of bills is to improve the effectiveness and efficiency of the regulatory systems governed by the Acts being amended.

11. The objectives of the courts-related proposed amendments are to clarify roles, improve court timeliness, address legislative inconsistencies, relieve administrative burdens, address gaps, and resolve anomalies. The objective of the one courts-related amendment included in this RIS is to strengthen the protections for witnesses' and informants' safety while enabling defendants to maintain fair trial rights.

12. The tribunals-related proposed amendments will improve the effectiveness and efficiency of these tribunals and quasi-judicial bodies, including to clarify powers and

[1] See [Starting out with regulatory stewardship: A resource - December 2022 (treasury.govt.nz)](), p 7.

functions, facilitate access to justice, and address regulatory gaps and inconsistencies. The objective of the two tribunals-related proposed amendments in this RIS is to clarify the powers and functions of the CIPU, established by the Private Security Personnel and Private Investigators Act 2010.

13. The objective of the proposed occupational regulation amendments is to enable these regimes to better protect consumers while minimising compliance costs. For example:
    - amendments to the Lawyers and Conveyancers Act will enable more efficient utilisation of resources to resolve complaints faster, and strengthen enforceability under the Act; and
    - amendments to the real estate agents' regime will reduce the compliance burden on real estate agents and provide the regulator with powers to better protect consumers.

14. The objective of proposals to amend the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) is to clarify the roles of entities in the system, improve information sharing between agencies, ensure improved compliance with international obligations such as the Financial Action Task Force (FATF) standards, and support effective and consistent supervision of the system.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

15. We have used the following criteria to assess the options:

Effectiveness: which assesses the ability of the option to deliver to the original policy intent of the relevant legislative regime. Consideration of effectiveness includes the interpreted or implied meaning of legislation in relation to its intent. For example, does the option carry out the original aim of the legislation against its original specifications?

Efficiency: which assesses how the option will affect the usage of resources, including time and effort to achieve the policy intent. This can be measured through the minimisation of the effort required to meet the objectives of the policy and the time and staff resourcing required by the participating parties to achieve the original intent of the legislation. For example, making administration less onerous for parties.

Equity: which refers to the degree in which a fair and reasonable outcome could be achieved by the option. This measures the distribution of cost across the participants, such as the degree of undue burden and/or harm placed on participants and/or a group of people when compared with other participants.

What scope will options be considered within?

16. An option was deemed suitable if it:
    - would make continuous improvements and repairs, or maintain the regulatory system (without major policy or system design changes, or significant financial implications);
    - could be progressed in the timeframes for the other amendments in the Bill;

54qq9y3jt5 2024-12-06 11:51:05

and

- would attract broad political support.

17. We have not considered options that would require significant policy changes or legislative reform, as these are beyond the scope of RSABs.

18. Where appropriate, we have also considered non-legislative options, and where these options were viable, they have been pursued rather than legislative changes. For the issues considered in this RIS, there were no feasible non-legislative options available.

How will the outcomes of the chosen option be monitored, evaluated, and reviewed?

19. Each proposed amendment included in this RIS represents clarifications or adjustments to existing procedures and legislative frameworks. The Ministry considers these changes to be non-contentious. Options considered in this RIS are not expected to result in significant operational changes for the related regulatory systems.

20. The outcomes of the chosen options for the courts, tribunals, and occupational regulation proposals will be monitored and evaluated in a number of ways, including:

    - Regular meetings and communications between the Ministry, the Judiciary, Justice-sector agencies, professional associations, tribunal and quasi-judicial body chairs, and community providers.
        - These meetings will generate information about the implementation of the proposed amendments and their impacts on the effectiveness and efficiency of courts, tribunals, quasi-judicial bodies, and the occupational regulation regime.
        - Examples of relevant stakeholders include but are not limited to: the New Zealand Police, Department of Corrections, Oranga Tamariki – Ministry for Children, New Zealand Law Society (NZLS), New Zealand Parole Board (NZPB), Legal Complaints Review Officer (LCRO), Private Security Personnel Licensing Authority (PSPLA), the Complaints, Investigation and Prosecution Unit (CIPU) in the Department of Internal Affairs (DIA), Disputes Tribunal referees, Tenancy Tribunal adjudicators, New Zealand Society of Conveyancers (NZSOC), REA, and the Real Estate Institute New Zealand (REINZ).
    - Routine data collection by the Ministry on courts and tribunals, which are analysed on a monthly, quarterly, and/or yearly basis.

21. The Criminal Law (Anti-Money Laundering) regulatory area has a well-established monitoring and evaluation regime that will generate feedback on the effectiveness of the proposed amendments in this Bill. The AML/CFT Act names three supervising agencies (i.e., the Reserve Bank of New Zealand (RBNZ), Financial Markets Authority (FMA), and DIA) to oversee compliance with this regime. In addition, the intergovernmental Financial Action Task Force (FATF) conducts regular assessments of countries. The Ministry is in regular contact with these agencies.

Section 3: Background to Regulatory Areas

Courts

22. The courts regulatory system gives effect to fundamental constitutional principles, like the rule of law and the separation of powers by providing the operating framework for the independence, jurisdiction, procedures and powers of courts and tribunals. This helps to provide justice, keep people safe, protect fair trial rights, and enable citizens and businesses to participate in our society and economy with confidence that laws and contracts will be enforced without interference.

23. The 22 courts-related amendment proposals in the wider Bill package support the Government's priority of improving court timeliness and access to justice and align with the wider Justice Sector's Timely Justice programme. The amendments will make improvements across multiple jurisdictions but are predominantly focused on the criminal jurisdiction which is facing particular timeliness issues.

24. On the courts-related proposals of relevance to them, the Judiciary and the following agencies and key stakeholders were consulted: Crown Law Office, Department of Corrections, Ministry of Health, Te Puni Kōkiri, Te Arawhiti, Police, Oranga Tamariki - Ministry for Children, Whaikaha - Ministry for Disabled People, Ministry of Business, Innovation and Employment, Public Defence Service, Chief Victims Advisor, Office of the Privacy Commissioner, New Zealand Law Society, New Zealand Bar Association, Criminal Bar Association, Defence Lawyers Association of New Zealand, Māori Law Society, and the Law Association. All government prosecuting agencies were also consulted on the criminal disclosure proposal included in this RIS.[2] Not all agencies and stakeholders responded, but overall, the feedback we received was supportive of the proposed amendment. Substantive issues raised by agencies and stakeholders have been addressed.

Tribunals

25. Tribunals and quasi-judicial bodies support the rule of law and ensure access to justice in specific contexts by providing specialised and accessible methods for resolving disputes without involving a court. Current Government priorities are to improve access to justice and experiences for participants in tribunals.

26. The ten tribunals-related amendments relate to legislation impacting three tribunals and two quasi-judicial bodies: the Disputes Tribunal, the Motor Vehicle Disputes Tribunal (MVDT), the Tenancy Tribunal, the PSPLA, and the New Zealand Parole Board (NZPB).

---

[2] List of government prosecution agencies: the Accident Compensation Corporation, Civil Aviation Authority, Commerce Commission, New Zealand Customs Service, Department of Corrections, Electricity authority, Energy Efficient and Conservation Authority, Environmental Protection Authority, Earthquake Commission, Fire and Emergency, Financial Markets Authority, Ministry of Health, Heritage New Zealand Pouhere Taonga, Kāinga Ora – Homes and Communities, Health Quality and Safety Commission, Inland Revenue Department, Land Information New Zealand, Ministry for Culture and Heritage, Ministry for the Environment, Ministry of Education, Ministry of Primary Industries, Ministry of Social Development, New Zealand Defence Force, New Zealand Qualifications Authority, New Zealand Transport Agency, Walking Access Commission, Royal Bank of New Zealand, Real Estates Agents Authority, Serious Fraud Office, Statistics New Zealand, Takeovers Panel, Tumata Arowai, Ministry of Transport, WorkSafe, Ministry of Business Innovation and Employment, Maritime New Zealand, Oranga Tamariki, Crown Law, and the Public Defense Service.

- The Disputes Tribunal provides an inexpensive, informal, private, and fast way of resolving a wide range of civil disputes, up to a value of $30,000.
- The MVDT hears disputes about vehicle sales made by registered dealers, where the claim is up to a value of $100,000 (or more with written consent of both parties).
- The Tenancy Tribunal hears disputes between landlords and tenants of residential properties who have not been able to reach agreement through mediation provided by the Ministry of Business, Innovation and Employment (MBIE). It also hears disputes relating to unit title developments, such as disputes about unpaid levies, up to a value of $100,000.
- The PSPLA is responsible for overseeing the licencing system for people working in the private security industry, receiving complaints, and exercising disciplinary functions.
- The NZPB is responsible for considering long term offenders for parole, or release on compassionate grounds.

27. The two tribunals-related amendments addressed in this RIS affect the PSPLA. The amendments will clarify the statutory role of CIPU and establish new information gathering powers to improve performance of CIPU functions under the PSPPI Act.

28. The development of all tribunals-related amendments in the Bill included consultation with other agencies and key stakeholders. Specifically, Ministry officials consulted with Housing and Urban Development, Inland Revenue Department, MBIE, Accident Compensation Corporation, NZPB, the Remuneration Authority, Community Law Centres o Aotearoa, NZLS, LCRO, Citizens Advice Bureau, the PSPLA, the CIPU in DIA, Police, Disputes Tribunal referees, and Tenancy Tribunal adjudicators. Overall, the feedback we received was supportive of the proposed amendments. Substantive issues raised by agencies have been addressed.

Criminal Law (Anti-Money Laundering)

29. Of the 25 amendments proposed to the Criminal Law (Anti-Money Laundering) regulatory area, 11 of these are addressed in this RIS.

30. This regulatory area improves New Zealand's ability to tackle money laundering and terrorism financing. To achieve this, the AML/CFT Act sets up a system of requirements for certain businesses to comply with, designed to help protect businesses and make it harder for criminals to profit from and fund illegal activity.

31. The aim of the AML/CFT Act is to: detect and deter money laundering and the financing of terrorism; contribute to public confidence in the financial system; facilitate co-operation amongst agencies; and maintain and enhance New Zealand's international reputation.

Three supervising agencies monitor and enforce system compliance

32. Under the AML/CFT Act, three supervising agencies (the AML/CFT supervisors) supervise compliance with requirements under the AML/CFT Act:

- RBNZ supervises banks, life insurers and non-bank deposit takers
- the FMA supervises issuers of securities, trustee companies, futures dealers,

collective investment schemes, brokers and financial advisers, and

- the DIA supervises casinos, non-deposit-taking lenders, money changers and any other financial institutions not supervised by the RBNZ or the FMA, as well as designated, non-financial businesses or professions and high-value dealers.

33. Supervisors have three core supervisory tools:

- producing guidance, education, and engagement to ensure businesses understand their obligations
- conducting desk-based reviews and onsite inspections to assess compliance, and
- taking enforcement action against businesses that fail to comply.

International standards applied to New Zealand

34. New Zealand is also subject to international AML/CFT standards. The FATF 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. The FATF also conducts assessments of countries to ascertain their compliance with the FATF standards, and the degree to which those laws are effective. It is therefore important that New Zealand's AML/CFT regime implements a risk-based system, which supports system effectiveness and efficiency, while also ensuring our compliance with the FATF standards.

Proposed amendments are based on the recommendations of two recent system reviews

35. The 25 proposed amendments in the RSAB package are the result of two recent substantive reviews of the AML/CFT regime. The first review was New Zealand's assessment by FATF in 2019-2021[3], and the second was a statutory review of the AML/CFT Act, undertaken by the Ministry of Justice and concluded in 2022[4]. These reviews broadly concluded that more can be done to make our AML/CFT system more risk-based, effective, and efficient. The statutory review contained over 200 recommendations to reduce compliance costs for business, while also making the regime more efficient and effective at addressing organised crime.

36. All 25 proposals included as part of this Bill are recommendations from the statutory review and, as such, are supported by the evidence presented at the time. Further the review recommendations were informed by extensive internal and external consultation. There was public consultation on the review itself, and the recommendations were drafted with all government agencies with an interest in AML/CFT. Agencies included the AML/CFT supervisors, NZ Police, NZ Customs Service, MBIE, Ministry of Foreign Affairs and Trade, as well as a group of key industry stakeholders from a wide variety of sectors.

[3] New Zealand's measures to combat money laundering and terrorist financing (fatf-gafi.org)
[4] Report on the review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (www.parliament.nz)

Occupational Regulation

37. Occupational regulation ensures certain services, particularly those at high risk of causing harm to consumers and the public, are performed to a reasonable standard of care and skill. The Ministry administers legislation that regulates a wide range of occupations.

38. The RSAB includes 17 amendments to three of these occupational regulation regimes as set out in the Lawyers and Conveyancers Act 2006, Real Estate Agents Act 2008, and Prostitution Reform Act 2003. This RIS includes nine of these amendments, which affect the Lawyers and Conveyances and Real Estate Agents regimes.

39. The Lawyers and Conveyancers Act 2006 regulates both the legal and conveyancing professions. The regime seeks to uphold the rule of law by maintaining public confidence in the provision of legal services and protecting the consumers of legal and conveyancing services.

40. The Real Estate Agents Act 2008 promotes and protects the interests of consumers in real estate transactions and promotes public confidence in the performance of real estate agents and agencies. This is done by regulating agents, branch managers and salespeople; raising industry standards; and providing accountability through a disciplinary process that is independent, transparent, and effective.

41. The Prostitution Reform Act 2003 established a regime to regulate prostitution in New Zealand, following decriminalisation of sex work in 2003. The regime seeks both to protect sex workers and ensure that any businesses established protect the health and safety of both their employees and customers. This amendment is, however, exempt from providing a RIA assessment and is not analysed further.

42. The 17 occupational regulation proposals were developed with input from other government agencies, relevant occupational regulators, and relevant professional bodies. Specific amendments to the Lawyers and Conveyancers Act were consulted on with NZLS and the legal profession, ANZ, BNZ, Kiwibank, ASB, Westpac, NZSOC, and (LCRO.

43. The amendments to the Real Estate Agents Act were consulted on with the Ministry of Housing and Urban Development, REA, and REINZ. With approval from the Associate Minister of Justice, officials consulted with REINZ's real estate membership, who were largely supportive of the proposed amendments to the Real Estate Agents Act 2008.

44. The amendments to the Prostitution Reform Act 2003 were consulted on with MBIE and the Auckland District Court.

45. The pace at which we undertook development of these amendments did not allow for wider consultation to identify any significant Māori interest in the proposals. However, as these are proposed technical amendments to make the relevant regulatory systems more effective, rather than changes to the overall policy framework underpinning each system, we do not believe that these proposals will result in significant impacts on Māori interests. The main impacts of the occupational regulation amendments are likely to be on the relevant regulators and members of the regulated professions.

46. Amendments to all three regimes were informed by regulatory stewardship practices, with most issues identified through the Ministry's relationships and regular communication with regulators about the operation and effectiveness of the relevant regimes.

54qq9y3jt5 2024-12-06 11:51:05

Section 4: What options are being considered?

Part I: Courts

Criminal Disclosure Act 2008

Clarify that unless the information is relevant to the defendant's case, information that may lead to identification of where a witness or informant works should not be disclosed except with leave of the court

<table>
<tr><td>Proposal context</td><td colspan="2">Disclosure of a witness's or informant's workplace information, as part of disclosing information to the defendant to ensure they have the information needed to defend their case, has the potential to endanger the safety of witnesses and informants. While prosecutors can withhold information that may lead to the identification of where a witness or informant lives, or if the information may endanger the safety of any person, it is up to the prosecutor to assess if workplace information should be disclosed which creates risk that witness or informant safety may inadvertently be compromised. The policy intent is to balance the fair, effective and efficient disclosure of relevant information against the need to protect the privacy and safety of witness and informant information being disclosed.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The Criminal Disclosure Act 2008 (CDA) places obligations on the prosecutor to disclose relevant information to the defence so the defendant can decide how to plead or defend their case. There are, however, a range of situations where relevant information can be withheld under the CDA. For example, it is the responsibility of the prosecutor to identify and withhold information that may endanger the safety of a witness or informant (s16(1)(a)). The prosecution can only disclose information that may lead to the identification of where a witness or informant lives with leave of the court, unless it is necessary to disclose the information to ensure the defendant is fully and fairly informed of the charge (s17).

<u>Option 2:</u> Amend the Criminal Disclosure Act 2008 to clarify that information that identifies (or may lead to the identification of) the address of the place where the witness or informant works cannot be disclosed to the defendant, except with leave of the court, unless the information is relevant to the charge or the case against the defendant.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

The status quo is effective at ensuring the defendant receives the information needed to protect their fair trial rights. The status quo relies on the prosecutor to identify that disclosing workplace information about a witness or informant may risk a witness's or informants' safety (for example, if it is contained in a Police officer's job sheet or notes).

<u>Efficiency:</u> 0

The prosecutor is responsible for assessing whether the information about the workplace address of a witness or informant is relevant, and for deciding not to disclose the information if it may endanger the safety of a witness or informant.

<u>Equity:</u> 0

The status quo largely achieves fair outcomes for the prosecution and defendants. The CDA has protections built into it to safeguard public safety and privacy, including of witnesses and informants, who are not parties to the case. However, in 2020, there was a complaint to the Office of the Privacy Commissioner (OPC) about the disclosure of workplace details of a witness to a defendant under the Criminal Disclosure Act.[5] The witness felt this was a breach of privacy. OPC's investigation concluded that the Criminal Disclosure Act overrode Principle 11 of the Privacy Act (which limits the disclosure of personal information). They did, however, conclude that "releasing workplace details could create an avenue for contact with a witness, and more care would have been desirable before releasing the information."</td><td>Option 2

<u>Effectiveness:</u> +

Option 2 would improve the effectiveness of the CDA by ensuring that decision-makers consider the risk of disclosing a workplace address, improving the safety of witnesses and defendants while still ensuring defendants can access relevant information.

<u>Efficiency:</u> 0

Option 2 may be slightly less efficient for defendants. This is because restricting the disclosure of information that identifies the address of the place where the witness or informant works, except with leave of the court, creates a slight risk of a small increase in court events. We expect this risk to be low and we have also mitigated it by enabling this information to be disclosed without leave of the court if it is relevant to the charge or the case against the defendant.

Option 2 would also make the disclosure process simpler and slightly more efficient for prosecutors. This is because it makes it easier for them to ensure witness and informant safety by withholding witness or informant workplace addresses unless relevant to the charge or the case. Rather than assessing if workplace information should not be disclosed because of any of the reasons set out in the CDA, they would only need to consider whether workplace information is relevant to the charge or case against the defendant, otherwise it should be redacted.

<u>Equity:</u> +

Option 2 will strengthen the protections for witnesses' and informants' safety, while maintaining fair trial rights by ensuring defendants are provided with the information if it is relevant to their case.</td></tr>
</table>

[5] Office of the Privacy Commissioner | Case note 292364 [2020] NZPrivCmr 3: Police defend release of woman's information to accused men

54qq9y3jt5 2024-12-06 11:51:05

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2 will achieve a better balance in the criminal disclosure regime between ensuring fair trial rights are maintained and defendants are provided with relevant information, while balancing this with other considerations such as safety and privacy of other persons.
What are the marginal costs and benefits of the option?	Costs: Option 2 may result in a small increase in the number of court events, if defendants seek the leave of the court for workplace addresses of witnesses or informants to be disclosed to them. The risk of increased court events is low because the information will be disclosed to defendants if it is relevant to the charge or the case against the defendant. Benefits: Option 2 will have low marginal social benefits of increased safety for witnesses and informants.
How will the new arrangements be implemented?	To implement this proposal, some internal guidance documentation will need updating at New Zealand Police. The Ministry will keep other government prosecuting agencies informed so that they can update any systems or processes. Legal professional groups will also be informed by the Ministry so that lawyers representing defendants know of the change.

Part II – Tribunals

Private Security Personnel and Private Investigators Act 2010

Investigation as a function of the Complaints, Investigation and Prosecution Unit

<table>
<tr><td>Proposal context</td><td colspan="2">The Private Security Personnel and Private Investigators Act 2010 (PSPPI Act) makes the PSPLA responsible for overseeing the licencing system for people working in the industry, receiving complaints, and exercising disciplinary functions. A dedicated body, CIPU has several statutory functions including preparing reports on licensing applications and complaints when asked by the PSPLA and bringing prosecutions for contraventions of the PSPPI Act and regulations. Despite the CIPU needing to investigate to fulfil its obligations under the PSPPI Act, investigation is not explicitly set out as one of its statutory functions (in section 101). Given the name of the CIPU and the necessity of investigation to its functions this was likely due to an oversight. This lack of a specific investigatory function in the PSPPI Act has led to uncertainty for the CIPU.

The policy intent is to resolve any ambiguity around the statutory role of the CIPU by explicitly making investigation one of its statutory functions.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The CIPU's investigative function remains implied rather than explicit in legislation, creating uncertainty about the exact nature and limitations of its role.

<u>Option 2:</u> Amend section 101 of the PSPPI Act to explicitly include investigation as a function of the CIPU to give it the proper legal foundation for this function, providing surety and appropriate emphasis and oversight.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

This option does not change the status quo, and therefore does not improve the effectiveness of the regulatory system. The CIPU continues to be uncertain about its statutory functions despite the original policy intent that investigation was a key function of the CIPU.

<u>Efficiency:</u> 0

This option does not change the status quo, and therefore does not improve the efficiency of the regulatory system.

<u>Equity:</u> 0

This option does not change the status quo and therefore does not improve the equity of the regulated system. Regulated parties are still investigated by the CIPU.</td><td>Option 2

<u>Effectiveness:</u> +

This option corrects the omission of this specific function when the PSPPI Act was originally introduced, ensuring alignment and certainty between the CIPU's functions in s 101 and the activities it must carry out under the PSPPI Act. A separate proposal addresses information gathering powers for the CIPU, in order to better enable them to effectively carry out their statutory function under the PSPPI Act.

<u>Efficiency:</u> +

This option will lead to absolute certainty about the CIPU's functions as the investigative and prosecutorial body in the regulatory system, which will flow through to all aspects of how it carries out its role, and also provides this extra level of surety to the PSPLA.

<u>Equity:</u> 0

There is unlikely to be any impact on those regulated under the private security regulatory system.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 corrects an oversight and will best address the issue, by providing certainty about the CIPU's statutory functions.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> We do not anticipate any new costs to the Ministry or DIA, which is responsible for hosting the CIPU, as a result of this option.

<u>Benefits:</u> Benefits will include a slightly more efficient regulatory system, with the CIPU clear on its role within it.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">No implementation will be required, as the preferred option will align the CIPU's statutory functions with its current activities.</td></tr>
</table>

54qq9y3jt5 2024-12-06 11:51:05

Information-gathering power

<table>
<tr><td>Proposal context</td><td colspan="2">The CIPU is very limited in the types of information it can request from regulated and third parties (i.e., banks), and the methods of information-gathering it can use under the PSPPI Act to carry out its functions. When investigating, it makes requests either by consent or under an exception in the Privacy Act 2020 that allows for disclosure of information (for example to enforce the law), but often has difficulty obtaining sufficient evidence. This impacts its ability to obtain information both from regulated parties under the PSPPI Act, and third parties. Approximately 80% of the CIPU's cases are impacted by this limitation, particularly in its investigation of unlicenced and uncertified people subject to the regime. In these cases, financial records are crucial evidence for establishing the full extent of a person's alleged offending.

As a result, the CIPU has a reduced ability to detect and deter people from acting as unlicensed or uncertified operators, keep bad operators from obtaining licences and certificates, prosecute breaches and fulfil an objective of the PSPPI Act to protect the public. This has a flow on impact on the PSPLA, because it relies on the CIPU to help it fulfil its own licencing and disciplinary functions under the PSPPI Act. The limitation impacts the CIPU's decision-making, charge selection, prosecution decisions, and the judicial sentencing decisions in the courts. Some offenders may not be held to account or may be given lighter sentences than they would otherwise receive if sufficient evidence were obtained.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The CIPU continues to rely on information-gathering by consent and by making requests under specific exemptions under the Privacy Act. This negatively affects both the PSPLA and the CIPU in performing their functions and erodes the objectives of the PSPPI Act from being achieved.

<u>Option 2:</u> Create a new information-gathering power for the CIPU. This enables it to require documents and information by written notice from both those subject to the licensing regime, and third parties, if necessary to fulfil its functions. The provision would include an offence for failure to comply with a notice without reasonable excuse. The offence of failure to comply with a notice would be heard in the District Court, with right of appeal to the High Court. The penalty would be a maximum fine of $10,000 for an individual and $20,000 for a body corporate. The limit for an individual would align with maximum fines in other occupational regulatory regimes for similar offending, such as under s 148 of the Real Estate Agents Act 2008 and s 99 of the Plumbers, Gasfitters and Drainlayers Act 2006. The limit for a body corporate is consistent with other offences in the PSPPI Act.

Introducing an information gathering power has been identified as necessary for the CIPU to effectively fulfil its statutory obligations. The proposed information gathering power appropriately balances the invasiveness of the search power with the harm caused by offending and failing to meet licensing obligations under the PSPPI Act and will be framed around the threshold of 'reasonable grounds to suspect'. The proposed power will sit with the chief investigator of the CIPU, or a person authorised by the chief investigator ensuring that the power is exercised with appropriate expertise and authority.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

The CIPU is unable to gather sufficient information required to fulfil its functions, including in relation to unlicensed and uncertified operators. This also has a significantly detrimental impact on the quality of information available to the PSPLA from the CIPU, to make decisions on licensing and disciplinary action.

<u>Efficiency:</u> 0

The CIPU is only able to obtain information by consent, or by making requests under exceptions under the Privacy Act 2020. Time and resourcing is required to clarify to third parties the specific exception within which the information is being sought. Third parties can spend effort in checking the information request from the CIPU is appropriate.

<u>Equity:</u> 0

Unlicensed and uncertified trading may go on without detection and punishment. Third parties' responses to requests by consent and under the Privacy Act may effectively determine the course of an investigation or whether there is sufficient evidence for a prosecution to be brought. This leads to disparity in how different conduct can be investigated and punished, and disparity in treating those under investigation.</td><td>Option 2

<u>Effectiveness:</u> ++

CIPU can improve the performance of its functions and assist the PSPLA to better regulate the private security sector. This supports the PSPPI Act's key policy objectives, ensuring people are suitably qualified to provide services and do not behave in ways contrary to the public interest.

<u>Efficiency:</u> ++

The CIPU has a clear legal basis for requesting information, with appropriate limitations and safeguards. A statutory requirement to produce information reduces costs for third parties who may otherwise seek legal advice on a request by the CIPU for information under the Privacy Act. The CIPU provides improved information to the PSPLA for its decision-making, and the CIPU's prosecution decisions are backed up by solid evidential information.

<u>Equity:</u> +

Soundly based and more consistent enforcement decisions by the CIPU and the PSPLA mean fairer and more reasonable outcomes for all regulated parties or people who offend under the PSPPI Act. Requests for information that already exists in documentary form do not engage the privilege against self-incrimination.</td></tr>
</table>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2 addresses the issues arising from insufficient information-gathering powers for the CIPU. It provides a far greater ability for the CIPU to detect and deter those acting in breach of the PSPPI. If no information-gathering power is provided, the CIPU will remain much more limited in how it can investigate wrongdoing, including into those operating as private security personnel without the required licenses and certificates. Unlicensed and uncertified operators present a public safety risk.
What are the marginal costs and benefits of the option?	Costs: . The CIPU does not anticipate any increased costs associated with issuing notices under the new power, as it already does so under the Privacy Act. The CIPU commences about 5 prosecutions each year. We estimate that the new information gathering power and related offence will not require additional judicial resource. The proposal for a new offence is not likely to result in increased court cases, therefore no additional costs are anticipated for the Ministry of Justice. Benefits: Provides greater ability for the CIPU to provide reporting to the PSPLA, investigate potential breaches of the PSPPI Act and bring prosecutions. This is expected to lead to better enforcement decision-making by the CIPU and the PSPLA and have associated benefits for public safety, a key objective of the PSPPI Act.
How will the new arrangements be implemented?	This change would be implemented by the CIPU. Training will be provided to investigators in-house at DIA and will be prepared by senior CIPU investigators in collaboration with in-house legal advisors. Implementation impacts for DIA are anticipated to be low.

Part III: Anti-Money Laundering and Countering Financing of Terrorism

Anti-Money Laundering and Countering Financing of Terrorism Act 2009

Information Sharing (and use of information) amendments

<table>
<tr><td>Proposal context</td><td colspan="2">The 2022 Statutory Review found that clarification of information sharing provisions and provisions relating to use of information are required to address anomalies in the AML/CT regime. Current provisions create situations where some personal information can be shared between agencies for law enforcement purposes but not used internally with DIA for the same purpose. In addition, the FATF found that the purposes for which supervisors may request information for overseas counterparts should be more explicit.

The Office of the Privacy Commissioner was consulted during the statutory review and the policy development and confirmed that the changes clarify, rather than make changes to, the status quo and/or are within the scope of the privacy principles.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u>
There is an <u>implicit</u> provision for the AML/CFT supervisors to conduct enquiries on behalf of foreign counterparts; however the lack of explicit clarity creates confusion.

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 <u>non-personal</u> AML/CFT information internally for enforcement of the Gambling Act, the Racing Act and the Charities Act; and to share <u>personal</u> 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.

<u>Option 2:</u> Amend the AML/CFT Act to:
• clarify that the DIA can share information internally across its regulatory law enforcement functions (such as charities services, gambling or the investigation of child sexual abuse imagery or spam) for law enforcement purposes on the same basis it is able to share information with other government agencies.
• clarify existing power that allows AML/CFT supervisors to initiate and act on requests from overseas counterparts to clarify this includes to conduct enquiries on behalf of overseas counterparts.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
-- much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)
<u>Effectiveness:</u> 0

This option does not change the status quo. Current information sharing provisions under the AML/CFT Act are not up to date. They also do not fully give effect to the AML/CFT Act's purpose which is to allow the collaboration with law enforcement agencies.

<u>Efficiency:</u> 0

This option does not change the status quo and therefore will not deliver any efficiency. Current information sharing arrangements under the AML/CFT Act continue to operate inefficiently.

<u>Equity:</u> 0

This option does not change the status quo which means there is no change to impact equity.</td><td>Option 2
<u>Effectiveness:</u> +

These small proposed amendments to the information sharing arrangements under the AML/CFT Act will provide AML/CFT supervisors with greater clarity about when information can be shared. This will assist to increase the effectiveness of the AML/CFT regime, as certain information collected for AML/CFT purposes is able to be confidently and appropriately shared and used for further law enforcement purposes (this has been confirmed as consistent with the information sharing principles of the Privacy Act.

<u>Efficiency:</u> +

As outlined above, the suggested amendments will clarify existing information sharing provisions under the AML/CFT Act and support law enforcement. Clarification that the DIA is able to share certain information internally, as well as externally, recognises the diverse range of law enforcement functions that the DIA performs and will contribute to greater efficiency within the DIA.

Clarification that the AML/CFT supervisors are able to conduct enquiries on behalf of overseas counterparts will allow greater international collaboration and will lead to greater efficiencies.

Industry and the general public can have greater confidence that information provided to one part of the system will be shared appropriately and contribute to overall system efficiency and effectiveness.

<u>Equity:</u> 0</td></tr>
</table>

54qq9y3jt5 2024-12-06 11:51:05

		Not applicable - the main benefits of option two are in effectiveness and efficiency.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2 will clarify existing information sharing arrangements under the AML/CFT Act, assisting to better achieve the purposes of the AML/CFT Act (including detecting and deterring money laundering and financing of terrorism, and facilitating co-operation with between law enforcement agencies.	
What are the marginal costs and benefits of the option?	Costs: there are no costs to the Ministry or any other government agency in this option. These minor amendments will not impact on the cost of AML/CFT compliance for industry. Benefits: greater clarity of existing law enforcement provisions, more efficient information sharing between and within agencies.	
How will the new arrangements be implemented?	The new amendments will be implemented with partner agencies involved in the administration and supervision of the AML/CFT Act, and law enforcement agencies including FIU and Customs. These changes will require minor change to internal practice documentation and implementation will mostly streamline existing practice.	

54qq9y3jt5 2024-12-06 11:51:05

Amend the record keeping provisions in the AML/CFT Act to improve clarity and efficiency for businesses

<table>
<tr><td>Proposal context</td><td colspan="2">The 2022 Statutory Review recommended that record keeping obligations should be clarified by specifying a timeframe within which those records must be obtainable.

The AML/CFT Act requires businesses subject to requirements to retain certain records. The AML/CFT Act specifies that records must be “in a form” that means they are “immediately available“ to an AML/CFT supervisor if requested. This provision implements an FATF obligation to ensure that records are available “swiftly”.

During the Statutory Review, industry submitted that the requirement for records to be “in a form” that is “immediately available” is unclear. The review recommended that rather than specify a specific form that more clarity be given by specifying a timeframe to make records available. This would provide sufficient flexibility in the form for record storage while providing an objective measure to ensure compliance. The Review noted that this would still need to meet the FATF’s undefined requirement for records to be “swiftly” available.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The AML/CFT Act currently requires records to be retained in a form enabling their 'immediate' availability. Industry have submitted it is unclear what this means. A recent court case held that records must be kept in a form that enables them to be immediately accessible, which does not provide further clarity on this requirement.

<u>Option 2:</u> Amend the record keeping provisions under the AML/CFT Act to specify what records, if any, should be retained in a form enabling their ‘immediate availability’ and specify a timeframe within which businesses are required to produce records to meet the immediacy obligation. This timeframe should accord with the undefined FATF standards that require records be available “swiftly”.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

It is not clear what records, if any, a business must retain to enable them to be “immediately available”. The timeframe applied to “immediate availability” is also not clear. In addition, the current requirement a does not comply with the FATF standards, that require records to be made available “swiftly”.

<u>Efficiency:</u> 0

Uncertainty about the requirements around the maintenance and production of records means that it can take longer for businesses to comply with requests, and in some cases records may not be held. This is both inefficient for businesses and for the AML/CFT supervisors involved.

<u>Equity:</u> 0

N/A</td><td>Option 2

<u>Effectiveness:</u> +

The proposed amendment reflects a recent High Court decision on the interpretation of this section, incorporating the decision into the AML/CFT Act itself. This will clarify the requirement and ensure that timeframes applied are more consistent with the FATF standard of “swiftly”.

<u>Efficiency:</u> +

Greater clarity about what is required and in what timeframe, will provide businesses with improved certainty of the AML/CFT Act’s requirements and the ability to plan accordingly. This will improve the efficiency with which businesses are able to comply with their obligations.

<u>Equity:</u> +

This amendment would remove current ambiguity from the AML/CFT Act’s requirements, supporting fairer outcomes in the application of the AML/CFT Act.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 provides better efficiency and greater clarity for business on the record keeping provisions of the AML/CFT Act. This will enable them to better comply with those obligations and should improve the AML/CFT supervisors’ access records.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> no extra costs to government agencies or business.

<u>Benefits:</u> greater clarity on the AML/CFT Act’s obligations, more efficiencies for business to be able to comply with those obligations.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">Businesses subject to AML/CFT requirements will need to update their AML/CFT programme and ensure they have processes in place to support their compliance. The cost to businesses is likely to be low, as this is a technical amendment to their existing systems and procedures.</td></tr>
</table>

Amend the AML/CFT Act to make explicit two civil liability acts: failing to submit a suspicious activity report; and failures in respect of a risk assessment.

<table>
<tr><td>Proposal context</td><td colspan="2">The AML/CFT Act contains a range of sanctions that may be applied if businesses subject to the AML/CFT Act's provisions do not comply. These sanctions include formal warnings, through to prosecution. Section 78 of the AML/CFT Act includes a range of civil liability acts. A civil liability act is when a business fails to comply with specified obligations under the AML/CFT Act, such as failing to conduct customer due diligence or report suspicious transactions. In these cases, an AML/CFT supervisor is able to take a prescribed range of civil actions, ranging from a formal warning, to applying to the court for a pecuniary penalty.

The 2022 Statutory Review recommended that the AML/CFT Act be amended to include <u>all</u> specific compliance breaches as civil liability breaches. This would address an anomaly in the AML/CFT Act, in which 'failing to submit a suspicious activity report' and failures in respect of a risk assessment are not explicitly included as civil liability acts.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> Two civil liability acts are currently not explicitly included in the AML/CFT Act - these are failing to submit a suspicious activity report; and failures in respect of a risk assessment. It is also not clear whether failing to submit an annual report to an AML/CFT supervisor is a civil liability act.

<u>Option 2:</u> Amend section 78 to include all three compliance breaches outlined above as civil liability acts.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

Failing to submit a suspicious activity report, failures in respect of risk assessments or failing to submit an annual report are breaches of important obligations under the AML/CFT Act. However, AML/CFT supervisors do not have the ability to take more formal action against non-compliance, meaning serious or sustained breaches of these obligations cannot be escalated as a civil liability breach.

<u>Efficiency:</u> 0

There is no ability for an AML/CFT supervisor to consider the most serious enforcement provisions under the AML/CFT Act for this level of non-compliance – contributing to inefficiencies in system enforcement activities.

<u>Equity:</u> 0

N/A</td><td>Option 2

<u>Effectiveness:</u> +

The High Court has held that AML/CFT supervisors can undertake civil liability action in response to a business's failure to meet risk assessment and suspicious activity reporting requirements.[6] It is currently not clear whether a breach of annual reporting obligations under the AML/CFT Act constitutes a civil liability act, but it is not explicitly excluded in the AML/CFT Act either.

The proposed amendment will reflect the position taken by the High Court and amend the AML/CFT Act accordingly, and remove ambiguity about breaches of annual reporting obligations. As a result, AML/CFT supervisors will be assisted to confidently give effect to the intention of the AML/CFT Act, effectively sanctioning non-compliance with the three requirements.

<u>Efficiency:</u> +

Providing AML/CFT supervisors with greater clarity of the responses available to them will contribute to the efficiency (and timeliness) of enforcement actions.

<u>Equity:</u> 0

Not applicable - the main benefits of option two are in effectiveness and efficiency.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 will allow AML/CFT supervisors to more effectively enforce the AML/CFT Act's obligations, contributing to the overall integrity of the AML/CFT Act regime. The proposed amendment provides greater clarity to all parties subject to the AML/CFT Act.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> no costs for government agencies or to business, other than the cost of enforcement/legal action should the AML/CFT supervisor undertake them - this is not anticipated to be substantial.

<u>Benefits:</u> greater clarity, more effective administration of the AML/CFT Act, better deterrence provisions to the AML/CFT Act to encourage compliance with important AML/CFT obligations</td></tr>
</table>

[6] *Department of Internal Affairs v Ping An Finance Group New Zealand Company Limited* [2017] NZHC 2363 at [5] and *Department of Internal Affairs v Qian Duoduo Limited* [2018] NZHC 1887 at [3].

How will the new arrangements be implemented?	Given these are offences and penalties under the AML/CFT Act, the AML/CFT supervisors would be responsible for implementing this amendment, if adopted. However, the change represents a clarification, rather than a new operational measure. We do not anticipate these changes to come at any additional cost to the supervisors. There will be minor impacts on court operations due to these offences and penalties. There is currently no identified financial impact or implementation timeframe requirements to enable these changes.

54qq9y3jt5 2024-12-06 11:51:05

Amend the AML/CFT Act to change the term "formal warning" to "censure" in response to non-compliance

Proposal context	The AML/CFT Act includes a range of enforcement provisions that allow an AML/CFT supervisor to address non-compliance with the AML/CFT Act 's requirements. Provisions range from a formal warning to prosecution under the AML/CFT Act. The 2022 Statutory Review identified that the name "formal warning" does not carry sufficient dissuasive effect and recommended use of the term censure in the act as an option for responding to non-compliance.	
What options are being considered?	Status Quo: AML/CFT supervisors can issue a formal warning for failure to comply with AML/CFT requirements. However, the term "formal warning" does not necessarily carry the intended weight with the sector. Option 2: Amend the AML/CFT Act to change the term "formal warning" to "censure". This would help to ensure such action carries more weight and potentially enhance its punitive/deterrent impact.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Effectiveness: 0 The range of enforcement provisions under the AML/CFT Act does not allow for options in between a formal warning and more formal court proceedings, including an enforceable undertaking or seeking an injunction. These 'medium' enforcement measures are important measures to deter non-compliance with AML/CFT Act, but do not meet the threshold for agencies to initiate formal court proceedings. Efficiency: 0 A lack of 'medium' enforcement measures hampers AML/CFT supervisors' ability to operate in an efficient way to maintain the system integrity. Effort may be wasted on ineffective responses until non-compliance behavior meets the threshold for more formal prosecution. Equity: 0 The current formal warning provision does not carry sufficient deterrent value to dissuade non-compliant businesses, limiting the deterrence effect means any such non-compliance is not sufficiently penalized to deter activity that can present a money laundering or terrorist financing risk to society.	Option 2 Effectiveness: + One of AML/CFT Act's purposes includes the deterrence of money laundering and terrorism financing. Making this small amendment to change the name from "formal warning" to "censure" will assist to ensure that existing mechanisms for enforcement under the AML/CFT Act carry their most effective punitive and deterrent impact. Issuing a censure is likely to have a greater reputational impact on businesses than a warning. A censure carries a form of punishment in the form of public criticism - in contrast, a warning implies that businesses have not yet been punished. Efficiency: + Enhancing the dissuasive effect of existing enforcement mechanisms will maximise their utility and support their use by AML/CFT supervisors. Equity: 0 Not applicable - the main benefits of option two are in effectiveness and efficiency.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2 would provide better deterrence sanctions, not invoke costly or resource intensive court proceedings, and achieve AML/CFT Act's purposes which include the deterrence of money laundering and terrorism financing.	
What are the marginal costs and benefits of the option?	Costs: no added costs to government agencies, courts operations or private industry. Benefits: The threat of a censure as an administrative punitive measure is likely to be more dissuasive than a warning, increasing the incentive for businesses to comply with AML/CFT Act's requirements. This is because of the greater impact on institutions reputation from being subject to a punitive measure rather than the direct impact of the measure per se.	
How will the new arrangements be implemented?	AML/CFT supervisors would be responsible for implementing this amendment should it be adopted. However, we do not anticipate these changes to come at any additional cost to the supervisors. As the proposal amends the wording of a civil liability action, this will also need to be implemented as part of court operations. However, we anticipate that the impact on court operations will be minimal. This proposal does not make changes to add or remove offences available under AML/CFT Act, but rather rewords a current civil liability action. No additional operational change is required, other than updating existing procedures on the use of formal warnings to update terminology. There is no identified financial impact or implementation timeframe required to implement this change.	

Clarify supervisors' standing to recover penalties and costs awarded in proceedings undertaken under the AML/CFT Act

Proposal context	Section 90 of the AML/CFT Act provides for the payment of pecuniary penalties for a civil liability act. On the application of the relevant AML/CFT supervisor, the High Court may order a person to pay a pecuniary penalty to the Crown, or to any other person specified by the court. However, unlike similar enactments (e.g., the Financial Markets Conduct Act 2013 and the Companies Act 1993), it is not possible for a court to order that the penalty must first be applied to pay the AML/CFT supervisor's actual costs in bringing the proceedings. The 2022 statutory review of the AML/CFT Act provided substantial analysis of the utility of pecuniary penalties as applied to serious non-compliance. Pecuniary penalties can only be imposed following a resource-intensive court process and the ultimate penalties imposed may not be in proportion to the seriousness of the breach[7]. Ensuring that a pecuniary penalty can be applied to the supervisors' actual costs in bringing the proceedings in the first instance, therefore provides some assurance that they will be able to cover (at least) some of the costs incurred.	
What options are being considered?	Status Quo: Unlike other enactments that allow for the recovery of pecuniary penalties, the AML/CFT Act does not allow for the court to order that such pecuniary penalties be first applied to an the costs of bringing the proceedings. Option 2: Amend the AML/CFT Act to align with other related enactments to include a new section 90A that states "if the court orders that a person pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the AML/CFT supervisor's actual costs in bringing the proceedings."	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Effectiveness: 0 The current provision does not allow the AML/CFT supervisors to recover the costs of bringing proceedings when a court orders a person to pay pecuniary penalties. This contrasts with other similar legislation that allows for the payment of pecuniary penalties to enforcement agencies. Efficiency: 0 A inability to recoup the costs of bringing proceedings may impact decisions made by AML/CFT supervisors to initiate court proceedings in certain circumstances – particularly where the costs are likely to be significant. Equity: 0 N/A	Option 2 Effectiveness: + The proposed change would support more effective and consistent supervision and enforcement action for all AML/CFT supervisors – as the cost of bringing proceedings is less likely to act as a disincentive. It also aligns with similar provisions in similar enactments that allow for pecuniary penalties. Efficiency: + The proposal allows the AML/CFT supervisors to seek an order from the court to recover the costs of proceedings against a business in the event a pecuniary penalty is ordered by the court, meaning the recovery of those costs is more efficient rather than the AML/CFT supervisors having to seek those costs elsewhere. Equity: + As above, this amendment will contribute to more consistent action by supervisors in response to serious non-compliance activities.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2 aligns the AML/CFT Act with other enactments (such as the Financial Markets Conduct Act and the Companies Act) by allowing AML/CFT supervisors to recover the costs of bringing court proceedings. As a result, supervisors are less likely to be deterred from bringing court proceedings where warranted.	
What are the marginal costs and benefits of the option?	Costs: no additional costs for the Ministry or other government agencies. Benefits: allows the AML/CFT supervisors to apply to the court to allow for any pecuniary penalty to cover its own costs first.	
How will the new arrangements be implemented?	AML/CFT supervisors will be responsible for implementing this amendment, should it be adopted. The proposal will also impact court operations. However, we anticipate that the impact on both the AML/CFT supervisors and court operations will be minimal. Pecuniary penalties are already available under the AML/CFT Act and the proposal constitutes a minor change to that provision by allowing those pecuniary penalties to cover the costs of the AML/CFT supervisor's actual costs in bringing the proceedings first. There is no identified financial impact or implementation timeframe required to implement this change.	

[7] There have only been three civil proceedings brought under the AML Act (all brought by the DIA) and all involved the awarding of pecuniary penalties, and involved companies accused of extensive non-compliance under the AML/CFT Act.

Align the approach to recovery of penalties to other enactments permitting the recovery of pecuniary penalties

<table>
<tr><td>Proposal context</td><td colspan="2">The 2022 Statutory Review recommended amending the AML/CFT Act to clarify supervisors' standing to recover pecuniary penalties.

Currently, the FMA and the RBNZ may affect recovery by applying to liquidate a company to recover penalties and costs obtained in proceedings undertaken under the AML/CFT Act. However, the DIA does not have a corresponding power in the companies Act. The AML/CFT Act provides for supervisors to seek pecuniary penalties, but is vague as to whether they can seek recovery through the court.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> It is also currently not clear in the powers provided to the AML/CFT supervisors (in section 132 of the AML/CFT Act) whether they can recover penalties and costs obtained in proceedings undertaken under the AML/CFT Act. The 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 AML/CFT Act. In contrast, the RBNZ and FMA have this ability, provided via section 241(2)(c) of the Companies Act.

<u>Option 2:</u> Amend section 132(2) of the AML/CFT to clarify the AML/CFT supervisors' standing to recover penalties and costs awarded in proceedings undertaken under the AML/CFT Act.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

In any court proceeding initiated by the RBNZ or FMA where costs are awarded to that agency, they can apply to the court to liquidate a business to recover those penalties and costs – in contrast, the DIA is not able to.

In addition, Section 132 of the AML/CT Act does not explicitly state the scope of powers of an AML/CFT supervisor to recover penalties and costs obtained in proceedings undertaken under the AML/CFT Act.

<u>Efficiency:</u> 0

A lack of legislative clarity likely impedes the efficiency with which supervisors can recover costs.

<u>Equity:</u> 0

N/A</td><td>Option 2

<u>Effectiveness:</u> +

The proposed change would allow for the more effective and consistent supervision and enforcement action for all AML/CFT supervisors under the AML/CFT Act. It also aligns with similar provisions in similar enactments that allow for cost recovery.

<u>Efficiency:</u> +

The proposal would clarify that an AML/CFT supervisor is able to recover pecuniary penalties and costs awarded in proceedings and enable them to utilise provisions under section 241(2)(c) of the Companies Act (currently only the FMA and RBNZ, but with future amendment to this section in the Companies Act, also the DIA). Ultimately the proposal would ensure alignment between the Companies Act and AML/CFT Act and contribute to greater uniformity in approaches and system efficiencies.

<u>Equity:</u> +

This would ensure that DIA has the same powers as the RBNZ and FMA under the AML/CFT Act once the requisite amendment to section 241(2)(c) of the Companies Act is made.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 clarifies the ability of AML/CFT supervisors to recover pecuniary sentences and costs awarded in proceedings and will assist to ensure they are not deterred from bringing court proceedings (where non-compliance is already at such a high threshold to warrant court proceedings). To fully operationalise this change, a corresponding amendment would also need to be made to section 241(2)(c) of the Companies Act 1993. However, the proposed amendment to the AML/CFT Act will go some way to addressing the current lack of consistency in powers between the RBNZ , FMA and DIA as the three system supervisors.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> no additional costs for the Ministry or other government agencies.

<u>Benefits:</u> clarifies that all AML/CFT supervisors can recover penalties and costs awarded in proceedings under the AML/CFT Act.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">AML/CFT supervisors will be responsible for implementing this amendment, should it be adopted. The proposal does not represent a significant shift in current operations and there is no identified financial impact or implementation timeframe required to implement this change. In addition, as it clarifies AML/CFT supervisors' standing to recover pecuniary penalties or costs awarded, it may also impact court operations. However, we anticipate that any impact on court operations will be minimal.</td></tr>
</table>

54qq9y3jt5 2024-12-06 11:51:05

Amending the current 'reasonable steps' requirement in section 26 of the AML/CFT Act

<table>
<tr><td>Proposal context</td><td colspan="2">The AML/CFT Act includes provision for enhanced checks to be completed on politically exposed persons (PEPs). PEPs (defined in section 5 of the AML/CFT Act) are persons who have held a political or like office (e.g. head of state, government minister or senior judge) overseas within the last year. The definition includes any immediate family member or other person specified in subsection (b) of the PEP definition. A business that must comply with AML/CFT requirements is required to do checks to identify any PEPs and, if they establish a customer is a PEP, there are enhanced measures that a business that must comply with AML/CFT requirements will have to apply to that customer.

The 2022 Statutory Review found that the use of the term "reasonable steps" with regards to the obligation to establish if the beneficial owner of a customer is a PEP is not clear. The review recommended replacing this phase with an obligation to have an appropriate risk management system in place to determine whether a customer or beneficial owner is a foreign PEP.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The AML/CFT Act requires businesses to take 'reasonable steps' to determine whether a customer or beneficial owner is a politically exposed person as soon as practicable after the business relationship is established, or an occasional activity or transaction is conducted.

<u>Option 2:</u> Amend the current 'reasonable steps' requirement in section 26 to require businesses to have <u>appropriate risk management systems in place</u> to determine whether a customer or beneficial owner is a foreign PEP. We consider this approach will provide clarity to businesses that the extent of the proactive steps required is dependent on the level of risk. We anticipate this change will be supported with guidance from the AML/CFT supervisors.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

It is unclear when businesses that have to comply with AML/CFT requirements should undertake proactive steps to determine whether a customer or beneficial owner is a PEP.

<u>Efficiency:</u> 0

There is little leeway in the current provisions, therefore it is not possible for them to be more efficiently applied.

<u>Equity:</u> 0

N/A</td><td>Option 2

<u>Effectiveness:</u> +

The proposed amendment makes a minor improvement to existing PEP provisions. The change will allow businesses to adopt a risk-based approach to some of these provisions – clarifying that the extent to which proactive steps are required to identify a customer or beneficial owner that is a PEP is dependent on the level of assessed risk.

<u>Efficiency:</u> +

Greater clarity about the application of a risk-based assessment is likely to contribute to increased efficiency for businesses.

<u>Equity:</u> 0

Not applicable - the main benefits of option two are in effectiveness and efficiency.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 clarifies an existing obligation from a 'reasonable steps' requirement, to having appropriate risk management systems in place to determine whether a customer or beneficial owner is a foreign PEP. This supports businesses to determine when any proactive steps will be required on their part, and enable a more risk based approach to this obligation.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> no additional costs for government and very minimal cost implication for private business are anticipated. This may, in very limited circumstances, marginally increase the costs of compliance as businesses that have to comply with AML/CFT requirements may have to delay their delivery of services to an individual to allow checks to be completed. However, this is commensurate with the risk presented by this customer (specified to be high risk only).

<u>Benefits:</u> increased compliance with FATF standards, clearer PEP obligations under the AML/CFT Act and allowing businesses that have to comply with AML/CFT requirements greater flexibility to apply a risk-based approach to these requirements.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">Specifically, businesses that have to comply with AML/CFT requirements will be required to update their AML/CFT programmes and their policies, procedures and controls to reflect the changed requirements – principally to ensure that they have appropriate risk management systems in place.

No further information will be required from a PEP than what is currently already prescribed for under the AML/CFT Act. The use of a risk-based approach may mean that some lower risk PEPs may not be subject to the same level of proactive checks as higher risk PEPs.</td></tr>
</table>

Include an explicit prohibition on international wire transfers that are not accompanied by the required information

<table>
<tr><td>Proposal context</td><td colspan="2">The FATF standards require institutions to prevent wire transfers unless the required information is supplied. This enables transactions to be traced internationally and suspicious transactions to be identified, for the purposes of detecting misuse by terrorist financers, money launderers and criminals.
Section 37 of the AML/CFT Act prohibits wire transfers from being used where customer due diligence (CDD) has not been done, and/or where there is information missing about the originator (the person for whom the business that has to comply with AML/CFT requirements is carrying out the funds transfer). However, the AML/CFT Act does not explicitly prohibit international wire transfers from being used where they lack the required beneficiary information (i.e., name and account number).
This means the requirements in the AML/CFT Act are not compliant with the FATF standards. Moreover, there is a money laundering and financing of terrorism risk in allowing wire transfers to be executed without including identifying information.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The AML/CFT Act prohibits wire transfers from being conducted where customer due diligence has not been done, and/or where there is information missing about the originator (the person for whom the business that has to comply with AML/CFT requirements is carrying out the funds transfer). However, the AML/CFT Act does not explicitly prohibit international wire transfers from being conducted where they lack the required beneficiary information (i.e., the person receiving funds).

<u>Option 2:</u> Amend the AML/CFT Act to include an explicit prohibition on international wire transfers that are not accompanied by the required information to ensure all international wire transfers have the required information and improve the integrity of New Zealand's payment system.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

There is a potential for wire transfers to be actioned despite not having the required beneficiary information, and this would compromise law enforcement agencies' ability to be able to trace a wire transfer if it was subject to an investigation.

<u>Efficiency:</u> 0

There is no ability to ensure that every wire transfer has the required originator and beneficiary information, meaning that information will need to be located elsewhere (if that is possible) by law enforcement agencies.

<u>Equity:</u> 0

Ultimately, this is a gap in the legislation which could be exploited by those looking to circumnavigate the AML/CFT Act's requirements.</td><td>Option 2

<u>Effectiveness:</u> +

Customer due diligence obligations under the AML/CFT Act are a cornerstone to the AML/CFT Act itself – it requires a business to understand who their customer is, and whether they are really who they say they are. If the customer due diligence information is not included on a wire transfer, but the transfer is made internationally, there is no way to trace who the money was sent to. This is a clear loophole in our legislation, which could allow complicit businesses to facilitate potential money laundering.

The proposed change would improve the overall integrity of our payment system by prescribing that such transactions should be prohibited if they lack the required information. It will also improve our compliance with the FATF standards.

<u>Efficiency:</u> +

This amendment should increase efficiency for law enforcement agencies to trace suspicious transactions and more clearly identify any payments that were stopped because they were lacking the required customer due diligence information to understand if it is suspicious. This change will likely mean that businesses that are ordering institutions under the AML/CFT Act may incur additional costs as they will have to change their existing AML/CFT systems to ensure all such transactions are not executed.

<u>Equity:</u> 0

Not applicable - the main benefits of option two are in effectiveness and efficiency.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 closes a gap in our AML/CFT Act, ensures that crucial customer due diligence information must accompany an international wire transfer and increases our compliance with the FATF standards.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> no costs to government agencies involved, though there may be a marginal increased costs for business to apply this provision as it can either delay a transaction or prevent it from taking place. Businesses must also have systems in place that will flag such transactions.

<u>Benefits:</u> closes current gap in the legislation, improves the integrity of our payments system, increases our compliance with the FATF standards.</td></tr>
</table>

54qq9y3jt5 2024-12-06 11:51:05

How will the new arrangements be implemented?	This amendment is likely to mean that businesses that have to comply with AML/CFT requirements who are ordering institutions may incur additional compliance costs to put in place additional systems or procedures to ensure that required identification information on the originator and beneficiary is collected before executing an international wire transfer. Businesses that have to comply with AML/CFT requirements that are ordering institutions would therefore need to put in place the required systems as part of their AML/CFT processes. They will also need to update their AML/CFT risk programme to outline their procedures for what to do with such international wire transfers. However, we note this amendment aligns to a significant extent with current requirements of payment networks such as SWIFT, which is the network most transactions pass through as bank transactions. This amendment therefore reflects the requirements most transactions are already subject to under SWIFT as most transactions pass through the SWIFT/bank networks.

Change the language to require businesses to take AML/CFT guidance or risk assessments into account

<table>
<tr><td>Proposal context</td><td colspan="2">A business subject to AML/CFT requirements is required to have a risk assessment process in place that allows it to identify any potential risks of money laundering or terrorism financing specific to the business, to risk rate them, and to put appropriate risk mitigation measures in place. The AML/CFT Act requires that businesses only have regard to government guidance on national and sector risk, which creates the possibility that businesses may interpret this to mean that they may diverge from the national or sector guidance if they decide to.
The 2022 Statutory Review and the 2021 FATF Evaluation of New Zealand recommended that the appropriate provisions in the AML/CFT Act should be clarified to ensure that business' risk assessments reflect government advice about national and sector risks.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> Businesses are required to 'have regard' to the factors set out in section 58(2) of the AML/CFT Act when conducting a risk assessment. This includes any applicable guidance material produced by AML/CFT supervisors or the Police, such as the National Risk Assessment or the various sectoral risk assessments. However, the language of 'have regard to' could allow businesses to consider, but ultimately reject, government advice about national or sectoral risks.

<u>Option 2:</u> Amend the AML/CFT Act to alter the language from 'have regard to', to something more appropriate which will require businesses to take applicable guidance material produced by AML/CFT supervisors or the Commissioner relating to risk assessments into account.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0
The current gap in the legislation can be exploited by those who do not have regard to national or sector risk assessments. This will compromise the accuracy of their risk understandings and ultimately undermine a risk assessment. There is also no ability for the AML/CFT supervisor to compel a business to consider the national or sector risk assessments, despite them being crucial documents on which to base any risk understanding.

<u>Efficiency:</u> 0
There is no requirement for businesses subject to AML/CFT requirements to consider and reflect any national or sector risk assessment findings in its own risk assessment. This may result in the duplication of some risk work and understanding if a business that has to comply with AML/CFT requirements did want to gather further information from different sources on risk.

<u>Equity:</u> 0
N/A</td><td>Option 2

<u>Effectiveness:</u> +
The proposed amendment closes a current loophole in the legislation. The AML/CFT Act is a risk-based piece of legislation, meaning that risk should inform and flow through the AML/CFT Act's obligations. The proposed amendment will improve the ability of businesses subject to AML/CFT requirements to maintain an accurate and up to date understanding of their risk and, in so doing, support the overall integrity of the AML/CFT Act.
Business' risk assessment and risk mitigation programme are key components of AML/CFT audits and reviews by supervisors. Supervisors will be able to use this requirement to drive alignment of private sector AML/CFT activity to national risk mitigation.

<u>Efficiency:</u> +
There is existing material for a business that must comply with AML/CFT requirements to consider in term of their own risk assessment as described above. This requirement will therefore not increase obligations, but make sure that businesses actively consider their applicability to their own business. This should streamline the creation of their own risk assessment.

<u>Equity:</u> 0
Not applicable - the main benefits of option two are in effectiveness and efficiency.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 would close a current loophole in the AML/CFT Act, ensure there is consistent and informed risk understanding for businesses and increase the effectiveness of the AML/CFT Act.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> this change will not increase costs to government agencies or industry.
<u>Benefits:</u> increased efficiency of the AML/CFT Act, good quality AML/CFT risk understandings in business, closing a current loophole in the AML/CFT Act.</td></tr>
</table>

54qq9y3jt5 2024-12-06 11:51:05

How will the new arrangements be implemented?	This amendment will require a business which has obligations under the AML/CFT Act to keep updated any risk assessment that is released by their AML/CFT supervisor or the FIU. This is important because the risk environment is dynamic and businesses that have to comply with AML/CFT requirements need to be able to respond to any new and emerging risks of money laundering and terrorism financing where appropriate. This amendment will require businesses that have to comply with AML/CFT requirements to review new risk assessments that are released by their AML/CFT supervisor, or any national risk assessment and to integrate mitigants to any areas of risk identified in those that are relevant to their business. They do so by updating their risk assessment and compliance programme, and then putting in place the appropriate procedures and controls to mitigate those risks.

Require border cash reports for stored value instruments, casino chips and precious metals and stones

<table>
<tr><td>Proposal context</td><td colspan="2">Under the AML/CT Act, a Border Cash Report must be completed by every person (unless exempt) who moves cash into or out of New Zealand, and any person who is to receive cash from outside New Zealand, sent either by the person or another person. The requirement applies to movement of cash with a total value of NZ$10,000 or more. Border cash reporting requirements are an important tool that allows NZ Customs(in the first instance) oversight of large transactions coming into or going out of New Zealand and thereby manage the risk of money laundering.

The 2022 Statutory Review recommended amending the AML/CFT Act to require border cash reports for stored value instruments, casino chips and precious metals and stones</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> Movement of stored value instruments (such as vouchers, casino chips, or precious metals and stones) across the border that do not involve currency or bearer-negotiable instruments, do not currently require a border cash report. This represents a potential vulnerability that could be exploited, as these items are an easily accessible alternative to cash. While there are now greater penalties under the AML/CFT Act for the transportation of cash, this creates the risk that alternative means of moving value may become more prevalent, including the use of bearer negotiable instruments (defined as including a bill of exchange, cheque, money order or promissory note).

<u>Option 2:</u> Amend the AML/CFT Act to require border cash reports for stored value instruments, casino chips and precious metals and stones (but excluding credit or debit cards).</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

There is a loophole where value moved on instruments (such as casino chips, vouchers or precious metals and stones) can be moved across borders without the requirement for a border cash report – in contrast to movements of cash or bearer-negotiable instruments.

<u>Efficiency:</u> 0

NZ Customs will not have an clear means of detecting suspicious movements of value occurring that do not involve cash or bearer negotiable instrument.

<u>Equity:</u> 0

N/A</td><td>Option 2

<u>Effectiveness:</u> +

The proposed change will enable NZ Customs to maintain a clear view of large quantities of money, or bearer negotiable instruments, moving across borders - a common way to launder money. Enabling this oversight will improve the effectiveness of the AML/CFT regime.

<u>Efficiency:</u> +

The proposal will provide greater efficiency for agencies with a law enforcement capacity under the AML/CFT Act (i.e. NZ Police, the Financial Intelligence Unit and NZ Customs) to have the required oversight of ways that criminals may move value across borders without having to undertake a dedicated investigation. This provision of upfront intelligence will enhance our ability to identify and monitor trends in the use of casino chips, stored value instruments and precious metals and stones.

<u>Equity:</u> 0

Not applicable - the main benefits of option two are in effectiveness and efficiency.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 mitigates the risk of money laundering or terrorist financing, closes a current gap in the AML/CFT Act, improves the ability for law enforcement to detect money laundering or terrorist financing and improves the ability of our AML/CFT regime to work effectively.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> no anticipated costs to industry or government agencies.

<u>Benefits:</u> closes a current vulnerability in the AML/CFT Act that can be exploited.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">These proposed amendments will be implemented by NZ Customs. This amendment will increase the circumstances in which a border cash report must be filed, which may marginally increase costs for the NZ Customs to change its processes (including the border cash report form) and internal processes to implement the extended scope of these requirements. NZ Customs have requested this amendment and the cost of any such change in processes or systems will be addressed as part of baseline costings.</td></tr>
</table>

Specify that a business that has to comply with AML/CFT requirements is not required to verify information relating to the source of funds or source of wealth of the trust

<table>
<tr><td>Proposal context</td><td colspan="2">The AML/CFT Act prescribes three levels of customer due diligence based on risk – simplified for low risk, standard customer due diligence for low-medium risk, and enhanced for high-risk customers. Trusts are internationally recognised as vehicles vulnerable to laundering money as they enable a money launderer to obfuscate the real identity of the beneficiary owner of the assets funds.
There are a large number of small family trusts in New Zealand that present a low risk of money laundering or terrorist financing. However, current legislative provisions must be applied in a uniform way – as if they all present the same level of risk.
The 2022 Statutory Review found that obligations on businesses to conduct enhanced due diligence are too burdensome.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> Enhanced customer due diligence (CDD) is mandatory for all customers that are trusts or other vehicles for holding personal assets. However, not all trusts or other vehicles for holding personal assets are inherently high-risk (e.g. some small family trusts).

<u>Option 2:</u> Amend the AML/CFT Act to specify that a business subject to AML/CFT requirements is <u>not</u> required to verify information relating to the source of funds or source of wealth of the trust under enhanced CDD requirements, if satisfied that doing so would not mitigate risks identified from conducting a standard CDD.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

The status quo does not allow for any flexibility in applying different forms of CDD for trusts, even if they are not high risk.

<u>Efficiency:</u> 0

Current provisions are not efficient as they apply blanket enhanced CDD requirements on all trusts – these enhanced checks create a substantial compliance burden for businesses. Business has long requested this change be made to the AML/CFT Act.

<u>Equity:</u> 0

All trusts are treated as high risk under the current provision, meaning no differentiation in risk levels presented by different kinds of trusts or ownership structures of those trusts can be made.</td><td>Option 2

<u>Effectiveness:</u> +

The proposed change will make current enhanced customer due diligence provisions more effective by ensuring these are applied only to higher risk customers that are trusts. The approach encourages a more nuanced risk understanding of trusts in New Zealand. It will require the AML/CFT supervisors to issue some guidance to accompany this change which would provide businesses with more assurance on how this requirement will function in practice, but it will ultimately give greater effect to the risk-based nature of the AML/CFT Act.

<u>Efficiency:</u> +

The proposed amendment will provide relief for businesses for some low-risk trusts and allow them to more efficiently on-board these customers. Businesses have long requested this change be made to the AML/CFT Act, as current requirements are very prescriptive and require them to compel trusts to provide a lot of documentation that can be time-consuming to collect and process – and ultimately is not always be justified on the basis of risk profile.

<u>Equity:</u> +

This amendment will allow for some low-risk trusts to be exempted from enhanced customer due diligence checks, meaning those trusts that do not pose a high risk are treated commensurately under the AML/CFT Act, and will not have to provide a significant amount of documentation.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 provides reduces compliance costs for business and low risk trusts, allows for a greater adoption of a risk-based approach in the AML/CFT Act and removed unnecessary requirements where that is not appropriate based on the level of risk presented by a particular trust.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> no additional costs to government agencies are anticipated and it will likely reduce the cost of compliance with the AML/CFT Act for businesses.

<u>Benefits:</u> reduced cost of compliance under the AML/CFT Act, more risk-based application of the requirements of the AML/CFT Act.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">The AML/CFT supervisors will be implementing this change which will require them to amend existing guidance on CDD. However, there should be no real impact from these amendments, but they will reduce the costs of compliance for businesses.</td></tr>
</table>

Part IV: Occupational Regulation

Lawyers and Conveyancers Act 2006

Enable the Lawyers' Complaints Service (LCS) to undertake an initial assessment of complaints before referring the complaints to a Standards Committee

Proposal context	The NZLS has been criticised about its inability to adequately handle complaints made against lawyers in an efficient and transparent manner. The NZLS has considered what changes could be made to the complaints process to ensure it is fit for purpose and consulted with the legal profession as part of this process. Currently, the Lawyers Complaints Service (LCS) must refer all complaints to a Standards Committee. The LCS does not have any discretion to determine whether this is the best course of action for each complaint. As there is no option to assess complaints before referring them to a Standards Committee, there is also no ability to prioritise complaints alleging the most serious misconduct, leading to an increased risk of continued harm to the public. This also leads to delays in resolving complaints for complaints and lawyers who are the subject of complaints. NZLS statistics show that from 2018-2022, no further action was taken on 78.7-82.4% of all complaints considered by Standards Committees. In 2022 this amounted to 1088 complaints (out of a total 1331 complaints that were closed) where no further action was taken. This indicates that the vast majority of complaints received by the LCS meet the grounds for a Standards Committee to take no further action – namely, that the complaint is inconsequential, frivolous or vexatious, could be better dealt with by another agency, or has already been resolved to the satisfaction of the complainant. Standards Committees are comprised of volunteer lawyer and lay-members - many of whom are full-time legal practitioners, who donate their time and expertise (compared to the LCS which is staffed by paid NZLS employees). The NZLS heard from one law firm that in its experience, it's not uncommon for a complaint to take between nine to 12 months to progress through the Standards Committee process. Requiring Standards Committees to consider complaints and decide to take no further action is an inefficient use of their expertise and time when those complaints are without merit. A number of other concerns have been expressed about the use of the Standards Committee process for considering complaints that do not have merit: • Feedback from NZLS and the profession has indicated that the current process can be used for harassment by the lodging of multiple bad-faith complaints. • There is a perception within the profession that the complaints system is high risk, because every complaint is referred to a Standards Committee, and therefore ***could*** lead to disciplinary sanctions. This results in lawyers fully engaging in the process, which means even complaints without merit are subject to a high level of scrutiny with associated resource impacts. • Triaging decisions made by Standards Committees are also reviewable by LCRO which can further delay resolution of a complaint. Even where a Standards Committee decides to take no further action, some complainants seek further review of that decision from the LCRO. The majority of reviews are not upheld. • The independent review of the regulatory framework for legal services[8] found there is also a perception from the public that the complaints system is "run by lawyers for lawyers."
What options are being considered?	<u>Option 1 (Status Quo):</u> Section 135(1) of the Lawyers and Conveyancers Act 2006 (LCA) requires the LCS to refer all complaints about a current or former lawyer, law firm or employee of a law firm to a Standards Committee. Unlike in some other professional regulation regimes, there is no provision allowing an interim assessment to be carried out by the LCS before it refers complaints to a Standards Committee to determine whether the complaint would be better dealt with another way. LCS staff members are paid employees of NZLS. <u>Option 2:</u> Enable the LCS to undertake an interim assessment of complaints and determine how to progress the complaint. The grounds for not progressing a complaint would be similar to those relied upon by Standards Committees to take no further action on a complaint, for example taking no further action, referring the complaint to a different agency better placed to resolve it, or referring it to a Standards Committee[9]. These interim assessment decisions would not be reviewable by the LCRO (as they are not substantive decisions of a Standards Committee), but they would still be judicially reviewable. This option would involve amending the Lawyers and Conveyancers Act and the Lawyers and Conveyancers Act (Lawyers:

[8] Regulating-lawyers-final-report.pdf (legalframeworkreview.org.nz)

[9] Section 138(1) of the Lawyers and Conveyancers Act sets out the grounds on which a Standards Committee may decide to take no further action on a complaint:
(a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or
(b) the subject matter of the complaint is trivial; or
(c) the complaint is frivolous or vexatious or is not made in good faith; or
(d) the person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or
(e) the complainant does not have sufficient personal interest in the subject matter of the complaint; or
(f) there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the person aggrieved to exercise.

54qq9y3jt5 2024-12-06 11:51:05

<table>
<tr><td></td><td colspan="2">Complaints Service and Standards Committees) Regulations 2008 (these currently states that when the LCS receives a complaint it must “as soon as reasonably practicable, refer the complaint to a Standards Committee”).</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

The status quo is not achieving the policy intent of the statutory complaints process, with section 120(2) of the AML/CFT Act requiring complaints to be processed and resolved expeditiously. As the current process continues to enable strategic delays and is unable to prioritise expeditious resolution of complaints, it is unable to meet the criteria for effectiveness.

<u>Efficiency:</u> 0

Significant and disproportionate administrative burden on volunteer members of Standards Committees, rather than on the paid staff members of the LCS. This is inefficient for the significant majority of complaints that are considered to require no further action, as Committees are being used to determine administrative matters rather than making substantive decisions on complaints, which was their intended role.

<u>Equity:</u> 0

All complaints are treated in the same way with the same amount of resource allocated. No risk that a substantive complaint will not be considered by a Standards Committee.

However this results in resource not being prioritised to higher risk complaints: delays in dealing with higher risk complaints can cause ongoing harm and can negatively impact both parties.</td><td>Option 2

<u>Effectiveness:</u> ++

Will ensure the complaints that do get referred to Standards Committees are processed and resolved faster. This option also enables the LCS to refer complaints to different agencies if they are better placed to resolve them which could promote negotiation, conciliation or mediation in appropriate cases. This option is likely to give effect to better achieve the LCA ’s intent. (set out in s 120(2)).

<u>Efficiency:</u> ++

Removes a significant administrative burden on volunteer Standards Committee members, and make better and more efficient use of Standards Committee members’ volunteer resource. This role would instead be filled by LCS staff members. The complaints system would more efficiently triage resource use to complaints alleging serious misconduct, enabling these to be resolved faster. Similarly, the number of complaints eligible for review by the LCRO will decrease, which will likely result in a decrease in both LCRO review applications and applications to the LCDT to strike out charges. This should make all aspects of the complaints process faster.

<u>Equity:</u> +

Enables more equitable outcomes by prioritising the most serious complaints that have the highest risk of continuing harm for the individual and public, rather than proceeding on the basis that each complaint is equal and requires same level of resource and urgency (complaints statistics demonstrate this is not the case).

Although this option reduces the availability of review processes for complainants, the increase in resource that will free up for the LCRO to review serious allegations of misconduct is likely to reduce overall greater harm to the individuals involved.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 enables the complaints system resource to be allocated in an equitable manner to the complaints with the highest risk of harm to the public. We expect it will positively impact trust and perceived transparency in the complaints system over the longer term. Similarly, it will align with the existing statutory purpose of the complaints system - which the status quo is unable to do - by processing and resolving complaints in an expeditious manner. Option 2 delivers the highest net benefits when weighed against the status quo.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> The complaints system is administered by NZLS and funded by regulatory fees and levies collected from the profession. NZLS has advised that the resourcing implications to implement and operationalise the proposal will also be low. Implementation costs, such as developing and training current staff has been factored into NZLS’ current budget. Ongoing operating costs are expected to be cost neutral and able to be met within existing parameters by reorganising current resource. As Standards Committees are likely to be considering significantly less complaints, they will require less administrative support from LCS staff. Therefore, these staff members can be retrained to support the new triaging assessments.

The triage process could see the NZLS referring complaints referred to the Ministry of Justice’s Legal Aid Providers (LAP) team (which considers complaints about legal aid lawyers if they are about legal aid specific issues. LAP anticipates that the number of referred complaints would be low, likely in the single digits per year (in the context of 185 considered in 2022/2023).

<u>There are also potential cost implications for complainants and people who are subject to complaints:</u> Currently, if a Standards Committee decides to take no further action, the complainant can apply to the LCRO to review the decision. It costs $50 to request a review. Under this proposal, triaging decisions of the LCS to take no action on a complaint will not be reviewable by the LCRO. Therefore, if the complainant wished to seek a review of the triaging decision, they would need to apply for judicial review. Judicial reviews are heard in the High Court. While the filing fee for a judicial review ($540) is significantly lower than most other applications ($1350), it is more costly than an LCRO review and, applicants for judicial review may also seek legal representation at an added cost (which is not a factor for LCRO reviews). However, as above, on the balance of considerations we think this is justified in the interests of being able to</td></tr>
</table>

	efficiently resolve complaints alleging serious misconduct. <u>Benefits:</u> The key benefit of the proposal is that complaints are likely to be resolved faster, bringing closure for complainants and mitigating risk to the public. The fact that complaints may not have to be considered by a Standards Committee lowers the risk that a complaint being laid could result in disciplinary consequences for a lawyer, and therefore could change the perception held by the profession of the complaints system and somewhat mitigate the risk of lawyers strategically delaying proceedings via reviews. Further, faster resolution of complaints is likely to be seen as an increase in transparency due to less unexplained delays following a complaint being laid (as there is a high degree of confidentiality in the process). There may be flow on resourcing and efficiency benefits for the LCRO and LCDT which are funded by fees and levies paid by the profession.
How will the new arrangements be implemented?	NZLS will be responsible for implementing the new arrangements: • Organisational changes are likely to include reallocating staff who are currently supporting Standards Committees to work on triaging assessments. This will likely require developing internal communications to staff about this change, as well as retraining staff who are being reallocated to be able to undertake this new function; • Operational changes are likely to include developing new processes and guidance for staff on how to undertake the triaging assessments. The implementation activities for the Ministry can be met within baselines and are likely to include: • Developing a referral process for the LCS to refer complaints to the Ministry -that builds on the existing Memorandum of Understanding between LAP and LCS. • Communicating with the NZLS so they can begin to implement the triage process and communicate with the profession. • Communications to the LCRO confirming that the LCS review process will not be reviewable by them. • Communications to the Chair of the LCDT explaining the changes and that their work won't be affected (complaints likely to raise a misconduct issue are unlikely to be triaged out).

Enforceability of conveyancers' undertakings

<table>
<tr><td>Proposal context</td><td colspan="2">Prior to the LCA) property conveyancing was a reserved area of work for lawyers. The LCA established the conveyancing profession with the intention of strengthening competition in the conveyancing market and bringing costs down for consumers.

Due to the large sums of money that change hands, conveyancing transactions are reliant on several undertakings, or promises, between the parties' agents (lawyer or conveyancer) and banks. As lawyers are officers of the court, their undertakings are summarily enforceable in the High Court under the court's supervisory jurisdiction. This means if a lawyer has breached an undertaking, the judge can consider an application on the papers and make orders for enforcement of the undertaking without requiring a hearing. This is a quick and reasonably cost-effective process.[10]

As conveyancers are not officers of the court, their undertakings are not as easy to enforce. A workaround agreement is currently in force between the Property Law Section of the New Zealand Law Society and the New Zealand Society of Conveyancers (NZSOC) which is enabled by section 18 of the Property Law Act. The agreement requires conveyancers' undertakings to be made in written deed form – this means any breaches of conveyancers' undertakings are more easily able to be enforced as a breach of contract. While this technically means breaches of conveyancers' undertakings can be enforced, this would be a time consuming and costly process and is rarely (if ever) utilised.[11] While banks are also able to rely on conveyancers' undertakings in deed form, some major banks will not instruct conveyancers for property transactions involving new lending. Consultation has highlighted that banks choose to instruct lawyers instead because of the perceived risk to the bank and the additional steps required to ensure conveyancers' undertakings are enforceable. This leads to conveyancers' clients often facing settlement delays and/or additional legal costs. These barriers lead to less interest from the public to instruct conveyancers which fails to achieve Parliament's original objectives with introducing a conveyancing profession.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> Continued difficulty enforcing breaches of conveyancers' undertakings. Continued resistance from some banks to instruct conveyancers, and interim requirement for lawyers representing other parties to receive a conveyancers' undertakings in written deed form likely to continue.

<u>Option 2:</u> Introduce a new section, modelled on s 15B of the Conveyancing Act 2004 (Tasmania, Australia) to provide for the enforceability of breaches of conveyancers' undertakings by way of summary judgment. This replicates the way lawyers' undertakings are enforced, though it relies on a legislative provision rather than the status of lawyers as officers of the court. The provision will establish that if a conveyancer's undertaking has been breached, a person to whom an undertaking was given can make an application to the court for a summary judgment. The court will be able to make orders with the goal of placing the affected person as near as practicable to the place they would have been in had the undertaking been fulfilled. This could include requiring the conveyancer to comply with their undertaking or compensating the affected person if they have suffered a loss as a result of the conveyancers' breach.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

Issues around the enforceability of conveyancers' undertakings (which have led to low confidence in the profession due to the risk involved) mean the conveyancing profession is not able to provide a viable alternative for conveyancing services compared to lawyers, as was originally intended. The status quo does not effectively deliver the original policy intent.

<u>Efficiency:</u> 0

Continued inefficiency due to the additional legal risks from using conveyancers. The mitigations being used to address legal risk around the ability to enforce undertakings create inefficiencies. If legal action is required to enforce an undertaking, this is more expensive and time consuming than enforcing a lawyer's undertaking.

<u>Equity:</u> 0

The status quo impacts differently on the stakeholders. In all cases, there is a higher risk to those relying on conveyancers' undertakings compared to lawyers':</td><td>Option 2

<u>Effectiveness:</u> +

Lawyers will have greater confidence relying on conveyancers' undertakings without requiring a written deed of undertaking. In consultation undertaken by NZLS, 89% of submitters indicated that they agreed or agreed strongly with the proposal. Consultation with the major home lending banks in New Zealand (including the two major banks that currently do not instruct conveyancers for transactions involving new lending), indicated that the proposed amendment will have a direct impact on the behaviour of banks in respect of conveyancers' undertakings (conveyancers will be able to be instructed in approximately 80% of all residential property transactions involving new lending (as opposed to approximately 50% of transactions under the status quo)).

In relation to the other 19%, we were advised this amendment is the first step required to start the process that may lead to that bank instructing conveyancers in these transactions in the longer term. However, the bank was not willing to confirm it would commit the resource required to update its systems to enable it instruct conveyancers as a result of the amendment being made.</td></tr>
</table>

[10] There is no fee payable on filing an application on notice for summary judgment, however, there is a cost to the defendant if they opt to file a notice of opposition. See the Schedule of the High Court Fees Regulations 2013.
[11] Section 18 of the Property Law Act enables the court to make an order for the specific performance of a voluntary promise made by deed. Although there is no specific marker in CMS to identify applications to enforce breaches of conveyancers' undertakings, consultation with Caseflow managers indicated that that they have never encountered such an application. Therefore, we have proceeded on the basis that the number of applications is negligible.

	Banks – when a party seeking to purchase a property with a mortgage chooses to instruct an agent to act for them in the transaction (either lawyer or conveyancer), the bank will then instruct that same agent for part of the transaction involving the new lending (mortgage) and settlement. This requires the bank to rely on the undertaking of the agent that they will hold the mortgage funds in the interest of the bank before releasing them to the other party upon settlement. Due to the large amounts of money at stake, the risk to the bank is high. Therefore, the bank must be confident the undertaking of the agent can be effectively enforced if it is breached. Banks see the difficulty in enforcing conveyancers' undertakings as a high risk. The lower risk associated with instructing a lawyer also relates to lower enforcement costs if required to enforce a breach of an undertaking by a lawyer as the bank is the direct client of the agent in this scenario. **Lawyers** – where lawyers are acting for one party in a transaction, but the other party is represented by a conveyancer there is a risk to both the lawyer and their client of relying on a conveyancers' undertaking. Lawyers have indicated that the delays that can be caused due to having to wait for written deeds of undertaking (as well as bank delays where banks will only instruct a lawyer and the conveyancers will need to work with another firm) can lead to complaints being filed against the lawyer and frustration from clients. This is an undue burden being placed on lawyers that is contrary to the policy intent. **Conveyancers** – Due to the issues around enforceability of undertakings, conveyancers have been unable to function in the role they were statutorily prescribed to undertake. This has led to perception issues for the profession and means many potential clients may not see conveyancers as a practical alternative to a lawyer when choosing who to instruct in a property transaction. **Clients** – clients of conveyancers can be subject to additional, unexpected legal costs if the bank refuses to instruct the conveyancer (approx. $188 - $500 per transaction). As the bank is instructing the conveyancer as a client, the bank has the valid choice not to instruct someone. Therefore, the client may not be able to predict that the bank will not instruct their conveyancers ahead of time. Instead of increasing competition and driving fees down for clients, the undertaking issue can instead drive up costs for clients and lead to additional delays if a lawyer is required to be instructed by the bank. This can have ripple effects for others with interests in the sale (such as the other party who may require settlement of this property to be completed by a certain date due to a conditional offer to purchase another property).	Although this proposal would not lead to immediate and guaranteed behaviour changes from all banks, it will have an immediate impact on the behaviour of lawyers and a significant impact on banks and will improve the public perception of conveyancers as a viable alternative to lawyers. This will more effectively achieve the initial policy intent to create competition in the conveyancing market. Efficiency: ++ Significantly more efficient to enforce conveyancers' undertakings – applications for summary orders are relatively low cost and less time consuming (as they can be done on the papers). This option removes the main risk perceived by banks in instructing conveyancers, regarding the time and cost of court proceedings to enforce an undertaking and puts conveyancers on a similar footing to lawyers. Equity: + There are positive benefits for all stakeholders in applying this option: **Banks** – by making the enforcement process more efficient, the risk is mitigated for banks when instructing conveyancers. **Lawyers** – lawyers are less likely to face complaints from their clients as delays will not be as frequent (or where there are settlement delays, these are less likely to be caused by issues with banks refusing to instruct conveyancers). There will also be less risk for lawyers when the other party is represented by a conveyancer – they will no longer have to receive undertakings in written deed form, thus cutting out an administrative step. **Conveyancers** – conveyancers will be able to act better in line with their statutory role. Less delays and fewer costs being passed down to clients will contribute to changing the perception of conveyancers so they can be seen as a viable alternative to lawyers. **Clients** –less uncertainty and less risk of unexpected legal costs and delays. It will be easier for a conveyancer to explain there is only one bank that will not instruct them which may prevent these issues up front.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2 is the best option to address concerns around the enforceability of conveyancers' undertakings by mitigating the perceived risk of instructing conveyancers or relying on their undertakings. This will better achieve the policy intent of enhancing market competition by making conveyancers a viable alternative to conveyancing lawyers, both by changing the behaviour of lawyers (as written deeds will no longer be required) and some banks, and in the longer term, changing the perception of conveyancers held by banks as a reputable profession as a result of the initial behavioural changes.	
What are the marginal costs and benefits of the option?	Costs: Implementation of this amendment will be limited to communications with NZSOC, NZLS, LCDT and the Ministry's Regional Service Delivery unit, and communicating the new enforcement process to the relevant court staff. The current enforcement process proposed utilises the existing summary judgement process. The new process is not expected to take up additional court time. Benefits: This amendment will give effect to the statutory intent of the Lawyers and Conveyancers Act by making it possible for the conveyancing profession to be seen as a viable alternative to lawyers. The key benefit is the mitigation of the perceived risk to parties relying on conveyancers' undertaking in relation to large sums of money. Although the enforcement regime is unlikely to be practically utilised, it is the existence of it that provides this mitigation of risk. Therefore, it is a low maintenance and low-cost option with significant benefits.	
How will the new arrangements be implemented?	This amendment will predominantly be implemented through communication with relevant stakeholders and court staff to advise of the new process. The Property Law Section will advise its members about the change in enforceability and redact the interim agreement to rely on written deeds. The New Zealand Society of Conveyancers will advise its members. As the behaviour of banks is voluntary (due to it being a choice to instruct conveyancers), the implementation of the changes by banks can (but is not required) to involve updating the papers for instruction and internal forms/processes to reflect that the agent could be either a lawyer or a conveyancer (rather than just a lawyer).	

Real Estate Agents Act 2008

Give the REA greater information gathering powers for the purposes of fulfilling its functions

<table>
<tr><td>Proposal context</td><td colspan="2">The REA has functions that include investigating whether offences under the Real Estate Agents Act 2008 (REAA) have been committed, and real estate agents' potentially unsatisfactory conduct or misconduct. However, the REA has no power to require information from people when conducting these investigations. S9(2)(ba)(i) but is unable to gather information to support investigations into these matters and is generally unable to progress them. In addition, it cannot require information from licensees relating to their compliance with the REAA. This affects its ability to detect and address wrongdoing.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The REA is currently unable to require information to support investigations into offences, unsatisfactory conduct, or misconduct. This undermines its ability to fulfil its statutory functions to investigate those who may be acting unlawfully or breaching their licensing obligations.
<u>Option 2:</u> Add new powers that allow the REA to require, by notice, documents: from licensees to monitor compliance with the REAA; and from an unlicensed person, where there are reasonable grounds to suspect unlicensed trading. Include an associated offence for failure, without reasonable excuse, to comply with a notice requiring information. This will ensure enforceability of the information gathering power. The penalty would be $10,000 for an individual or $50,000 for a company, which aligns with other similar offences in the REAA.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0
The REA would continue to be unable to obtain information to fulfil its investigatory functions, including in relation to suspected harmful behaviours or unlicensed trading. This would impact its ability to enforce breaches of the REAA, including the offence of unlicensed trading.

<u>Efficiency:</u> 0
The only way to obtain information is by consent, including once a matter progresses to a Complaints Assessment Committee. This is inefficient and could lead to matters being referred to a Committee that could otherwise be disposed of earlier, or to potentially serious breaches not being investigated.

<u>Equity:</u> 0
Existing barriers to investigating unlicensed trading would continue. This leads to disparity in how potential conduct issues affecting the real estate system are investigated and punished.</td><td>Option 2

<u>Effectiveness:</u> ++
This change will enable the regulator to fulfil its functions and better regulate the sector. This will support the consumer protection purpose of the AML/CFT Act.

<u>Efficiency:</u> ++
Decisions about whether to pursue cases will be supported by better information, leading to more informed decision-making and use of resources.

<u>Equity:</u> +
Including non-licensed people within scope means that the REA is able to take action against unregulated individuals holding themselves out to the public as licenced real estate agents. Confining the power to documents does not engage the privilege against self-incrimination.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 would provide greater ability for the REA to investigate and enforce breaches of the REAA. If no powers are provided the REA would remain limited in how it can investigate potential breaches, including unlicensed trading and misconduct by licensees.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> The new power could lead to a greater number of cases of unlicensed trading cases being pursued by the REA, which will require some legal and investigator resource. The REA estimates this could be around $50,000-$100,000 per year. Any prosecutions would be funded within the REA baseline. There would be no new costs to the Ministry. Resourcing allocated to this would be within current capacity of the Ministry of Justice (Courts and Tribunals), and operational impacts will be low. We estimate that the new information gathering powers and related offence would result in an additional 25-50 prosecutions in the District Court each year in relation to unlicensed trading, which would not require new judicial resource.

<u>Benefits:</u> Provides greater ability for the REA to detect and address breaches of the REAA. This expected to increase protection for consumers.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">This change would be implemented by the REA. No Ministry implementation is required. The offence would not need to be added separately to the Courts systems as a generic offence code can be used.

We will monitor the effect of the changes as part of our ongoing regulatory stewardship obligations and relationship with the REA.</td></tr>
</table>

54qq9y3jt5 2024-12-06 11:51:05

Grant a temporary licence to companies in the same basis as individual applicants

Proposal context	Both individuals and companies can be licensed under the REAA. A company may be licensed as an agent under s36(3) if an officer of the company is licensed as an agent. Section 62 allows the Registrar to grant a temporary licence to certain prescribed persons to carry on business as a real estate agent, in certain circumstances (for example, where the agent dies, his or her personal representative may apply). There is no provision in the REAA for the Registrar to consider applications for temporary licences for companies that have only one officer of the company that qualifies to hold the real estate agency licence. This is a problem because, to be licensed, a company needs an officer to be a licensee. Should that licensee lose their licence, or become unavailable (for example, where the officer of the company is incapacitated due to illness), and they are the sole licence holder of the company, the company will no longer be able to perform real estate agency work. This would mean that existing agency contracts could no longer be performed.	
What options are being considered?	Status Quo: The Registrar cannot grant a temporary licence to a company, where the officer of the company becomes unavailable (for example through death or illness). Option 2: Allow a temporary licence of up to 2 months (which is the period already specified for temporary licenses in the REAA) to be granted to certain persons to carry on real estate business when the sole licence holder is unavailable for specific reasons (for example, illness, death, or insolvency). The amendment will provide a mechanism for a company licensee to apply to the Registrar for the appointment of another officer of the company to act in place of the agent licensee if that agent becomes unavailable.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Effectiveness: 0 Maintaining the status quo means that a company may lose its licence unexpectedly if the sole agent that holds the licence for the company becomes unavailable and agency work would need to stop. This could negatively impact consumers. Efficiency: 0 The inability for a company to apply for a temporary licence means that work would need to be reassigned and could increase compliance costs for the company having to find a new agent and reapply for a licence. Equity: 0 The flow on impacts if a company loses its licence would be felt by both consumers for unfulfilled contracts, and employees of the company as work would need to cease.	Option 2 Effectiveness: + Allowing a company to apply to have another person hold a temporary license would ensure continuity for consumers. A temporary licensee would still be subject to the REAA, and the associated protections for consumers. Efficiency: + Enabling a company to apply for a temporary license will ensure flexibility and minimise unintended consequences and reduce costs. Equity: + Both consumers and employees of a company would benefit from increased certainty if companies can apply for temporary licenses to ensure continuity.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option two will ensure that the company can continue existing agency work, ensuring continuity of business in the event an agent of a company licensee becomes unavailable. Extending the ability to apply for a temporary licence to companies will also prevent unnecessary disruption to consumers. This aligns with the consumer protection purpose of the REAAand will be more efficient than requiring a company to find a new permanent licensee in order to maintain its licence.	
What are the marginal costs and benefits of the option?	Costs: There will be no implementation cost to the Ministry. We anticipate the operational impact on and cost to the REA will be minor. The REA has only had one temporary licence application since 2013, so we do not anticipate the number of these applications will increase significantly. Extending the ability to apply to companies is unlikely to result in many applications, as these will only be made where an existing agent is unavailable. Benefits: Extending the ability to apply for a temporary licence to companies will ensure continuity of business, in the event the sole licensed agent of an organisation is unable to act. This will prevent unnecessary disruption to consumers.	
How will the new arrangements be implemented?	This change would be implemented by the REA. We will monitor this as part of our ongoing regulatory stewardship and relationship with the REA.	

54qq9y3jt5 2024-12-06 11:51:05

Allow for unsatisfactory conduct findings that are not only related to carrying out real estate agency work

Proposal context	Section 72 allows a finding of unsatisfactory conduct for a licensee in relation to certain types of conduct that arise when the licensee is undertaking “real estate agency work”. “Real estate agency work” is defined in section 4 as: *“any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction.”* There are several matters excluded from this definition. There is no mechanism to address poor conduct that arises outside of “real estate agency work”. This is a problem because there are conduct issues that arise outside of real estate agency work, which generally relates to the sector because the behaviour could bring it into disrepute, but that cannot be the subject of disciplinary action. Examples include complaints received on unacceptable use of real estate agency work data and information (such as the misuse of a person’s contact details); or the bullying or harassment of work colleagues. This gap in addressing bad behaviour can have negative impacts for the broader sector and its reputation. This could also lead to harm to consumers going unaddressed.	
What options are being considered?	Status Quo: A finding of unsatisfactory conduct for a licensee can only be made if the conduct arises when the licensee is undertaking “real estate agency work.” Option 2: Expand the definition of behaviour that can be considered “unsatisfactory conduct” by removing the reference to “real estate agency work” in section 72. This would include breaching the regulations, breaching practice rules (some activity may fall outside the strict definition of real estate agency work), or for behaviour that does not meet the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee. This would allow findings of unsatisfactory conduct in relation to matters that may arise outside the strict definition of real estate agency work, or for behaviour that falls outside what a reasonable member of the public can expect from a real estate agent. However, real estate agency work should be included in section 72(c), which relates to incompetence or recklessness. The need for this to be in relation to real estate agency work because subsection (c) relates to incompetence or negligence which strictly relates to work done in the course of real estate agency. Therefore, the amendments should include reference to real estate agency work for 72(c).	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Effectiveness: 0 The requirement that unsatisfactory conduct must arise in relation to real estate agency work can mean that harm to consumers is not adequately addressed. Efficiency: 0 Some types of conduct may be able to be addressed under other legislation. However, this may not be the most efficient way to address conduct issues that bring real estate agents into disrepute. Equity: 0 Regulated parties may not face appropriate consequences for bad behaviour.	Option 2 Effectiveness: ++ Providing an ability to censure this wider type of behaviour will enhance consumer and professional confidence in the profession. It can also address a wider range of harm to consumers, upholding the purpose of the REAA. Efficiency: + Option 2 will provide the REA with more regulatory tools to respond to conduct issues by licensees. Equity: + Regulated parties will be fairly held to account for a wider range of behaviour not directly tied to “real estate agency work”. This is not an undue burden because it can safeguard confidence in the real estate profession. This wider range of behaviour would be to the same standard of “unsatisfactory conduct” findings already made. The Complaints Assessment Committee process and ability to appeal decisions would be the same as it is currently for unsatisfactory conduct findings.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2 provides additional tools to ensure that conduct issues are managed appropriately and that any real estate professionals who behave in a manner likely to bring the profession into disrepute can be censured.	
What are the marginal costs and benefits of the option?	Costs: There will be some cost to the REA in an increase in Complaints Assessment Committee (Committee) fees, as Committee members are paid hourly. S9(2)(ba)(i) . However, given the fixed number of Committee members, this may impact timeframes for cases more than cost. An increase in cases referred to the Committees will also likely lead to appeals from some of their decisions to the Real Estate Agents Disciplinary Tribunal (READT). We estimate an approximate 18% increase in the READT’s caseload, which would cost approximately an additional **$37,000 per year** in daily fees for the tribunal officers. This can be absorbed within baseline funding. Ministry officials developed this figure using forecasting based on the current proportion of Committee decisions that are appealed to the Tribunal. Actual costs may differ in practice. There would be low cost to the REA to implement this proposal. While there will be an increase in Committee workload, the remuneration for Committee members will not change as a result of this proposal. Benefits: The REA will have more regulatory tools available to address conduct issues and better protect consumers and confidence in the profession under the REAA.	

54qq9y3jt5 2024-12-06 11:51:05

How will the new arrangements be implemented?	This change would be implemented by the REA. We will monitor this as part of our ongoing regulatory stewardship and relationship with the REA.

54qq9y3jt5 2024-12-06 11:51:05

Provide the power to grant discretionary individual exemptions for qualifications of licence holders

<table>
<tr><td>Proposal context</td><td colspan="2">Real estate agents must be qualified to be licensed. There is no explicit discretionary power for the REA to grant individual exemptions based on recognition of the qualifications of licensees who hold qualifications that pre-date the current standards. These licensees otherwise meet the requirements for holding a valid licence under the REAA, including completing their yearly Continuing Professional Development (CPD) requirements. According to the REA, this means that very experienced agents with older qualifications may leave the industry. There are several licensees with these older qualifications who, if they miss renewal or take a break from practice, would no longer hold a “prescribed qualification” required for a licence, despite having significant experience.
The situation arises for people applying for a licence with qualifications obtained under:
• previous legislation (1976 Act)
• the transitional qualifications that applied when the 2008 Act repealed the 1976 Act
• under the 2008 Act, some of which have since been removed as approved qualifications.
The REA has indicated that this situation arises up to 10 times a month. Many cases relate to licensees who have been licenced continuously for 10+ years who miss their renewal date and can't be licensed again without getting a new qualification. This takes around 12 months. While the proposal below on licence renewal would allow flexibility in the renewal process and may resolve this issue for a number of these persons, there will also be some who do not renew within 12 months who then seek to practice again.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The Registrar does not have the power to grant an individual exemption to the current qualifications prescribed in regulations, to recognise older qualifications or relevant experience.
<u>Option 2:</u> Provide REA the discretionary power to grant individual exemptions to the current qualification requirements, when considering an application for licence. This is where the applicant’s qualification is not included in the list of recognised qualifications, but where they have real estate experience and knowledge the Registrar considers equivalent to the accepted qualifications. The REA also may grant discretionary exemptions for classes of people under the REAA (see s 20 and 156).</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0
The status quo is intended to ensure that licensed real estate agents are suitably qualified but a strict application of the list of qualifications can result in the loss of very experienced agents.

<u>Efficiency:</u> 0
An inability to ensure experienced licensees can continue to practice risks them leaving the sector.

<u>Equity:</u> 0
Not recognising old qualifications will risk losing experienced agents and key industry knowledge because of a significance compliance burden. In some areas of the country, there is a larger population of older licensees who may hold an old qualification. This could risk lose a higher portion of those licensees (so high portion of their staff in general) in those areas of the country.</td><td>Option 2

<u>Effectiveness:</u> +
This change will result in a net positive affect on the consumer protection purpose of the REAA. Retaining industry knowledge and experience of these older licence holders, will maintain industry credibility and ensure consumers are provided will a good standard of service. However, many of these individuals are more likely to leave the industry (retire, etc) in the next 10 years. Loss of industry knowledge and expertise will occur eventually anyway.

<u>Efficiency:</u> +
This will amount to less of an administrative burden on the licensee, as it will be significantly less time consuming and costly to apply for an exemption than to requalify for a licence. However, it will be more of an administrative burden for the REA as processing and investigating individual claims, and granting an exemption will take more time than the usual (and more common) licence application process.

<u>Equity:</u> +
This amendment will remove unnecessary compliance burden on experienced applicants, who would otherwise need to requalify. Requiring an experienced agent to undertake a full requalification is not necessary to achieve the objectives of the legislation, particularly as they must complete their CPD requirements to be eligible to hold a licence. This is a more reasonable outcome for individuals and assists in retaining industry experience and knowledge.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 removes unnecessary compliance burden on experienced applicants/license holders who would otherwise need to requalify. This will retain quality experienced people in the industry and help support the consumer protection purpose of the REAA.</td></tr>
</table>

What are the marginal costs and benefits of the option?	Costs: We consider there will be no new or additional costs for the Ministry. Implementation costs will be low and will be borne by the REA as the regulator. Other changes proposed, including flexibility around renewal after the expiry of a licence are expected to keep application numbers low. We consider the operational impact to the Ministry will be limited to communications with the READT Chair. Benefits: We consider this amendment will be more efficient for the regulator to assist relicensing and reduce unnecessary compliance costs for the regulator.
How will the new arrangements be implemented?	This change would be implemented by the REA. It anticipates issuing information to the sector, updating its website and developing a process document for how to consider applications. We will monitor this as part of our ongoing regulatory stewardship and relationship with the REA.

Provide new power for the Registrar to able to cancel a licence in a situation where the licensee's circumstances change and affect entitlement to hold a licence

<table>
<tr><td>Proposal context</td><td colspan="2">A license is renewed annually and must meet the specific requirements to continue holding a licence, including completing courses for their CPD, continuing to meet the 'fit and proper' standard and paying fees. A licensee's circumstances may change during their licence period, such that if they applied immediately after the change occurred, they would no longer be entitled to hold a licence, or they would be specifically prohibited from being licensed. For example, they may be convicted of a serious offence. However, REA is unable to act immediately to cancel their license or impose conditions in response to their change in circumstances. The REA must wait until that person's licence is up for renewal until they can respond to the change in circumstances. The REA can initiate an investigation if the circumstances are connected to a misconduct or code of conduct issue.

The proposal is for a new power for the Registrar to able to cancel a licence where the licensee's circumstances have changed in a way that would prohibit them from being licensed. This will enable the Registrar to be more responsive and remove licensees who are not fit to be licensed or who do not meet the fit and proper standard, subject to natural justice safeguards (including a chance to put forward a case before cancellation, and the ability to review the Registrar's decision). It helps ensure consumers are protected from any 'bad actors' in the sector.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The REA can only cancel a licence, or impose conditions, during the annual licence renewal and not before.
<u>Option 2:</u> Provide for a new power to the Registrar to cancel a licence, where the licensee's circumstances change in a manner that would affect their entitlement to hold a licence.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

Not enabling proactive investigation and cancellation of licensees who are an identifiable risk to consumers can mean that harm to consumers is not adequately addressed or continue placing consumers at a significant risk of harm.

<u>Efficiency:</u> 0

Regulated parties may not face appropriate consequences in an appropriate or timely manner.

<u>Equity:</u> 0

The REA can cancel licences for these individuals when licences are up for renewal, but that could be up to a year after the change in circumstances has occurred. This risks industry credibility and consumer confidence in the sector.</td><td>Option 2

<u>Effectiveness:</u> ++

This change will enable the REA to be more responsive and remove licensees who are not fit to be licensed or who do not meet the 'fit and proper' standard prescribed. This enhances the original consumer protection purpose of the REAA and the industry's reputation.

<u>Efficiency:</u> +

This change may be a more administrative burden on the REA, but it will enable them to take proactive responses to risks with the actions already available to them.

<u>Equity:</u> ++

This change will enable the REA to remove someone who is an identifiable risk to consumers, which will assist in preserving credibility in the sector and consumer confidence in the profession.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 will enable the REA to remove someone who is an identifiable risk to consumers, which will assist in maintaining credibility to the sector and consumer confidence in the profession, upholding the consumer protection purpose of the REAA.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> This change will result in no new costs to the Ministry, and we anticipate the implementation impact will be low. The REA expects costs to be low and absorbed within its current resources, as decisions to cancel a licence will be rare. Decisions of the REA Registrar (including the proposed power to cancel a licence) can be reviewed by the READT, which is a tribunal supported by the Ministry. We anticipate that the number of REA decisions to cancel a licence will be low and, that at most, one of those decisions will be reviewed by the READT each year.

<u>Benefits:</u> Option 2 reduces the risk to industry reputation, preserving credibility and will enable the REA to be more responsive to wrongdoing by licensees.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">This change would be implemented by the REA. We will monitor this as part of our ongoing regulatory stewardship and relationship with the REA.</td></tr>
</table>

54qq9y3jt5 2024-12-06 11:51:05

Provide the ability for the Authority to accept licence renewal applications for up to a year after a renewal date has been missed

<table>
<tr><td>Proposal context</td><td colspan="2">The REAA outlines the conditions and process for licence renewal. It requires that, if a renewal application is not made on or before the date of renewal, the licence is effectively treated as cancelled (s 53). Licensees who miss their renewal dates must apply for a new licence. This is more expensive and takes longer than a renewal (includes a stand down period and advertising on the REA website). If a new licence is needed, some licensees must also requalify, if their qualification pre-dates the prescribed qualifications. Circumstances surrounding the missed renewal date can include an administrative error, or other circumstances outside a licensee's control. For example, we understand around 9 licensees missed renewal dates during the severe weather events in February 2022. A licensee may also fail to pay a suspension fee (in the case of voluntary suspension), or to pay any prescribed fees or levies under the practice rules within the specified time period, and then will automatically have their licence cancelled and must go through a full new licence application process.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> If a licensee misses the renewal date for their licence or fails to pay any relevant fees the Registrar <u>must</u> record the expiry of the licence in the register. The result is that the licence is cancelled, and a full new licence application process is required.

<u>Option 2:</u> Include the ability to allow a streamlined process for the renewal of a licence to occur within 12 months from the due date, without requiring a full new licence application (see section 52). The person's licence would still be cancelled from the date of expiry until they renewed it, but they would not have to undergo a full new licence application process. This would prevent a new licence being required.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Effectiveness:</u> 0

The intention to ensure people are suitably qualified is not undermined when a licence renewal date is inadvertently missed, potentially by as little as one day.

<u>Efficiency:</u> 0

The inability to be flexible around renewal dates means licensees who miss renewal dates or fail to pay fees on time must go through an expensive and time-consuming full application process.

<u>Equity:</u> 0

Individuals who reasonably miss licence renewal dates or fail to pay fees due to circumstances outside their control or for a good reason will continue to be unfairly disadvantaged and forced to go through the full application process.</td><td>Option 2

<u>Effectiveness:</u> +

Allowing a grace period for the renewal to occur within 12 months after the due date will reduce time and cost burden for licensees, and for the Authority as the regulator, without undermining the purpose of the REAA.

<u>Efficiency:</u> ++
A full application process for an existing practitioner who misses a renewal date is not necessary to advance the consumer protection purpose of the REAA.

<u>Equity:</u> ++

Reduces unnecessary compliance burden on the licensee for situations affecting licence renewal that is outside their control. This amendment will be fairer on the licensees generally, by avoiding strict consequences for administrative error.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 provides less compliance burden and costs on the part of both the regulator and the licensee who missed the renewal deadline. It also maintains the consumer protection purpose of the REAA, but enabling continuation of services to consumers where a licensee who would otherwise have to apply for a new licence, can continue the real estate transaction.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2"><u>Costs:</u> We consider this change will result in no cost to the Ministry. We understand the implementation costs will be low for the regulator. We also consider this change will have no operational impact on the Ministry to administer or monitor.

<u>Benefits:</u> Option 2 provides a reduction in time and cost burdens to the regulator. It may reduce the number of complaints to the Complaints Assessment Committee and appeals to the READT.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">This change would be implemented by the REA. Implementation will involve minor changes to licensee information and processes. We will monitor this as part of our ongoing regulatory stewardship and relationship with the REA.</td></tr>
</table>

Remove cancellation as the automatic consequence of non-completion of CPD and non-payment of fees

Proposal context	There is an automatic 5-year suspension from practice when there is a failure to complete CPD or failure to pay annual suspension fees. This is a disproportionate response. Other, similar industries do not have such a response to non-completion of their CPD requirements or failure to pay annual suspension fees ((where a licensee may suspend their licence for a time that they are not undertaking real estate agency work).	
What options are being considered?	Status Quo: Licensees who fail to complete the CPD requirements under practice rules or pay suspension fees have their licence cancelled and they are prohibited from practising for 5 years (under s 54(d) of the REAA and s37(1)(c)). Option 2: Remove the 5-year prohibition on holding a licence (sections 37(1)(c) and (d) and section 54) to address unnecessary compliance costs and prevent disruption to consumers (where existing agency arrangements may need to be reassigned if someone becomes prohibited from being licensed). This would work together with the proposal to enable a licensee to go through a "streamlined" re-licensing process within 12 months to enable these affected individuals the chance to complete their CPD requirements or pay the annual suspension fees. This 12-month process grace-period to comply and become re-licensed. would be less burdensome on both the regulator and the affected licensee.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Effectiveness: 0 This is unintended and unnecessarily harsh, and risks losing experienced real estate agents with the unduly burdensome requirements to staying in the industry. Efficiency: 0 Automatic 5-year suspension from practice is a disproportionate response to failure to complete CPD or non-payment of fees. There have been many complaints from real estate agents and the sector for the unduly severe consequence. Equity: 0 This will continue to unfairly and unreasonably punish licensees who fail to complete CPD requirements or fail to pay fees on time.	Option 2 Effectiveness: + The change better meets the purpose of the REAA and prevents disruption to consumers (where existing agency arrangements may need to be reassigned if someone becomes prohibited from being licensed). Efficiency: + Removing this prohibition will not negatively affect the consumer protection purpose of the REAA. It will also reduce compliance burden for the regulator. Equity: ++ Automatic 5-year suspension from practice is an overly punitive response for the affected group of licensees. Option two will deliver a fairer outcome for those who fail to meet these requirements and provide an opportunity to deliver on those requirements without needing to reapply. It would align with the approaches in other, similar industries.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2 will deliver a fairer outcome for those who fail to meet CPD requirements and prevent unnecessary disruption to consumers (where existing agency arrangements may need to be reassigned if someone becomes prohibited from licensed). This will not negatively affect the consumer protection purpose of the REAA but rather ensures continued delivery of services by agents.	
What are the marginal costs and benefits of the option?	Costs: We consider there will be no cost to the Ministry. Any associated costs will be low and be borne by the REA as the regulator. The REA expects that costs could be met within its existing resources. We expect that the implementation impact on the Ministry will be limited to communicating with the READT Chair about the change (if they are not already informed as part of the legislative process). Benefits: This will reduce compliance costs for licensees who fail to meet CPD requirements within the set timeframe, and the REA as the regulator.	
How will the new arrangements be implemented?	This change would be implemented by the REA. We will monitor this as part of our ongoing regulatory stewardship and relationship with the REA.	