

8 March 2006

Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
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Australia

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Dear Secretary

### **Inquiry into the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 (the 'Bill')**

ING DIRECT welcomes the opportunity to provide comment to the Senate Legal and Constitutional Committee (the "Committee") inquiry into the above Bill.

ING DIRECT Australia was launched in August 1999, and is part of the global ING Group, one of the world's largest financial institutions offering banking, insurance and asset management to more than 60 million clients in over 50 countries. Along with personal savings products, ING DIRECT also offers a business savings product and a range of mortgage products.

ING DIRECT recognises the importance of an Anti-Money Laundering (AML) regime to counter money laundering and terrorist financing. It strongly supports the Government's commitment to introducing an enhanced AML regime that meets Australia's international obligations and has welcomed the opportunity to be involved in the formulation of that regime.

ING DIRECT has been actively involved with the consultation process being lead by Senator the Hon Chris Ellison, the Attorney General's Department and AUSTRAC. To date there has been a very high level of activity and engagement from financial institutions such as ING DIRECT, and there are some broad issues that ING DIRECT believes the Committee should consider in its inquiry.

#### **Risk Based Approach**

ING DIRECT supports a risk based framework, and we envisage that this framework would comprise an approach that would take into consideration the risks associated with product, customers, source of funds, and the control framework within the relevant financial service provider.

This is consistent with the Financial Action Task Force 40 Recommendations which state that "financial institutions should apply each of the CDD [customer due diligence] measures on a risk sensitive basis depending on the type of customer, business relationship or transaction."<sup>1</sup> Whilst the Government has committed to a legislative package which supports the risk based approach, ING DIRECT has a concern with the detail of specific obligations in the draft Rules released to date.

Although there has been much engagement between AUSTRAC and the financial services industry on the detail of Rules development, the current proposals are quite prescriptive in their approach and, in ING DIRECT's opinion, exceed FATF requirements and those in comparable jurisdictions. For example, in the draft Customer Identification and Know Your Customer Rules, 'minimum standards' and specific procedures documented are applicable to all products caught within the AML regime, which far exceed those required under FATF and in comparable jurisdictions such as the United Kingdom. Refer to

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<sup>1</sup> Financial Actions Task Force, 40 Recommendations Recommendation 5

Appendix A for a comparison between the draft AUSTRAC Know Your Customer Rule requirements, and that required under the UK Joint Money Laundering Steering Group.

In their guidance for UK organisations, the UK Joint Money Laundering Steering Group outlined some of the characteristics of high and low risk customers and products / services. These characteristics are indicative only (and not prescriptive), and they highlight the various circumstances which may give rise to a higher or lower risk profile which each organisation should consider in making their assessment. This framework allows for more appropriate identification processes to be adopted by organisations as it allows them to take into account their risk profile.

Any legislation which is prescriptive in its approach as to what constitutes high or low risk or methods as to how the risk should be controlled, will not allow organisations the flexibility to manage the money laundering risk in the most efficient and cost effective manner. Australia should not strive to go beyond the FATF Recommendations or the experience of comparable jurisdictions, such as the UK. To do so would place us at a competitive disadvantage in international markets. The UK experience is salutary where a large degree of rework occurred to achieve the risk based approach.

### **Consultation Period and Timing**

The release of the Exposure Draft and three Sample Rules in December 2005 was welcomed by ING DIRECT. The Exposure Draft developed by the Attorney General's Department is principles based and the Rules developed by AUSTRAC (also legislative instruments) contain the actual detail for reporting entity compliance.

It is expected that over 30 Rules will be released along with Guidelines to support them. To date, only 3 of these Rules have been released with an additional Rule being discussed between industry and AUSTRAC. Without the full package of draft legislative instruments, financial institutions can not analyse to a sufficient extent the full impact of the Bill, the practicalities of implementation, and whether or not the Bill will achieve the desired objective of countering money laundering and terrorist financing.

In particular, ING DIRECT is experiencing challenges in providing meaningful commentary on the Exposure Draft for key areas such as (but not limited to) the use of third parties for identification and identification of pre-commencement customers without the relevant Rules available for assessment. Some specific examples include:

- ING DIRECT is currently unable to assess to what degree and to what extent money laundering may be detected in pre-commencement customers without understanding AUSTRAC's requirements for 'risk triggers'. To date, all that is known to financial institutions is that they *may* have to re-identify existing customers, if a risk is 'triggered'.
- Since there is no draft Rule on ongoing customer monitoring, ING DIRECT is unable to assess how on-going monitoring of customers will fit into the organisation's overall AML Program. Although we can use experience from other comparable jurisdictions in our assessment, we can not provide commentary to the Government on how initial customer due diligence and ongoing due diligence will work together in preventing and detecting money laundering within Australia.
- Due to an incomplete Rule on customer identification, which currently does not provide information on electronic verification, ING DIRECT is unable to assess the ability to identify customers in a non face-to-face environment. As the Committee would be aware, many of the designated services provided by financial institutions are provided in a non face-to-face environment.

It is anticipated that, even if the remaining draft Rules are released by AUSTRAC by 13 April 2006, financial institutions will require a period of at least one month to conduct a complete assessment of the regime, to prepare detailed submissions, and to continue to work with AUSTRAC to ensure that the Rules meet a common objective. There is a concern that if financial institutions are unable to completely assess

the complete AML legislative package prior to 13 April 2006, issues may be overlooked or not properly resolved, resulting in implementation difficulties and ongoing operational problems.

Possible solutions to this issue include:

- AUSTRAC increasing its available resources to work on the Draft Rules, and to consult with the relevant AML working groups.
- An extension to the Bill consultation period, to allow analysis by financial institutions of the impact of the proposed new regime as a whole, and to assess whether it is likely to achieve its purpose.

ING DIRECT requests that the Committee consider this during its inquiry.

We thank you for your consideration of the matters raised. Please do not hesitate to contact me on (02) 9028 4544 or Jennie Armstrong on (02) 9028 4370 should you have any queries in relation to this submission.

Yours sincerely

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**APPENDIX A**

<p align="center"><b>AUSTRAC DRAFT IDENTIFICATION RULES EXCERPT: The Minimum Know Your Customer Information</b></p>	<p align="center"><b>UNITED KINGDOM JOINT MONEY LAUNDERING STEERING COMMITTEE: Guidance for the UK Financial Sector</b></p>
<p>Individual or natural persons</p> <p>1. The minimum know your customer (KYC) information for a natural person is:</p> <ul style="list-style-type: none"> <li>a) the customer’s full name;</li> <li>b) the customer’s full residential address;</li> <li>c) the customer’s date of birth;</li> <li>d) the customer’s place of birth;</li> <li>e) the customer’s country of citizenship; and</li> <li>f) the customer’s country of residence.</li> </ul>	<p>Personal Customers</p> <p>5.4.15. The firm should obtain the following information in relation to the personal customer:</p> <ul style="list-style-type: none"> <li>- full name</li> <li>- residential address</li> <li>- date of birth</li> </ul> <p>5.3.6. How much identity information or evidence to ask for, and what to verify, in order to be reasonably satisfied as to a customer’s identity, are matters for the judgement of the firm, which will be exercised on a risk-based approach.</p>
<p>Companies</p> <p>2. The minimum KYC information in respect of a company is:</p> <ul style="list-style-type: none"> <li>a) the full name of the company;</li> <li>b) the full address of the company’s principal place of business;</li> <li>c) the ABN<sup>2</sup> or ARBN<sup>3</sup> of the company;</li> <li>d) the name of the country in which the company was incorporated;</li> <li>e) the date of the company’s incorporation;</li> <li>f) the name of each director of the company;</li> <li>g) the name of any company secretary;</li> <li>h) if the company is listed - the name of each member of the company who has a substantial holding<sup>4</sup>;</li> <li>i) if the company is not listed — the name of each person who meets the control test<sup>5</sup> in relation to the company; and</li> <li>j) evidence of the authorisation given by the company to any of its officers to deal with the reporting entity in respect of any designated service.</li> </ul> <p>[NB These requirements are for both public and private companies]</p>	<p>Corporates (other than regulated firms)</p> <p>5.4.70: The firm should obtain the following in relation to the corporate concerned:</p> <ul style="list-style-type: none"> <li>- full name</li> <li>- registered number</li> <li>- registered office in country of incorporation</li> <li>- business address</li> </ul> <p>and additionally, for <b>private</b> companies:</p> <ul style="list-style-type: none"> <li>- names of all directors (or equivalent)</li> <li>- names of beneficial owners holding over 25%</li> </ul>

<sup>2</sup> Australian business number.

<sup>3</sup> Australian registered business number

<sup>4</sup> The term ‘substantial shareholding’ is defined by section 9 of the *Corporations Act 2001*. [Note - Substantial holding information will change readily. However, the purpose of requiring this information upfront is to provide initial information relevant to customer profile, which can then be updated in accordance with the reporting entity’s AML/CTF Program, as necessary, on a risk basis]

<sup>5</sup> Defined by clause 10 of the AML/CTF Bill – which refers to section 1207Q of the *Social Security Act 1991*.