

From the Law Society

Anti-money laundering



The anti-money laundering and countering financing of terrorism (AML/CFT) regime is, ultimately, a public good regime.

It is aimed, most simply, at preventing both the proceeds of crime entering the financial system and the funding of activity that is fundamentally detrimental to society.

As a member of the international governmental forum that sets AML/CFT standards (Financial Action Task Force (FATF)) New Zealand is committed to implementing the FATF recommendations. The Ministry of Justice consultation noted that services provided by legal professionals are attractive to criminals wanting to launder money. In some cases involvement of lawyers may be innocent or unwitting and “red flags” can be missed by the lawyer involved.

As the Law Society noted in its recent submission on introducing phase two of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act), the Ministry of Justice’s con-

sultation paper on introducing phase two of the AML/CFT Act records that money laundering and financing of terrorism are “significant problems” in New Zealand. They are “allowing criminals to hide criminal proceeds and to fund serious crimes such as drug offending, organised crime and tax evasion, with an estimated \$1.5 billion being laundered in New Zealand each year.”

Phase one of the AML/CFT Act came into force on 30 June 2013. That placed obligations on New Zealand’s financial institutions and casinos to detect and deter money laundering and terrorism financing. The regime has, therefore, already impacted the financial sector, and indirectly everyone who deals with that sector.

As discussed in the feature in this edition of *LawTalk*, phase two of the AML/CFT regime will extend it to include larger groups of professionals that can often unwittingly be part of this process. That includes lawyers.

Given the value of the regime to New Zealand society and the implications for lawyers, it is important for the profession to work with Ministry of Justice and the supervisors to help achieve the objectives effectively and proportionately. In a way that will be effective without imposing unreasonable requirements on the profession.

In its widest scope, the legislation does challenge traditional ideas of privilege and the sanctity of the lawyer-client relationship, but with careful finessing it is possible to balance the need to protect privilege for the public good with the objectives of the legislation.

It is very encouraging that the New Zealand Law Society is focussed on the issues. The Law Society submission showed both that the Law Society is willing to proactively work with the Ministry, and also that it is acutely aware of the challenges. It is working to ensure the regime that finally hits us is workable.

Ultimately the legislation is coming. The Government has clearly signalled that fact.

Lawyers – individually, within law firms, and as a profession – need to start working to understand the legislation. In particular the duties to develop a compliance programme and a risk assessment are unlikely to change, so it would be worthwhile for people to start thinking about this.

As a profession, we have made a valuable beginning by presenting a submission that, we believe, will provide the best framework for the operation of phase two in relation to lawyers.

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