

17 November 2006

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Per email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Anti-Money Laundering and Counter-Terrorism Financing Bill

Abacus – Australian Mutuals welcomes the opportunity to comment on the *Anti-Money Laundering and Counter Terrorism-Financing Bill 2006*. This submission should be read with the contribution by the Australian Bankers' Association, which *Abacus* endorses.

Abacus is the peak association for the majority of mutual building societies and credit unions in Australia. *Abacus* was formed in July 2006 in a merger between the *Credit Union Industry Association* and the *Australian Association of Permanent Building Societies*.

Abacus welcomes the attention of the Committee's inquiry into the AML/CTF legislative package because the new AML/CTF regime will increase surveillance of consumers and place substantial new regulatory compliance obligations on the financial sector.

Abacus highlights the following issues:

- risks to competition and choice in retail banking with the loss of the Acceptable Referee customer identification method;
- concerns about the potential for intrusion into consumer privacy and the need for an effective and timely Government-run public awareness campaign; and
- the need for clarity about the AML/CTF Rules and for timely provision of Guidelines by AUSTRAC to enable Reporting Entities (RE) to take full advantage of transition periods for various Parts of the Bill.

1. Identification

The AML/CTF Bill requires a RE to carry out a procedure to verify a customer's identity prior to providing a designated service. *Abacus* has two observations about this requirement:

- the lack of a viable e-verification identification method; and
- a tension between requiring industry to perform more detailed identification checks but not making that task any easier.

The current s.21 Acceptable Referee identification method is not FATF-compliant and will, according to the implementation timetable, cease to operate 12 months after the AML/CTF Bill receives assent. However, the AML/CTF Bill does not provide a viable alternative. This

creates an operational gap for smaller ADIs that rely on Acceptable Referee identification, such as credit unions drawing their membership from the teaching profession or the defence forces.

Large REs with established branch networks will immediately gain a competitive advantage.

Removing Acceptable Referee identification will require RE to look to agents or other RE to perform face-to-face identifications to fill this gap. This might include entering contractual arrangements with trusted providers or agents such as Australia Post to undertake face-to-face identification on their behalf.

In the absence of an available agent, a RE would need to look to a reciprocal RE in other regions to verify and validate identification documents. In these circumstances, the RE would in effect be sending a potential customer, where there is no established relationship, to a competitor to have their identification documents validated.

The Draft AML/CTF Rules allow the use of *'reliable and independent electronic data'* to verify identity for medium or lower risk customers. The Attorney-General's Department, in consultation with industry, has cited the electoral roll, White Pages and credit files as potential databases for use in e-verification. However, there is doubt about whether these databases will be able perform this role and the capacity for REs to verify the authenticity of core government-issued documents – such as Passports, Drivers' Licences and Birth Certificates - is severely limited.

Currently, credit unions and building societies have access to a few services that validate government-issued documents. For example, Birth Certificates in New South Wales, the Australian Capital Territory and Victoria can be verified on a fee basis – although this is done on a volume basis giving larger users a cost advantage. Medicare cards can also be verified where the cash dealer faxes relevant materials to Medicare.

The Minister for Human Services, the Hon. Joe Hockey MP, recently observed that a quality fake Medicare card can be purchased for around \$150 and quality fake NSW Drivers' Licences costs about \$750. The Minister also observed that 500,000 Medicare cards were lost or stolen each year. This low cost and card loss means there is a proliferation of fraudulent or tainted cards, which makes identity verification particularly vexed.

Unfortunately, the AML/CTF Bill does not expand access to available databases for identity verification purposes. The proposed Medicare and welfare services Access card will not be an identity panacea and access to the planned government document verification system (DVS) remains a distant possibility.

Alternatively, referring to credit references, via the credit reporting bureaus, for identification purposes might be possible but access to this data is typically limited to credit assessment purposes. Amendment to Part IIIA of the *Privacy Act 1988* may be barrier to broader use.

Abacus therefore continues to question the inconsistency of imposing demanding new requirements on industry to verify identity but refusing to provide industry with capacity to verify the authenticity of government-issued documents.

2. Privacy and public awareness

The AML/CTF Bill requires the collection of identification information and the reporting of suspicious matters to AUSTRAC. There are also record keeping obligations to provide customer information to other entities and secrecy and access limitations. Further implications arise in terms of determining money laundering and terrorism risks, including in relation to identity verification.

Given the gravity of these requirements, the earlier *Senate Legal and Constitutional Legislation Committee* concluded that a Privacy Impact Assessment (PIA) was warranted, but this recommendation does not appear to have been adopted.

Similarly, the current *Australia Law Reform Commission's* (ALRC) Issues Paper 31: *Review of Privacy*, which will not report until March 2008, also outlined these issues and posed a question about the alignment of the AML/CTF Bill and the protection of personal information.

Considering the list of agencies to be able to access information provided to AUSTRAC by RE and the nature of that information, *Abacus* calls for greater clarity about the importance of privacy and the risks to privacy in an AML/CTF context.

Abacus also takes this opportunity to again emphasise the importance of an effective and timely public awareness campaign about the new AML/CTF regime.

Consumers need to be prepared for the impact of these new laws on their day-to-day lives. Attention should focus on the legal obligations on REs to gather KYC information, to undertake customer due diligence (including transaction monitoring) and to refuse to provide, or to restrict or limit a service to a customer.

Consumers may be willing to support measures against terrorist-financiers but they may balk at the personal intrusion caused by the identification and monitoring requirements.

Abacus believes it should be well understood by consumers that the obligation to pry into a person's background and activities is not commercially-driven but is a direct consequence of the Government's AML/CTF regime. It is important, therefore, that this is a primarily a Government and not industry campaign.

3. Rules and Guidelines

The AML/CTF Bill refers to AML/CTF Rules for additional definitional information in 76 different sections. These references occur in numerous Parts of the Bill including those that commence on assent as well as other commencing sequentially.

Abacus accepts that not all references to Rules in the Bill require AUSTRAC to formally make Rules. For example, the Rules about exemptions may depend on applications received from industry. *Abacus* also accepts that the substantive purpose of the Rules that have been drafted, such as identification and verification, are likely to remain as they are.

However, *Abacus* is concerned the current draft consolidated set of AML/CTF Rules is no longer aligned to the AML/CTF Bill as introduced into Parliament. This makes assessing the total impact of the regime difficult. Further, there is no Rule consultation process outlined in the AML/CTF Bill.

Accordingly, *Abacus* welcomes AUSTRAC's intention to continue to consult widely on the next iteration of the Rules, particularly those that reflect the changes in the Bill and that arise at commencement.

A corollary to the development of Rules is the need for non-mandatory non-prescriptive guidance from the regulator. *Abacus* has called for this guidance for some time as a key aid in developing appropriate compliance responses. *Abacus* remains willing to participate in industry-based guideline development but believes a consultative process with AUSTRAC needs to be settled.

To fight money launderers and terrorism-financiers, credit unions and building societies need practical, non-prescriptive guidance about various aspects of that regime. This means guidelines about money laundering and terrorism-financing risks and proportionate responses to those risks as well as guidance about the regulator's compliance expectations.

Industry needs to be empowered to fulfill its regulatory obligations and manage their own risks effectively. This will be assisted by good quality intelligence and data sharing from law enforcement and regulators. Such guidance should include worked examples of how to comply and risk typologies. This will help industry to better understand the risks they face and the responses they need to consider.

For example, REs need guidance from AUSTRAC about sensitive obligations such as the prohibition on "tipping off". Under s.123, it is an offence to disclose any information that could lead a person to infer that a suspicious matter reporting obligation has arisen. The prohibition on "tipping off" must be consistent with the right of a RE, under s.92, to refuse to continue to provide a designated service to a customer until the customer provides certain information.

Timely provision of guidelines is needed to enable REs to take full advantage of the transition timetable. The value of the transition period to REs will be eroded by any lack of certainty about their obligations and the expectations of AUSTRAC.

Conclusion

Thank you again for the opportunity to make these comments. *Abacus* looks forward to being included in further consultation and learning the outcomes of the Committee's review.

If you would like more information about the credit union and mutual building society sector or the comments in this submission please contact me on (02) 8299 9033 or at jmoyes@abacus.org.au.

Yours sincerely,



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