

Departmental Disclosure Statement

Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

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Part One: General Policy Statement

1. Money laundering is the process by which money obtained through crime is made legitimate to conceal its criminal origins. Financers of terrorism use similar techniques to money launderers to avoid detection by authorities and to protect the identity of those providing and receiving the funds.
2. This Bill amends the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 (the Act). The Act aims to detect and deter money laundering and terrorism financing, so that criminals cannot enjoy the profits of their activity, or reinvest it into further criminal conduct including the financing of terrorism. It currently applies to banks, financial institutions and casinos and sets out these entities' core obligations including:
 - developing a risk assessment and compliance programme
 - undertaking customer due diligence (customer identification and verification)
 - account monitoring, and
 - submitting suspicious transaction reports to the Financial Intelligence Unit of the New Zealand Police.
3. This Bill will expand the Act's obligations to real estate agents, lawyers, accountants, conveyancers, the New Zealand Racing Board, and some high value dealers. When undertaking certain activities which pose high risk for money laundering and terrorism financing, these sectors will be required to know who their customers are and on whose behalf they act. The sectors will be required to report large cash transactions, and, (other than high value dealers), report suspicious activity, develop a risk assessment and maintain a compliance programme. High value dealers will be able, but not required, to report suspicious activities which come to their attention.
4. The Bill also establishes the Department of Internal Affairs as the relevant AML/CFT supervisor for estate agents, lawyers, accountants, conveyancers, the New Zealand Racing Board, and some high value dealers. Supervision of Phase II businesses and professions is essential to ensure that AML/CFT obligations are implemented in practice. This is important to ensure that Phase II businesses are not being misused and to protect New Zealand's international reputation as a hostile environment for criminal funds.
5. The Bill also makes amendments to existing provisions to improve the operation of the AML/CFT regime. These include:
 - Expanding the scope of reporting requirements to include reporting suspicious activities;
 - Expanding the situations where reporting entities can undertake simplified customer due diligence.

- greater flexibility to share information to meet the purposes of the Act, including mechanisms to facilitate information flows between Government and the private sector. Information sharing was highlighted as a key gap in the current AML/CFT regime in the recent Government Inquiry into Foreign Trust Rules by John Shewan.
6. The expanded scope of the Act will mean that where the Police needs to investigate money laundering or organised crime, they can more easily access relevant information, and trace who has been involved.
 7. New Zealand's AML/CFT regime also helps New Zealand meet its international obligations under the Financial Action Taskforce (FATF) – an inter-governmental forum of technical experts on money laundering and countering terrorist financing. Expanding the sectors covered by the Act will close the existing regulatory gaps, and align with FATF recommendations. This expansion will improve the ability to detect and deter money laundering and terrorism financing, and enhance New Zealand's international and trade reputation.
 8. The provisions of the Bill strike a balance between combating crime, minimising costs and enabling New Zealand to meet its international obligations. New Zealand needs to ensure that it is not a weak link in international efforts to counter money laundering and the financing of terrorism.

Part Two: Background Material and Policy Information

Published reviews or evaluations

<p>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</p>	<p>YES</p>
<p>Government inquiry into foreign trust rules, John Shewan, June 2016, and government response - The Bill addresses some of the concerns raised in the Shewan report including better information sharing and expanding the coverage of AML/CFT legislation. http://www.treasury.govt.nz/publications/reviews-consultation/foreign-trust-disclosure-rules/pdfs/report-giftdr-27jun2016.pdf and https://www.beehive.govt.nz/release/government-adopt-shewan-recommendations</p> <p>Financial Action Task Force (FATF) Mutual Evaluation report (MER) 2009 – The FATF is the multi jurisdictional body responsible for the internationally recognised standards for AML/CFT. As part of their function they perform an evaluation of member countries AML/CFT measures. New Zealand’s last MER was in 2009. As part of that last evaluation New Zealand received negative comment on the lack of coverage of designated non-financial businesses and professions (DNFBPs) and highlighted ‘essential gaps’ in regards to this sector. DNFBPs (lawyers, accountants, real estate etc) are now covered by the AML/CFT Act as part of Phase 2. http://www.fatf-gafi.org/countries/nr/newzealand/documents/mutualevaluationofnewzealand.html</p> <p>FATF Follow Up Report (2013) – Post the FATF MER 2009 NZ was placed on follow up report due to number of non-compliance issues. This report described New Zealand’s efforts to comply with the FATF standards. In October 2013, the FATF recognised that New Zealand had made significant progress in addressing deficiencies identified in the 2009 MER and decided New Zealand be removed from the regular follow-up process. Part of this progress was an undertaking to implement Phase 2 of the AML/CFT Act. http://www.fatf-gafi.org/countries/nr/newzealand/documents/fur-new-zealand-2013.html</p> <p>AML/CFT National Risk Assessment (NRA) 2010 – This document, produced by the New Zealand Police Financial Intelligence Unit (FIU), provided a national level over view of money laundering and terrorist financing risks from a law enforcement perspective. Included in the NRA were DNFBPs and related typologies. A revised NRA is due later in 2017. http://www.police.govt.nz/sites/default/files/publications/fiu-nra-2010-primary-document.pdf</p> <p>Quarterly Typology Reports (QTRs) – These FIU produced documents provided updates on AML/CFT typologies and related information. DNFBPs have been included as topics of discussion. http://www.police.govt.nz/advice/businesses-and-organisations/fiu/news-and-documents</p> <p>Sector Risk Assessments (SRAs) – SRAs have been produced by the Department of Internal Affairs (DIA), Financial Markets Authority and the Reserve Bank of New Zealand (RBNZ) as part of their AML/CFT duties. They are informed by the NRA and detail the level of ML/TF risk for each of their specific sectors. Updated RBNZ and FMA SRA’s are due later in 2017. https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Sector-and-National-Risk-Assessments?OpenDocument https://fma.govt.nz/news/reports-and-papers/monitoring-and-compliance-reports/amlcft-sector-risk-assessment/ http://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/anti-money-laundering/guidance-and-publications/4345201.pdf?la=en</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
This Bill does not give effect to New Zealand action in relation to an international treaty, but does relate strongly to an intergovernmental forum. The AML/CFT regime is informed by the international standards set by the Financial Action Task Force (FATF) of which New Zealand is a member. This is an intergovernmental forum of technical experts on money laundering and countering financing of terrorism. New Zealand is also a member of one of FATF's regional bodies, the Asia / Pacific Group on Money Laundering (APG). As a member of these bodies, New Zealand has committed to the effective implementation of the international standards, which are known as the FATF Recommendations.	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
No National Interest Analysis was prepared because FATF membership is not a treaty level commitment.	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
A RIS was required for this proposal. In addition, a short appendix to the RIS was prepared, summarising the minor changes to the policy which were made as a result of consultation. It can be found at: http://www.treasury.govt.nz/publications/informationreleases/ris	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
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On the basis of the RIS prepared in October 2016, the RIA team stated
 “The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement “Second phase of reforms to the Anti-Money Laundering and Countering Financing of Terrorism regime” produced by the Ministry of Justice. The reviewers consider that the information and analysis summarised in the RIS meets the QA criteria.

The RIS demonstrates that in-depth consideration has been given to the nature and level of costs that the new regime will be creating for business, through a Business Compliance Cost survey. It also includes a formal cost benefit analysis (CBA) which, although it results in no or marginal benefit in quantifiable terms, clearly signals that the overall net benefits are likely to be far more significant. This is because benefits such as the deterrent effect and the impact on New Zealand’s international reputation are valuable in nature but cannot be expressed in quantified terms.

However, the actual impact of decisions in practice will largely depend on the detailed design and implementation of the new regime and the way in which stakeholders respond to it. Therefore, it will important to maintain contact with stakeholders and to put in place a comprehensive monitoring and evaluation process, to measure the success of the second phase reforms and identify any additional changes needed.”

Having reviewed the supplementary appendix to the RIS, the RIA team did not require anything further and stood by its previous QA statement.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
A cost benefit analysis was undertaken by the Ministry of Justice which will be made available in due course.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES

(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>(a) Much of the success of the regime will rely on reporting entities having sufficient systems in place to ensure they understand and can comply with their obligations. However, there will be a number of ways in which compliance will be supported, For example:</p> <ul style="list-style-type: none"> - Government will develop clear regulations to provide specific detail about aspects of the obligations - the Financial Intelligence Unit, and supervisors of new and existing reporting entities, will provide written guidance, training, and other direct support to ensure that reporting entities are able to comply. <p>(b) The Department of Internal Affairs (DIA) will be the supervisor for all Phase II entities. This will build on the DIA's current AML/CFT supervisory role for entities such as casinos, money changers and money remitters. As an existing AML/CFT Supervisor, the DIA has experience in AML/CFT supervision and has established a risk-based approach across all supervisory activities. The DIA has established structures, systems and mechanisms for an effective AML/CFT supervision capability which will be extended to the Phase II sectors. This model will provide consistency by limiting the number of supervisors and ensuring one supervisor for the new entities.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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Part of the reason to enact this Bill is to align with the international standards set by the Financial Action Task Force (FATF) of which New Zealand is a member.

For example, the FATF standards require that the customer due diligence requirements be done both by financial institutions and designated non-financial businesses and professions. These non-financial businesses and professions include real estate agents, certain high value dealers, lawyers, conveyancers and accountants.

This Bill will help New Zealand comply with the FATF standards through including these additional sectors within New Zealand's AML/CFT regime. The measures in the Bill will support New Zealand in its evaluation by the FATF in 2020 to assess New Zealand's compliance with the FATF standards and the effectiveness of the AML/CFT regime.

This Bill will also enhance New Zealand's implementation of the UN Convention Against Transnational Organised Crime (UNTOC) which calls on member states to institute a comprehensive regulatory and supervisory regime on banks and other businesses susceptible of being misused for money laundering. The UNTOC also calls on states to ensure that administrative, regulatory, law enforcement and other authorities have the ability to share information domestically and internationally to combat money laundering.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Principle 4: Duty to Consult:

Two rounds of consultation have been held: the first in relation to the policy proposals, and the second related to the proposed drafting of the Bill. This consultation provided all New Zealanders, including Māori, with the right to submit in writing.

The Ministry has not identified any aspects of the Bill which would disadvantage Maori.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by Crown Law, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon the Bill's introduction at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>A Privacy Impact Assessment (PIA) is being undertaken by the Ministry of Justice. Preliminary analysis has highlighted some privacy risks posed by the proposed Bill in relation to the collection, use and disclosure of information. The Select Committee process will offer opportunities to clarify and further refine these provisions, while still enabling effective information sharing in support of the AML/CFT regime.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Privacy Commissioner considers that the information sharing framework proposed is broad. As currently drafted the Commissioner considers the Bill will go beyond the objective of providing greater flexibility to share information to meet the purposes of the Act.</p> <p>The Commissioner recommends that the Select Committee direct officials to amend the information-sharing provisions in the Bill to ensure they are clear, appropriately constrained and include proper safeguards before the Bill is approved for introduction.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Ministry has held two rounds of consultation:</p> <ul style="list-style-type: none"> the first in relation to policy proposals, held in August 2016 and the second related to the proposed drafting of the Bill, held in Dec16-Jan 17. <p><i>August consultation</i></p> <p>The Ministry conducted targeted consultation from 18 August to 16 September 2016, and received almost 60 submissions from a cross-section of affected individuals.</p> <p>Generally there was support for the reforms. The public understands the value of detecting and deterring both money laundering and the financing of terrorism. However, there were questions about what a fit for purpose AML/CFT regime looks like in each sector. Almost all submissions sought clarity about how the regime would apply and what their precise obligations would be. Submitters requested that we use existing regulatory and sector business practices in particular as a means to reduce both compliance cost and additional regulatory burden.</p> <p><i>Dec/ Jan engagement on Exposure draft Bill</i></p> <p>Time for submissions on the Exposure draft of the Bill closed on 27 January 2017. 34 submissions were received on the Bill with a further 4 late submissions. The Ministry also conducted 5 workshops with affected Phase 2 sectors across New Zealand</p> <p>The process revealed there remains broad acceptance of, or support for, the reforms. However, there were mixed views about how clear parts of the Bill were and the extent to which businesses could use some of the compliance reducing provisions. Submitters also commented on the critical nature of regulations, clear guidance and training to the successful implementation of the regime. Feedback from submissions has been taken into account in revising the Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Relevant Government departments, including AML/CFT Supervisors and the Financial Intelligence Unit, have been involved in testing the policy proposals to ensure they are workable and complete.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
The Act currently enables the Minister of Justice to grant exemptions from aspects of the Act (s157). The Bill amends s157 to allow the Chief Executive of the Ministry of Justice to grant exemptions. All other substantive aspects of the exemption power remain the same.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
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See reference to the amendment to the exemption power above in 4.6.

See context and full list in Appendix 1. Included in this list is reference to section 36 of the Bill which amends s130 of the Act. Amended section 130(c) allows another supervisor to be prescribed as the supervisor for designated non-financial businesses or professions and high value dealers.

4.8. Does this Bill create or amend any other powers to make delegated legislation?

YES

See context and full list in Appendix 1.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?

NO

Appendix One: Further Information Relating to Part Four

Powers to make delegated legislation- questions 4.7 and 4.8

The Bill includes a number of powers to make delegated legislation, which are listed below. This is a conscious policy decision, to enable the legislation to be flexible. The primary legislation sets out the broad parameters of the AML/CFT regime, while delegated legislation can be used to, for example, provide the specific compliance requirements and adapt the scope of the Act's coverage.

This flexibility recognises the dynamic and constantly changing nature of money laundering and terrorism financing threats. Domestic and international experience shows that putting AML/CFT controls in place can lead to a displacement risk into other sectors. So, the legislation needs to be flexible to swiftly address these risks as they arise.

The safeguards on these powers are:

- all delegated legislation needs to be processed through the Order in Council process, which requires appropriate consultation, and scrutiny to ensure that they are within the scope of the power granted
- for regulations which are made under s154 of the Act on the recommendation of the Minister, additional consultation and notice periods apply.

Provision of Bill	Details
Section 5 (amended s5) definition of designated non-financial business or profession (DNFBP)	Subclause (b) and (c) allow a DNFBP to be designated or excluded by regulation
Section 5 (amended s5) definition of law enforcement purposes	Subclause (d)(vii) allows any additional Act which will be relevant to this definition to be prescribed in regulations
Section 5 (amended s5) definition of regulator	Subclause (b) allows any additional regulators to be prescribed in regulations
Section 5 (amended s5) definition of regulatory purposes	Subclause (b) allows Acts to be prescribed of which the enforcement and administration falls within this definition
Section 5 (amended s5) definition of designated business group	Subclause (b) allows the criteria of entering a designated business group to be prescribed in regulations
Section 5 (amended s5) definition of designated business group	Subclause (d)(xiii) allows for an entity or class of entities to be prescribed in regulations
Section 5 (amended s5) definition of transaction	Subclause (c)(iii) allows for a class of transactions to be prescribed in regulations
Section 8 (amended s14) circumstances when standard customer due diligence applies	Subclause (1)(d) allows for circumstance where standard customer due diligence must be conducted to be prescribed in regulations
Section 8 (amended s14) circumstances	Subclause (3) allows the times when real

when standard customer due diligence applies	estate agents must conduct standard customer due diligence to be specified in regulations
Section 9 (amended s18) circumstances when simplified customer due diligence applies	Subclause (2)(q) entity or class of entities to be prescribed in regulations
Section 9 (amended s18) circumstances when simplified customer due diligence applies	Subclause 3A allows when a real estate agent must conduct simplified customer due diligence to be specified in regulations.
Section 10 (amended 22) circumstances when enhanced customer due diligence applies	Subclause 6 allows when a real estate agent must conduct enhanced customer due diligence to be specified in regulations.
Section 11 (amended s23) enhanced customer due diligence: identity requirements	Clause 1(b) allows for the information a reporting entity must obtain to conduct enhanced customer due diligence to be prescribed in regulations
Section 15 (amended s33) reliance on other reporting entities or persons in another country	Clause 3A(d) allows for reliance conditions to be prescribed in regulations
Section 15 (amended s33) reliance on other reporting entities or persons in another	Clause 3A(c) allows for reliance conditions to be used when a reporting entity being relied upon is a prescribed as an approved entity or is within an approved class of entities
Section 18 nature of suspicious activity reports	Clause 41(1)(a) states that suspicious activity reports to be in a prescribed form (if any)
Section 18 nature of suspicious activity reports	Clause 41(1)(b) allows for the details to be contained in a suspicious activity report to be prescribed in regulations
Section 18 nature of suspicious activity reports	Clause 46(2)(f) allows entities authorised to receive suspicious activity report information to be specified in regulations
Section 20 (amended s51) obligation to keep other records	Clause 2(d) allows records that must be kept to be prescribed in regulations
Section 22 (amended s59) review and audit of risk assessment and AML/CFT programmes	Clause 2 allows the time period for audits to be prescribed in regulations
Section 25 (amended s70(d)) reporting requirements	Clause 2 amends reporting in regards to Customs Officers to include other prescribed persons at prescribed times
Section 36 (amended s130)	Amended section 130(c) allows another supervisor to be prescribed as the supervisor for designated non-financial businesses or professions and high value dealers
Section 38 (amended s 139) Power to disclose information supplied or obtained as AML/CFT supervisor	Clause 139(3)(a) allows the manner in which information may be disclosed to be prescribed in regulations
Section 38 (amended s 139) Power to disclose information supplied or obtained as AML/CFT supervisor	Clause 139A allows regulations to be made specifying the type of information that may or may not be disclosed, the conditions under

	which the information may be disclosed, and the conditions applying to the use of that information
Section 39 (amended s140) power to use and disclose information supplied or obtained under other enactments for law enforcement or regulatory purposes	Clause 2(v) allows acts to be prescribed in regulations for information sharing purposes
Section 40 (new section 140A) data access for law enforcement purposes	Subclause 2(c) allows agencies in other countries that are authorised to receive information to be prescribed in regulations
Section 48 (amended s153) regulations	Subclause 1(d) allows the amounts and thresholds for the purposes of the Act to be prescribed in regulations
Section 48 (amended s153) regulations	Subclause 2(ia) allows the authorising and regulating of information sharing between reporting entities in different groups to be prescribed in regulations
Section 49 (amended s154) regulations relating to application of Act	Subclause 1(ab) allows regulations to exempt financial activities or class of financial activities described in the definition of financial institution
Section 49 (amended s154) regulations relating to application of Act	Subclause 1(ac) allows regulations to declare an entity or a class of entities to be approved for the purposes of section 33(3A)
Section 51 (replaced s157 to s159) exemptions	Subclause 157(3) allows the chief executive, in the prescribed form, to exempt entities from all or any of the provisions of the Act
Section 51 (replaced s157 to s159) exemptions	Subclause 157(3)(a) before granting an exemption the Chief Executive must have regard to any regulations