

Kokay, Nick

From: Pacific Lawyers Association <info@pacificlawyers.org>
Sent: Tuesday, 21 December 2021 6:08 am
To: aml
Cc: [REDACTED]
Subject: PLA Submission AML/CFT Law Reform
Attachments: PLA AMLCFT submission(62203404.1).pdf

Talofa lava AML/CFT reform team

Nick Kokay very kindly gave us an extension to make a submission on the AML/CFT review.

Please see attached submission from the Pacific Lawyers Association.

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[REDACTED]
On behalf of the Pacific Lawyers' Association

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17 December 2021

AML/CFT consultation team
Ministry of Justice
SX 10088
Wellington 6140

Attention:

Talofa lava AML/CFT Consultation Team

The Pacific Lawyers Association ("**PLA**") welcomes the opportunity to make submissions on the Consultation Document October 2021 prepared by the Ministry of Justice in undertaking its review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT**).

We have reviewed the Consultation Document October 2021 prepared by the Ministry of Justice ("**Consultation Document**") and have identified a few areas where we believe further consideration is required to avoid or mitigate unintended consequences for the Pacific community in Aotearoa.

1. **Appropriate Cash transaction Threshold**

Relevant Questions in the Consultation Document

- 2.18. *Should we lower the applicable threshold for high value dealers to enable better intelligence about cash transactions? Why or why not?*
- 2.19. *If so, what would be the appropriate threshold? How many additional transactions would be captured? Would you stop using or accepting cash for these transactions to avoid AML/CFT obligations?*

The PLA understands that prescribed transaction reports are required for domestic cash transactions which exceed NZD10,000 and international wire transfers which exceed NZD 1,000. We note that it is very rare for people to use cash these days, due to societies ever-increasing shift to becoming cashless. However, one of the legitimate reasons that people may use cash is when a person is unable to open a bank account (e.g. due to not being able to complete the AML/CFT compliance requirements of a bank).

In our view, if there is any decrease in the cash threshold limits, we would not wish for it to result in persons who are already subject to financial exclusion in society (e.g. as they cannot open a bank account) to be further marginalised by having their cash payments subject to further transaction reporting by reporting entities under the AML/CFT. Having said that, we do not consider it to be a major issue for the Pacific community if the cash threshold is reduced from \$10,000 to say, \$5,000.



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In terms of the \$1,000.00 international wire transfers, the reality for Pacific families is that this is a common occurrence where funds are sent from NZ to the Pacific. We consider that the \$1,000 threshold should not be reduced as it would be inclined to capture many more clientele and realistically, we consider that these type of transfers to the Pacific is not the target 'catchment' for the transactions that the AML/CFT legislation is intended to capture.

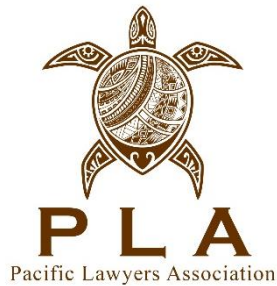
2. Potential New activities: Criminal Defence Lawyers ("CDLs")

Relevant Questions in the Consultation Document

- 2.25. *Should criminal defence lawyers have AML/CFT obligations? If so, what should those obligations be and why?*
- 2.26. *If you are a criminal defence lawyer, have you noticed any potentially suspicious activities? Without breaching legal privilege, what were those activities and what did you do about them?*
- 2.27. *Are there any unintended consequences that may arise from requiring criminal defence lawyers to have limited AML/CFT obligations, that we need to be aware of?*

In our view CDL's should not be subject to AML/CFT obligations for the following reasons:

- (a) CDLs are already over-worked. We refer you to the PLA press release statement on the review of Legal Aid currently being undertaken. In our view, introducing reporting requirements on CDLs on top of their legal aid reporting requirements appears to be disproportionate to the AML/CFT risk – particularly given that the only funds that are paid to a CDL from their clients is for fees. This is an area of law that is not like say, property lawyers, where clients pay large amounts of cash for property transactions.
- (b) Absolute trust and confidence between lawyer and client are fundamental to the lawyer-client relationship and to criminal defence in particular. Public confidence in the availability of a proper defence to criminal charges underpins public confidence in access to, and the administration of, justice. Criminal defence lawyers deal with clients who already have low trust in the justice system and a misperception that lawyers are working "for" or "with" police or will provide information to law enforcement agencies. Making that perception a reality subverts the lawyer-client relationship and can only do great harm to justice and access to justice in New Zealand.
- (c) In our view, the only transactions that could be relevant to AML/CFT compliance would be, CDLs receiving cash from clients and specifically in amounts of \$5,000 or \$10,000 (or whatever that threshold may be under the AML/CFT). It might be that some CDLs are being paid in cash, and this cash could be captured by the AML/CFT rules. However, Legal Aid should not be captured, for obvious reasons.



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3. Verifying address for customers who are natural persons

Relevant Questions in the Consultation Document

- 4.50. *What challenges have you faced with verification of address information? What have been the impacts of those challenges?*
- 4.51. *In your view, when should address information be verified, and should that verification occur?*
- 4.52. *How could we address challenges with address verification while also ensuring law enforcement outcomes are not undermined? Are there any fixes we could make in the short term?*

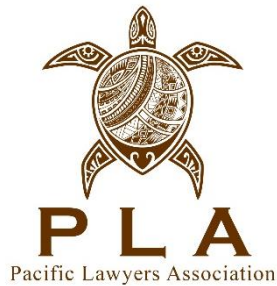
The PLA agrees that there are challenges with address verification for many of the Pacific community which include the following:

- (a) Pacific peoples are significantly over-represented among people living in temporary accommodation at 38.8% (Ira Mata, Ira Tangata: Auckland's Homeless Count report Point in Time Count 2018 - pg 9).
- (b) Pacific peoples are also overrepresented in the prison population, which raises concerns for when they are released and searching for accommodation.
- (c) Many Pacific peoples do not have any utility bills in their names because of the fact that they have more people living in a house than a normal household and utilities are normally paid by the person(s) in whose name the property is owned or rented by (i.e. one or two people).
- (d) The PLA also note that some peoples from the Pacific under the Recognised Seasonal Employer scheme, a regime that is already widely criticised, will be faced with problems not having adequate housing or correct documentation. This may cause issues of opening a bank account and sending money back home to family in the Pacific.
- (e) Many undocumented immigrants may be Pacific people.

If a person is not able to meet the verification of address AML/CFT requirements imposed by a financial institution, they may utilise dubious ways to send money home or hold on to their money in cash.

We suggest the regime needs to provide more flexibility in lower risk circumstances so as to not financially exclude Pacific peoples who make up one of the country's most vulnerable groups. Measures should be taken to allow for an electronic address verification system to be set up.

We note that in India, a system was adopted whereby lower risk customers were exposed to



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simplified due diligence measures. This allowed undocumented individuals to at least access the very basics of a functional bank account. Similar measures could be introduced in New Zealand.¹

4. Should 'company secretaries' have reporting obligations?

Relevant Questions in the Consultation Document

- 2.23. *Should acting as a secretary of a company, partner in a partnership, or equivalent position in other legal persons and arrangements attract AML/CFT obligations?*
- 2.24. *If you are a business which provides this type of activity, what do you estimate the potential compliance costs would be for your business if it attracted AML/CFT obligations? How many companies or partnerships do you provide these services for?*

The PLA disagrees with this. As the concept of a 'company secretary' is not even recognised in the Companies Act 1993 we do not agree that any obligations under the Act should be imposed on these officers

5. Remittances

Relevant Questions in the Consultation Document

- 1.21. *Can the AML/CFT regime do more to mitigate its potential unintended consequences? If so, what could be done?*
- 1.22. *How could the regime better protect the need for people to access banking services to properly participate in society?*
- 1.23. *Are there any other unintended consequences of the regime? If so, what are they and how could we resolve them?*

It may be worth considering who is the target audience of the AML/CFT regime and who is not. At this time, the biggest difficulties that some of our community face would be the CDD compliance e.g. some of our community may have different names on different documents and (as noted above) at times, it is difficult to get proof of address. We consider that as part of the AML/CFT regime, it provides a front end easy, workable solution e.g., a standard Statutory Declaration to address these types of issues at the front end.

Remittances are a big part of many Pacific cultures. The PLA notes that in recent reports noted in World Bank (<https://www.worldbank.org/en/news/press-release/2021/11/17/remittance-flows-register-robust-7-3-percent-growth-in-2021>) and Samoa Observer articles (<https://www.samoaoobserver.ws/category/samoa/94612>) posted earlier this month that remittances to the Pacific Islands have increased since the same time last year.

¹ See Rebecca Stanley & Robert Buckley "Protecting The West, Excluding The Rest: The Impact of the AML/CTF Regime on Financial Inclusion in the Pacific and Potential Responses" 17 MJIL 83.



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Consequently it does not appear as if the AML/CFT requirements for remittances is causing any specific issues to the Pacific community (i.e. over and above the other issues noted in this submission in relation to address verification and names on documents).

Conclusion

We would be happy to participate in any further consultation on the above issues. Please do not hesitate to contact us if you have any questions

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Secretary

On behalf of the Pacific Lawyers' Association

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