

aml

From: [REDACTED]@financialadvice.nz>
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To: aml
Subject: submission on AML/CFT Act .
Attachments: AML Review Submission from Financial Advice NZ.docx

Hi. Attached is our submission on AML/CFT Act .

Thank you for the extension.

Kind Regards

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Feedback to the Ministry of Justice: Review of the AML/CFT Act

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Financial Advice New Zealand is a professional membership body for financial advisers in New Zealand. It represents around 1600 members.

We thank you for the opportunity to comment on the consultation document regarding the Ministry of Justice's review of the AML/CFT Act.

We have some overall comments to make as well as comments on a few of the specific questions asked in the document. Where appropriate, the consultation document question numbers are referenced.

Overall comment

Financial Advice NZ and its members are supportive of the goals of the AML/CFT Act. We understand we have a role to play in reducing the risk of money laundering and the financing of terrorism occurring in New Zealand, and in identifying it when it may be happening.

While not all financial advice firms are reporting entities directly, many more act as agents of reporting entities (financial product providers) and are therefore also impacted by AML/CFT requirements.

Where this review identifies risks which can be mitigated without unreasonable burden, we would in principle look to support extensions of the AML/CFT Act.

However, in regards the review of the current law, we are concerned about what we consider are unintended consequences of the law, or how the law has been interpreted in practice. These are areas where compliance has caused unnecessarily effort and cost within the AML/CFT framework, which we feel is not supported, or originally anticipated, by the intent of the law.

We would like to see these issues addressed in any change to the AML/CFT Act and/or through the production of more detailed guidelines to give more certainty of what is required or not required in various risk based scenarios.

We have three main areas of concern regarding AML/CFT requirements and its implications for the advice sector which we would like to raise. They broadly fall into the following sections of the consultation document: Supervision regulation and enforcement, Preventative Measures and a wider concern about duplication of AML efforts and the impact on customers and advisers.

Upon completion of this review, when determining the impacts of possible new recommendations or guidelines, Financial Advice NZ would be happy to provide a working group of advisers and advice firms to provide feedback to the Ministry of Justice on the feasibility and/or implications of those changes.

Duplication of AML effort for no gain

Duplication of CDD for the same customer by different providers

There is currently a lot of duplication of effort around AML CDD which we feel negatively impacts on the financial advice experience for consumers without providing additional AML security.

A client often goes through the CDD process many times for what they consider to be one transaction.

For example, the financial adviser verifies the client during their investigation phase, then if the client takes out two investment products with different product providers they are often required to under-go repeat verifications; or the adviser is required to provide additional verification information to each provider. Each provider, and the advice firm, then keeps records of that CDD.

Suggestion: We would like to see guidelines confirming when, and under what conditions, an entity can rely on some or all of the verification done by another reporting entity. For clarity, we are talking about direct reporting entities rather than third party providers.

Duplication of AML for the same source of funds transaction

Similar to the above, the AML rules around verifying source of funds/source of wealth can require duplication of checks which is time consuming and frustrating for clients, especially when it is the same transaction being checked within a relatively short time frame.

To illustrate, here is an example; a client sells a farm in England, deposits the money in a New Zealand bank account and then visits a financial adviser to get help to invest those funds. The depositing of the funds at the bank, and the decision to withdraw the funds to create an investment portfolio were done in a short period of time.

The bank has done the full AML checking on the person and has verified the source of funds, but the financial adviser is also obliged to do the same checks, on the same transaction.

For the adviser, this required them to go back to England and get proof of the sale, the land transfer etc – which the NZ bank had already done. This is frustrating for the client as they have already gone through this process with the bank just a short time earlier.

It is also a duplication of effort and cost for the AML system with no additional gain as it is the same risk being checked twice, not a new risk. Furthermore, if the client chose to invest directly themselves with more than one managed fund provider, this check could be duplicated even more times.

Suggestion: Financial Advice NZ would like to see a system where transactions such as this can be tagged as AML checked, so the transactions which flow from those funds do not need to repeat the verification of the funds further back. I.e the Financial Adviser/FAP would verify the source of funds at the bank, but see those funds, which haven't been intermingled, are tagged as previously AML checked and they would not be required to verify further.

Customer Due Diligence

Q 4.1 The challenges advisers and advice firms face around CDD concerns the extension of CDD required beyond the client, particularly for trusts.

The requirement to extend CDD to beneficial owners can often result in extensive AML checking for people far removed from the transaction.

To illustrate, here is an example: a Financial Adviser/FAP is preparing an investment portfolio for a family trust where one trustee is a corporate trustee. The corporate trustee is a company (accounting firm) with shareholders, one of those shareholders is also a company (parent accounting group). Financial advisers have provided examples like this where they have had to do AML CDD checks on 30-40 people for a small family trust with just 3 trustees. This seems too extensive.

A similar example is where a Financial Adviser/FAP's client wants to change the ownership of their life insurance policy from a Trust into their personal name. The Financial Adviser/FAP had to run AML checks on all 12 partners of a law firm as one of them was a Corporate Trustee of the family trust.

This level of AML checking is time consuming and likely for no gain within the AML system for small family trusts in low-risk situations.

Suggestion: Financial Advice NZ would support a system where law firms and accounting firms (and similar common entities with corporate trustee services) can have their partners', and shareholders' AML requirements checked and held in one central repository under administration of the supervisors which can be relied upon for flow down AML requirements.

In the example above, the Financial Adviser/FAP would AML the individual Trustees and the Corporate Trustee, but would not have to AML further if they could see that appropriate (and regular) CDD AML checks had already been confirmed for that entity.

Q 3.20 We appreciate there are commercial operations which offer this type of reusable AML checking as agents/third parties, but these entities are unregulated and therefore aren't monitored by the AML/CFT Supervisors. Any failures in compliance by these providers are suffered by the reporting entity.

Additionally, not all product providers accept AML CDD done by these third parties which limits their use in the advice sector.

To strengthen and improve the overall efficiency of the AML/CFT regime, Financial Advice NZ supports the licensing, regulation, and auditing of third-party providers, and supports clear guidelines on the circumstances in which they can be relied upon, and/or when their CDD must be accepted by reporting entities.

Information being obtained and verified

Q 4.18-4.21 Financial Advice NZ would like to raise an issue around the non-acceptance of verified ID documents by reporting entities.

Different product providers (reporting entities) are requiring different and specific wording as proof of identity verification on ID documents, causing issues for people with no benefit to the AML/CFT system.

A client can think they are doing the right thing by getting their ID verified before they visit a financial adviser, but then find the particular product provider they decide to engage with requires different verification wording to be put on the document.

As an example, a financial adviser had a client looking to get funds out of KiwiSaver under hardship. Their application was declined by the provider as the standard words the JP used to confirm identify verification were not exactly the same as the ones they required. This caused a delay in what was already a very stressful situation for the client.

Another example is insurance firms declining applications to change the ownership name on a life insurance policy where ID verification wording didn't exactly match their own requirements (but met others' requirements).

A client who is doing a tidy up of their full financial affairs may need to get one ID document verified many times with different versions of the verification wording in order for that document to be accepted by different product providers. This is illogical.

Suggestion: Financial Advice NZ encourages standardised ID verification wording that reporting entities must accept (assuming all other aspects are acceptable).

Supervision regulation and, and enforcement

Q 3.11 Financial Advice New Zealand would welcome the introduction of standards around audits and auditors, in particular better clarity around the term "appropriately qualified".

Currently those financial advice firms which are reporting entities have to themselves determine who they consider are appropriately qualified to be AML/CFT auditors, yet they don't necessarily have the knowledge to assess this.

They, and other reporting entities, should be able to rely on set criteria, or registration to assure themselves that the auditor they select is appropriate.

Audits are a key control in the AML/CFT system, and in the reporting entities' understanding of their compliance. A reporting entity does not want to be in the position of finding out they have been non-compliant for many years when they either change auditors (in the case of an audit firm leaving the market), or worse, not finding out until much later.

Q 3.13 The cost of an AML/CFT audit for a small financial advice firm is indicatively around \$1,500. This cost and any increase due to new auditor standards/requirements, while not insignificant, is small compared to the greater cost of unknowingly being non-compliant.

Q 3.14 If standards of auditors are in place, then reporting entities should be able to rely on any audits at least as a mitigating factor if non-compliance is subsequently discovered by the supervisors.