

Submission, **Anti-Money Laundering and** **Countering financing of Terrorism** **amendment Bill**

By Community Networks Aotearoa

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Addressed To:

Committee Secretariat
Justice Committee
Parliament Buildings
Wellington

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Dear Sir or Madam,

Community Networks Aotearoa is the national office or umbrella organisation for non-profit networking organisations provincially and Wellington based. We are a national organisation, a communication agent, a partner with our members, a connector with our members and hopefully a catalyst for change. We provide our members with the opportunity to have their voice heard in the national arena.

We have 80 network members across the country, and considering their provincial members we believe we may reach over 10,000 organisations.

What is our interest?

CNA while in conversation with 5 of our largest memberships were asked to find out why For Purpose organisations had such difficulty with banking. This request turned into a full-scale research project called "Better Banking – Creating Ease of Banking for the Not-For-Profit Sector.- this project was launched on Wednesday 28th June 2023. [We have included a link to this project should you be interested in reading this.](#)

Although we could trace unintended consequences through many parts of this report from AML/CFT legislation, we wrote a specific chapter on AML/CFT Derived Issues. We spoke to many people in many organisations with interest in this subject, and we have continued to follow this issue up.

The chapter on AML/CFT came up with these specific issues:

- Although every organisation we spoke with was dealing with problems, everyone fully supported the idea that the banking system needs to be safeguarded from forces intent on money laundering and financing of terrorism.
- There was, however, very little information available to NFPs about what their role is and why in the AML/CFT regime.
- Banks were very secretive about their processes involved with the assessment of risk.
- Bank were not interested in education for people about the AML/CFT issues.
- NFPs often encountered banks that appeared obstructive by not actively assisting with compliance logistics related to AML/CFT rules. Many banks approach to fair and reasonable assessment undermined organisations that played a crucial role in New Zealand's society and economy.

- The processes that involved signing up all trustees, directors or members onto the bank were often extremely onerous. Involving expectations by the bank that everyone on a board would come into the bank together. Very difficult for organisations where the Trustees lived all over New Zealand, or where all Board members were disabled. We know this was unenforceable by law, but this requirement was often suggested by Banks.
- The obligation to identify individuals as 'beneficial owners' under the 'Know your customer' (KYC) mandate confused attendees from the NFP. In the non-profit world, no individual can be a beneficial owner, as that goes against the legislative rules for achieving non-profit status. We know however that Banks needed to be able to access associated risks. We are sure there are ways that this could occur without using dense and unhelpful language. Especially if the NFP is a charity where all details about the organisation are held for public view on the Charities Register.
- We also came across the phenomenon of all Trusts, irrespective of size or likely risk, were automatically put under Enhanced Due Diligence. One example is a small rural library where the Board were asked to prove where the funding came from for every book in the library. We will speak about amendments concerning Trust risk further on.
- In the opinion of an AML/CFT expert we spoke with, Banks have made this process more complicated by their specific interpretation of the rules and they say they comply with these.
- Quote *"so that's what the law says, but what the banks did was they took the law, they said "Well we can't allow our frontline staff any discretion, it's a risk-based process, which requires discretion, so we're not going to let them do any of that. So, we're just going to give you one set of rules. If anybody complains, tell them, it's the government's fault."*
- Usually, NFPs only get access to Banks frontline staff. These staff are not only afraid of the legislative burden of financial large cash fines but in many cases, they have not been trained and do not know how to bank NFPs. This has now reached a point where there are more than several banks who now refuse to bank NFPs. We will write more about Fines in further areas of this submission.
- Banks have a very limited understanding of the way NFP organisations work, including the fact that trustees/governors are almost always volunteers. While the need for all Committee members to sign an array of paperwork is a necessary part of the process, the way some Banks impose time frames on the NFP committee makes it very difficult.
- Many tellers did not know how to process ID requirements.

We have many examples and stories of specific organisations problems when dealing with Banks and AML regulations. ([See the research report](#)).

CNA is not a bank, nor a financial institution. As the Executive Director, I do not have qualifications in banking or finance. The following specific comments are based wholly on understandings from our research and work done with institutions within the Banking/Finance sector. In Part 2 of this submission We will speak directly to issues within the key amendments that I wish to talk about.

Part 2: Key Amendments

We are aware that as regarding Government priorities, there is a commitment in the National and ACT parties' coalition agreement to review and reform key sectors where the cost of regulations is overly burdensome for businesses. In this case there are researched and proven difficulties for members of the public who are working for Incorporated Societies and small Trusts with trying to onboard or bank normally with commercial banks. In fact, during our research the frustration with this issue is widespread. The problem is not so much the AML/CFT Act as it is the banks extreme response and their high level of fear in putting their understanding of the CML/CFT Act into action with customers.

We hope to add some clarity of ideas in Part 2 response.

Clarified Definitions

Beneficial Owner – We would like to speak to the use of this term when discussing Non-Profit organisations. By their very nature, there should not be any ultimate beneficial owner. However, even a full Governance body does not fall under the term beneficial. Non-Profit legal entities cannot use any money for personal pecuniary gain. In fact, when we discuss this issue with our membership, they state that the people who gain the most from the financial funding of services is the community or members of the community who need their services.

This terminology may well work for profit making organisations and entities but does not make a lot of sense when talking about non-profits.

Suggestion: Is it possible for a secondary term to be applied for these circumstances.

Definition of Trust – Banks tendency to put any entity which has established as a Trust under enhanced due diligence is a massive overreaction when the small Trusts with very low income are not even in the same field as massive Trusts with high income. We have many examples but perhaps one previously mentioned is the small rural library which had been banking with a particular bank for years.

They had to change signatories and that instituted AML procedures they had not come across before. This particular bank they were attempting to work with insisted that they provide proof of where the money came from to purchase every single book in their library. This is an example of AML going astray. Not only did the Bank 'know their customer' but the current Committee running the library could not prove where the money came from for books purchased 20 years ago, or which books were donated, or how the original committee (now all dead) managed to buy/borrow/find the large oak table at the back of the library.

Suggestion: We are very hopeful that within these amendments the requirement to provide immediate relief in the workstream by relaxing some of the overly burdensome obligations for low-risk trusts translate to more sensible responses from overly diligent Banks.

We are also hopeful that the refined definition of 'trust' and company service provider' gives Banks a clearer picture of sensible due diligence and not as is practiced often now, the 'extreme over-reaction'.

Customer Due Diligence – This is closely tied to the discussion above. We have no problem with the "KYC" regime, or the identification of customers. We do have problems which are often insurmountable when it comes to banks insisting on Enhanced Due Diligence with small Trusts. As discussed before many banks ask that all the governance board attend at the same time, in person, while undertaking some of these tasks. This is not a legal requirement, causes huge problems, and they should not be encouraged to continue this request which is not required by law.

Risk Management and Reporting – We would like to ensure that banks have clear and sensible risk management systems. Of course, it is important that anyone who is acting outside the law is quickly identified. However currently there does not seem to be any risk profile which is appropriate to non-profits. It seems as if the risk profile that banks use is entirely based on for-profit roles.

This habit of banks putting non-profits into the 'suspicious' category ends up creating huge distress for individuals who are treated this way. Examples can include an elderly treasurer who cannot understand what the bank is saying to them and feels insulted and attacked. I am aware that this has to do with customer service issues, but also it comes from the original interpretation of the legislation by the bank, that puts this person into the 'suspicious' category.

We ask in more detail this time, in the case of a registered charity, is the bank not able to review the Charities register which has all financial records of the organisation, plus updates on the Board plus annual plans for the Bank to copy and view? What is the point of the enormous amount of compliance that Charities are required to undertake if entities such as banks don't even use this easily accessible amount of information to enable their risk management to be appropriate to the entity.

Suggestion: We would like to ensuring that Banks in particular act accordingly to the risk profile and will take on-board suggestions by the supervisory body.

Enforcement and penalties –We became aware of huge penalty fines for bank tellers. These are extremely unfair. Bank tellers are not trained in AML/CFT law but have to take on-board the instructions from their employers legal team. These instructions could be complex and difficult for a bank teller. In our opinion penalties should be directed at the bank as an institution and not towards the staff who are at such risk from such penalties.

Suggestion: Please ensure that bank corporates are recipients of enforcement and penalties, and not the front-line staff.

Part 2 – Secondary Legislation

We very much approve of most of this amendment bill. Our focus is on definitions, due diligence and risk management. We hope that a more consistent clearer message from AML/CFT supervisors to banks will clarify what they need to do and enable them to communicate to their staff who are trying to solve problems for nonprofit customers who are just trying to get their banking done.

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