

24 November 2006

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Email legcon.sen@aph.gov.au

Dear Committee Secretary,

Anti-Money Laundering and Counter Terrorism Financing Bill 2006 (“Bill”) – Additional Submissions and Answers to Questions on Notice

Please see the attached submission for an outline of our position.

Should you have any questions or wish to discuss the submission please contact us.

My contact details are on the attached submission.

Yours sincerely,



Erica Hughes
General Manager
Information Services and Solutions
Baycorp Advantage Ltd

BAYCORP ADVANTAGE LIMITED

Response to the Senate Legal and Constitutional Affairs Committee 24 November 2006, questions on notice inquiry into *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006*.

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

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Submission to the Senate Legal and Constitutional Affairs Committee on the Senate's review of the proposed Anti-Money Laundering and counter Terrorism Financing Bill (Bill) and the related Transitional bill

Additional Submissions

In addition, we draw the Committee's attention to wide finance industry support for a proposed amendment dealing with transitional consequences for Part IIIA of the Privacy Act including:

- *Australian Bankers' Association*

17	Privacy Act Clause 105 Clause 123(9)	Part IIIA of the Privacy Act is not overridden. Industry seeks that the AML legislation specifically overrides Privacy Act given the importance of the AML legislation. Note comments in Explanatory Memorandum. A Reporting Entity is not in breach of the Privacy Act by virtue of meeting its obligations under this Act. A problem remains with customers requesting their information under Privacy Law. This clause requires a reporting entity to comply with this request and the customer may obtain AML sensitive information such as suspicious matter reports. This goes against the spirit of the legislation in that elements of a reporting entity's AML program may be revealed to the customer. Further the Consequential Amendments legislation does not make the amendments necessary to the Privacy Act to allow reporting entities to access credit reports for purposes other than assessing credit history.	Amend the AML/CTF Bill to ensure it overrides the Privacy Act and avoids "tipping off" where suspicious matter reports are raised. A problem may also arise when customers requesting their information under Privacy Law. Although NPP 6.1 may provide the solution this clause may require a reporting entity to comply with a request and the customer may obtain AML sensitive information such as suspicious matter reports. This goes against the spirit of the legislation in that elements of a reporting entity's AML program may be revealed to the customer.
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- *Abacus – Australian Credit Unions and Building Societies*

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.

Similarly, there is wide support for amendments to the *Electoral Act*:

- *ABACUS*

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.

- *Australian Finance Conference*

2. Proposed Amendments to the Commonwealth Electoral Act

Clause 37 of the Bill refers to agents of reporting entities carrying out customer identification procedures. We have some overall concerns with clause 37 and support the ABA submission

on this. We would like to add a particular concern about the carry over of the reference to agents in clause 37 into the Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006 (the Consequential Amendments Bill).

In our submission to the Attorney-General in August 2006, we requested that, in order to facilitate the verification of customer information, access to government databases for AML/CTF compliance purposes by reporting entities, or through information brokers, be recognised in the Bill or through consequential amendments to the laws supporting maintenance of those registers.

The Consequential Amendments Bill includes proposed amendments to the Commonwealth Electoral Act. These would replace current provisions in the Electoral Act to the effect that persons or organisations to whom the Electoral Commission may give electoral roll information include “a prescribed person or organisation that verifies, or **contributes to** the verification of, the identity of persons for the purposes of the Financial Transaction Reports Act.” The Consequential Amendments Bill proposes only allowing access to a prescribed person or organisation that is a reporting entity or “an **agent** of reporting entity”. This reflects clause 37 of the Bill, but its effect appears to be a narrowing of the current Electoral Act provisions, which only require a **contribution** to the verification of identity, without the

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need for formal appointment as an agent. As members may source particular information from more than one service provider, we submit that it would be appropriate for clause 13 of the Consequential Amendments Bill to be amended to reflect the reference in the Electoral Act to a person who contributes to verification of identity. This will ensure carry over into the new laws of practices developed and access allowed under the current Electoral Act provisions.

We also draw the Committee's attention to our submission that the accreditation provisions of the Draft Exposure Bill should be re-inserted in the Bill before the Senate.

Specific Questions on Notice – Committee hearing on the 23 November 2006

Below we address the questions on notice that arose in the course of the Senate Standing Committee Hearing conducted on 23 November 2006.

We address each question in the order that it appears in the Transcript.

1. Privacy Act 1988 and Electoral Act – Senator Ludwig, pp 17-18 of the Transcript

a. Privacy Act

In our submission dated 17 November, Baycorp proposed a number of changes to the Privacy Act to reflect the overlap of the Bill with provisions of part IIIA of the Privacy Act. Senator Ludwig suggested that the revision were to broad and invited Baycorp to consider a narrower amendment. The revisions are marked up for ease of reference.

(a) a new section 240(2)) or as a regulation:

- (XX) Notwithstanding Part IIIA of the *Privacy Act 1988*, a credit reporting agency may provide personal information contained in a credit information file to a reporting entity or an accredited person, and may use such information, for the purposes carrying out or contributing to the carrying out of procedures under Part 2, Identification Procedures etc. and Part 3, Division II, Reporting Obligations, Suspicious matters under ~~of~~ this Act.

Alternatively, the *Transitional Amendments and Consequential Provisions Bill* could be changed so that it makes an additional change to the Privacy Act as follows:

152A Before subsection 18K(1)(m)

Insert:

- (ka) the information is contained in a record given to a reporting entity or an accredited person (within the meaning of the Anti-Money Laundering and Counter-Terrorist Financing Act 2006) who requested the report for the purposes of carrying out or contributing to the carrying out of procedures under Part 2, Identification Procedures etc. and Part 3, Division II, Reporting Obligations, Suspicious matters under ~~t~~ that Act.

2. Community attitudes to privacy – Senator Payne , p19 of Transcript

The formal reference to the study is Community Attitudes towards Privacy 2004, Prepared by Roy Morgan Research. The full text of the study can be found on Office of the Federal Privacy Commissioner's website at <http://www.privacy.gov.au/publications/rcommunity2004.pdf>. The comment in respect of the particular survey result is at page 39.

3. Contact with the Office of the Federal Privacy Commissioner – Senator Payne, pp19- 20 of Transcript

These matters were raised as part of the general discussions with the Office of the Federal Privacy Commissioner.

On 17 November 2006, Baycorp's Head of External Relations and Compliance, Chris Gration, and Legal Counsel, Olga Ganopolsky, had a discussion with the Timothy Pilgrim, Deputy Commissioner, Office of the Federal Privacy Commissioner. In that discussion Baycorp expressed its intention to make the submission to the Senate Standing Committee. Baycorp foreshadowed that, in addition to other matters, Baycorp would be making references to the increased workload that would arise as a result the introduction of the Bill. This is because the Bill in effect operates as an exception to the Privacy Act. The proposed changes would lead to questions and possible complaints to the Office or to Baycorp form members of the public. Many of these questions and complaints could be avoided by the introduction of an express provision dealing with the Privacy Act.

Baycorp also stated its intention to address issues under Part IIIA of the Privacy Act. An amendment to the current version of the Bill was required to make it expressly clear that credit information could be used for identity verification purposes. As the Act currently stands Part IIIA prohibits disclosure of credit information unless the information is contained in a credit report given to a credit provider who requested the report for the purposes of assessing an application for credit (see section 18K (1) (a)). The balance of the provisions of section 18K also deals with credit related functions. Under section 18L restrictions are placed on the uses the credit provider may use a credit report for. For example 'a credit provider must **not use** a credit report any purpose other than assessing an application of credit' (Our emphasis). The balance of section 18L similarly deals with credit related functions. Breach of section 18L is an offence punishable upon conviction of a fine of up to \$150,000.

The deputy privacy commission had no objection with Baycorp's proposed submission.