



SUBMISSION

Prepared by
New Zealand Retailers Association

For
**Foreign Affairs, Defence and Trade
Select Committee**

On
**Anti-Money Laundering and Countering
Financing of Terrorism Bill**

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Introduction

These submissions are presented by the New Zealand Retailers Association (NZRA)

The Association is the largest trade association involved in the retail industry in New Zealand. We represent an industry that has annual sales of \$66billion and which employs 325,000 people (approx 20% of the New Zealand workforce) in more than 49,000 outlets throughout New Zealand.

Our national membership includes general merchandise chains, specialised chains, traditional department stores, grocery stores, supermarkets and thousands of owner operators spread throughout the country. The membership also includes a number of specialised trade groups representing manufacturers, distributors and retailers in the plumbing materials, metal fastener, pet, equestrian, jewellery, bicycle and sporting goods sectors.

General Submission

The New Zealand Retailers Association welcomes the opportunity to make this submission on the **Anti-Money Laundering and Countering Financing of Terrorism Bill**.

The NZRA fully acknowledges, and supports, the importance of New Zealand not only fulfilling, but being seen to fulfill, its obligations as a responsible member of the international community in its effort to counter money laundering and terrorist financing activity. The NZRA considers that all reasonable efforts should be made to ensure that New Zealand is neither a haven for this form of activity, or considered as such by other countries or international organizations. To that extent, providing there are demonstrable benefits to the country as a whole, which are proportionate to the associated costs, the NZRA in principle supports the Bill.

Notwithstanding this, and while recognizing the limitations imposed on New Zealand's ability to tailor its AML/CFT regulatory framework in the context of international standards, the NZRA considers it highly important that the final legislation not impose unnecessary or excessive compliance demands on affected businesses and industries, especially those operating in an environment that presents a low risk of money laundering or terrorist financing.

1. The Money laundering or Terrorist financing risk associated with the Retail Sector

The level of money laundering or terrorist financing risk generally associated with the retail sector is it is submitted, extremely low by any objective assessment.

There are two means by which the retail sector might conceivably be used for money laundering or terrorist financing purposes.

Firstly, a group intent on such activity might establish a finance company and launder 'dirty' money by lending it to customers in the form of consumer credit.

Secondly, customers wishing to launder 'dirty' money might obtain credit by means of facilities such as hire purchase agreements and use it to repay those loans.

With reference specifically to terrorist financing, it is inconceivable how any individual or group might sensibly finance terrorist-related activity, either through lending consumer credit, or through the purchase of consumer items which make up the majority of transactions undertaken by retailers.

The majority of sales transactions, involving consumer credit facilities and facilitated by NZRA members, are not well suited to an efficient or effective money laundering operation due to their relatively low value. With the exception of higher value items such as boats, cars, precious stones, art etc. it would take considerable time, effort, and risk for a criminal to launder significant sums of 'dirty' money through the purchase of retail goods.

For these reasons, the NZRA strongly considers that the money laundering and terrorist financing risk associated with the retail sector is extremely low and that the level of any controls imposed on its members should be set at the lower end of the spectrum.

The NZRA notes that the proposed threshold for 'triggering' standard CDD measures is \$10,000NZD. The use of this sum as a threshold certainly excludes the vast majority of transactions that are typically facilitated by retailers and serves to reduce the potential burden of the Bill on most retailers.

2. Specific Clauses

Clause 4 – Interpretation

The NZRA notes that the Bill, if enacted, will affect its members differently, depending on the nature of their business activities. Likewise, in light of the 'phased-in' approach to the implementation of New Zealand's new AML/CFT regulatory framework, only some of the NZRA's membership will be directly subject to the obligations contained in the Bill in its current form.

3. Retailers that are Financial Institutions

The NZRA notes that the operative parts of the Bill apply to '*reporting entities*' defined in Clause 4 (page 17) as '*financial institutions*'; casinos and '*any other person that is required by any enactment to comply with the Act as if they were reporting entities*'.

In this regard, as currently defined, and taking into account the definition of '*financial institution*' contained on page 12 of the Bill, the NZRA members most directly affected by the enactment of the Bill will be any retailers which provide, in their own right, consumer finance to customers. These members would be obliged to establish and operate the full range of AML/CFT controls contained in the Bill.

The NZRA considers that the number of its members undertaking financial activities which would make them a 'financial institution' for the purpose of the Act is very low. However, on behalf of any members that might fall within this definition; the NZRA submits that within any Code of Practice developed for AML/CFT purposes for financial institutions by the relevant supervisor there should be variations or exemptions recognizing the extremely low money laundering and terrorist financing risk associated with retail transactions.

4. Retailers acting as Intermediaries

In addition to any NZRA members that are deemed to be 'financial institutions', other members, such as those which act as 'store-front' intermediaries between providers of consumer/retail credit may, it appears, possibly be subject to some obligations if required by finance companies to conduct elements of the Customer Due Diligence (CDD) procedures required of finance companies under the Bill. In this regard, Clauses 31 to 33 of Bill are relevant as these provide the legal basis on which retailers might be asked by finance companies to conduct elements of CDD procedures on their behalf.

It is not possible, in the abstract, to fully identify the extent to which the Bill will impose additional compliance procedures and costs on the many retailers which (through their staff) act as intermediaries between finance companies and customers. At this time, the NZRA has no means of identifying the extent to which, if any, retailers will be expected to undertake any of the specified CDD procedures as agents for finance companies engaged in providing consumer credit, typically through hire purchase agreements. However, the NZRA considers it unlikely that any such involvement would go beyond the role currently played by retailers when acting as intermediaries between finance companies and customers. This is largely limited to assisting customers to complete loan documentation and obtaining identity documents, which are then subject to verification by the finance companies themselves.

In the absence of anything that indicates any change in this role, the NZRA considers that the Bill should have little impact on its members when engaged in this intermediary role. It notes the possibility that loan and/or security documentation commonly used by finance companies may be amended to reflect the Bill, specifically those relating to CDD procedures.

5. Jewelers

The NZRA understands that jewelers will, at a later time become subject to the obligations contained in the Bill in their own right; when conducting cash transactions over NZD10,000. This would mean that jewelers dealing in precious stones would have to implement all of the AML/CFT controls contained in the Bill. This is potentially very onerous.

However, the NZRA notes that the proposed regime in the Bill is expected to contain sufficient flexibility to enable specific industry groups such as jewelers to set, in conjunction with the relevant AML/CFT supervisor, industry-specific

Codes of Practice for AML/CFT purposes. If this occurs, the NZRA considers (providing agreement can be reached) that the level of AML/CFT controls that would ultimately apply to jewelers should reflect what it considers to be the low money laundering or terrorist financing risk associated with transactions facilitated by jewelers in New Zealand. Providing this agreement on a low-level of risk is reached, the NZRA expects that the compliance burden of this Bill on jewelers should be significantly alleviated.

In respect of the implementation of the proposed measures on the retail sector generally, but also on jewelers, the NZRA records that it stands ready to engage with the relevant supervisor on discussions regarding an appropriate industry-specific Code of Practice on AML/CFT matters.

7. Other issues

Again, it is difficult to be precise about the compliance impact of the proposed obligations on NZRA members in the absence of an agreement between supervisor and the sector on the level of money laundering or terrorist financing risk in the retail sector. However, it is possible to suggest some areas where aspects of the proposals in the Bill seem unnecessary and/or excessive in the retail context. This certainly applies in the 'intermediary' situation described earlier but also, it is submitted, in the case of retailers engaged in consumer-credit financing in their own right. It is noted however, that for purely commercial reasons many of the controls (such as customer identification and verification) are already used by many

Specific areas where the NZRA questions whether proposed AML/CFT controls in the Bill should apply to these 'retail' credit transactions are:

Clause 23 - Politically exposed persons (PEP's)

The NZRA observes that given the definition of this term in the Bill, it might be very difficult to identify precisely what individuals would be subject to these additional requirements. It strongly suggests that the government should be responsible for clearly identifying PEP's by means of a list which it maintains for this purpose, and makes available to reporting entities.

Subpart 4 – Compliance with AML/CFT requirements

Given its assessment of the low level of money laundering/terrorist financing risk in the retail sector, the NZRA has concerns about the extent of the obligations set out in Clauses 53, 54;57;and 58 relating to the type of proposed compliance programmes which affected retailers would be required to establish and maintain. On the face of it, these appear quite elaborate and potentially time consuming and expensive to maintain for affected NZRA members, and are likely to be disproportionate to the level of associated risk. The NZRA would expect that these would be 'tailored' to meet the actual level of risk involved through discussions between the supervisor and the NZRA.

The Association does not wish to appear before the Committee to speak to this submission.

New Zealand Retailers Association
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