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# **Summary report on workshop feedback on ways to reduce cost compliance**

**Anti-Money Laundering and Countering Financial  
Terrorism Bill**

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# Why we ran the workshops

This report summarises the key points from workshops with real estate agents, lawyers, conveyancers, accountants and high value dealers on the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Bill Phase II. The workshops explored:

- assumptions underpinning the compliance costs for the implementation of the AML/CFT Phase II based on the more defined policy and legislative directions
- implications for businesses with the introduction of the AML/CFT Phase II, in particular the real estate transaction pathways
- efficiencies to lower compliance costs (e.g. reliance, designated business groups, linking AML obligations to other business processes).
- whether organisations will undertake behavioural changes to gain the cost efficiencies (e.g. cease the service, not take cash payments over \$15,000).

**Table 1: Overview of workshops by location, audience and numbers**

Date	Location	Audience	Number
14 December 2016	Hamilton	Designated business group/reliance group including: <ul style="list-style-type: none"> <li>▪ 6 lawyers</li> <li>▪ 5 accountants</li> <li>▪ 5 real estate agents</li> <li>▪ 3 conveyancers</li> </ul>	19
15 December 2016	Auckland	Real estate transactional group including: <ul style="list-style-type: none"> <li>▪ 7 real estate agents</li> <li>▪ 6 lawyers</li> </ul>	13
19 December 2016	Dunedin	Real estate transactional group including: <ul style="list-style-type: none"> <li>▪ 7 lawyers</li> <li>▪ 4 real estate agents.</li> </ul>	11
24 January 2017	Auckland	High value dealer group including: <ul style="list-style-type: none"> <li>▪ 4 car dealers</li> <li>▪ 2 boat dealers</li> <li>▪ 1 auctioneer</li> <li>▪ 1 jeweller</li> </ul>	8
25 January 2017	Wellington	High value dealer group including: <ul style="list-style-type: none"> <li>▪ 3 car dealers</li> <li>▪ 3 jewellers</li> </ul>	6

# **Mixed opinion on when and who does customer due diligence (CDD) in the real estate transaction process**

## **The language in the AML/CFT Bill needs to be consistent with other Acts**

Real estate agents requested the language used in the AML/CFT Bill Phase II is changed from 'client' to 'vendor' and 'customer' to 'purchaser' to be consistent with the Real Estate Agent Act.

## **Real estate agents rarely receive large cash deposits**

Real estate agents spoke of receiving cash less than once a year and for amounts ranging from \$3,000 to \$9,000. They actively discourage cash deposits due to the additional costs of time and bank handling charges. Real estate agents have requested purchasers to put cash through the banking process.

## **Participants noted duplication of CDD in the transaction process**

Real estate agents commented customers may be put off proceeding with the sale or purchase due to the compliance requirements. Real estate agents said paperwork to be completed by vendors is increasing. A year ago, vendors completed a one page document to authorise the real estate agent. Now they complete three pages. Documentation increases to six pages if the sale is subject to the bright line test.

## **Real estate agents are concerned customers will go to other agents if CDD is undertaken**

Real estate agents were concerned about their liability around CDD obligations and reporting. They believed asking vendors and purchasers for proof of identification may mean they do not proceed with the listing or buy the property. As a result, they may go to another agent if the property has multiple listings. In Dunedin, multiple listings do not occur as the practice is actively discouraged.

## **Real estate agents have mixed opinion on when CDD occurs**

Some real estate agents believed they should not have to do CDD. And some reflected they do not have the skills to do CDD. Real estate agents also noted identifying who is listed on a property or who is the actual purchaser can be challenging.

When receiving instructions, the real estate agent needs to know who owns the property and who is on the title to make sure the person has the authority to sell. Real estate agents tend to check identification from vendors when they do the listing sheet. In Auckland, listing tends to occur via email and vendors are not asked for proof of identification. Asking for photo ID is not part of the standard process.

Real estate agents noted that they do not always know the purchasers. The 'hot market' means buyers will view online pictures and if there is a positive builders' report they will purchase without visiting the property.

At auctions, real estate agents try to register purchasers. However, registering could mean receiving identification for up to 300 people attending the auction, which is time consuming. Purchasers at auction can also arrive late, not be registered and then be successful in purchasing the property. No industry regulation exists for people to register before taking part in an auction.

Real estate agents perceive the biggest risk to be overseas purchasers at auction. While overseas purchasers may be registered, no proof of identification is requested. In Auckland, the use of multiple names in the Asian community can make identification challenging.

Identification can also be asked for at the contract stage when documents are being signed. In Auckland, real estate agents noted that deposits can come from someone who is not the purchaser and this is not checked.

### **Fast sale transactions are likely to impede on the CDD**

Participants reflected sales transactions are becoming faster. Vendors and purchasers expect transactions to go through immediately, which makes it difficult to do CDD. In this environment, the CDD process needs to adopt new technologies to ensure efficiencies.

### **Lawyers are undertaking CDD on title holders**

Lawyers feel that identification checks should be undertaken at the start of the real estate transaction process. Lawyers commented that they do CDD on the title holder, but not on the person who signed the contract. For lawyers identifying the purchaser can be challenging. The person signing the contract may be different from the purchaser (i.e. a trust, a company, a parent paying the deposit and a child buying). Lawyers are verifying identification and asking to see original documents.

Participants questioned whether CDD should solely be the role of the bank.

### **Participants wanted clarity on their investigative role in CDD**

Participants were concerned that the new AML/CFT obligations meant they did the investigative process if discrepancies were found in the CDD. Participants also wanted clarity on whether customers are informed when they are reported to the Financial Integrity Unit (FIU) and told who reported them.

### **Participants want CDD to be linked to existing processes**

Accountants suggested leveraging off Inland Revenue's processes in the real estate transaction process. Lawyers also want the CDD process to align with other obligations: IRD tax statements; Foreign Account Tax Compliance Act (FATCA); and the New Zealand Law Society's Lawyers Trust Account Guidelines.

## **The role of professional bodies needs to be clarified**

Compliance costs may be reduced if there are mandatory requirements from professional bodies to do CDD. Professional bodies could have a leadership and education role in the introduction of the CDD. Some concerns were raised about sole practitioner accountants who are not members of professional bodies.

## **Participants noted other challenges undertaking CDD**

The use of buyers' agents is uncommon in real estate transactions, especially in rural areas.

Younger real estate agents were seen to be more likely to struggle with CDD as they are establishing new client relationships.

Participants recommend that careful consideration is given to the information for CDD to ensure it is clear and concise.

Lawyers in Dunedin cited that not having a register of trusts is one of the biggest existing loop holes. The lawyer referenced that currently trust beneficiaries are not signatories and have no reporting requirements. The question of the reporting of gifts and loans made by trusts was raised.

## **Designated business groups (DBGs) will have some impact on cost compliance reduction**

### **For small lawyers/conveyancers there is limited opportunity to set up DBGs**

Lawyers and conveyancers in Hamilton had limited understanding of DBGs. Once explained, most would not form a DBG as they are single firms of lawyers with no related entities. These participants were unable to identify the benefits of establishing a DBG.

Lawyers and conveyancers acknowledged related partnerships in different towns, operating under the same brand, may form a DBG. Firms that share back office functions such as payroll may also set up a DBG. However, lawyers noted there are not many of these partnerships types.

### **Larger accounting firms are likely to set up DBGs but not sole practices**

Accountants perceive that DBGs will work best for larger accountancy firms. Smaller accountancy firms are less likely to adopt DBGs due to the perceptions of taking on another firm's risk. It was suggested that DBGs could be grouped by client type, size of practice, marketplace positioning, rural/commercial/urban customer base.

### **Real estate agents see limited benefits in setting up DBGs**

Real estate agents were not convinced that DBGs would work for them. One franchisor said they would not set up a DBG for their real estate agent franchisees. Their reluctance reflects that franchisors do not have clients and have no visibility over the transactions. The franchisees hold the responsibility and liability relating for the AML/CFT obligations. Franchisors could support through regional training.

# Barriers exist to using third part reliance to reduce compliance costs

## Participants are reluctant to use reliance due to lack of trust and liability risks

Participants noted it is difficult to use reliance procedures due to the independence of the different parties in the transaction. Lawyers and real estate agents have different CDD procedures, so are not sure how they could rely on one another. Lawyers did not perceive it be onerous to ask for identification so prefer to do CDD themselves. Concerns were also raised about reputation risk, and liability risks.

## Participants do not have existing arrangements with other parties

Most participants do not have formal or informal arrangements with other firms in the real estate transaction process. Real estate agents noted they can no longer recommend lawyers and must provide at least three names.

## Participants are not willing to share information

Lawyers are concerned about maintaining client confidentiality and reporting obligations under a reliance arrangement. Some lawyers would not use third party reliance for this reason. Real estate agents do not share customers.

Participants were uncertain about the role of the bank in reliance. They noted banks do not confirm whether they have carried out CDD.

## Participants see reliance as expensive and time consuming

Real estate agents perceive that establishing and using reliance would be time consuming and expensive, and increases the level of regulation. The checking of identification is not seen as overly onerous without a reliance arrangement.

## Participants want support and education

Participants raised the following support and education requirements:

- knowing when the AML/CFT obligations will be rolled out
- understanding the definition of a suspicious transactions, and what red flags to look for
- making clear the requirements for each sector and involving professional bodies to develop the guidance
- having forms to assist the process to record mandatory information
- having consistent guidelines and checklists across the different sectors.

# The AML/CFT will have little impact on high value dealers' workload

## High value dealers had little understanding of the changes

High value dealers had limited awareness of the implications of the AML/CFT obligations for their business. The exception was franchisee car dealers who have finance companies and were included in Phase I.

The AML/CFT threshold of \$15,000 was seen to be set at the right level. A few franchisee car dealers perceived the limit as too low.

## High value dealers infrequently receive large cash payments

**Jewellers** said cash payments are rare and inconvenient. One jeweller participant said processes are in place to ensure there is a paper trail if they receive cash payment. Jewellers will fulfil their AML/CFT obligations provided the online process is straightforward. Participants want to receive clear information on their obligations and free government training. One participant noted the need for supervision and monitoring to ensure that compliant jewellers are not competitively disadvantaged.

The **auctioneer** participant commented on the reduction of the number of cash payments after the introduction of AML/CFT Phase I. Auctioneer participant refuses cash payments due to banking costs related to cash over \$10,000. Customer identification is being taken particularly for online auctions.

Some **car dealers** do not accept cash and others will continue to accept cash over \$15,000. Car dealer participants in Auckland either said they did not receive cash or only amounts under \$5,000 or \$10,000 depending on the dealership. Car sales people are actively discouraged from receiving cash payments. Not taking cash is noted in their employment standards.

Participants from franchisee car dealers in Wellington receive cash payment of over \$15,000 at least twice month with amounts cited of up to \$20,000 and \$40,000. The AML/CFT reporting threshold of \$15,000 was seen as too low. Participants comment small second hand car yards and Trade Me are more likely to receive cash payments.

With the introduction of the AML/CFT obligations, the car dealer participants in Wellington will continue to accept cash payments as they do not want to lose customers to other dealers. These participants are concerned about their customers' response of being asked for identification due to privacy grounds. AML/CFT reporting is inconsistent with internal policies and customer promises on protecting client confidentiality.

Participants from franchisee car dealers in Wellington would not set up a designated business group. Dealerships do not share customer information across the franchisee as they do not want to give others linked dealerships a competitive advantage. Also, the benefits of a designated business group are not clear as online reporting does not appear difficult.

Questions were raised on whether one non-compliant dealership in a designated business group would put all in the franchisee at risk.

**Boat dealer** participants said they receive about two cash transactions a month. They only receive cash transaction of over \$15,000 once or twice a year. Their preference is not to receive cash due to the inconvenience and banking costs. Boat dealer participants would accept a lower cash threshold for AML/CFT obligations.

Boat dealers do not have registration or licensing so identification information is not being captured through other requirements

### **Jeweller and car dealer participants are concerned they will lose customers**

High value dealers perceive customers will complain about privacy issues and some may take their business elsewhere if CDD is undertaken. Asian customers in particular were perceived as preferring to pay for goods purchased in cash. Car dealers are seeking marketing material to inform customers of their changed obligations (e.g. posters).

### **Franchisors are not likely to set up DBGs to reduce compliance costs**

For car dealers this reflects internal competition for customers, and for jewellers the infrequency of receiving cash and the simple online process.

### **Participants want more information through free training on:**

- their obligations under the Act
- the penalties if they do not comply with the Act
- the legal implications for their business if a customer is found to be money laundering (e.g. if there is money owing on a vehicle)
- what was meant by the 'cash' (i.e. 'physical' cash).

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