

aml

From: [REDACTED]@unitymoney.co.nz>
Sent: Friday, 10 December 2021 1:35 pm
To: aml
Cc: [REDACTED]
Subject: Re: Review submission extension
Attachments: Unity AML CFT Response.pdf

Hi Nick,

Thanks again for extending the submission deadline. Please find attached a submission on the review of the AML/CFT Act from Unity Credit Union.

Please let me know if you have any questions.

Cheers, Phil

[REDACTED] Risk & Compliance Manager



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Unity Credit Union trading as Unity.

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From: aml <aml@justice.govt.nz>
Sent: Thursday, December 2, 2021 9:25 AM
To: [REDACTED]@unitymoney.co.nz>
Subject: RE: Review submission extension

Kia ora Phil,

Absolutely – so you would like to submit on 10 December?

Ngā mihi,

Nick



[REDACTED]
Kaitohu Tōmua | Senior Policy Advisor
Criminal Law | Policy Group

[REDACTED]
www.justice.govt.nz



From: [REDACTED]@unitymoney.co.nz>

Sent: Thursday, 2 December 2021 9:22 am

To: aml <aml@justice.govt.nz>

Subject: Review submission extension

Kia Ora,

I was wondering if it was possible to get a one week extension to the submission deadline on this review? Things have been pretty hectic with the CCCFA changes, and we would like a little more time to finalise our response.

Thanks,
Phil

[REDACTED] – Risk & Compliance Manager



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Thank you.

AML/CFT consultation team
Ministry of Justice

By e-mail: aml@justice.govt.nz

AML/CFT Act Review

Kia Ora,

Thank you for the opportunity to provide input on the review of the AML/CFT Act. In addition to the feedback provided as part of the Industry Working Group, Unity Credit Union (trading as Unity) has reviewed the proposed changes and selectively made comments on certain key areas, primarily being areas of particular relevance to us or where we feel more strongly about the proposals.

Q 1.2 - Should a purpose of the Act be that it seeks to actively prevent money laundering and terrorism financing, rather than simply deterring or detecting it?

Q1.3 If so, do you have any suggestions how this purpose should be reflected in the Act, including whether there need to be any additional or updated obligations for businesses?

How this works in practice will pose significant challenges. For financial institutions like Unity, we tend to see only a small part of a person's overall financial relationships, which makes it difficult for us to make meaningful steps to actually prevent a person from laundering money. In our view, prevention will rely on an organisation like the FIU taking a more holistic review of a person's financial conduct and disseminating meaningful information back to REs. However, this poses significant issues around privacy, resourcing, avoiding tipping off, and legal rights to process or decline a transaction.

Q 1.7. What could be improved about New Zealand's framework for sharing information to manage risks? 1.8. Are the requirements in section 58 still appropriate? How could the government provide risk information to businesses so that it is more relevant and easily understood?

Q1.8 Are the requirements in section 58 still appropriate? How could the government provide risk information to businesses so that it is more relevant and easily understood?

Unity considers the requirement in s58 remain broadly appropriate. However, we believe that more tailored risk information needs to be provided from the government / FIU / supervisors about actual areas of risk and how these evolve. These should be tailored to specific sectors and be referenced to actual activity seen. More work should be done to quantify risk and for this to be realistic and pragmatic – identifying products that are actually low risk (e.g. for many products, it would be easy to say that they could conceivably be used for laundering money, but the reality is that they are not very attractive and therefore the risk is actually low).

Q 1.9. What is the right balance between prescriptive regulation compared with the risk-based approach? Does the Act currently achieve that balance, or is more (or less) prescription required?

Q 1.10. Do some obligations require the government to set minimum standards? How could this be done? What role should guidance play in providing further clarity?

Q 1.11. Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to?

Generally the approach is about right, however to be effective the risk-based regime needs to be more accepting of certain products etc being low risk. Whilst a level of risk exists with most, if not all, products and services, there should be an increased acceptance that there are lower risk (but not zero risk) areas that should be accompanied by less oversight, and likewise that higher risk areas should have more focus. The example of exempting low-value loans is a good example of this.

In some areas more prescription would be welcome. For example, the requirements relating to ongoing CDD and nature and purpose of a business relationship are quite vague and are interpreted differently across different organisations.

Q 1.12. Does the Act appropriately reflect the size and capacity of the businesses within the AML/CFT regime? Why or why not?

Q 1.13. Could more be done to ensure that businesses' obligations are in proportion to the risks they are exposed to and the size of the business? If so, what?

The Act itself and the accompanying Codes of Practice, Explanatory Notes and Guidance publications require a high degree of knowledge, experience and resource to fully understand and implement. This is likely to be a significant challenge for smaller firms, who make up the majority of the regulated population. It would likely assist these organisations to help them to focus on areas of highest risk as opposed to lower risk areas.

Q 1.21. Can the AML/CFT regime do more to mitigate its potential unintended consequences? If so, what could be done?

Q 1.22. How could the regime better protect the need for people to access banking services to properly participate in society?

There are certain critical areas of financial inclusion where the cost-benefit trade-off for firms in banking these marginal customers is unlikely to be attractive in an enforcement-led regime. This can have a significant impact on individuals and families (examples include money remittance to pacific islands and banking services for those without common ID or who live transiently).

Whilst enforcement clearly has a place, this should be outcomes-focussed.

Q 1.26. Should there be greater sharing of information from agencies to the private sector? Would this enhance the operation of the regime?

Q 1.30. Should the FIU be able to request information from businesses on an ongoing basis? Why or why not?

Possibly, but this could have significant resourcing and privacy impacts, so additional evidence-based consultation would be welcomed.

Q 1.32. Should the Act provide the FIU with a power to freeze, on a time limited basis, funds or transactions in order to prevent harm and victimisation? If so, how could the power work and operate? In what circumstances could the power be used, and how could we ensure it is a proportionate and reasonable power?

Q 1.33. How can we avoid potentially tipping off suspected criminals when the power is used?

Possibly, but more detail is required. There are clearly risks relating to tipping off that would need further work. This may have resource implications for entities and the FIU, and may require updates to terms and conditions. The FIU would need to have a fair and consistent process for how it applies this freezing obligation.

Q 1.55. Should there also be an AML/CFT licensing regime in addition to a registration regime? Why or why not?

It is unclear what benefit this would provide.

Q 1.60. Would you support a levy being introduced for the AML/CFT regime to pay for the operating costs of an AML/CFT registration and/or licensing regime? Why or why not?

Q 1.61. If we developed a levy, who do you think should pay the levy (some or all reporting entities)?

Q 1.62. Should all reporting entities pay the same amount, or should the amount be calculated based on, for example, the size of the business, their risk profile, how many reports they make, or some other factor?

Q1.63. Should the levy also cover some or all of the operating costs of the AML/CFT regime more broadly, and thereby enable the regime to be more flexible and responsive?

It is difficult to comment without a better understanding of what positive effect the licensing regime would have, and who would be subject to it. Generally speaking, the benefits of AML/CFT regulation appear to accrue to society and REs already bear a significant cost burden, so the current funding model appears appropriate. If a levy were to be implemented it would make sense to apply this on a risk / size basis.

Q 2.54. Should we issue an exemption for all reporting entities providing low value loans, particularly where those loans are provided for social or charitable purposes?

Q 2.55. If so, what conditions should be attached to such an exemption to ensure it does not raise other money laundering or terrorism financing vulnerabilities?

We agree that low value loans pose low AML/CFT risks and therefore an exemption should be considered. We have not seen any compelling evidence to show that the risk decreases because the loan is for charitable purposes or made by a not-for-profit organisation, so a blanket approach would seem most appropriate.

Q 4.18. Is the information that the Act requires to be obtained and verified still appropriate? If not, what should be changed?

Address verification has limited benefits and is of questionable validity given the increasing use of electronic communication. We suggest this be removed or replaced with something more meaningful.

Q 4.58. Should we remove the requirement for enhanced CDD to be conducted for all trusts or vehicles for holding personal assets? Why or why not?

Yes, in our experience there is a very wide spectrum of risk associated with Trusts, and in some cases EDD may not be appropriate.

Q 4.103. Should legislation require businesses to include, as part of their AML/CFT programme, policies, procedures, and controls to implement TFS obligations without delay? How prescriptive should the requirement be?

Any requirement should be risk-based and should clearly take into account the widely different types of terrorist funding that now take place, from organized terrorist groups to “lone wolf” incidents.

Q 4.128. Should we issue regulations to explicitly require businesses to assess risks in relation to the development of new products, new business practices (including new delivery mechanisms), and using new or developing technologies for both new and pre-existing products? Why or why not?

Our interpretation is that this is already factored into the requirements to keep our risk assessment and programme up to date.

Q 4.157. Have you encountered any challenges in complying with your PTR obligations? What are those challenges and how could we resolve them?

Yes, as we use an agency banking relationship for incoming international financial payments, this creates some confusion over the responsible party for submitting a PTR and makes us reliant on the information passed on to us by our agency bank when submitting a PTR.

Q 4.160. Should non-bank financial institutions (other than MVTS providers) and DNFBPs be required to report PTRs for international fund transfers?

Possibly, but as noted above, there are challenges when multiple parties are involved and possible duplication of PTRs.

Q 4.167. Do you consider that a lower threshold for PTRs to be more in line with New Zealand's risk and context? If so, what would be the appropriate threshold for reporting?

Q 4.168. Are there any practical issues not identified in this document that we should address before changing any PTR threshold?

Q 4.169. How much would a change in reporting threshold impact your business? 4.170. How much time would you need to implement the change?

Possibly the limit for cash deposits could be lower, but even then this can be circumvented relatively easily. Reporting other lower value transactions could be done, but it questionable whether the benefits of doing this would outweigh the costs.

This would involve significant additional cost and time to implement – at least six months. As noted above, we are not clear that the benefits outweigh the costs.

Kind regards



Risk & Compliance Manager