

19 March 2010

International Criminal Law Team
Ministry of Justice | Tahu o te Ture
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Workplace Savings NZ submission on Implementation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 Discussion Document

We wish to submit the attached in respect to the implementation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 Discussion Document released in February 2010.

Workplace Savings NZ is a national, not-for-profit, apolitical membership organisation. Our current membership comprises around 100 major workplace superannuation and KiwiSaver schemes and another 50 organisations and individuals representing the various product and service providers for workplace savings arrangements.

From the perspective of assets under management, the membership of Workplace Savings NZ covers around 90% of retirement savings held through workplace retirement saving arrangements (i.e. Corporate and Master Trust superannuation schemes and KiwiSaver).

Workplace Savings NZ's objective is to be the Voice of Workplace Savings; advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved – including the core workplace superannuation scheme members who remain at the heart of the organisation. It does this through:

- Advocating – advancing legislative and public policy initiatives beneficial to workplace savings and participation in the workplace savings industry, making submissions, engaging with policy-makers and officials and issuing media commentary to advance those causes.
- Education – promoting trustee, employer and member financial and regulatory education through dedicated training programmes, newsletters and special interest seminars.
- Networking – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.
- Promotion – publicising the benefits of workplace savings, and helping to improve public confidence in workplace savings.

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I would be pleased to discuss our comments or answer any queries in relation to the submission.

Thank you for the opportunity to make this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Bruce Kerr', with a large, stylized initial 'B'.

Bruce Kerr
Executive Director

Workplace Savings NZ

Te māngai penapena ā-mahi

Submission to the

Ministry of Justice

on the

**Implementation of the Anti-Money Laundering and
Countering Financing of Terrorism Act 2009**

Discussion Document

19 March 2010

Summary of our submission

Workplace Savings NZ wishes to make the following submission on the Discussion Document (DD). Our prime concerns relate to workplace savings schemes, including KiwiSaver Schemes, operating for the benefit of employees in the NZ workplace. Our comments generally will address the parts of the DD relating to such schemes.

We note that Part 2 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT) is due to come into effect around the beginning of 2012. With regard to superannuation schemes, the provisions of the Financial Transactions Reporting Act 1996 (FRTA) that currently apply will cease to do so when part 2 of the AML/CFT come into effect.

The majority of schemes will, therefore, be operated on the basis that the FRTA has applied for a number of years. The 'operators' will be familiar by now with identification requirements.

Workplace Savings NZ submits that the potential risk of money laundering or financing of terrorism through the use of a registered superannuation scheme is low. The opportunity for such activity through registered schemes that are workplace schemes is probably extremely low. We are not aware of any incidence of such activity being discovered since the FRTA was enacted.

We do however recognise that NZ has international commitments in regard to the prevention of money laundering and financing terrorism and we support legislation aimed at meeting those commitments. We will be pleased to continue to be a part of discussions surrounding the implementation of the AML/CFT.

We welcome and support any reduced compliance measures proposed for workplace superannuation schemes. We believe that any increase in compliance costs resulting from additional requirements to those currently in place must be justifiable and balanced against the benefits that can genuinely be expected.

We submit that, as currently proposed in the DD, very few, if any, workplace schemes will be eligible for any concessions (refer to detailed comments below). In addition we believe that the increased compliance costs associated with schemes meeting the requirements of the AML/CFT as a whole appear to far outweigh the protections afforded.

In our view, a better approach would be to allow all workplace schemes that are registered under the Superannuation Schemes Act 1989 or the KiwiSaver Act 2006 to be eligible for the proposed concessions. In order to be registered under the Superannuation Schemes Act

1989 the Government Actuary must be satisfied that a scheme, in a general sense, was established principally for the purpose of providing retirement benefits. We think that this criteria for eligibility for reduced AML/CFT requirements will be more practical, and will still effectively minimise the harm associated with money laundering.

Detailed comments for the Workplace Savings NZ submission

Comments on the Discussion Document

1. Paragraphs 122 to 127 of the DD relate to “reduced measures for workplace-based superannuation funds”. At the risk of stating the obvious we have assumed that the reference to “superannuation *funds*” in this heading is a reference to what are elsewhere called “superannuation *schemes*”.
2. We agree with the comment at paragraph 122 that identification by the employer is likely to have been relied on to date.
3. We also agree with the comment at paragraphs 123 and 124.
4. We note the preferred approach as outlined under paragraphs 126 and 127.
 - 4.1. The condition included in paragraph 127 appears to be designed such that superannuation schemes that qualify under paragraph 126 are then treated in the same way as KiwiSaver schemes (under section 203(2) of the KiwiSaver Act);
 - 4.2. The ‘reduced measure’ then becomes that the identity of the member must be confirmed to the standard CDD level prior to any benefit being paid from the scheme, rather than at the point of joining the scheme.
5. We think that the criteria specified under paragraph 126 need to be reviewed if any schemes are to qualify, for the following reasons;
 - 5.1. Paragraph 126.1 is a little confusing as schemes are not generally established under statute.
 - 5.1.1. a very few schemes are constituted under an Act of Parliament (and could therefore be considered to be established under statute);

- 5.1.2. the majority are established by a trust deed. The scheme can then be registered under the Superannuation Schemes Act 1989 (SSA) – is that what the DD is referring to?
 - 5.1.3. we suggest that being registered under the SSA is an appropriate requirement.
- 5.2. Paragraph 126.2 is problematic in that a large number of workplace schemes are now provided via the employer’s participation in a scheme established under a master trust (a scheme that covers any number of participating employers or other groups).
- 5.2.1. The majority of these master trusts also include a section that allows any member of the public to become a member. These schemes may not, therefore, be considered to be workplace based;
 - 5.2.2. We believe that it is important to include these arrangements and suggest that a requirement to the following effect would be appropriate:
“provide for employees to become members as a result of being an employee of an employer that participates in the scheme for the benefit of its employees.”
- 5.3. It would be helpful to clarify the meaning of the term “managed through a registered provider” used in paragraph 126.3. Does this refer to the scheme being provided by a person who is registered as a financial service provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008? (when these provisions come into effect).
- 5.4. Paragraph 126.4 would eliminate virtually every superannuation scheme in NZ, including all KiwiSaver schemes. Schemes generally provide for withdrawal in circumstances such as financial hardship or disablement. Workplace schemes, other than KiwiSaver schemes, also invariably provide for a benefit to be paid on the member leaving service, eligibility for membership being restricted to employees of the employer concerned. We suggest that to be of any value the requirement should reflect what an ‘average’ scheme is likely to provide.
- 5.5. The separate requirement relating to transfers specified under paragraph 126.6 is likely to be impractical:
- 5.5.1. no trust deed in existence would include this requirement;
 - 5.5.2. trust deeds could not be amended to include such a requirement without the consent of all existing members – an unrealistic and expensive expectation;
 - 5.5.3. trustees, managers and members are, in practice, not likely to know which countries this would apply to;

5.5.4. it is suggested that any transfer from the scheme should be subject to the same requirements as other withdrawals (i.e. through an expanded measure based on paragraph 126.4 that would include transfers).

5.6. We submit that a single requirement – that the scheme is registered under the Superannuation Schemes Act 1989 or the KiwiSaver Act 2006, is appropriate to make a scheme eligible for the concessions suggested. This may need to be qualified if it is preferred to restrict eligibility only to workplace schemes.

Submission Ends
