

CHAPTER 1

INTRODUCTION

Background

1.1 On 9 February 2006, the Senate referred the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 (Exposure Bill) to the Legal and Constitutional Legislation Committee for inquiry and report by 13 April 2006.

1.2 The Attorney-General's Department (Department), in conjunction with the Australian Transaction Reports and Analysis Centre (AUSTRAC), is also conducting a public consultation process; comments and submissions to that process close on 13 April 2006. The committee is mindful of advice by the Department and media reports that the Exposure Bill is not a static document and will undergo substantial re-drafting during, and as a result of, the consultation process.¹ However, the committee has necessarily confined itself to examination of the publicly released version of the Exposure Bill for the purposes of this inquiry.

1.3 The Exposure Bill forms part of a package of reforms consisting of legislation, regulation and rules, which is eventually intended to replace Australia's principal anti-money laundering legislation, the *Financial Transaction Reports Act 1988* (FTR Act), and the *Financial Transaction Reports Regulations 1990*. The Exposure Bill will supersede the FTR Act to the extent that the FTR Act applies to financial services.

1.4 The package of reforms is intended to improve and strengthen Australia's current anti-money laundering and counter-terrorism financing (AML/CTF) system, in line with international standards issued by the Financial Action Task Force on Money Laundering (FATF).²

1.5 These international standards are contained in the FATF Forty Recommendations on AML, which were revised in June 2003 (FATF Recommendations), and the Nine Special Recommendations on CTF (Special Recommendations) which were adopted following the terrorist attacks in the US on 11 September 2001.

1 See, for example, *Committee Hansard*, 14 March 2006, p. 61; E. Colman, 'Dirty money laws stall, face revision', *The Australian*, 17 March 2006.

2 The FATF is an international organisation concerned with strengthening AML provisions in the global financial system, including recommending legislative and enforcement measures for individual countries to implement.

1.6 The FTR Act was last updated in a significant way through the *Proceeds of Crime Act 2002* and, in relation to terrorism, through the *Suppression of the Financing of Terrorism Act 2002*. However, following the revision of the FATF Recommendations in 2003, the Federal Government committed itself to a further overhaul of the FTR Act and associated legislation.³ In December 2003, the Minister for Justice and Customs (Minister) announced that Australia would be implementing the FATF Recommendations which would require a significant review of Australia's AML regime, including some new measures intended to counter terrorist financing.⁴

1.7 Early consultations with stakeholders resulted in a range of in-principle agreements between the Federal Government and industry on the approach to the proposed reforms, including implementation of the reforms in two tranches. Following the conclusion of these consultations, the Minister announced, in October 2005, that the Federal Government had agreed to proceed with a package of reforms to strengthen Australia's AML/CTF system. The Minister also announced that the next step in the reform process would be the release of the Exposure Bill.⁵

1.8 The Exposure Bill sets out the first tranche of reforms covering a range of services provided by the financial services sector, gambling service providers and bullion dealers. It also covers lawyers and accountants to the extent that the services provided are in direct competition with the financial sector.⁶

1.9 Following the first stage of reforms, the Minister has indicated that there will be a second stage extending AML/CTF obligations to real estate agents, jewellers and professionals, such as accountants and lawyers, when they provide specified non-financial services.⁷ The committee understands that there is no settled timeframe for the second stage but that it is likely to be developed during the transition period for the first tranche of reforms. The FTR Act will remain in force, although significantly

3 Sue Harris Rimmer, Ann Palmer, Angus Martyn, Jerome Davidson, Roy Jordan and Moira Coombs, Parliamentary Library, *Anti-Terrorism Bill (No. 2) 2005*, Bills Digest No. 64 2005-06, 18 November 2005, p. 49.

4 Minister for Justice and Customs, Media Release, *Australia endorses global anti-money laundering standards*, 8 December 2003, at <http://www.ag.gov.au/agd/www/Justiceministerhome.nsf/Page/RWP448419DCA3156F1BCA256DF5007AC772?OpenDocument> (accessed 6 April 2006).

5 See <http://www.ag.gov.au/aml>

6 Minister for Justice and Customs, Media Release, *Exposure draft of anti-money laundering and counter-terrorist financing Bill released for public comment*, 16 December 2005, at <http://www.ag.gov.au/agd/WWW/justiceministerHome.nsf/AllDocs/B8D9EAFB4FED18E6CA2570D8007C616D?OpenDocument> (accessed 7 February 2006).

7 Minister for Justice and Customs, Media Release, *Exposure draft of anti-money laundering and counter-terrorist financing Bill released for public comment*, 16 December 2005, at <http://www.ag.gov.au/agd/WWW/justiceministerHome.nsf/AllDocs/B8D9EAFB4FED18E6CA2570D8007C616D?OpenDocument> (accessed 7 February 2006).

amended, until the second stage of legislation applying to non-financial services matters, at which point it will be repealed.

1.10 Significantly, Australia's progress in meeting the FATF Recommendations was reported in a FATF country evaluation published in October 2005. The evaluation found that Australia's AML/CTF laws addressed requirements under 31 of the 40 FATF Recommendations. In relation to the Special Recommendations, the evaluation rated Australia as 'partially compliant' with Special Recommendation VI (regulating alternative remittance dealers), Special Recommendation VIII (regulation of charitable and non-profit organisations) and Special Recommendation IX (cash couriers), and 'non-compliant' with Special Recommendation VII (wire transfer funds services). Australia achieved a rating of 'largely compliant' with most of the other Special Recommendations.⁸

1.11 The Anti-Terrorism Bill (No 2) 2005 addressed four of the Special Recommendations. Amendments contained in Schedule 3 of that bill were intended to 'strengthen the existing terrorist financing offences'⁹ in the Criminal Code and the FTR Act. Schedule 9 of that bill amended the FTR Act (with consequential amendments to the *Proceeds of Crime Act 2002* and the *Surveillance Devices Act 2004*) to address Special Recommendation VI, Special Recommendation VII and Special Recommendation IX.

1.12 The committee understands that proposed reforms in the Exposure Bill will ensure that Australia complies fully with the remainder of the FATF Recommendations plus the Special Recommendations, excluding Recommendation 12 (designated non-financial businesses and professions – to be covered by the second tranche of reforms), and excluding Special Recommendation 8 (non-profit and charitable organisations – to be dealt with separately¹⁰). The committee also notes that some aspects of the FATF Recommendations and the Special Recommendations are already covered by other legislation, including the Criminal Code, and mutual legal assistance and extradition legislation.

8 Minister for Justice and Customs, Media Release, *Australia fighting money laundering and terrorist financing*, 17 October 2005, at <http://www.ag.gov.au/agd/WWW/justiceministerHome.nsf/AllDocs/2DCD3F1AC23A43A8CA25709E0027F92E?OpenDocument> (accessed 6 April 2006).

9 *Explanatory Memorandum*, p. 12.

10 In September 2005, the Council of Australian Governments (COAG) agreed that the Commonwealth would consult with the states and territories about the enactment of laws to prevent the use of non-profit or charitable organisations for the financing of terrorism: Minister for Justice and Customs, Media Release, *Australia fighting money laundering and terrorist financing*, 17 October 2005, at <http://www.ag.gov.au/agd/WWW/justiceministerHome.nsf/AllDocs/2DCD3F1AC23A43A8CA25709E0027F92E?OpenDocument> (accessed 6 April 2006).

Conduct of the inquiry

1.13 The committee advertised the inquiry in *The Australian* newspaper on 1 March 2006, and invited submissions by 8 March 2006. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to over 80 organisations and individuals.

1.14 The committee received 33 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.15 The committee held a public hearing in Sydney on 14 March 2006. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

Acknowledgement

1.16 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Note on references

1.17 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.