

# THE BIG PICTURE: ANTI-MONEY LAUNDERING

## Is regulatory change on the horizon?

December 2020



---

# Contents

- 1 Introduction
- 2 What's on the horizon?
- 3 What do businesses need to do?
- 4 How is AML compliance enforced?
- 5 Spotlight on New Zealand enforcement activity
- 8 How we can help
- 9 Our team

# Introduction

A significant upcoming report will put anti-money laundering (AML) back in the spotlight in 2021. The Financial Action Task Force (FATF), which sets and monitors global standards to combat money laundering, will report on New Zealand's AML practices early next year. The report is expected to identify areas for improvement and – most likely – will prompt change to the AML regulatory framework and the strategic priorities of AML supervisors.

A decade has passed since New Zealand was last reviewed by FATF. Back then, FATF identified significant gaps in New Zealand's compliance with FATF standards. New Zealand has since introduced a new supervisory regime through the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act), placing extensive obligations on New Zealand businesses.

New Zealand's financial institutions, casinos, and many professional services providers have become subject to, and are growing accustomed to, the regulatory focus on AML compliance – conducting risk assessments and customer due diligence, responding to audits and reporting suspicious activity. However, preliminary indications are that FATF will identify more work to be done.

In advance of FATF's conclusions, New Zealand's AML supervisors have signalled an increased appetite for enforcement action for breaches of the AML/CFT Act. Where action has been taken, courts have responded with stern penalties. We expect that, over the next decade, and in line with global trends, AML will become a significant source of enforcement and investigative activity.

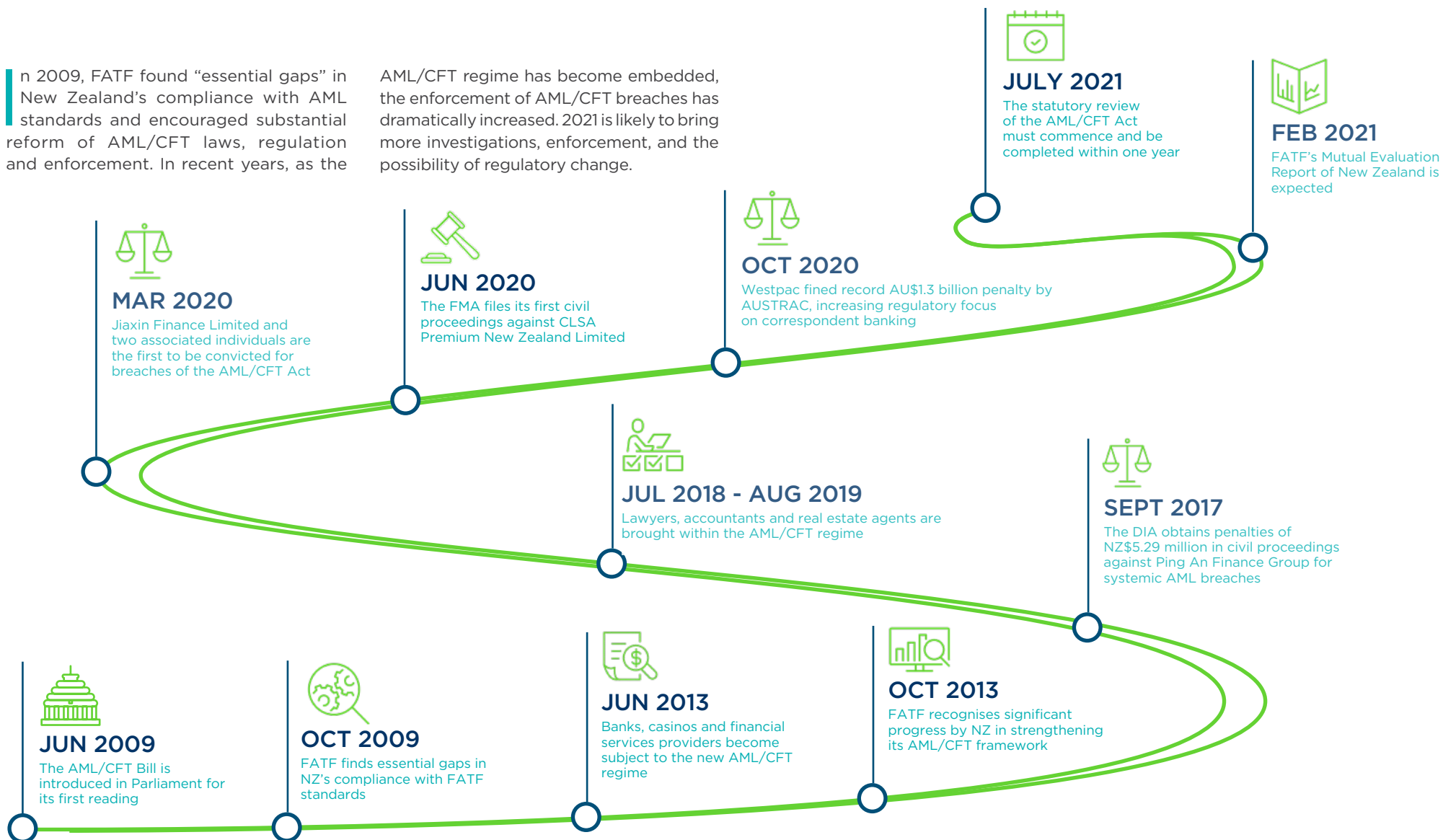
In this environment, New Zealand businesses should be reviewing their own compliance with the AML/CFT Act. In this context, we provide a comprehensive overview of what businesses need to know.



# What's on the horizon?

In 2009, FATF found “essential gaps” in New Zealand’s compliance with AML standards and encouraged substantial reform of AML/CFT laws, regulation and enforcement. In recent years, as the

AML/CFT regime has become embedded, the enforcement of AML/CFT breaches has dramatically increased. 2021 is likely to bring more investigations, enforcement, and the possibility of regulatory change.



## What do businesses need to do?

**T**he AML/CFT Act imposes obligations on reporting entities to detect and deter money laundering and terrorism financing. These obligations are designed to ensure that businesses have suitable policies, procedures and controls in place to prevent money laundering and terrorism financing and to ultimately contribute to public confidence in New Zealand's financial system.



### Who needs to comply?

- Financial institutions
- Casinos
- Law firms
- Conveyancing practitioners
- Real estate agents
- Trust and company service providers
- High-value dealers
- TAB NZ
- Virtual asset service providers

### Report

suspicious activities and prescribed transactions to the New Zealand Police Financial Intelligence Unit and Commissioner of Police (respectively).

### Prepare an annual report

on its risk assessment and AML/CFT programme in the prescribed form for its supervisor.

### Keep records

which enable it to readily recreate a transaction for at least five years.

### Undertake a risk assessment

of the risk of money laundering and terrorism financing that a business may "reasonably expect to face in the course of its business".

### Appoint a compliance officer

to administer and maintain its AML/CFT programme.

### Establish an AML/CFT programme

which includes policies, procedures and controls to detect and deter money laundering and the financing of terrorism and to manage and mitigate those risks.

### Undertake customer due diligence

to identify and verify customers, beneficial owners and persons acting on behalf of customers.

### Regularly review

its risk assessment and AML/CFT programme to ensure they are up to date and effective.

### Arrange an external audit

of its risk assessment and AML/CFT programme every two years.

## OBLIGATIONS



# How is AML compliance enforced?

There are three supervisors charged with supervision, investigation and enforcement of the AML/CFT Act: the Reserve Bank of New Zealand, the Financial Markets Authority and the Department of Internal Affairs. The three supervisors share information and coordinate operational activity, including the publication of Guidelines and Codes of Practice for reporting entities. Although the supervisors may take different approaches to supervision, depending on the nature, all associated with their respective sectors, they strive to interpret the AML/CFT Act in a consistent way.

These sector supervisors work together with the New Zealand Financial Intelligence Unit (FIU), which receives and analyses suspicious and prescribed transaction/activity reports from reporting entities. The FIU refers these reports and its analysis to the New Zealand Police and other government agencies, including the AML/CFT supervisors, for further investigation and possible enforcement action.

### The Reserve Bank of New Zealand

The RBNZ is responsible for supervising **banks, life insurers and non-bank deposit takers**.

The RBNZ has stated that its appetite for taking formal enforcement action following breaches has increased, effective September 2019.

The RBNZ will refer breaches by reporting entities to its enforcement team, where such breaches are material, or are minor but repeated (and possibly symptomatic of a larger issue). Enforcement may also result following repeated infringements and/or failure to act on RBNZ's actions.

In November 2020, the RBNZ reported that it was investigating the AML compliance of two banks and one insurer.

While the RBNZ has not yet taken civil or criminal enforcement action, we expect an **uptick in enforcement activity** in the next few years.

### The Financial Markets Authority

The FMA supervises approximately 800 financial services providers, including **issuers of securities, derivatives issuers and dealers, fund managers, brokers and custodians, and financial advisers**.

The FMA has indicated that "failure to meet AML/CFT requirements" is likely to be an area of particular focus in coming years.

The FMA has stressed that the AML/CFT legislation has been in place for "more than five years" and it expects to see mature policies, procedures and controls in place. Remedial action is "more likely now to be accompanied by formal enforcement action, as [the FMA] expect[s] reporting entities to understand and meet their obligations".

We saw the FMA's **reduced tolerance for non-compliance** in June 2020, when the FMA issued its first civil proceedings for AML failings, against a financial services provider.

### The Department of Internal Affairs

The DIA oversees compliance of approximately 5,000 reporting entities, including **casinos, money changers and remitters, accountants, lawyers, conveyancers, real estate agents, and any other reporting entities not supervised by the RBNZ or FMA**.

The DIA will prioritise its interventions to areas of greatest potential harm or where the DIA considers it can maximise compliant outcomes. The DIA will take different enforcement action "depending on the circumstances [of the reporting entity] and their willingness to comply with AML/CFT requirements".

The DIA has been the **most active in taking civil and criminal enforcement action**, typically against money remitters, and their directors, for systemic non-compliance. These cases have resulted in multi-million dollar civil penalties, and criminal convictions and fines.

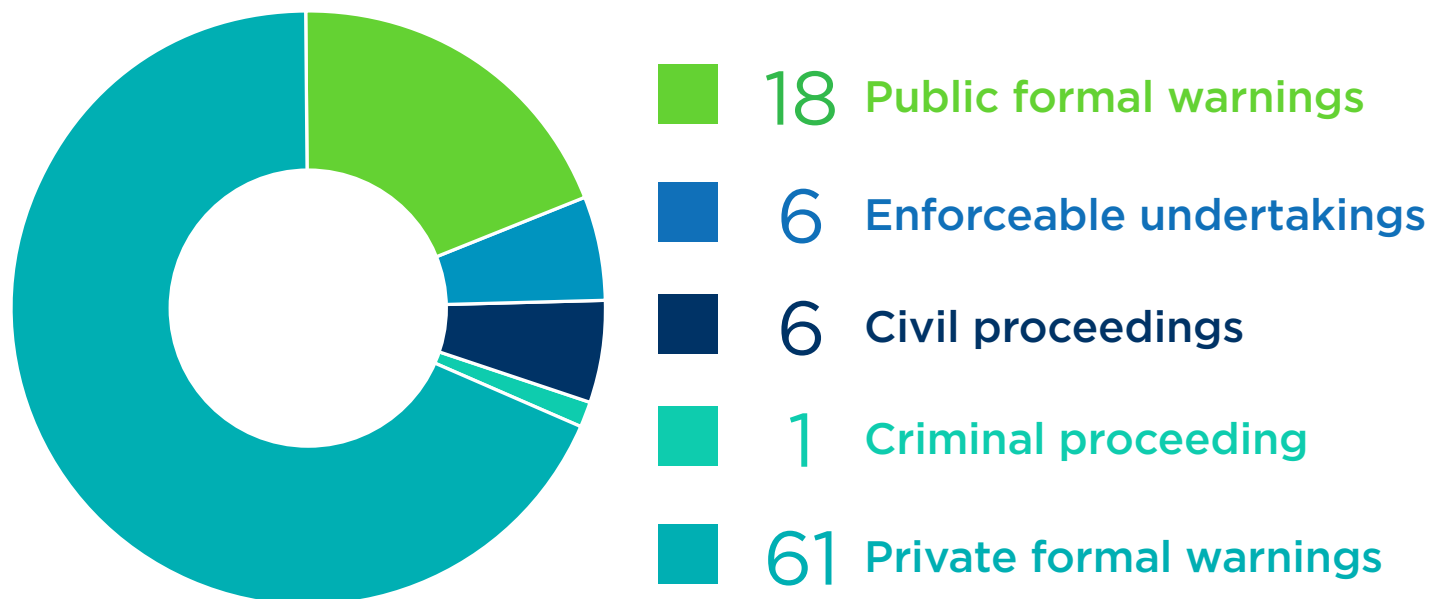
# Spotlight on New Zealand enforcement activity

**A** ML/CFT supervisors have a number of enforcement responses when reporting entities fail to comply with their AML/CFT obligations, including issuing a formal warning, accepting an enforceable undertaking, or seeking a pecuniary penalty or injunction from the Court.

For each act of non-compliance, known as a 'civil liability act', a penalty of up to **NZ\$1 million** or **NZ\$2 million** may be ordered against a corporate entity (the maximum amount is dependent on the type of civil liability act).

Civil liability acts include: failing to conduct customer due diligence, failing to adequately monitor accounts and transactions, and failing to establish, implement or maintain an AML/CFT programme.

Where the reporting entity acts knowingly or recklessly, it may also be convicted of a criminal offence under the AML/CFT Act and fined up to **NZ\$5 million**. There are separate offences for failures to report suspicious activity or to keep adequate records. Individuals may be convicted as parties to the relevant offending, as occurred in the case of Jiaxin Finance.



## ENFORCEMENT ACTION FOR AML NON-COMPLIANCE

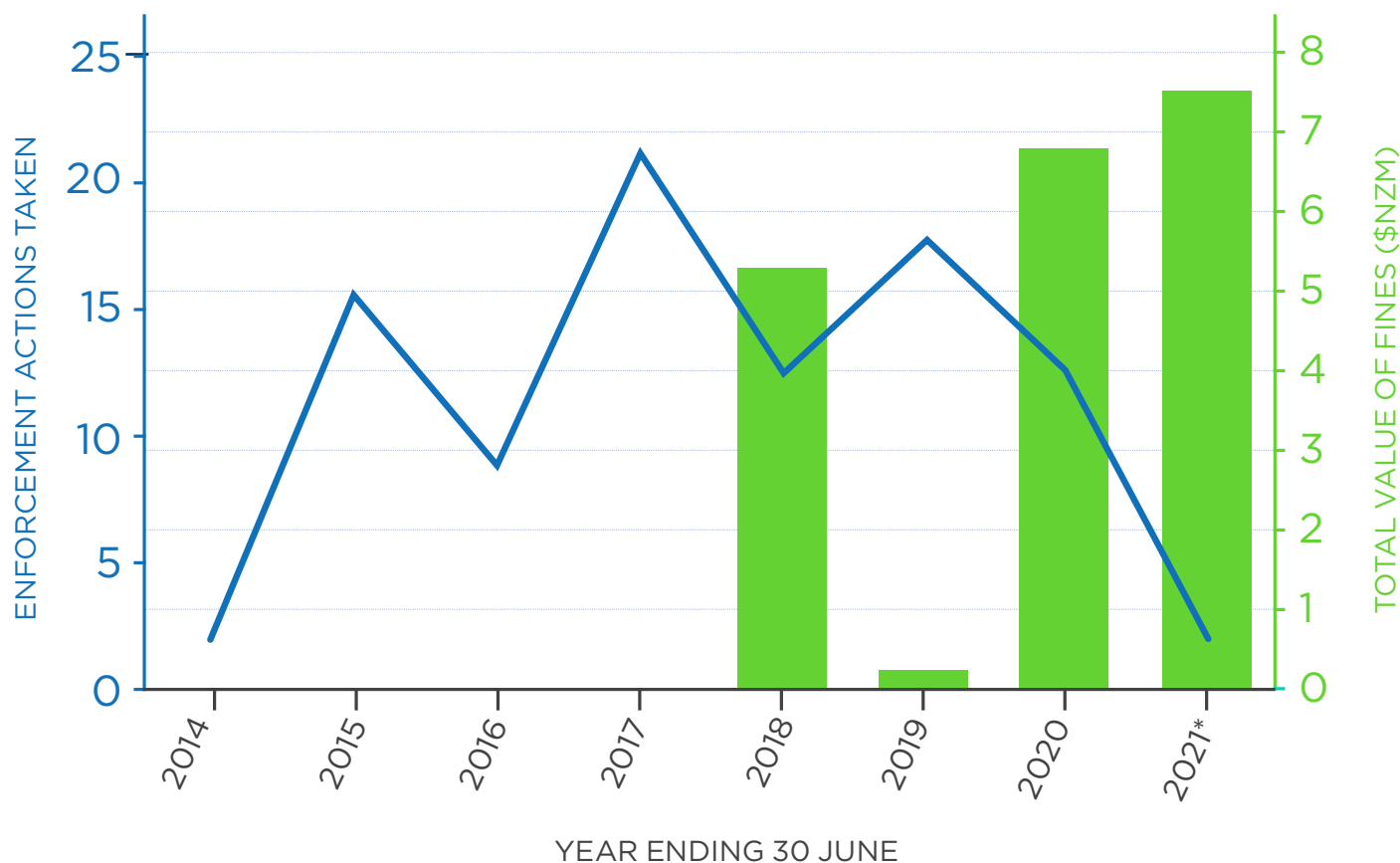
July 2013 – June 2020

# Spotlight on New Zealand enforcement activity

**T**he three sector supervisors have signalled that any 'grace period' for AML non-compliance has ended, given the maturity of the AML/CFT regime. Formal enforcement activity has increased significantly in New Zealand in the past five years, and we expect this trend to continue.

On average, in New Zealand, between 10 and 20 formal enforcement actions have been taken each year. These are, most commonly, formal warnings that require remediation of non-compliance. Such warnings, if not complied with, may result in civil proceedings and fines. This was the case for Jin Yuan Finance, which was initially warned in 2015 and fined NZ\$4 million in October 2019 for ongoing non-compliance.

More recently, civil and criminal proceedings have been issued for significant or systemic AML non-compliance, resulting in multi-million dollar penalties and fines. In the year ended 30 June 2020, penalties and fines totalled NZ\$6.9 million, with a further NZ\$7.585 million imposed against two money remitters in July 2020.



## ENFORCEMENT ACTION FOR AML NON-COMPLIANCE

\* known to date.



# Spotlight on New Zealand enforcement activity

In New Zealand, civil and criminal proceedings have focused on the high risk money remittance industry, in which small, closely-held firms offering cross-border financial services have been penalised for weak or negligible compliance controls, customer due diligence and record-keeping. The cases of **Ping An Finance** (still the highest civil penalty imposed in New Zealand) and **Jiaxin Finance** (the first criminal prosecution) are important examples of the DIA's enforcement activity in this sector.

We expect, nonetheless, to see a much broader scope to AML enforcement in New Zealand, across a wider range of industries in the coming years. This expectation is reinforced by recent announcements of the FMA's first civil proceeding and the live investigations of the RBNZ. As those investigations and cases progress, we anticipate that the supervisors will be taking account of the negotiated outcomes across the Tasman, including the AU\$1.3 billion penalty settled between AUSTRAC and **Westpac**.

### CASE STUDY:

#### **Ping An Finance**



**P**ing An Finance Limited provided money remittance and foreign currency services from Queen St in Auckland. Between January 2014 and January 2015, it conducted 1,588 transactions totalling NZ\$105.4 million, but breached its AML/CFT obligations such that non-compliance was a “cultural norm” within the business. It did not conduct customer due diligence for at least 362 customers, review customer account activity, keep records or report 173 objectively suspicious transactions. Ping An was fined NZ\$5.29 million, which remains NZ's highest penalty for AML non-compliance.

### CASE STUDY:

#### **Jiaxin Finance**



**J**iaxin Finance Limited, its owner, Qiang Fu and his mother, Fuqin Che, were convicted and fined in March 2020 for conducting transactions worth over NZ\$53 million for an international customer without conducting customer due diligence. Those transactions were, objectively, suspicious, but the defendants failed to file suspicious activity reports or keep records of the relevant transactions. Indeed, Ms Che was found to have made a series of cash deposits for the customer deliberately to avoid the application of AML/CFT obligations. In total, the defendants were fined NZ\$2,932,000.

### INTERNATIONAL CASE STUDY:

#### **Westpac Across the Tasman**



**A**cross the Tasman, the financial crimes regulator AUSTRAC has taken an increasingly stern enforcement response to AML failures. In September 2020, Westpac Banking Corporation settled with AUSTRAC for AU\$1.3 billion, admitting that it failed to report international funds transfers, to adequately assess the AML/CFT risks associated with its correspondent banking relationships, and to reasonably monitor customers for transactions involving potential child exploitation. The record penalty reflected “the serious and systemic nature of Westpac's non-compliance”.



# How we can help

**B**ell Gully's experienced team can help you understand and comply with New Zealand's AML legislation and work with supervisors when issues arise. We have in depth knowledge of the AML/CFT legislation, understand regulatory guidance and maintain active relationships with AML/CFT supervisors so that we can support you with practical advice and assistance. We are able to assist you with all aspects of your AML compliance – from determining whether your business must comply with the AML regime to helping remediate any AML breaches or deficiencies.

Our clients include both domestic and overseas financial institutions, insurers and professional services firms. Our lawyers have considerable experience in the AML regulations of New Zealand and other jurisdictions.

Our specialist team of finance, regulatory and dispute resolution lawyers can assist with:

- Advising on the application of the AML/CFT Act.
- Drafting and implementing effective AML compliance programmes, including working with you to review and revise risk assessments and policies.
- Advising on suspicious activity reporting and assisting with preparing and filing reports.
- Training of staff, including simulations or mock onsite inspections to test the effectiveness of AML procedures.
- Responding to audits and regulatory enquiries, including liaising with your AML supervisor.
- Conducting internal investigations and assisting with remediation of AML deficiencies.
- Handling regulatory investigations and pecuniary penalty proceedings.

# Our team

For help with your AML/CFT needs, contact any of our specialist AML/CFT team, or your usual Bell Gully advisor.

---



**David Craig**

PARTNER

---

DDI +64 4 915 6839 MOB +64 21 674 851  
[david.craig@bellgully.com](mailto:david.craig@bellgully.com)



**Murray King**

PARTNER

---

DDI +64 9 916 8971 MOB +64 21 684 573  
[murray.king@bellgully.com](mailto:murray.king@bellgully.com)



**Blair Keown**

SENIOR ASSOCIATE

---

DDI +64 9 916 8796 MOB +64 21 185 0409  
[blair.keown@bellgully.com](mailto:blair.keown@bellgully.com)



**Alix Boberg**

SENIOR ASSOCIATE

---

DDI +64 9 916 8356  
[alix.boberg@bellgully.com](mailto:alix.boberg@bellgully.com)



**Fran Burley**

SENIOR ASSOCIATE

---

DDI +64 9 916 8718 MOB +64 21 622 329  
[fran.burley@bellgully.com](mailto:fran.burley@bellgully.com)



---

**AUCKLAND**

VERO CENTRE  
48 SHORTLAND STREET  
NEW ZEALAND

**WELLINGTON**

ANZ CENTRE  
171 FEATHERSTON STREET  
NEW ZEALAND

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this publication. The views expressed are our own. No client views are represented in this publication.

All rights reserved © Bell Gully 2020