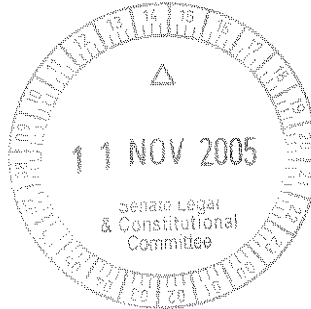


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Managing Director & Chief Executive Officer



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Australia

11 November 2005

Mr Owen Walsh  
Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

Dear Mr Walsh

**Re: Inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005**

I am writing to raise with the Senate Legal and Constitutional Committee what we believe are some unintended consequences of Schedule 9 the *Anti-Terrorism Bill (No.2) 2005* (the Bill) which relates to financial transaction reporting and changes to the *Financial Transaction Reports Act 1988* (the Act)

I have set out in an attached executive summary, the National's concerns with the current format of the Bill.

Yours sincerely

John Stewart

03 8641 4912

2

## Executive Summary – Anti-Terrorism Bill (No.2) 2005 – National Australia Bank response

### 1 Outbound payments

#### 1.1 Account numbers

The provisions relating to outbound payments (Schedule 9, section 17FA) require that an account number, or where the customer does not have an account number with the sending institution, a customer number, be included in the payment message. This is not current practice across the large volume of outbound payments, and will require significant changes to multiple systems and platforms of the National.

The provisions appear to assume that customers only have one account and that the money for the payment instruction always comes from that account. However, some customers with accounts will pay for international transactions in cash, which will necessitate a financial institution 'guessing' at which account number to list with the transaction.

There is not necessarily a 1:1 relationship between an account number and an international payment instruction. For example:

- Some major corporate customers have no accounts but they do have customer numbers; and
- A single payment can come from more than one account.

Inserting an account number will require significant system changes so that both operators and systems can access and then choose the correct account from all those held by the customer.

"Account" in the Bill is to be read as having the same meaning as under the Act. This has a narrow meaning than "account" in normal usage, and therefore renders the provision more onerous to implement than the corresponding requirement under Special Recommendation VII of the Financial Action Taskforce. The Act will be repealed under the new proposed AML laws and members will then need to change their systems again to reflect the new definition of "account".

#### 1.2 Reliance

Financial institutions should be able to rely on the source of the message, assuming that they are appropriately licensed in Australia. These new provisions ought to impose on those Australian financial institutions that send their international payment instructions to others (eg. credit unions) a requirement to include the sender's name, address and customer/account number. This imposes systems changes in a very short space of time.

#### 1.3 Address data

##### 1.3.1 Privacy and security

Mandatory passing of customer addresses has privacy issues for some classes of customers, for example those involved in family law matters.

In addition, for the National, this will involve changes to existing forms, processes and systems.

##### 1.3.2 Data "cleansing"

Major data cleansing will be required by the National to ensure that the address fields used to populate this information in the payment message do not contain Post Office Box numbers.

03 8641 4912

3

### 1.3.3 Delay in effecting payments

The ABA Code of Banking Practice requires financial institutions to advise customers of issues that may impact the processing time of a payment, such as additional data verification or obtaining data from a customer not supplied at time of requesting the transaction. This introduces process changes for staff.

## 2 Inbound payments

### 2.1 Reports

It is not clear what a cash dealer must do under section 17FB(4) to create the report for the Director. If it assumes that a cash dealer will monitor inbound messages from a correspondent bank for compliance with the cash dealer's request then this will impose significant manual work. For example, the National receives about 3,000 inbound payment instructions daily.

Alternatively, the provision might mean that the cash dealer merely has to indicate whether the correspondent bank agreed to meet the request. This lack of certainty needs to be clarified in the Bill.

### 2.2 Originating institutions

Few overseas institutions provide messages that currently comply with these requirements and Australian institutions have no power to make them comply.

Financial institutions would prefer a legislative provision, which requires them to pass on a direction from the Director of AUSTRAC in the form provided by the director to avoid any commercial difficulties with their correspondent banks.

## 3. Offence

The new criminal provisions regarding providing funds to terrorists apply to financial institutions and carry life imprisonment. The threshold for this offence is "recklessness". Management and staff are exposed to this penalty if staff are careless or inadequately trained in their work.

There should be review of offences to ensure consistency with the Criminal Code and other parts of the law. Currently these penalties are inconsistent between the offences introduced in 2002 and those in the Bill.

## 4. Proposed Solution

The major difficulties with the relevant provisions of the Bill as it is currently drafted relate to the time allowed for implementation of Schedule 9.

The National believes the simplest solution, which would involve minimal changes to the Bill, would be to increase the implementation time by changing the date of effect of the new sections 17FA and 17FB to "a date to be proclaimed". The date to be proclaimed would be the same transition period as will be allowed under the new AML laws. This solution is put forward on the understanding that:

- The two sections in the Bill would be repealed in 2006 by the new AML laws currently being drafted and replaced by provisions in that legislation;
- The consultation period for those laws would allow industry to work with Government to overcome the problems in the current drafting outlined above.

03 8641 4912

A simple amendment to date of effect will meet the Government's objective of having the legislation in place quickly, and will allow an efficient and controlled implementation across the industry, with significantly reduced customer impacts.