NEW ZEALAND
BANKERS ASSOCIATION

# Submission

to the

# Law and Order Select Committee

on the

# Organised Crime and Anti-corruption Legislation Bill

5 February 2015

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# Submission by the New Zealand Bankers' Association to the Law and Order Select Committee on the Organised Crime and Anti-corruption Legislation Bill

## About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.

2. The following fourteen registered banks in New Zealand are members of NZBA:
   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of New Zealand
   - Bank of Tokyo-Mitsubishi, UFJ
   - Citibank, N.A.
   - The Co-operative Bank Limited
   - Heartland Bank Limited
   - The Hongkong and Shanghai Banking Corporation Limited
   - JPMorgan Chase Bank, N.A.
   - Kiwibank Limited
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited.

## Background

3. NZBA would appreciate the opportunity to make an oral submission to the Committee on this Bill.

4. If the Committee or officials have any questions about this submission, or would like to discuss any aspect of the submission further, please contact:

Kirk Hope
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## Executive Summary

5. NZBA appreciates the opportunity to submit on the Organised Crime and Anti-Corruption Legislation Bill.

6. Overall we support the Bill and welcome its progression into law.

7. Organised crime requires an international response and this Bill will further ensure that New Zealand plays its part in the global response to serious organised crime. Although this is not currently a major issue domestically, it is important to bear in mind the bigger picture. This is about New Zealand's international reputation and ensuring that we remain in line with global best practice.

8. The New Zealand banking industry is committed to playing its part in this and we look forward to further working with the Committee and the Government to progress the Bill.

9. However, we have identified a number of technical issues with the Bill which we believe need to be addressed and rectified by the Committee before the Bill progresses.

10. These issue have been identified through our members' knowledge of international money transfers and global experience with similar pieces of legislation.

11. The changes we suggest to address these issues are all relatively minor and uncontroversial in nature, but they will ensure a significantly improved Bill with reduced compliance costs for New Zealand financial institutions.

12. We believe that none of the proposed changes in our submission substantially affect the intent and focus of the Bill. They are focused on addressing a number of unintended technical and timing problems with the Bill.

13. Our submission outlines the seven key problems that we have identified and our suggested remedies for addressing them.

## Key points

### *Transactions Caught*

NZBA believes that the number of transactions caught in the draft Bill is broader than is reasonably necessary to give effect to the intent of the Bill. The definitions in the Bill are unclear, and will result in a large number of unnecessary transactions needing to be reported at considerable expense.

Based on international experience, the primary legislation should exempt transactions that do not need to be caught rather than relying on any subsequent regulations to clarify this detail.

Without the applicable thresholds being specified, NZBA can only make estimates as to how many transactions might be caught based on the existing New Zealand thresholds and the Financial Action Task Force and Australian thresholds. We estimate that across the banking industry there could be between five and seven million reportable prescribed transactions annually.

Reporting this number of transactions would clearly place a significant compliance cost on financial institutions. We argue that instead reporting should be aligned with the different types of SWIFT message as this will be practically easier for banks to report.

From there, the Police or any other agency entitled to receive this information can manage it into the form that they want it. The cost of this data management, through reporting requirements, should not be on banks, and reporting SWIFT information would allow banks to report raw data that can be readily extracted from banks' systems.

## *International Wire Transfers*

It is unclear from the Bill which reporting entity will be responsible for reporting an international wire transfer. Wire transfers are payments which generally involve ordering, intermediary and beneficiary institutions. The Bill applies when a "person conducts a prescribed transaction through a reporting entity" (per section 48A(1)). As drafted, this could be interpreted as giving an obligation to all of the entities involved in a transaction because the wire transfer is "conducted through" them and this term is not otherwise defined. The Australian Anti-Money Laundering and Counter-Terrorism Financing Act 2006 clearly establishes at section 45(1) that the obligation to report applied to the reporting entity that is the last point of transmission of an international funds transfer instruction (IFTI) transmitted out of Australia, or the reporting entity at the first of an IFTI transmitted into Australia.

NZBA believes that the Australian solution is a logical one and that the Bill should be clarified to align with the Australian Legislation.

## *Reporting Portal*

There is not enough information in the Bill to adequately identify what reporting will look like, what form the information reported should take and the proposed method of delivery. In order for banks to be in a position to comply with the new reporting requirements it is important they have this information.

For example, it would be useful to know whether it is anticipated that this will it be done through the goAML Portal used for reporting under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) . In particular, NZBA believes that more information is needed as to what the reporting fields will be to allow banks to develop and implement automated extraction and reporting solutions as soon as possible.

## *"Nature" of Transactions*

NZBA is also concerned as to what is expected by the new requirement in section 48B of the AML/CFT Act to report the "nature" of the transaction, and we submit that further guidance should be provided as to what kind of analysis will be required to make this determination.

## *Naming Staff*

NZBA strongly argues that the proposed new requirement at section 48B(1)(b)(vi) to name the staff member who handles a particular transaction is inappropriate.

There is nothing in the Australian Legislation or the New Zealand AML/CFT Rules that requires a reporting entity staff member who was involved in a transaction to be named. The AML/CFT Rules do require the identification of agents for international funds transfers but only in limited circumstances at 17.2(6), "where a person (other than the person referred to in subparagraph 17.2(3)) transmits the instruction for the transfer of money or property under the designated remittance arrangement (transmitter)."

This blanket naming of bank staff goes against bank policies regarding naming staff, and it is unclear from the Bill why this information is being collected and in particular what it might be used for.

## *Timing and Implementation*

Without detail in the Bill or draft regulations setting out the details of the prescribed transaction reports, the banking industry cannot begin to build an appropriate technology solution.

Given the major regulatory reform affecting banks in recent years the sector has significant knowledge of the time required to build and develop new technology solutions and systems such as what this Bill will require. Accordingly, it is our firm view that it is likely that to develop the technology solution required will take at least twelve months. This is because information that the Bill requires to be reported is not currently reported, and because current IT systems are not geared towards the mass provision of information.

This is particularly important given the experience of the banking industry in implementing electronic suspicious transaction reports (STRs) under the AML/CFT Act. Two distinct inputs will be required from the Ministry of Justice and the Financial Intelligence Unit of the Police (FIU), namely:

1. Regulations which set out:
    a. The "applicable threshold value" for prescribed transactions (this would require an amendment to the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011);

b. Any additional content for prescribed transaction reports, under proposed s48B(1)(b)(vii); and

2. System specifications for "secure electronic transmission specified or provided by the Commissioner" under the proposed section 48B(1)(d)(i). In our view the AUSTRAC online reporting guide gives a good picture of the type of specifications that will be needed to be able to report effectively.

We also note that there were substantial issues with the timing of both of these elements in the implementation of STRs under the AML/CFT Act. The FIU did not provide detailed specifications on electronic transmission until the final quarter of 2012 and made subsequent changes to these in 2013. The STR form was only included in Schedule One of the Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011 on 30 June 2013 (although a draft of the regulations had been made available).

The result was that several large banks were not able to use the electronic means of transmission for some time. The FIU had strong expectations that the majority of STRs would be electronic and raised this as an issue with AML/CFT Supervisors. Similar delays would cause much greater problems with prescribed transaction reports as it would not be feasible to make manual reports under s48B(1)(d)(i) in the interim given the likely volume of transactions.

Accordingly, NZBA argues strongly that the Bill needs a transitional timeframe included on the basis that banks will not be able to build and deploy IT systems by the 1 January 2016 commencement date. Ideally this would be at least a year from the point at which the details outlined above become known.

## *Failure to Lodge*

We believe that the failure to lodge a report on a prescribed transaction within the prescribed time should be a separate offence to which the usual burdens of proof apply. That is, the onus of proving a defence should not be on the banks. While understanding and supporting the purpose of these provisions, we submit that the maximum fine of five million dollars for this type of offence is grossly excessive and a more realistic level of penalty should apply.