Bendigo Bank

17 November 2006

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
Parliament House
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Dear Committee Secretary

SUBMISSION REGARDING THE ANTI–MONEY LAUNDERING AND COUNTER–TERRORISM FINANCING BILL 2006

Thank you for the opportunity to make submissions on the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 ("the Bill").

Summary

We have reviewed the submissions made by the Australian Bankers Association (ABA). We are in broad agreement with the ABA's submissions and we will not repeat them in this submission. This submission deals only with issues specific to the Bendigo Bank Group and which we consider will have a material impact on our operations if amendments are not made.

1. In relation to the concept of an Owner Managed Branch (OMB), changes should be made to Sections 12(1) & 12(2) to modify the requirements that the arrangements with the ADI be "exclusive" and that the arrangement must be under a "single brand, trademark or business name".
2. In relation to the tipping off prohibition, Section 123(8) should be amended to allow disclosure of information between an OMB and the ADI and between OMB's in relation to designated services provided by the ADI.

Our suggested amendments are set out in the Appendix attached as "A". They are also described in the body of this submission.

Introduction

Bendigo Bank Limited ("BBL") is a community based bank. As a result of its community focus, aspects of its distribution model, including Community Banks, differs from that of other Banks.

The Attorney-General's Department has been working cooperatively with BBL throughout 2006 to address the way its distribution model is covered in the Bill. BBL has also made a previous submission to this Committee regarding this aspect of the Bill in August 2006.

The current wording of section 12 reflects the Attorney-General's Department's interest in dealing with the circumstances of BBL and BBL is appreciative of the effort that has been made to date to meets its needs. However, section 12, as drafted, does not entirely address BBL's circumstances. BBL is continuing to discuss these matters directly with the Attorney-General's Department in parallel with this submission.

BBL believes that the change it is requesting to section 12 will not detract from its cover of other similar business models such as the Bank of Queensland but which will still provide the required cover to BBL and its business model.

The recommended changes aim to not only reduce inefficiencies and higher cost of operations but will provide for a more effective AML Program. The changes will allow information to be appropriately exchanged between **Community Banks ®**, and other joint venture alliances, in particular Tasmanian Banking Services Ltd (TBS) and BBL and maintain our capability to understand customer activity across our organisation as a whole.

Requested changes to Section 12

BBL submits that the current Section 12(1) be changed as follows:

"(1) For the purposes of this Act, if:

(a) a person has an arrangement, whether directly or indirectly, with an ADI, and no other ADI, under which that person is entitled to advertise or offer all or some designated services that the ADI offers; and

(b) that person advertises or offers those designated services in conjunction with a brand of that ADI or a brand controlled by that ADI, the person is an owner-managed branch to the extent that the person provides those designated services."

Rationale for Changes requested to Section 12

BBL is an Authorised Deposit Taking Institution (**ADI**) and provides a comprehensive range of banking and related financial products and services. These are distributed via:

- BBL's own network of approximately 160 fully owned branches;
- Directly between BBL and its customers via electronic or telephonic means;
- BBL's subsidiaries;
- Its **Community Bank®** branches; and
- Other third party branches, including Tasmanian Banking Services.

The last two distribution means, **Community Bank®** and Tasmanian Banking Services, give rise to the need for the requested changes to section 12. Details of the way that the **Community Bank®** and Tasmanian Banking Services branches operate are set out in Appendix B to this Submission.

Community Bank® and Tasmanian Banking Services branches function in the same way as BBL owned branches in relation to banking activities, but they are not owned by BBL. They all offer and distribute the same products and services in the same way. These products and services include not just those issued by BBL and its wholly owned subsidiaries but also those distributed by BBL but which are issued by third parties, such as Elders Rural Bank.

To maintain competitive neutrality, the AML/CTF Bill should not impose different (and more onerous) requirements on **Community Bank®** and Tasmanian Banking Services branches that are imposed on bank owned branches. To this end the Government has been open to suggested changes required by reporting entities with business models such as that used by BBL. This is the genesis of the current section 12 in the Bill.

Section 12 was intended to ensure that branches like the **Community Bank®** and Tasmanian Banking Services branches are not reporting entities under the AML/CTF Bill and that the ADI they are associated with is responsible for the obligations imposed by the new laws. Section 12 was intended to overcome uncertainties that otherwise arise under the application of section 6 which may unwittingly make branches like the **Community Bank®** and Tasmanian Banking Services reporting entities in their own right.

Section 12 as currently drafted provides that a person will be an owner-managed branch of an ADI if:

> "the person is a party to an exclusive arrangement with an ADI to offer designated services advertised or promoted under a single brand, trade mark or business name."

BBL does not believe that its **Community Bank®** and Tasmanian Banking Services branches are owner-managed branches as defined in the current wording of section 12 because:

- **Community Bank®** and Tasmanian Banking Services branches do not necessarily promote and advertise their products under a single brand. For example, **Community Bank®** branches promote and advertise BBL products, Sandhurst products, Elders Rural Bank products by their different brand names. TBS primarily promotes BBL products by co-branding using both the BBL and TBS brands.
- Tasmanian Banking Services has arrangements with its own branches, BBL and Tasmanian Perpetual Trustees and thus may not have an "exclusive arrangement" as required by Section 12.

The references to "exclusive" and to "single brand" are not essential to the meaning of section 12 and are the words that give rise to BBL's difficulties. If the requested changes cannot be made to section 12 then BBL will be placed in the situation that its **Community Bank®** and Tasmanian Banking Services branches are likely to be reporting entities in their own rights under certain items in Table 1 of section 6. As reporting entities these branches will be under a range of obligations that an ordinary branch of a bank is not, including the requirement to have their own AML/CTF Program (either as a single program or via a Designated Business Group). In addition there is no provision in section 123 which allows BBL to disclose information regarding suspicious activity reporting except via the Designated Business Group exception.

The Designated Business Group can only work for that part of what **Community Bank®** and Tasmanian Banking Services branches do which falls within section 6. Activities do fall outside section 6 with the result that these types of branches will fall within, between or outside the different options in the new laws causing a range of operational problems not experienced by reporting entities who own all their branches.

This will serve to disadvantage **Community Bank®** and Tasmanian Banking Services branches by adding to their operating costs and complexities in a highly competitive market. Such an outcome does not deliver competitive neutrality nor provide for an effective AML Program.

BBL's proposal is that owner-managed branches should be any:

- person that has an arrangement, whether directly or indirectly, with only one ADI to advertise and offer all or some designated services that that ADI offers or is entitled to offer; and
- where that person advertises or offers those designated services in conjunction with a brand of that ADI or a brand controlled by that ADI.

A single word change has been suggested for section 12(2). This section transfers obligations, to the extent they exist, under the new laws from owner-managed branches to the ADI. It is unclear from section 12(2) whether the designated service is taken to have been provided only by an ADI or both the owner-managed branch and the ADI. As BBL understands that it was intended to be only the ADI, section 12(2) should be amended to make that clear by inserting the word "only" immediately before the words "by the ADI" at the end of the subsection.

Requested changes to Section 123 (8)

BBL submits that the current Section 123(8) be changed as follows:

"Subsections (1), (2) and (3) do not apply to the disclosure of information:

(a) by a reporting entity that is an ADI and where the disclosure is to an owner-managed branch of the ADI;

(b) between owner-managed branches of the same ADI in relation to designated services relating to that ADI."

Assuming that the Committee accepts the logic for expanding the exemption to cover subsections 123(1) and 123(3) in the exemption provided by section 123(8) then the Committee may decide that the same change should also appear in sections 123 (4), (5), (6), (7) and (9).

Rational for Changes to Section 123 – Tipping Off

Section 123 relates to tipping off a person that a suspicion has been formed or a suspicious matter reported. The section effectively prohibits the disclosure of information about suspicious matters. BBL agrees with the need for the provision. However, while some relief has been provided where a reporting entity (such as BBL) discloses a matter to an owner-managed branch, the section does not put owner-managed branches in the same position as bank owned branches. In particular:

- At section 123(8) there is an exemption which permits information to be disclosed by a reporting entity that is an ADI to an owner-managed branch. However, the disclosure only applies to disclosures of the kind referred to in section 123(2). It does not apply to the disclosures referred to in section 123(1) and (3). If owner-managed branches are to be put on the same footing as other branches (thereby ensuring a level playing field), the exemption in section 123(8) should extend to sections 123 (1), (2) and (3).
- The Bill does not expressly permit the sharing of information directly between owner-managed branches. The sharing of information between banking groups (including between the bank branches) is critical to ensure that suspicious activity is properly tracked and dealt with throughout the group. Disclosure between branches of a bank, irrespective of whether they are wholly owned or owner-managed branches, should be encouraged. For that reason, subsection 8 should be amended to make it clear that the disclosure of suspicious matters between owner-managed branches of an ADI does not contravene section 123.

The suggested changes to subsection 123(8) address the two problems above.

Finally, we note that there does not appear to be any obligation upon owner-managed branches to not disclose information referred to in sections 123(1) to (3) which is disclosed to them. Given the importance of the tipping off provisions, we suggest that such an obligation be included in the Bill. The same applies to legal practitioners under section 123(5).

We have requested an opportunity to give evidence at the Committee hearing in Sydney on 22 November. I understand that time is limited and not all interested parties can appear and, as stated earlier, we will continue to work cooperatively with the Attorney General's Department to resolve these matters.

Thank you again for the opportunity to make this submission. These are very significant issues for the Bendigo Bank Group and I wish to ensure that we are not disadvantaged in any way.

Yours sincerely

ROB HUNT
MANAGING DIRECTOR
BENDIGO BANK GROUP

cc Senator Chris Ellison, Minister for Justice & Customs
Judith Pini, Criminal Justice Division, Attorney General's Department

Appendix A

12 Owner-managed branches of ADIs

(1) For the purposes of this Act, if:

(a) a person ***has an arrangement, whether directly or indirectly, with an ADI and no other ADI, under which that person is entitled to advertise or offer all or some*** designated services ***that the ADI offers; and***

(b) ***that person advertises or offers those designated services in conjunction with a brand of that ADI or a brand controlled by that ADI,***

~~is a party to an exclusive arrangement with an ADI to offer designated services advertised or promoted under a single brand, trademark or business name,~~ the person is an ***owner-managed branch*** ~~of the ADI~~ ***to the extent that the person provides those designated services.***

(2) For the purposes of this Act, if an owner-managed branch of an ADI proposes to provide, commences to provide, or provides, such a designated service, the designated service is taken to have been proposed to be provided, to have been commenced to have been provided, or to have been provided, as the case requires, ***only*** by the ADI.

Section 123 Tipping Off Exemption for Related Entities

(8) Subsection ***(1),***(2) ***and (3)*** does not apply to the disclosure of information:

(a) by a reporting entity ***that is an ADI*** and ***where*** the disclosure is to an owner-managed branch of the ADI;

(b) ***between owner-managed branches of the same ADI in relation to designated services relating to that ADI***.

[NOTE Assuming the Committee accepts the need to amend s123(8) to expand the exemption to cover 123(1) and (3), then the Committee may decide that the same change should also appear in sections 123 (4) (5) (6) (7) and (9).

Appendix B

Community Bank®

There are currently 189 **Community Bank®** branches in Australia. This number is growing by about 30 branches per annum. They now account for more than 50% of BBL's total branch network. Approximately half of all **Community Bank®** branches are situated in rural and remote areas and the network provides an essential service to those communities. The **Community Bank®** network has approximately 475,000 accounts and $7.4 billion in banking business (i.e. combined deposits and loans). By any measure, the **Community Bank®** model is a major driver of the Bank's distribution and growth strategy.

Community Bank® is a registered trademark of BBL. Each community company operates a BBL franchise, follows BBL procedures and uses exclusively BBL systems. The **Community Bank®** structure has the following key features:

1. **Community Bank®** branches are franchise operations of BBL. Each community company is established as a (listed or unlisted) public company which is predominantly owned by shareholders in and around the region of the community being serviced by the branch.
2. Notwithstanding that the **Community Bank®** is not owned by BBL, each **Community Bank®** functions in exactly the same way as a BBL owned branch. Amongst other things:
    - in the same way that a customer of a typical retail bank can transact at any branch of that bank, a BBL customer can transact at a **Community Bank®** in the same way that he or she can at a BBL branch and vice versa;
    - **Community Bank®** companies enter into an agreement with BBL under which they are required to comply with BBL's operational policies and procedures (in the same way that wholly owned branches are required to comply);
    - **Community Bank®** branches distribute only products issued or distributed by BBL and all of the banking operations of **Community Bank®** branches are controlled by BBL. Where a customer obtains a BBL product from a **Community Bank®**, the customer is a customer of BBL and the customer's account is maintained on BBL's operating system;
    - **Community Bank®** branches are monitored and audited in the same way as BBL owned branches. Amongst other things, **Community Bank®** branches, like BBL owned branches, are regularly audited to determine whether they have complied with BBL's operational policies and procedures.
    - BBL performs all "back room" banking functions for **Community Bank®** branches, including development and provision of all products and services, compliance, marketing, staff training, management of credit risk and ongoing support.
    - **Community Bank®** companies employ their own staff either directly or by secondment from BBL and are responsible for their own operating expenses. All staff must be approved by BBL and are required to undergo the same background checks, training and authorisations and are subject to the same disciplinary action as other BBL branch staff.
    - Community Banks trade under their own registered company name even though the BBL and "Community Bank" brands (which are controlled by BBL) also appear in signage and on promotional material.

Tasmanian Banking Services Ltd

- Tasmanian Banking Services (**'TBS'**) is a 50/50 joint venture between BBL and Tasmanian Perpetual Trustees (TPTL) that returned local ownership to the Tasmanian banking sector. It began in November 2000 and TBS now operates through seven branches in major population centres throughout Tasmania.
- As is the case with **Community Bank®** branches, the banking services and operations of the TBS branches are controlled by BBL. TBS branches are required to comply with BBL operational policies and procedures. Like **Community Bank®** branches, TBS branches function, in relation to banking activities, in the same way as a BBL branch. Each of the issues set out above in relation to **Community Bank®** branches also apply in relation to TBS branches.
- TBS branches trade under the TBS brand (which is jointly owned by BBL and TPTL), although a BBL brand also appears in signage and promotional material.