



**AUSTRALIAN BANKERS' ASSOCIATION INC.**

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Tony Burke  
Director

Level 3, 56 Pitt Street  
Sydney NSW 2000  
Telephone: (02) 8298 0409  
Facsimile: (02) 8298 0402

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

Dear Committee Secretary,

**Anti-Money Laundering and Counter-Terrorism Financing Bill 2006**

Thank you for the opportunity to comment on the Bill.

Attached is a summary of comments on the proposed legislation together with suggested solutions. Consultation over the course of this year has resulted in a Bill that meets many of industry's previous concerns. There remain however serious issues with the Bill that have significant operational impact. Appreciating the desire to finalise the Bill in the current session of the Parliament, the ABA has included in its submission only the key issues.

In addition to these specific content and drafting issues there is an overriding concern about the timelines for implementation of the Bill, the numerous aspects of the Bill that require or make provision for Rules to be made and that the Rules are yet to be formally issued by AUSTRAC.

Industry acknowledges the "prosecution-free period" which has been introduced to complement the shorter and phased timetable for introduction discussed with industry. The prosecution-free period seems to contemplate that organisations may not be fully compliant with the AML/CTF Bill/Act obligations by the commencement date, but will have a "honeymoon period".

However, the prosecution-free period does not allow for Rules development. It is not workable for industry to implement a Rule after Royal Assent either concurrently with or shortly preceding the commencement date. In our view, as an example, if a part of the Bill is to commence 6 months after Royal Assent, it should at least be available at time of Royal Assent but preferably before so that planning can be undertaken.

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Compliance, enforcement and prosecution activity should then not commence until 12 months after commencement of the Part, including publication and finalisation of all necessary Rules to give effect to the Part.

If there is any delay in Rule release beyond the commencement date the prosecution period should be extended by the duration of that delay. To do otherwise is to undermine the period for implementation. Reporting entities require significant lead times for planning projects, designing system and process changes, assessing organisational and customer impacts, developing training programs and managing all implementation activities to meet the obligations. Further, many systems and process changes are strongly interlinked. The changes necessary to meet an obligation on 1 January 2009, for example, will in nearly all cases, require changes to systems and processes which relate to new 1 July 2007 requirements.

An alternative to the approach of harmonising Rules release and implementation duration (including prosecution-free period) would be to not have any Part commence before 31 March 2007, to allow another three months for Rules development, with all other commencement dates in the Bill extended by 3 months. The estimate of three months is based on the extensive experience we have had in Rules development over the course of the year.

Additionally, in relation to the prosecution-free period, during which AUSTRAC will not enforce the penalty provisions of the AML/CTF legislation where an organisation is acting in good faith in attempting to comply with the AML/CTF legislation, the effect and scope of the mechanism is not clear. As a matter of good corporate governance Boards require certification from executives that the organisation complies with all applicable laws so that the Board in turn can be comfortable it is fulfilling its directors' duties and other legal obligations.

It is essential that Government provide clarity on the precise meaning of the prosecution-free period and in what circumstances AUSTRAC would commence prosecution.

Yours sincerely

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**Tony Burke**