Strategi
Compliance

BEST PRACTICE GUIDANCE NOTE

CHANGES TO AML/CFT ACT REGULATIONS – JULY 2023

VERSION 1, JULY 2023

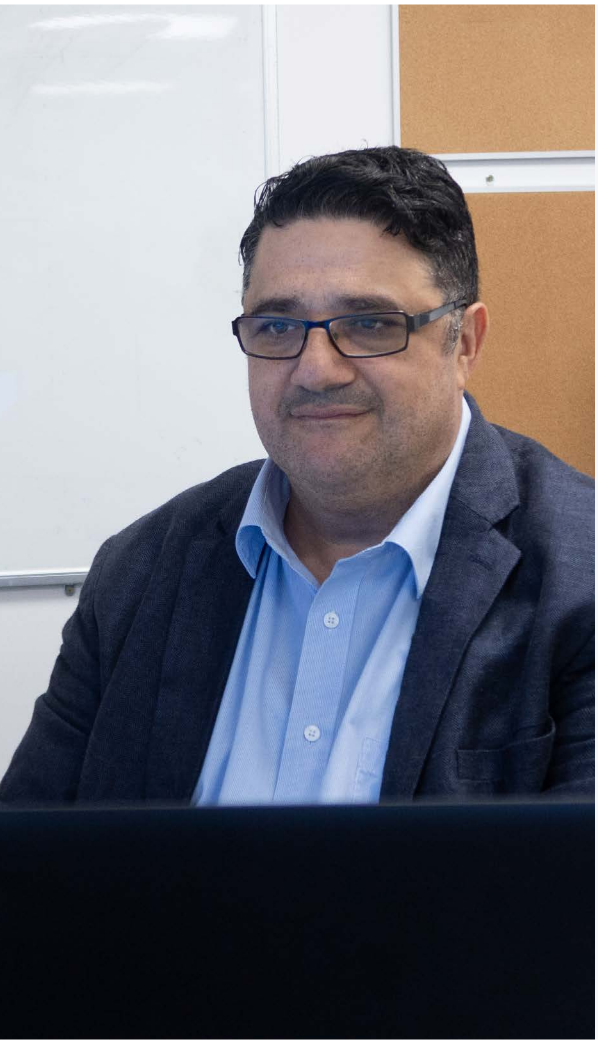
Changes to AML/CFT Act regulations

Background

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) places obligations on New Zealand's financial institutions, casinos, virtual assets service providers, accountants, lawyers, conveyancers and high value dealers to detect and deter money laundering and terrorism financing.

The Act ensures that businesses take appropriate measures to guard against money laundering and terrorism financing. This enhances the reputation of individual businesses, and of New Zealand as a safe place in which to do business.

Between July 2021 and June 2022, the Ministry of Justice (MoJ) led a review that looked at how the AML/CFT Act has performed since 2017 as well as whether any changes were necessary or desirable. Following this review the Government has now introduced changes to regulations in the Act that will come into force in three stages from July 2023 to 1 June 2025.



What is changing and when?

The changes cover a broad range of areas within the AML/CFT regime and amend each of the main sets of regulations under the AML/CFT Act. The changes come into effect in three stages over the next two years:

Stage 1 – 31 July 2023	These changes will provide regulatory relief to some businesses and clarify existing obligations.
Stage 2 – 1 June 2024	Introduces new obligations for existing reporting entities.
Stage 3 – 1 June 2025	Extends coverage of the regime introducing obligations on sectors that were not previously subject to AML/CFT obligations.

This Guidance Note focuses on key changes that come into effect on 31 July 2023. We will release further guidance in advance of the next two stages as we learn more about what is changing and the impact this will have on reporting entities.

There are a large number of new or amended Regulations all of which can be found via the following link: **https://www.justice.govt.nz/justice-sector-policy/key-initiatives/aml-cft/aml-cft-review/**

> The Ministry of Justice's website is initially the 'horse's mouth' when it comes to these changes so make sure you sign up to their notifications and check their website regularly.
> We also anticipate that all three supervisors will release guidance that will be specific to each change in due course.

Who do the amended regulations apply to?

- All current reporting entities under the AML/CFT Act need to be aware of the changes as they apply across all sectors covered by the Act.
- Entities that are likely to become reporting entities after 1 June 2025 will also need to be across these changes.

> Watch this space – as soon as we have more information about who else this applies to, we will let you know.

- We also recommend that anyone with a general interest in the financial services sector stay up to date with the requirements of the AML/CFT regime. For example, investors or entrepreneurs interested in opportunities in the financial services sector.

What do you need to do?

1. The first thing you need to do is determine what is required of you and by when.

   We urge all reporting entities, including those likely to become reporting entities, to promptly assess their new obligations and determine the necessary steps. For the changes that come into effect on 31 July 2023 use the list below as a starting point but make sure you also read through the amendment regulations to ensure you have captured all the changes that apply to your specific business.

2. Update relevant documentation and train staff.

   Most reporting entities will need to modify their key compliance documents (Risk Assessment and AML/CFT Programme) and make a training plan for relevant staff members. Strategi can provide a 'mini' audit for anyone who is unsure of what changes they need to make to their documentation or would like a second opinion. See the end of the Guidance Note for more information on this service.

3. Have all this done before changes come into effect.

   For changes slated to take effect in 2024 and 2025, we anticipate supervisors will require prompt compliance from reporting entities once the changes are in force. Strategi will release further guidance on the next two stages of changes in due course but for anyone who wants to tackle all of the changes in one go this is something our team can help with now.

Key changes: Stage 1 – 31 July 2023

Below are links to the changes to the AML/CFT Act regulations that are in force from 31 July 2023. Not all of these changes apply across the board so check each one carefully to see what applies to your specific business and get in touch with our team if you are not sure. We have also picked out the main ones we think will relate to our clients to help you work through them in terms of understanding what is changing and what you need to do. This is not an exhaustive list so make sure you read through the amendment regulations.

The changes to regulations can be found here:

[Cross-border transportation of cash (external link)]

[Definitions(external link)]

[Exemptions(external link)]

[R&C(external link)]

[PTR]

What's changed?	Link to reg	Who does it impact?	Strategi comment
Definition of "beneficial owner" extended. The definition of "beneficial owner" is being extended to include "a person with ultimate ownership or control of a customer or person, whether directly or indirectly." The change also clarifies that "a person on whose behalf a transaction is conducted" is a beneficial owner if the individual is "a person with ultimate ownership or control, whether directly or indirectly."	Reg 5AA	All reporting entities.	Under the original definition it could lead to a business identifying the wrong person as the beneficial owner and therefore not fully appreciating the risks associated with the transaction. The key changes to the definition are: • The introduction of the concepts of "ultimate ownership" and "indirectly." • Clarifies that in a scenario where your customer is making a transaction on behalf of another person you will need to identify who that person is and potentially treat them as the beneficial owner.

			Next steps: Update your CDD policies and processes in your AML programme to incorporate this change. Make sure your documents reflect the new definition and that staff understand this means they may have to take extra steps when identifying the beneficial owner. Note: Currently there is no requirement to apply this retrospectively.
Clarification of enhanced CDD requirements. Reg 12A clarifies CDD requirements for existing customers when the relevant service was not initially provided. Reg 12B clarifies CDD requirements where the relevant service is provided to a repeat customer outside of an ongoing business relationship.	**Reg 12A and 12B**	Designated non-financial business or profession (DNFBP) e.g., law, accounting, and real estate firms.	Reg 12A clarifies that if an existing customer who has previously received a service not captured by the Act now requires a service that is captured by the Act, then CDD requirements apply. This means normal CDD should be provided **before** the transaction occurs. However, it does allow for delayed CDD. This means the CDD can occur **after** the reporting entity has been engaged to provide the captured service if: • it is essential not to interrupt normal business practice; and • money laundering and financing of terrorism risks are effectively managed through appropriate risk management procedures; and • verification of identity is completed as soon as practicable after the DNFBP is engaged to provide the relevant service.

			When a service that is captured by the Act is requested by a repeat customer who is outside of an ongoing business relationship, a DNFBP is not required to obtain or verify any documents, data, or information that it has previously obtained and verified relating to the customer. The DNFBP will not be required to conduct new CDD unless: • there are reasonable grounds to doubt the adequacy or veracity of the previously obtained information or documents; or • the level of risk involved otherwise requires new CDD. Example: Real estate agent Tom is engaged to sell a property for Richard who is a repeat customer outside of an ongoing business relationship. Richard is a repeat customer as Tom sold a property for him two years earlier, but he is outside of an ongoing business relationship as Tom has not kept in touch with Richard since the first property sold. Under the new regulations (and because Tom conducted CDD on Richard at the time of the first property sale) Tom is not obliged to conduct new CDD.

			Because there is no specific reference to time frames in the regulations Tom must make a judgment call based on the information he holds from the initial CDD and how comfortable he feels in the current circumstances. Richard has not experienced any significant life changes since Tom interacted with him last and there are no red flags raised during their initial meeting, so Tom decides that new CDD is not necessary in this situation.
			Next steps: Update your CDD policies and processes in your AML programme to outline the scenarios covered in both of the new regs. We recommend including a higher level of sign-off when a decision is made to not conduct CDD for a repeat customer who is outside of an ongoing business relationship. Once the new process is embedded and you are comfortable with setting your own rules e.g. you may decide to seek fresh CDD if more than two years have elapsed regardless of the situation.

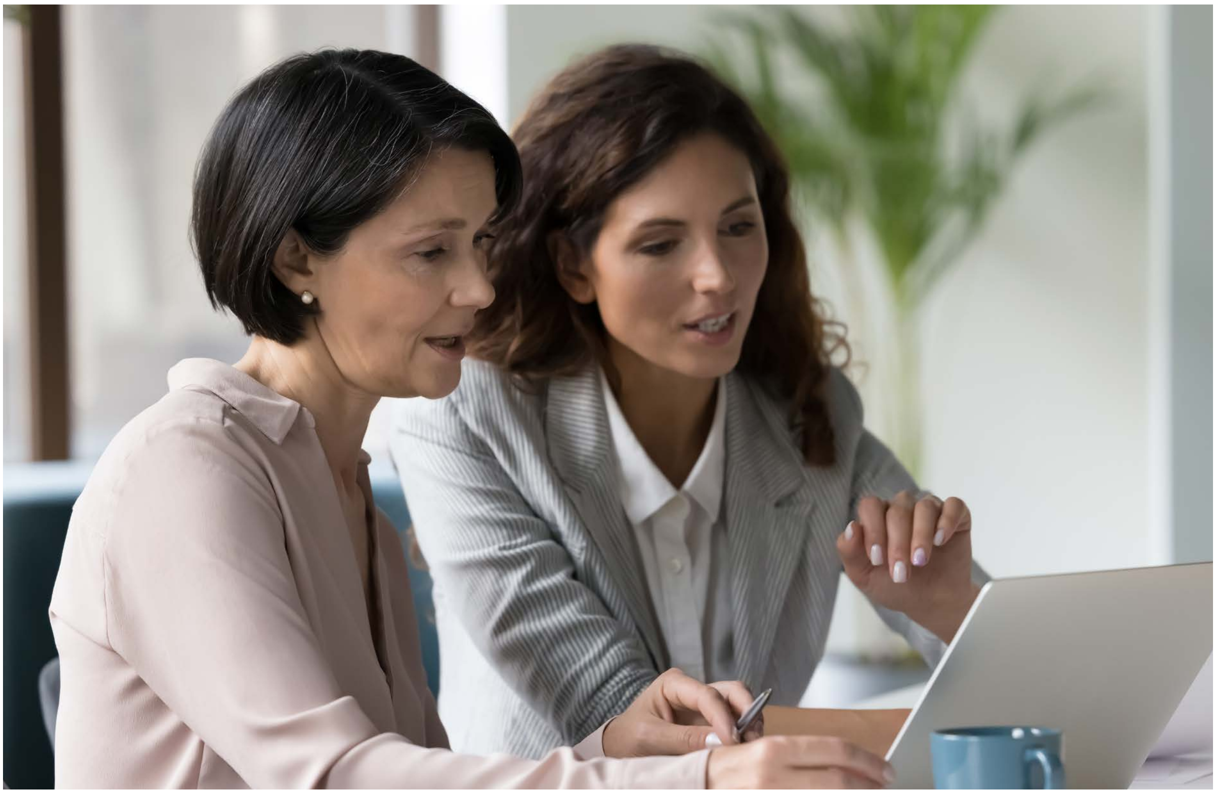
Updated "definition of customer". Regulation 5B which provided a "definition of customer" has been replaced with new regulations 5B – 5G that provides updated definitions and extend to cover specific types of services.	**Reg 5B – 5G**	All reporting entities.	Identifying who the person is that meets the definition of a customer was not always clear, particularly where the transaction or relationship was complex. In some circumstances this may have led to businesses conducting CDD on multiple parties or on the wrong party leading to unnecessary work and potentially increased risk. Next steps: The regulations provide updated definitions so read through them and record / amend the definitions that are applicable to you in your AML programme. Click on the link and review the definition changes for different persons and situations. Staff will also need upskilling.
Definition of "legal arrangement" extended. The definition of "legal arrangement" has been extended to include an unincorporated society.	**Reg 10AAAC**	All reporting entities.	The previous definition of "legal arrangements" covered trusts, partnerships, and charitable entities only. It is now amended to cover unincorporated societies. Next steps: Update your AML programme to include unincorporated societies as a legal arrangement.

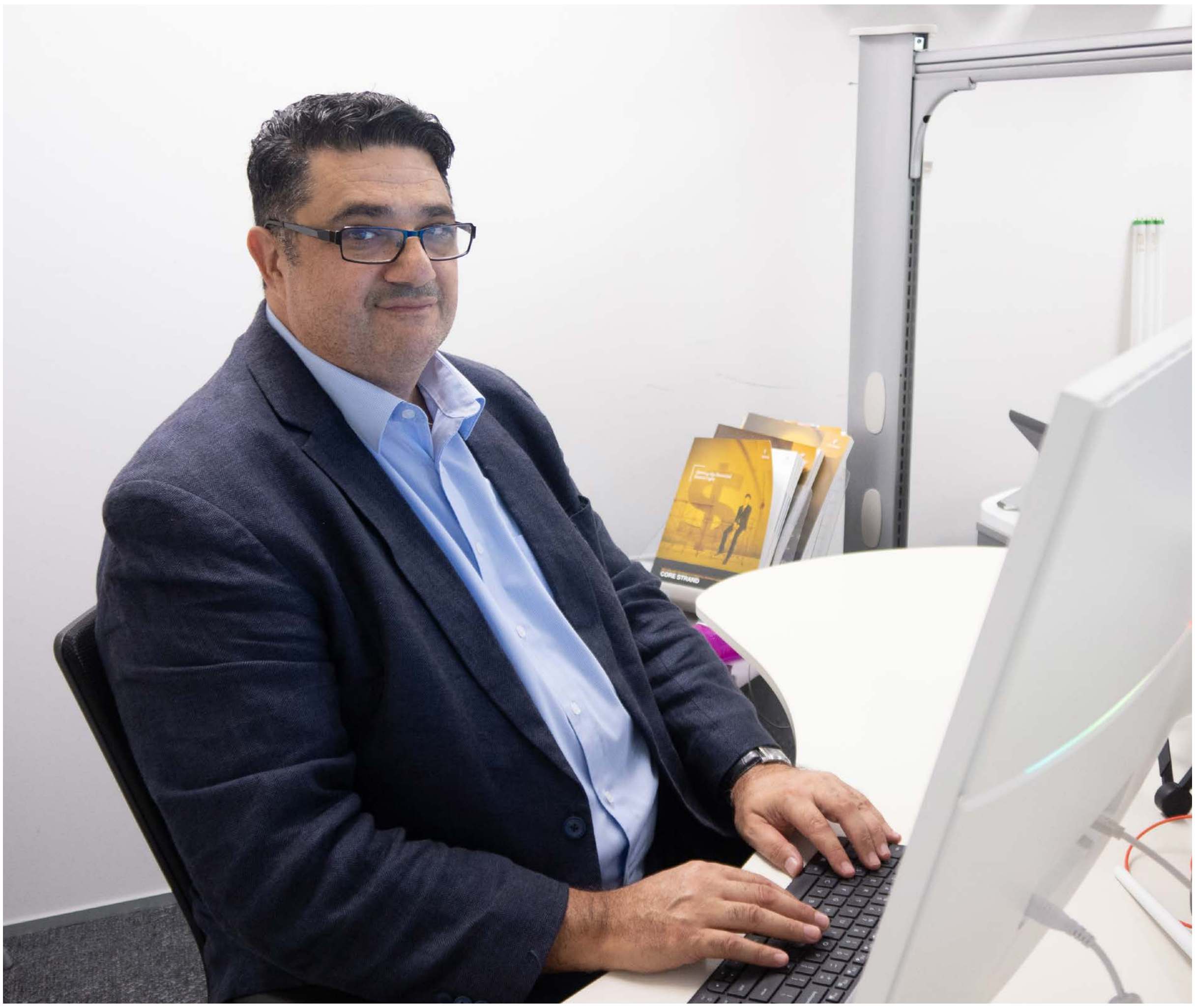
Clarification of the meaning of "countries with insufficient AML/CFT systems or measures." The definition of "A country that has insufficient anti-money laundering and countering financing of terrorism systems or measures in place" now includes "A country identified by the Financial Action Task Force as being a high-risk jurisdiction subject to a call for action."	**Reg 15**	All reporting entities.	Entities need to be aware of this change when they are conducting enhanced CDD on any customers originating from "countries with insufficient AML/CFT systems or measures." Checks now need to include countries that have been identified by the Financial Action Task Force as being a high-risk jurisdiction. Next steps: Update your CDD process document and your Country Risk Assessment section in your Risk Assessment doc to include an instruction to check the **FATF page**. Once you open the page you just need to enter the name of the country of origin of your customer to see if it comes up as a high-risk jurisdiction.
Clarification of the definition of "stored value instruments". The definition of a "stored value instrument" (SVI) has been further clarified to now mean "an instrument (whether tangible or intangible), including a gift facility or voucher, that is capable of storing monetary value in a form that is not physical currency or giving access to monetary value stored in a form that is not physical currency, regardless of whether the instrument is reloadable or able to be redeemed for cash; and	**Reg 15(4)**	Because SVIs are commonly used in money laundering typologies we recommend that all reporting entities be aware of this risk and include it in their Risk Assessment.	With the Act recognising that stored value instruments (SVIs) can be both tangible and intangible, there will be a wider range of SVIs that fall under the Act. This means that existing reporting entities may have new obligations, or it may bring new service providers under the scope of the Act e.g. mobile apps that store value are now covered by the Act. Note: Under the Act (s15 (1)) some SVIs are exempt e.g., if they have a maximum possible value at any one time not exceeding $1,000-$10,000 (depending on the nature of the instrument) or is capable of being reloaded with $10,000 or more in any consecutive 12-month period. These limits will still apply but under the updated definition it will also apply to intangible SVIs.

(b) includes— (i) a portable instrument (whether tangible or intangible) whose value, or associated value, is transferable to a third party or able to be remitted; and (ii) any account or other arrangement associated with the value stored on the instrument; but (c) does not include— (i) a credit card or a debit card; or (ii) an instrument that stores a virtual asset.			Next steps: Include SVIs in your Risk Assessment document and if they are already included make sure your description includes intangible SVIs. It is important that your staff understand what SVIs are as they are becoming more commonly used in money laundering typologies so we have included an explanation below that you can use for training purposes of put into your Risk Assessment and process documents. What is a stored value instrument? A stored value instrument is a type of payment method that stores a certain value of money for future use. It can be in the form of a physical card, a digital token, or even a mobile app. Stored value instruments are often used for convenient and quick transactions, allowing people to make purchases without using traditional cash or credit cards. It is important to note that stored value instruments can be intangible, meaning they may not have a physical form like a card or token. They can exist purely as electronic records or digital codes stored in a computer system.

			However, it is worth clarifying that stored value instruments cannot be used to store or represent virtual assets. Virtual assets typically refer to cryptocurrencies or other digital currencies that exist solely in electronic form. Stored value instruments are primarily designed to store and facilitate the use of fiat currency (government-issued money like dollars or euros) or other traditional forms of payment, rather than virtual assets.
The Act will now apply to providers of virtual asset safekeeping and administration services. The definition of "financial institution" now also includes a person who in the ordinary course of business, provides safe keeping or administration of virtual assets on behalf of any person.	Reg 10AAA	Anyone who currently offers this service or is considering offering this service.	The Act does not currently apply to service providers that only provide the service of safekeeping or administration of virtual assets. The changes will bring providers of such services within the scope of the Act so if this applies to you please get in touch with our team for more information.

There will now be an exemption for corporate trustees and nominee companies that are subsidiaries of reporting entities. Corporate trustee or nominee company subsidiaries are no longer subject to the regime if their activities are already covered by their parents' AML/CFT compliance programmes.	Reg 24AF	Law and accounting firms who are reporting entities and have set up a 'subsidiary' corporate trustee or a nominee company to provide services for clients.	This change reduces the administration and compliance costs associated with meeting AML/CFT obligations of 'subsidiary' corporate trustees and nominee companies. Note: Previously many law and accounting firms were setting up Designated Business Groups (DBGs) to reduce the administration and compliance costs but this will no longer be necessary under the new regulations. DBGs allowed for two or more reporting entities to join together to share administration obligations. Next steps: Create a new section in your AML programme called 'Corporate Trustees and Nominee Companies' and list any that apply to your business making and describe how they follow the AML/CFT risk assessment and programme of the parent entity.





Next steps and recommendations

While this Guidance Note provides a good overview of the key changes in the first stage it is still vital that you work through the regulatory amendments to make sure you understand what they are and how they will impact your business. Our expert team can help you with this so let us know if you need assistance here.

There is a legal requirement for reporting entities to be compliant and for their AML/CFT Risk Assessment and Programme to be up to date and effective in meeting their obligations. It is not practical to wait until just before you are due for your three yearly AML/CFT audit and then make the necessary changes. Given the high volume of changes to the regulations over the next few years, we recommend conducting an annual review including updating key documents and training to reflect each stage of changes as they come into force. Or you may decide to implement all of the changes now to get the job done which is not a bad idea as it will likely save you time and money in the long run. Either way Strategi can help by providing a 'mini' audit to make sure your AML/CFT programme reflects the changes, and that training is in place.

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For more information contact:

David Greenslade BA, MBA, Dip Mgt, Dip Bus Studies (PFP), MIML, MInstD

Executive Director

T: + 64 9 414 1302

M: +64 21 400 600

E: david.greenslade@strategi.co.nz

W: strategi.co.nz

17e Corinthian Drive, Albany, Auckland 0632

PO Box 301426, Albany, Auckland 0752, New Zealand

Telephone +64 9 414 1300 | Email compliance@strategi.co.nz

STRATEGI.CO.NZ

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