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**Subject:** REINZ SUBMISSIONS: STATUTORY REVIEW OF THE ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM ACT 2009  
**Attachments:** AML Submissions REINZ 031221.pdf  
**Importance:** High

Good afternoon

Please find our submissions attached.

We are very happy to arrange a Zoom call to discuss our comments and concerns in more detail.

Kind regards

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3 December 2021

AML/CFT Consultation Team  
Ministry of Justice

By email only: [aml@justice.govt.nz](mailto:aml@justice.govt.nz)

## **REINZ SUBMISSIONS: STATUTORY REVIEW OF THE ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM ACT 2009 (AML/CFT Act)**

### **Executive Summary**

1. Currently real estate agents are required to conduct Client Due Diligence (CDD) on their client, which, in by far the majority of cases, is the vendor.
2. REINZ is strongly opposed to amending the existing regulations to require real estate agents to conduct CDD on both the vendor **and the purchaser** because:
  - a. the real estate agent does not have a business/contractual relationship with the purchaser;
  - b. A real estate agent is **expressly prohibited** from having a business/contractual relationship with the purchaser in the same transaction (which would create a conflict of interests);
  - c. It would be **unduly onerous, impractical, and in some cases literally impossible** for a real estate agent to complete AML on the purchaser in advance in New Zealand. For instance:
    - i. In New Zealand, a purchaser has the ability to nominate a different person/entity to complete the purchase, even after the sale has gone unconditional – the real estate agent may never know the identity of the nominee;
    - ii. In New Zealand, a sale by auction results in an unconditional sale; again, the purchaser will not be known in advance and there could be more than 50 potential purchasers at an auction, with some only making themselves known for the first time as they walk into the auction room;
  - d. It would likely create a **conflict of interest** for the real estate professional - who must act in the best interests of their client (the vendor) – for instance, if they are required to conduct AML on the purchaser and there is suspicious activity which they cannot disclose to their client, and which may compromise the sale;
  - e. It would likely **contravene an agent's legal obligations** under the Real Estate Agents Act 2008, and Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, and expose them to disciplinary action and litigation risk;

- f. it would create a further impediment to the fair, transparent and efficient operation of the real estate market;
- g. this risk is already mitigated as there are other professionals already completing CDD on purchasers, so it would create a doubling or tripling up of the same due diligence exercise at huge additional cost, for no material gain;
- h. other professional (banks and lawyers) are better placed than real estate agents to detect red flags as a result of conducting CDD on the purchaser;
- i. FATF's recommendations are based on the UK's property market. It is not the same context in New Zealand and here we have other tools to manage foreign investment in property, such as the Overseas Investment Act 2005; and
- j. No change to the status quo is required. The MoJ's objectives set out in paragraph 8 below are already being achieved and the real estate profession is out-performing lawyers and accountants on the compliance front (see paragraph 23 below).

## Introduction

- 3. REINZ is a membership organisation with more than 16,000 members (representing approximately 90% of the real estate profession). Our members span the breadth of real estate services, including residential sales, rural/lifestyle, auctioneering, business broking, commercial and industrial sales and leasing, and property management.
- 4. Thank you for the opportunity to submit on behalf of our members on the advanced questions and proposed changes discussed under the Ministry of Justice's (MoJ) Consultation Document released October 2021. Specifically, our submissions will focus on the below questions proposed in the Consultation Document, albeit not necessarily under these headings:
  - a. **4.6** "Should we amend the existing regulations to require real estate agents to conduct Client Due Diligence (CDD) on both the purchaser and vendor?"
  - b. **4.7** "What challenges do you anticipate would occur if this was required? How might these be addressed? What do you estimate would be the costs of the change?"
  - c. **4.8** "When is the appropriate time for CDD on the vendor and purchaser to be conducted in real estate transactions?"
- 5. Due to the significant impact the proposed changes would have on our members, we have received in excess of 229 individual items of feedback from members within a matter of weeks. Our members' views have been captured in these submissions. Please see Schedule 1 for representative feedback from members.
- 6. Members unanimously agree that the current AML/CFT regime as it stands should be maintained, and proposed change numbered 4.6 in the Consultation Document (i.e., completing CDD on purchasers as well) should be rejected.

7. REINZ supports our members' views and **strongly opposes** the suggestion that real estate agents should conduct CDD on both the vendor and purchaser for the reasons set out below.

## General comments

8. REINZ supports the MoJ's objectives behind the consultation and its desire to:
- a. maintain New Zealand's effective and high-quality regime for combatting money laundering and terrorism financing;
  - b. allow for sufficient tools to enable flexibility and ensure the regime responds to changing risks and new opportunities for addressing them;
  - c. create a financial environment which is hostile to serious organised crime and national security threats by maintaining and enhancing our ability to detect and deter money laundering;
  - d. ensure our AML/CFT regime does not compromise the ease of doing business or unduly impact the lives of New Zealanders;
  - e. adopt international best practices where appropriate in the New Zealand context and ensure that New Zealand fulfils its international obligations and addresses matters of international concern so that New Zealanders' economic wellbeing and national security is protected; and
  - f. ensure the AML/CFT regime produces the necessary type and quality of information to support other frameworks.
9. In REINZ's submission, proposal numbered 4.6 in the Consultation Document is inconsistent with MoJ's own objectives (see paragraph 8d and 8e above in particular).
10. Requiring agents to conduct CDD on both the vendor and purchaser for the sake of aligning New Zealand's practices with the Financial Action Task Force's (FATF) recommendations would significantly compromise the ease of buying and selling real estate, and thereby unduly impact the lives of New Zealanders.
11. It would be an unnecessary adoption of international practices that would be inappropriate in the New Zealand context. CDD on the purchaser is already being completed by the purchaser's lawyer and bank, and an agent's CDD would be superfluous and unduly onerous when New Zealand is already achieving the overall objectives of the AML/CFT regime (see paragraph 8a, 8b, 8c and 8f) above.
12. REINZ and our members have serious concerns about the consequences for the real estate industry if this dramatic change was implemented.



**FATF's recommendation to align New Zealand's AML/ CFT regime with international practices would be inappropriate in the New Zealand context**

13. The FATF's Mutual Evaluation Report published in April 2021 suggests that New Zealand's requirements for agents to only conduct CDD requirements on the party on whose behalf they are acting is inconsistent with the FATF's standard to conduct CDD on both the purchasers and vendors of the property.
14. FATF identified the following concerns:
- a. In conducting CDD on only one party to the transaction, there is a lack of complete visibility of the end-to-end transaction, including detection of links among the parties involved; and
  - b. For real estate agents who facilitate advance payments using third-party trust account services, it is unclear who is responsible for monitoring the transactions and detecting unusual patterns in this account, as real estate agents have little visibility over the payments made to and from the account.

Risk already mitigated and would simply create duplication/triplication of CDD for no obvious gain

15. There is no need for agents to conduct CDD on purchasers because **this risk is already mitigated by the banks and the purchaser's lawyer or conveyancer**, who each conduct their own CDD on the purchaser.
16. When an individual purchases a property, they must instruct a lawyer or conveyancer to register the transfer of legal ownership through Land Information New Zealand. The lawyer or conveyancer must conduct CDD on their client. Furthermore, if the purchaser requires a loan to purchase the property, their transaction is again captured under the Act, and the bank must also conduct their own CDD on the purchaser (the borrower).
17. If agents are also required to conduct CDD on a purchaser, that means there would be three independent CDD exercises conducted on the same party in the same transaction. This is an expensive, time-consuming and unnecessary waste of resources.
18. Real estate agents are in no better position to notice the relationship between vendors and purchasers than the parties' lawyers.
19. In almost all instances, the agent's client is the vendor not the purchaser. It would be a **conflict of interest** for the agent to act for both parties, and this is something they are expressly prohibited from doing (see paragraphs 28 to 41 below). Although an agent will correspond with the purchaser, correspondence is generally limited and administrative. There is no business relationship between an agent and a purchaser. Often agents will provide advertising material and meet a prospective purchaser at an open home or private viewing

for a duration of 15 minutes maximum (often as one of a large number of prospective purchasers looking at the same property).

20. Furthermore, in conducting ongoing CDD on their own client (the vendor), agents can have continued confidence that the business relationship and the transactions within the relationship are consistent with the client's business and risk profile. Therefore, if there is a connection between the purchaser and the vendor – which is not necessarily a red flag of money laundering in any event – and the vendor has a deal with the purchaser to make a quick sale, or sell the property at lower or higher than market value, the agent can see these red flags, simply by conducting ongoing CDD on their own client, the vendor.
21. It is also important to bear in mind that real estate agents are not involved in all real estate transactions. Private sales of property from a vendor to a purchaser can be handled directly by each party's lawyer without any involvement by a real estate professional. A lawyer/conveyancer is a compulsory figure and a constant in the transfer of real estate ownership. They are thus best placed to capture any fraudulent activity.
22. The status quo should be maintained. There is nothing to be gained and a lot to lose in terms of time, doubling up and a huge increase in costs to require real estate agents to not only conduct CDD on their client, the vendor, but also on purchasers.
23. According to the Department of Internal Affairs Anti-Money Laundering and Countering Financing of Terrorism Regulatory Findings Report for 2019-2020, the real estate profession was more compliant in every technical sector of the AML/CFT programme obligations (completing CDD, enhanced CDD, monitoring and reviewing the AML/CFT programme, monitoring for suspicion, record keeping and staff training) when compared with other industries such as accountant and lawyers. REINZ submits that there should be no change to the status quo.

#### Practical and legal impediments to conducting CDD on the purchaser/all prospective purchasers in addition to the vendor

24. Then there is the question of who is the purchaser? Is it the person who buys the property on the fall of the hammer in an auction, or is it suggested that CDD be extended to all potential purchasers who might set foot in a property, or express an interest in being notified if it goes on the market? This would be practically impossible.
25. Even limiting that obligation to 'bidding' purchasers would be impractical. For example, in a tender or auction scenario, the relevant agent would need to have conducted CDD on every bidder in advance. For obvious reasons this is impossible. In a heated market, there can be a significant number of parties bidding at an auction with only one winner. This means the CDD conducted on those who were unsuccessful would be meaningless and a waste of time and costs (and a double-up as their bank would have already completed CDD on them).
26. It would also be impossible to leave conducting AML/CFT obligations until after an offer has been accepted and a sale and purchase agreement is entered into, especially when the

property is bought via auction. If the purchaser enters into an unconditional sale and purchase agreement, they cannot simply 'pull out' of the contract based on their inability to satisfy AML/CFT CDD. This could only occur if the contract was conditional and that is not the case in a sale by auction. **To change this widespread method of sale in New Zealand would have unfathomable consequences on the sale of real estate in this country.**

27. In addition, on our standard ADLS/REINZ Agreement for Sale and Purchase of Real Estate there is an option for the purchaser to elect a nominee. An individual could simply circle the "and/or nominee" option. If this is the case, it is usually the purchaser's solicitor who drafts a Deed of Nomination to nominate an entity or individual. Sometimes, when a purchaser elects a nominee, that is because they are intending to have their lawyer set-up a family trust or investment company as an entity to purchase the property. Firstly, this would mean that the CDD conducted by the agent on the individual who signed the agreement is meaningless. Secondly, the agent is often unaware of the identity of the nominee/s.
28. Perhaps most importantly of all, the agent is prohibited from acting for both parties to the transaction. The agent has a contractual relationship with the vendor and owes the vendor a duty of good faith (except in rare circumstances where they are the buyer's agent, in which case their fiduciary duties are owed to the buyer instead). It would be an **unlawful conflict of interest to act for both parties to the transaction.**
29. **The irreconcilable conflict that would exist between agents' statutory and legal obligations if agents were required to perform CDD on the purchaser/prospective purchasers as well as their own client is discussed in more detail below.**

#### Rule 6.1 and 6.4 Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (Code of Conduct)

30. Under section 40(4) of the Anti-Money Laundering and Countering Financing of Terrorism Act, agents should not disclose the existence of Suspicious Activity Reports (SARs) to clients. Usually in the New Zealand context, the client is the vendor.
31. Rule 6.1 of the Code of Conduct states that a licensee must comply with their fiduciary obligations to their client.
32. Under rule 6.4 of the Code of Conduct, a licensee must not mislead a customer or client, nor provide false information, nor withhold information that should in law or in fairness be provided to a customer or client.
33. If there was a need to conduct CDD on both the vendor and purchaser and red flags triggered a SAR on the purchaser, **the agent would be breaching its fiduciary obligations to their client if they refused to disclose this information to their client.**
34. Indeed, the agent would need to continue to act for the vendor and proceed with the transaction. Where the subject of the SAR is the purchaser, the vendor would be an innocent



party who could be unfairly misled by the agent's silence whilst an investigation due to a SAR was conducted.

35. If the sale could not be completed as a result, the vendor would have lost out on a favourable heated market and potentially suffered a loss for which it could potentially pursue the agent.
36. Compelling an agent to breach its statutory obligations to its client puts the agent in an untenable situation. It exposes agents to the risk of disciplinary and/or legal action.

#### Section 126 of the Real Estate Agents Act and Rule 9.14 of the Code of Conduct

37. We understand many of our members do not recover their costs for conducting CDD on their clients. Some charge a disbursement fee. However, many of our members have stated that if they were required to conduct CDD on both vendors and purchasers, due to the additional burden, they would have no option but to on-charge these expenses in full to their clients (i.e., in almost all cases, the vendor).
38. Under section 126 of the Real Estate Agents Act, an agent is not entitled to any commission or expenses from a client for or in connection with any real estate agency work carried out by the agent for the client unless the work is performed under a written agency agreement.
39. However, under rule 9.13 of the Agent's Code of Conduct, a licensee must not act in a capacity that would attract more than one commission in the same transaction.
40. Indeed, an agent is precluded from acting for both parties to a transaction. The main rationale being that it would create a conflict of interests. So an agent could not recover these compliance costs from the purchaser/prospective purchaser.
41. To avoid this conflict of interest in discharging an agent's obligations, our agents would have no option but to place the expense for conducting CDD on both vendor and purchaser on their only client, the vendor. Members tell us the costs could well be triple the cost of doing CDD on the vendor. This would be a financial burden on the vendor, and would have wider ramifications for the industry/public.

#### **Overseas AML/CFT regimes**

42. In other jurisdictions, AML requirements vary. Many jurisdictions do not follow FATF's recommendation to conduct CDD on both parties due to local conditions making that unnecessary because the risk is mitigated in other ways (as it is in New Zealand), or inappropriate (as it would be in New Zealand for the reasons listed above).
43. In New Zealand, banks and purchasers' lawyers are in a better position to identify red flags of money laundering than real estate agents and this sentiment is supported by overseas jurisdictions:



- a. In Australia, real estate agents are not required to complete AML on either party. They are not subject to the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 because it is accepted that real estate transactions most commonly go through a financial institution. Reportable transactions which intersect with the regulated sectors provide authorities with visibility of potential money laundering through real estate. A party's lawyer or conveyancer must verify their client, as well as their client's instructions before acting; and
  - b. In Canada, under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and associated legislation, a real estate broker need only verify their own client's identity when they act as an agent in the purchase or sale of real estate.
- 44. Whilst in the United Kingdom, real estate agents do have to complete due diligence on both parties under their AML/CFT regime if they are:
  - a. representing the person (client); or
  - b. taking a cash deposit on behalf on someone who is buying real estate,effectively, they verify the identity of all buyers, vendors, lessors and lessees involved in a transaction.
- 45. The real estate industry in New Zealand is **very different** from that in the United Kingdom. In New Zealand:
  - a. it is not uncommon for real estate agents to have extensive involvement with a vendor, but for no transaction to result;
  - b. the sale and purchase model is based on inviting a number of prospective purchasers to bid on a property (whether through a tender, auction, multi-offer, private treaty or other offer structure), with each prospective purchaser having an intention to fulfil the transaction, if successful; and
  - c. open homes are overwhelmingly the predominant means by which property (at least in the residential housing context) is marketed, and a property can be attended by up to 50 different groups, particularly when the market is favourable to the vendor, such as now.
- 46. In the United Kingdom, the most popular method employed by most real estate agents to sell real estate is via 'Sale by Private Treaty' rather than hosting an auction or offering an informal or formal tender.
- 47. A property 'For Sale by Private Treaty' means that real estate agents will have prepared descriptive details of the property, as well as provided a definitive asking price to prospective purchasers. Prospective purchasers are then invited to view the property, usually by appointment, to buy at the asking price or submit an offer to purchase. This system is materially different from New Zealand's real estate market. As mentioned above, our industry

is based on generating the highest amount of interest in a property possible, with all prospective purchasers having the opportunity to be successful in purchasing the property.

48. In the United Kingdom, prospective purchasers are infinitely more aware of their ability to succeed in a private treaty. Therefore, requiring an agent to complete CDD on all parties involved in a transaction in most instances is manageable. Whereas, in the New Zealand context, due to the nature of our industry and demand exceeding supply, **to complete CDD on all interested parties would be hugely burdensome and practically impossible due to the sheer number of prospective purchasers per property, per hour, per day.**
49. There needs to be much closer consideration of local conditions before implementing FATF's recommendations. **FATF's recommendations are based on the UK's property market, where a lot of the property is owned by non-residents and citizens from other jurisdictions with less transparency and higher money laundering and financing of terrorism risks. It is not the same context in New Zealand.** Here we have other legislative requirements to manage overseas property purchasers, such as the Overseas Investment Act 2005, and this is sufficient to ameliorate the risks of money laundering from overseas individuals or entities.

#### **Lack of visibility over payments made to third party trust accounts**

50. In response to the second concern raised by FATF (see paragraph 14b above) REINZ submits that although the agent may not have access to the nominated third party trust account, there is no greater risk of money laundering as a result.
51. **The operation of trust accounts is regulated and tightly controlled.** In New Zealand, every agency must ensure any money received in respect of a real estate transaction is deposited in a designated trust account. When an agency switches from using its own trust account to a third-party trust account, the Real Estate Authority must be informed, as well as the nominated auditor. Every agency must keep trust account records in a manner that enables them to be properly audited. Each receipt, payment, and transfer must be promptly and clearly recorded in the ledger for each client so the funds can easily be traced backwards and forwards. These duties are noted in the Real Estate Agents (Audit) Regulations 2009. Real estate agents then have to provide a written summary of the account to the person that is lawfully entitled to the money, this means if the deposit is paid in instalments, the account must state the particulars of the money that is received in the trust account and how the funds have been allocated.
52. There is the additional requirement under section 123 of the Real Estate Agents Act that all money received from a real estate agent must be held in the trust account and it cannot be paid to any person for a period of 10 working days after the date it is received unless authorised in writing by all parties, or by a court order. This is additional regulation stops money being quickly transferred in and out of a trust account, even if the real estate agent is using a third party trust account.
53. Due to these stringent measures, even though there is a perceived lack of visibility over the third party trust accounts by the agents acting for the vendor as they do not have access to

the accounts for obvious reasons, the agents and those operating trust accounts are kept informed of the transactions. Many of our members' agencies have regimes in place to escalate unknown or suspicious activities within their trust accounts to the AML Compliance Officer.

## Other concerns voiced by members

54. When we alerted our members to the MoJ Consultation, we received extensive feedback from our members on their experience of the AML/CFT regime to date, and their significant concern if they were required to complete CDD on purchasers/prospective purchasers as well as vendors. Additional points included:
- a. It will lead to **very significant increase in administrative compliance** - that real estate agents only go through a year of studies before becoming a salesperson. What may seem like a simple process to a trained expert, is a very intensive regime for real estate agents to comply with, and agents tell us this workload will increase exponentially if they need to do CDD on purchasers as well, or worse still, on prospective purchasers.
  - b. The **financial consequences** of this proposal - many real estate professionals are sole traders, or work within a small firm. They simply do not have the financial resources to employ a full-time AML Compliance Officer, nor have the funds available to outsource the duties to a professional AML company;
  - c. If agents need to complete CDD on purchasers as well, this will **cause delays and will undermine the premise of 'time being of the essence' in most transactions**. If purchasers miss out due to delays in completing AML, they may look to the agency for financial compensation.
55. Please see **Schedule 1** on page 13 for a small but representative sample of responses (which have been anonymised). We would be very happy to share more detail, or more quotes if this would help you to understand our members' concerns.

## Property Management Sector to remain excluded

56. Whilst we are not aware of any suggestion to require AML on the property management sector, for the sake of completeness, REINZ is of the firm view that exempting property management services from AML/CFT obligations is entirely appropriate. This aligns with international standards.
57. The financial and administration burden for property managers to conduct CDD on tenants and landlords, for residential leases, which are generally no more than \$15,000 per year is unreasonable. Bonds are small and residential tenants and landlords can provide notice to terminate a tenancy, which means if CDD had to be conducted on one or both parties, for a residential property manager, the financial and administrative burden would be disproportionate to any risk.



## **Suggestions - Support for a centralised datahub for CDD to be completed once for purchasers within a set time frame**

58. As discussed above, all feedback from members has been strongly opposed to changing the status quo. However, if there is to be a material change to how CDD is conducted by real estate professionals in New Zealand, some members have suggested a centralised datahub for CDD on purchasers to be shared.
59. The real estate profession has a variety of organisational models (e.g. sole licensed individual agents, franchise arrangements, corporate licensed entities with individual employees and independent contractors etc.). In addition, often several agents work together in teams. As such, it is critical to ensure that the way AML/CFT obligations are applied can accommodate the practical realities of the real estate industry in New Zealand.
60. Many of our members' independent submissions supported a centralised compliance system that could be shared amongst registered real estate professionals. REINZ suggests a similar model to a 'designated business group' (as defined in the Act) to allow a district or national system. One practical suggestion would be for the compliance system and the uploading of required documents be secured by a RealMe login, or by the purchaser generating their own personal QR code to allow certain agents access.
61. Enabling agents to request recently conducted CDD and risk assessment on individuals or entities shared on a secure portal would reduce the administrative and financial burden for agents conducting CDD on both vendors and purchasers. Consent would obviously be required from the purchaser/prospective purchaser.
62. However even with consent, it would not address the practical and legal impediments to conducting CDD on purchasers/prospective purchasers discussed above.

## **Conclusion**

63. In summary, and using the numbering in the Consultation Document:
- a. **4.6** - REINZ and our members are strongly opposed to amending the existing regulations to require real estate agents to conduct CDD on both parties. This is unnecessary and it is inappropriate in the New Zealand context. It would be unworkable in practice and would create a further impediment to the fair, transparent and efficient operation of the real estate market, contrary to the MoJ's objectives. Additionally, there are other professionals already completing CDD on purchasers, who are better placed to detect red flags.
  - b. **4.7** - There are a number of important challenges if this were required, including practical and legal impediments which make this proposal untenable. Importantly, it would create an unlawful conflict of interests for the real estate professional and most likely cause them to breach their legal obligations and expose them to legal and/or disciplinary action.



If AML/CFT obligations were to override a real estate professional's legal obligations under the Real Estate Agents Act 2008 and Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, this would need to be addressed expressly in the legislation/regulations.

As to the estimated cost of this change, members anticipate compliance costs would more than double, and many believe they would triple, plus agents would no longer be able to absorb those costs, so they would need to pass them on to their client, the vendor.

- c. **4.8** - The appropriate time for CDD to be completed on the vendor and purchaser is when a business relationship is entered into:
- i. In New Zealand, the significant majority of agents act for the vendor (buyer's agents are rare). Therefore, the appropriate time to complete CDD on the vendor is upon listing the property, when the agency agreement is signed. This is the current practice.
  - ii. Conversely, the agent does not have a business/contractual relationship with the purchaser, may never know their identity where a nomination is made, and in any case, **the agent is expressly prohibited from having a business/contractual relationship with the purchaser in the same transaction.** Thus requiring agents to conduct CDD on the purchaser/prospective purchaser as well is **entirely inappropriate in New Zealand.**

64. REINZ does not support the suggested changes to the AML/CFT regime as proposed in the Consultation Document for the reasons set out above. In its review of the regime, the DIA might revisit private sales, which do not involve a real estate professional and are unregulated. If the DIA does advance proposal numbered 4.6, notwithstanding unanimous opposition from real estate professionals, an approved centralised datahub for agents to conduct CDD for a purchaser once over a set period would reduce additional compliance costs (perhaps using RealMe verification). Any changes would need to be considered very closely by industry experts across the entire real estate industry before any changes are made.

65. Thank you for the opportunity to make a submission on behalf of our members. If the AML/CFT Consultation Team has any questions, please direct them to [REDACTED]@reinz.co.nz.

Yours sincerely



General Counsel

## Schedule 1

### A small sample of the feedback and concerns received from our members

- *"I fail to see how [the proposal] is manageable in the short time frame we have in preparing and presenting offers to our vendors. Awaiting for AML checks to be completed prior to presenting an offer or in the case of a multiple offer scenario would not be viable and cause delays. In the case of trusts buying a property due diligence could take a week or more for information to be collated for both Trust and Trustees.... Couldn't the bank complete a preapproval certificate for AML, and real estate agents rely on this?"*
- *"Approximately 70% of our business is auction listings. If 'and or nominee' is not crossed out on the S&P Agreement, how do we ensure we have identified all beneficial owners? What happens if we conduct CDD on the individuals who signed the sale and purchase agreement, and then on settlement transfer the ownership of the property into a Company or a Trust, entities to which we have not conducted CDD on?"*
- *"We often have no business relationship with purchasers. For example, a purchaser arrives at an open home and buys the house very quickly. We have never met the purchaser prior to the open home, whereas with vendors we form a business relationship with them... When completing CDD on vendors they know we will not begin marketing their property until we have CDD completed, and this is an incentive to provide all relevant documentation to us asap. What hold would we have on Purchasers to ensure they provide us with all relevant documentation. What would we do if a purchaser refused or did not provide all requested documentation?"*
- *"Perhaps some of the large real estate businesses in NZ could cope with this change (at a significant cost), however we feel it could be very difficult for smaller companies and offices and could seriously impact the ability for these companies to continue to comply with their AML/CFT responsibilities and their long-term survival. The majority of real estate agents earn their commissions through vendor listings and this requires them to do the right thing by their vendor. If Real Estate is responsible for completing CDD on purchaser this could be detrimental to the vendor's outcome."*
- *"My line of work is business sales and as an example, a large amount of businesses are purchased by competitors or complementary businesses, where sometimes the business owner isn't even involved directly with the transaction. Acquisition is simply part of a growth plan and the cash to purchase the business comes from borrowing (or surpluses from) against the existing operation, and the bank lends the remainder to back up the acquisition.... What use is it?"*
- *"I disagree. I work within compliance for a Commercial Real Estate Company, this seems like a ridiculous amount of work for leases that are sometimes only around \$15,000 to \$50,000 per annum. Generally, for larger transactions the clients would take the signed agreement to their lawyer who would conduct CDD at that stage. Please look at situations around commercial lease apart from residential sales."*



- *"For the vendor it takes 2 days or up to a week if it is a trust or company [to complete CDD]. Sometimes more if parties to a trust cannot be reached for more information. If this happens with purchasers, some buyers may simply walk away... keeping deals together is quite a major part of the job. If this is assessed even before presenting an offer, life as a real estate will be very long and drawn out for each house that we sell. More deals will fall over."*
- *"No...it is not manageable and will double compliance costs for our industry. Logistically it would be a challenge as to timing of AML taking into consideration different sales methods such as Auction and purchasing unconditionally."*
- *"The regulations should NOT be amended to require real estate agents to undertake CDD on both the purchaser and vendor. Such a change would be unworkable in practice and create a further impediment to the fair, transparent and efficient operation of the real estate market. New Zealand's land resources, buildings, homes and commercial premises form some of the key aspects of our lives and productive components of our economy. The proposal would essentially prevent buyers from purchasing property at auction for example where there is insufficient time to complete the CDD. This would have cause to distort the market and create a barrier to the appropriate acquisition of property by those most able to use it productively. There would be no such application of this obstruction to purchasing privately. It may be that this legislation has cause to push more transaction into the private market where consumers do not have the protections, safeguards, ethics, education and support of the real estate industry and its regulator the REA. In my personal experience the private market is a ruthless one dominated by unlicensed traders with no accountability to any regulating authority, employer or professional body. To instigate this change will be to place an unnecessary barrier to purchasing through or selling with a licensed real estate agent. This will encourage unlicensed trading in an unregulated environment and is likely to lead to many more stories of woe and misfortune for both property buyers and vendors. One of New Zealand's strengths as an economy is its transparency and the ease of doing business here."*
- *"For the vendor, if all relevant documents are available we would be looking at a 5 working day maximum turnaround. ... For a purchaser to be verified, it could be even more than this. We are looking at an extra added wait on processing of a settlement of 3-4 weeks, for Trust and Companies this is a huge undertaking to get it right. The unpredictability of this unquantifiable time is huge. It would have a massive impact. I cannot understate this."*
- *"We have a high volume of auctions in New Zealand that involve multiple bidders. The successful purchaser is only identified when the property is sold unconditionally under the hammer. Likewise, tenders and multi-offer situations involve dealing with multiple purchasers at the same time. For example, one of our franchisees recently received 502 offers on 60 sections available for sale. Completing CDD on all purchasers that submitted an offer in this example would have involved substantial cost and resourcing – with little benefit from an AML/CFT perspective."*
- *"I am a sole trader trading with [a commercial leasing and sales agent]. I have not found anyone who can tell me or demonstrate how the leasing – renting – [of] commercial property can be used to launder money. 100% of my revenue has been earned from leasing. While the*

*purchase of an asset can be done with laundered money – a balance sheet time, why would someone lease a floor in a building for, say, \$120,000pa plus GST expect to get the money back – this is an expense to the lessee and revenue for the [lessor] who has to account to IRD.”*

- *“I do not agree. The onus to conduct CDD on Vendors is already a significant burden as a business owner and on any salesperson. When I applied for my agency licence, I did so understanding the role was to provide a service by selling property between willing buyers and willing sellers. Had I chosen a profession in the New Zealand Police, or forensic accounting or anything in the financial industry, it would make more sense for this compliance undertaking to be a part of the role. The overall onus on this industry, particularly a small business like mine where we do not have the same resources at hand means we are being significantly impacted financially to take on these duties, there is no financial remuneration for this extra compliance work which as I have identified falls under a different profession.”*
- *“We are a small agency with 2 salespeople and 1 admin [staff] and the cost (monetary and workload) is high to comply with all the necessary legislation. I personally need to be a salesperson/ agent/ director/ manager/ AML compliance officer/ health and safety officer/ finance administrator/ moral keeper and recruiter. I believe we need to review and agree that we need to make sure that the financial implication of any change needs to have benefit that isn't outweighed by the cost.”*
- *“This is not manageable and a totally unrealistic expectation of salespeople. Salespeople generally handle on average 1-2 vendors per month or 1-2 listings. The scope and extent of the administration and paperwork required just for 1-2 vendors, including AML requirements, is challenging and extensive. The expectation for them to conduct AML requirements on the successful buyer or any buyer is adding another responsibility that takes them away from their core business of listing and selling real estate.”*
- *“We should not. Already AML requirements are considerable for Vendors. But, with purchasers, when should the questions take place? With up to 50 attendees per open home it is not practicable at this stage and with multi offers seeing up to 30 offers (usually less than 10), this would still be a onerous task if it were to be completed before an offer were submitted. Doing it afterwards would also be problematic as it will certainly result in many offers 'crashing' and then adding to the workload by requiring us to chase other potential purchasers - some of which might also subsequently 'fail' the AML criteria.”*