New Zealand Banking Association
Te Rangapū Pēke

Submission

to the

Justice Committee

on the

Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill

28 March 2025

NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE
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About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following eighteen registered banks in New Zealand are members of NZBA:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
- Bank of New Zealand
- China Construction Bank (New Zealand) Limited
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- Industrial and Commercial Bank of China (New Zealand) Limited
- JPMorgan Chase Bank N.A.
- KB Kookmin Bank Auckland Branch
- Kiwibank Limited
- MUFG Bank Ltd
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

Contact details

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Justice Committee on the Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill (**Amendment Bill**). NZBA commends the work that has gone into developing the Amendment Bill.

5. This submission first addresses the proposed amendments to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**Act**) that we consider the most significant – in particular, the proposed amendments to sections 24, 26, 52 and 58.

6. We then briefly address a number of less substantial changes proposed in the Amendment Bill.

Analysis

<u>Section 24 Amended (Enhanced customer due diligence: verification of identity requirements)</u>

7. While we are supportive of the removal of Source of Wealth (**SoW**) and / or Source of Funds (**SoF**) for low risk trusts, we do not consider the proposed amendment will practically achieve this intent.

8. The proposed wording is vague, with the condition for defining low risk trust being that "the reporting entity is satisfied that any risks have been mitigated" by conducting standard customer due diligence, identifying SoW and / or SoF and obtaining "Nature & Purpose" information. In effect, the proposed amendment will practically require reporting entities to collect SoW / SoF for all trusts or other vehicles for holding personal assets, with verification of this information only being required where the customer is high risk.

9. This approach may create several new challenges:

    9.1. It introduces a new, light-touch version of enhanced customer due diligence (**ECDD**) into the Act, adding an additional layer of complexity.

    9.2. It may result in inconsistent application of the requirements across different reporting entities.

    9.3. It leaves individual reporting entities to prove that all risks have been mitigated in every single case where SoW / SoF was not verified.

10. In our view, the complexities introduced through the proposed amendment, provide little benefit being in exchange. The exercise of asking a customer what their SoW / SoF is without undertaking any verification does very little to mitigate AML/CFT risk.

11. We consider a more pragmatic approach would be to repeal the requirements of s 22(1)(a)(i) and (b)(i) entirely. This would allow the same level of due diligence to be applied to a low risk trust as to a low risk company, partnership or other legal arrangement or person. Under this approach, the Act would still allow for full ECDD to be conducted where a reporting entity believes this is warranted under s 22(1)(d).

Section 26 amended (Politically exposed person)

12. The wording of clause 10 suggests that the amendment is intended to require reporting entities to complete politically exposed person (**PEP**) checks prior to account opening and onboarding a customer.

13. We do not support the proposed amendment. When this proposal was first raised with the industry, it was met with very clear opposition due to major costs and operational challenges involved with the implementation of that change. Further, we strongly oppose including it in the Amendment Bill, which is supposedly only to include minor changes with little impact on the reporting entities, due to the scale of that change. This position has previously been communicated to the Ministry of Justice.[1]

14. This would be a significant, costly and complex change to bank processes, requiring updates to bank systems and infrastructure, necessitating substantial investment across the sector to implement. Reporting entities would also require a significant compliance period to effect the change.

15. Furthermore, there will be a material customer impact; straight through onboarding processes will be adversely impacted and the time taken to onboard customers could dramatically increase. For retail banking, conducting PEP checks and getting relevant approvals prior to establishing a business relationship is very problematic.

16. It is also unclear how the proposed change would actually improve the outcomes and help to deliver the goals set out by the Act, since it does not offer any significant risk mitigation. We do not consider it is commensurate with a risk based approach where reporting entities apply screening and transaction monitoring under the current framework to risk rate customers.

17. What is more, removing "take reasonable steps" also seems problematic in the context of PEPs where reporting entities need to rely on external vendors' databases which, although still appropriate from a risk management system perspective, might not always capture 100% of PEPs, in particular close associates of PEPs. Including the clause of "take reasonable steps" accounts for that issue; reporting entities can evidence they have done what they can to ensure they have identified a PEP.

[1] See, for example, NZBA's submission to the Ministry of Justice on its Review of the AML/CFT Act, dated 17 December 2021 (in particular, our responses to questions 4.88 – 4.91 at pages 34 – 35).

18. We submit that the existing requirement should remain unchanged at this stage, allowing reporting entities to complete screening and investigation of potential alerts post onboarding of the customer.

Section 52 amended (How records to be kept)

19. NZBA submits that this clause is redrafted to provide reporting entities with a clearer requirement than “swiftly”. “Swiftly” is a vague term that creates an obligation with no clear requirement to ensure compliance.

20. While this could be clarified by supporting guidance, there is a simpler (and legally binding) opportunity to draft legislation that is clear, precise, does not require supplementary documents, and removes the risk of legal arguments as to the definition of the word.

21. We consider a definitive timeframe for standard reporting should be set out in the legislation as linked to the purpose for which the records are requested. There are numerous precedents within the Act – for example, a three working day requirement for reporting a suspicious activity, five working days for providing verification information and 10 (soon to be 20) working days for providing prescribed transactions reports.

22. In our view, the standard timeframe should be “within 10 working days”, with an exclusion for certain complex requests (i.e. on-site and other bulk information requests). Some records are easily retrievable, however records that may have been archived or are simply more complex to gather may take upwards of 5 working days to be retrieved. Setting a timeframe of 10 working days does not necessarily mean it will regularly take that long to complete a record retrieval request, but it does account for some situations where the request may be challenging.

23. In situations falling within the proposed exclusion, the reporting entity can discuss with its supervisor. A specified time period will however provide a clear starting point and less opportunity for legal arguments on what is considered “swift”.

Section 58 amended (Risk assessment)

24. NZBA does not support the proposed amendment to s 58.

25. We are concerned that the change from an entity “having regard to” applicable guidance material to “must undertake its risk assessment in accordance with” that material may have the unintended consequence of making all guidance issued by AML/CFT supervisors legally binding. This would be a significant departure from current practice.

26. The current wording in the Act already ensures that reporting entities consider applicable guidance during the risk assessment process. The proposed changes

therefore seem unnecessary, particularly taking into account the potential unintended consequences outlined above.

Comments on other proposed amendments

27. **Use of "customer" and "person":** Clarity is sought in respect of the application of areas of the Amendment Bill for which "customer" (as defined in s 5 of the Act) will be replaced by "persons".

28. **Section 5 amended (Interpretation):** NZBA is supportive of the proposed updates to the definitions of beneficial owner and trust and company service provider. These are consistent with earlier changes made to the AML/CFT (Definitions) Regulations 2011.

29. **Sections 14, 18 and 22 amended:** NZBA welcomes these clarifications.

30. **Section 29 amended (Correspondent banking relationship):** NZBA supports the deletion of "and effective" from s 29(2)(c). We consider that confirming the effectiveness of the controls in the context of correspondent banking relationships can pose significant problems.

31. **Section 56 amended (Reporting entity must have AML/CFT programme and AML/CFT compliance officer):** We support the change to clarify roles that can be appointed as an AMLCO.

32. **Section 78 amended (Meaning of civil liability act):** Expanding civil liabilities acts to breaches of Subpart 2 of Part 2 (SARs), ss 58 and 59 (Risk Assessment and review of the AML/CFT Programme) as well as s 60 (annual reports) is a significant expansion of the civil liabilities and it can be particularly problematic in the context of proposals around expanding civil liabilities to directors and shareholders.

33. **Updated wording from "formal warnings" to "censures":** This update is out of step with other liability regimes in New Zealand (for example, the Financial Markets Authority and Commerce Commission liability regimes). This risks creating more confusion for consumers, which, in our view, defeats the purpose of this amendment.

34. **New Section 90A inserted (Court must order that recovery from pecuniary penalty be applied to AML/CFT supervisor's actual costs):** NZBA has no objections.

35. **Changes to AML/CFT (Definitions) Regulations 2011:** Changes made to the regulations make sense, the updated definitions have now been included in the AML/CFT Act.

36. **Changes to AML/CFT (Requirements and Compliance) Regulations 2011:** Changes made to the regulations make sense, as they ensure consistency between those regulations and the AML/CFT Act.