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From: NZ Society of Conveyancers <info@nzconveyancing.co.nz>
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To: aml
Subject: AML/CFT Act Review - NZSoC Submission
Attachments: 2021 - AML submission - NZSoC.pdf

Good day

Please find the submission from the NZSoC on the AML/CFT Act Review for your records.

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Best regards


President



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AML/CFT ACT

SUBMISSION ON BEHALF OF THE NEW ZEALAND SOCIETY OF CONVEYANCERS

Background:

The Ministry of Justice is reviewing the operation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act), as required by s.156A of the Act.

In doing so the Ministry has published Terms of Reference and released an issues paper and has called for written submissions from interested parties.

This submission is made on behalf of the New Zealand Society of Conveyancers (NZSoC).

NZSoC:

The NZSoC was established by s.77(1) of the Lawyers and Conveyancers Act 2006 as the national regulatory and representative body to control and regulate the practice in New Zealand by Conveyancers of the profession of conveyancing, and to represent its members and to serve their interests.

The membership of NZSoC includes:

- Registered Conveyancers, mostly employed by law practices to conduct their conveyancing
- Conveyancing Practitioners with practising certificates, who can also be Conveyancing Professionals with Landonline
- Conveyancing Practitioners practising on their own account

NZSoC's members are all intrinsically involved in the daily hands-on practice of Conveyancing either as employees or principals of a Designated Non-Financial Business or Profession (DNFBP) as defined in s.5 of the Act, which are therefore also Reporting Entities in terms of the Act.

Most of those who are practising on their own account are also the AML/CFT Compliance Officers for their practices.

By the very nature of their work, which is a captured activity for AML/CFT purposes, they are all involved with their employer's or their own practice's AML/CFT compliance obligations on a daily basis.

They conduct Customer Due Diligence (CDD) on both new and existing customers (Clients) as required by s.11 of the Act, and Ongoing CDD as required by s.31.

Very few Conveyancing Practices outsource their CDD obligations or use third parties or electronic providers to conduct CDD for them, so Conveyancers are very familiar with, and conscious of, the need for strict compliance with the CDD requirements of the Act.

The Amended Identity Verification Code of Practice 2013 – (IVCOP):

The IVCOP is a Code of Practice prepared under s.63 and approved under s.64 of the Act to provide a suggested best practice for all reporting entities to conduct name and date of birth identity verification on customers (that are natural persons) that have been assessed to be low to medium risk, which is an integral part of the CDD procedure.

Part 1 of the IVCOP deals with Documentary Identity Verification. Clause 7(b) of Part 1 permits a reporting entity to verify the identity of a client by way of copies of documents that are certified by a “trusted referee”.

Clause 8 of Part 2 of the Code contains a list of those people or occupations considered to be trusted referees. It does not include Conveyancers.

It does include several people or occupations which will have very little exposure to or knowledge of the Act and, in particular of the CDD obligations imposed by it. With no disrespect to any of those occupations, Conveyancers have more involvement with and knowledge of the CDD requirements of the Act than the likes of registered medical doctors, kaumatua, registered teachers, ministers of religion etc., all of whom are listed as trusted referees.

The effect in practice:

As Conveyancers, members of NZSOC are responsible for verifying the identity of clients on a daily basis in order to satisfy the CDD obligations of the reporting entities that they are employed by or that they operate on their own account.

But because they are not listed as trusted referees in the IVCOP they are unable to certify identity documents for other reporting entities to rely on pursuant to clause 7(b) of Part 1 of the Code.

Conveyancers are often asked by clients to certify identity documents for the likes of their banks or other financial institutions, such as in the case of applying for mortgage finance, but they have to advise these clients that they are not able to as they are not trusted referees. This is both embarrassing for the Conveyancers and confusing for the clients. It also imposes additional time and cost on the client in order to meet their bank’s CDD requirements, by having to locate a suitable alternative trusted referee to certify their identity documents.

The suggested amendment:

NZSoC would therefore request that the Ministry consider including Conveyancers in the list of trusted referees in part 2 of the IVCOP.

According to the full Consultation Document on the Ministry’s website the scope of the Ministry’s review includes the IVCOP.

The Summary Document that accompanies the Consultation Document, and the explanatory notes on the website, list key initiatives and reasons and why the Ministry might recommend changes.

These include avoiding or mitigating unintended consequences of the Act, improving efficiencies, and improving the public's experience in dealing with banks and when buying houses.

It is our submission that the requested change would address all these objectives.

It would also accord with the Guiding Principles listed in the Terms of Reference for the Review.

Furthermore, it would appear to be possible to achieve the suggested change through "Secondary Legislation" or Regulation by way of an amendment to the IVCOP under s.63(1)(b) and s.64 of the Act.

This would enable it to occur earlier than an amendment to the Act.

In the "Overview" section of the Consultation Document it is suggested that the Ministry would only look to use this method "to make relatively straight forward changes that address discrete issues that would not be impacted by later legislative changes". It is submitted that the requested change meets those criteria.



President, New Zealand Society of Conveyancers.