## aml

**From:** [redacted]@laneneave.co.nz>
**Sent:** Tuesday, 30 November 2021 3:08 pm
**To:** aml
**Subject:** Submission - Review of the AML/CFT Act Consultation Document [LN-LNDMS.FID621295]
**Attachments:** AML.CFT Act - Statutory Review Comments November 2021 - LN Submission.pdf

Dear Sir/Madam

Please find attached our submission regarding the review of the AML/CFT Act consultation document.

Kind regards

[redacted]

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Compliance Manager

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30 November 2021

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Dear Sir/Madam

This submission on the Ministry of Justice Review of the AML/CFT Act Consultation Document, October 2021, is from Lane Neave.

Lane Neave welcome this opportunity to provide feedback on the Act and support the objectives of the review to improve the regime in New Zealand to prevent money laundering and the financing of terrorism. Your Consultation Document is very thorough and the queries you raise to the market are on point and in the right direction to try and achieve the right balance to meet the principles of the Act and to not unduly impact the lives of New Zealanders. Not an easy task!

We have chosen the topics that we feel are important to us to provide feedback. It is not to say, however, that we don't have comment regarding the rest, but time has meant we have had to restrict the response to meet the deadline.

Please see comments below.

**Regulatory Framework**

We are aware that what we are about to suggest would not be an easy task but do feel it worthwhile to mention as part of this review. The functions of the AML/CFT supervisor under Section 131, do not include interpreting the requirements of the Act in relation to the reporting entities. It is purely to monitor, assess, provide guidance, investigate and enforce compliance with the Act and regulations.

In today's world, there is an expectation that reporting entities are equipped to understand and interpret the Act, the Regulations, the Exemptions, the Guidance, the Codes of Practice and various Risk Assessments.

It would be more effective and efficient if there was one body who is responsible for that and to pull all that information together in to one document that can be used across all reporting entities. This would remove any ambiguity on the requirements and provide clear "instruction" to reporting entities on how they meet the requirements of the Act.

With that in mind, it is our suggestion that the Regulatory Framework in New Zealand look like this:

**AML/CFT Regulator**
Interprets the requirements of the Act and provides a "rule book" for each sector.
Are responsible for enforcement against reporting entities who fail to meet the requirements of the rule book.

**Supervisors (RBNZ, FMA, DIA)**

Continue to perform the functions as described by section 131 of the Act (except enforcement) with a large focus on education in the public domain, and, training and guidance for reporting entities.

It is important to note that “rule book” is not in reference to it being rules-based regulation. A rule book can still be drafted for principles-based regulation to keep in line with the Act being risk-based.

This model places a high dependency on skilled personnel sitting in the AML/CFT Regulator entity that can cover the various sectors governed by the AML/CFT Act.

**Prescriptive versus risk based**

It is prudent to understand that there can be difficulty with a purely risk-based approach as this is reliant on a business having knowledge of how to determine their risks and how to mitigate them.

What has been seen with the introduction of the phase 2 entities is that those entities do not traditionally have that knowledge in their pool of staff. If they are not able to resource appropriately then they can struggle with meeting the requirements of the Act.

When you have such an eclectic range of reporting entities under the Act, there is benefit in prescribing requirements so that it is clearer as to what is required. The flip side of that, is it takes away the ability to assess based on risk.

There is thought to prescribe for some sectors and have risk based for others, but that could become dysfunctional and difficult to regulate consistently. We therefore believe that our proposal above for the Regulatory Framework would greatly assist this discussion in finding that balance between prescriptive and risk based. Risk based is the most appropriate approach in order to fulfil the principle of the Act and allowing the flexibility that is required to apply the Act across such a varied range of reporting entities, but there also needs to be some prescription to help that varied range of reporting entities to comply. It just needs to be the right prescription. An example of the right prescription are the identity requirements of the Act. These are prescribed as to what is required and ensures there is a level playing field across all reporting entities in what they need to request from clients. This also provides stability for clients who are requested to provide this information as it’s the same information requested from whichever reporting entity they are dealing with.

**Potential new regulatory exemptions**

***2.48 Should we issue any new regulatory exemptions? Are there any areas where Ministerial exemptions have been granted where a regulatory exemption should be issued instead?***

Yes, we believe it makes sense to issue regulatory exemptions for certain Ministerial exemptions if they are demonstrably low risk. Bodies corporate and body corporate managers is an example.

**When CDD must be conducted**

***4.9 Are the prescribed points where CDD must be conducted clear and appropriate? If not, how could we improve them?***

Standard CDD

We recommend that the wording for existing customers be amended to read – “… and for existing (pre-Act) customers where the business considers it has insufficient information about the customer or if there has been a material change in the nature or purpose of the business relationship.”

This is to clarify that CDD should be conducted where you have insufficient information OR if there is a material change in the nature or purpose of the business relationship. It doesn’t read that way currently.

Enhanced CDD

We recommend that the wording regarding the inclusion of trusts in the “must” category be released. Suggested wording - “ Enhanced CDD must be conducted where risk is elevated for a variety of reasons, including if the customer is a politically exposed person, seeks to conduct a complex, unusually large transaction or pattern of transactions or where a SAR has been filed.

This is because trusts may not always be high risk, and most generally we find are not. If they were, then they would be caught in the wording “where risk is elevated for a variety of reasons”.

**Managing funds in trust accounts**

***4.14 What money laundering risks are you seeing in relation to law firm trust accounts?***

We see instances where third parties pay into our trust account for a property purchase rather than through their lawyer which is the required practice. We have also received instructions from clients to return funds to a third-party account if paid "erroneously".

***4.15 Are there any specific AML/CFT requirements or controls that could be put in place to mitigate the risks? If so, what types of circumstances or transactions should they apply to and what should the AML/CFT requirements be?***

In relation to the risks that we have identified in 4.14, we would suggest that if funds are received from a third party in relation to a business relationship (e.g. a property transaction), then CDD must either be conducted by the receiving reporting entity or a Section 33 requested from the third party's reporting entity. If there is a request for funds to be transferred to a third party not part of the business relationship, then the request should be denied or CDD must be conducted on the third party.

***4.16 Should this only apply to law firm trust accounts or to any DNFBP that holds funds in its trust account?***

The risk of money laundering and terrorist financing isn't specific to a law firm's trust account. It should be any DNFBP that holds funds in its trust account as the trust account enables the placement of money into the financial system.

**Verifying the address of customers who are natural persons**

We have found that proof of address can cause issues where a customer cannot provide evidence of an address as they don't have anything that is in their own name. It is also quite easy to change your address for some accepted identification so it is questionable whether this is serving any real purpose given the angst it can cause law abiding customers to provide. It would be recommended to adopt FATF standards as the standard is sensible for when proof of address would be of benefit in the event of a criminal investigation.

**Conducting simplified CDD on persons acting on behalf of large organisations**

***4.57 Should we issue regulations to allow employees to be delegated by a senior manager without triggering CDD in each circumstance? Why?***

It's practical that reporting entities would be conducting CDD on the main contact person they are dealing with at the large organisation. We don't see any need for CDD to be extended beyond that, otherwise it removes the point of simplified CDD.

**Mandatory enhanced CDD for all trusts**

***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?***

As mentioned under 4.9, trusts may not always be high risk, and most generally we find are not. Under a risk-based Act, they would be assessed the same way as all other customers for their risk rating. We don't believe it achieves the purpose of the Act to mandate enhanced for trusts.

***4.59 If we removed this requirement, what further guidance would need to be provided to enable businesses to appropriately identify high risk trusts and conduct enhanced CDD.***

Guidance on the types of trusts and the risks they pose would assist businesses to assess the risk on trusts.

***4.60 Should high-risk categories of trusts which require enhanced CDD be identified in regulation or legislation? If so, what sort of trusts would fall into this category?***

We don't believe it belongs in either as the Act should be moving away from prescriptive. That information should go in Guidance which would be included in the rule book mentioned earlier.

That concludes our comments to the chosen questions.

We would also like to add that if we are operating under a risk-based Act then certain questions about what should or shouldn't be included may easily be answered by assessing what the risk of money laundering or terrorist financing is. The same goes for anything that may be introduced or removed – would by doing so, impede the principal of the Act? It's perhaps too simplistic a view but sometimes that is what is required to strip something back to give it purpose again.

Please don't hesitate to contact me if you wish to discuss anything further.

Kind regards

[redacted]
Compliance Manager