

PRACTICE BRIEFING

# AML/CFT – Charging clients for compliance

*This Practice Briefing does not constitute legal advice.*

## INTRODUCTION

---

*The New Zealand Law Society has received inquiries from lawyers about whether they can charge for undertaking compliance work required under the Anti-money Laundering and Countering of Financing of Terrorism Act 2009 (AML/CFT). This Practice Briefing outlines what lawyers will need to consider when considering passing on compliance costs.*

## LAWYERS AND CONVEYANCERS ACT 2006 REGULATORY REQUIREMENTS

---

The Law Society's view is that the regulatory framework under the Lawyers and Conveyancers Act 2006 does not prevent lawyers from passing on a genuine compliance cost associated with the provision of regulated services to clients. However, lawyers will need to adopt a fair and transparent approach to charging to ensure that regulatory requirements are met and client complaints are avoided.

The definition of legal work in the Act is broad and extends to *any work that is incidental* to traditional legal work as specifically defined in section 6. Work undertaken to complete due diligence and verification for AML/CFT purposes and required to complete a transaction appears to fall within the category of *incidental*. However, any fee related to compliance work must be fair and reasonable in the particular circumstances.

The starting point is that any fee charged by a lawyer must be *fair and reasonable for the services provided, having regard to the interests of both client and lawyer and having regard also to the factors set out in rule 9.1*. The “reasonable fee” factors include various matters such as time expended, urgency and circumstances in which the work is undertaken, and the reasonable costs of running a practice (see: rules 9 and 9.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC)).

A lawyer is also required *in advance* to provide a client with information in writing about *the basis on which fees are to be charged* (rule 3.4 of the RCCC). Further, a lawyer must not engage in

any conduct which may be misleading or deceptive (rule 11.1). For this reason, a lawyer wishing to charge to cover costs associated with compliance must provide information to the client about this in advance in a way that is open and transparent. This information should be clearly explained in the terms of engagement provided to the client.

New Zealand Law Society guidance is available about open and transparent billing practices. See <http://www.lawsociety.org.nz/practice-resources/the-business-of-law/practice-systems-and-tools/open-and-transparent-billing>.

Describing an office fee or expense recovery as a “disbursement” when it is not an actual cost to the firm has the potential to be a misleading practice, with regulatory consequences. By way of example, a lawyer passing on compliance costs in a way which was found to be misleading was found guilty of unsatisfactory conduct by a lawyers standards committee (see: <http://www.lawsociety.org.nz/for-the-community/lawyers-standards-committee-decisions/2018/client-charged-a-non-existent-tax>).

The Solicitors Regulation Authority in the United Kingdom (SRA) recently warned firms about treating customer due diligence costs as a *disbursement* (see: <https://www.legalfutures.co.uk/latest-news/sra-warns-firms-charging-money-laundering-checks>). The position would be similar under the Lawyers and Conveyancers Act regime.

Any firm contracting with an external AML provider service will need client consent. In those circumstances, any charge back to the client must be correctly disclosed and recorded as a disbursement.

## PRACTICAL TIPS

---

Lawyers thinking about passing on compliance costs should consider the following:

- » If a separate charge is to be made for AML/CFT compliance costs:
  - » The charge must be clearly explained in the terms of engagement provided to the client at the start of the relationship;
  - » Consider advising on the law firm’s website that charges may be applied for conducting customer due diligence – information about charging could also be added to the Guide to advise clients – see <https://www.lawsociety.org.nz/practice-resources/practice-areas/aml-cft/guide-to-advise-clients-of-amlcft-information-requirements>
  - » The charge should be fair and reasonable with regard to the *reasonable fee factors* found in rule 9.1 of the RCCC;
  - » In the Bill of Costs the charge should be listed under a heading “Expense Recoveries” or similar description.
  - » Alternatively, a lawyer may consider integrating an increase in their hourly rates or into any fixed fee arrangement to cover the compliance cost as an ‘overhead’.
  - » No AML/CFT compliance charge should be passed on to a client as a “disbursement”.

The New Zealand Law Society’s regulatory team is available and happy to discuss queries lawyers may have. They can be contacted on (04) 472 7837.



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

---

**NEW ZEALAND LAW SOCIETY**

Law Society Building  
26 Waring Taylor Street  
WELLINGTON 6011

PO Box 5041  
Lambton Quay  
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to the legal profession. This briefing is intended to provide guidance and information on good practices. Some of the information and requirements may change over time and should be checked before any action is taken.

**Updated May 2019**