CLA

Civil Liberties Australia Inc. A04043
Box 3080 Weston Creek ACT 2611
Email: secretary[at]cla.asn.au

Subject: Submission re money laundering and terrorism

Formal inquiry into:
The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime

By the:
Legal and Constitutional Affairs References Committee E: legcon.sen@aph.gov.au

Introduction

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 is a misnomer. The Act should really be titled *The Financial Institutions Reporting on Customers Act 2006 (AML/CTF Act)*.

Surveillance and spying on customers is what the Act actually mandates and requires, as opposed to its purported purposes.

To require person A to report to the authorities on person B without any legal process is something which should be deeply troubling to a country steeped in the tradition of English common law. It smacks more of totalitarian regimes than common law democracies.

Therefore at the outset, this submission focusses on governance and legality of the system. Proceeding through relevant terms of reference, we offer the following observations:

address governance and risk-management weaknesses within designated services

At common law it is the duty of the banker to keep his customer's affairs confidential. *Tournier v. National Provincial & Union Bank of England* [1924] 1 K. B. 461.

The vast majority of bank customers going about their lawful business rightly expect that their affairs will be kept confidential and their privacy respected.

Sections 40, 41 and 43 of the Act blatantly violate this principle and turn banks into government spies on their customers. The basic failing in terms of governance in the Act is therefore that there is no form of judicial oversight of these mandated invasions of

customer privacy. It should be elementary that a warrant issued by a magistrate or judicial officer should be required before a bank is robliged to divulge details of the bank customer's account to AUSTRAC. The automatic mandated transference of customer information to AUSTRAC violates basic principles of legality.

the effectiveness of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the Act) to prevent money laundering outside the banking sector;

It should be fairly obvious that the Act promotes transactions outside the banking system. Once it is known that banks are operating as spies of the authorities, it would be foolish to think that any criminal would wish to do business with them. Any form of token transferable by hand or by keyboard without traceability can operate as a legal currency substitute. The increasing popularity of crypto currencies is a tribute to lack of confidence in financial privacy being respected by governments or banks and lack of confidence in the monetary policies being pursued by central banks.

Governments of all stripes are quite understandably facing a long-term crisis of public confidence. As people increasingly become aware of automatic spying upon their affairs, even ordinary people wanting to recover privacy start to prefer encrypted communications apps over the telephone and to prefer non-bank means of exchanging value.

People do not like to have to explain their private affairs to a bank teller when making financial transactions, for example, involving a transfer to a relative in another country. In former times, it would have been regarded as completely impertinent for a bank teller to enquire of a customer what was the purpose of the payment. Quite simply, a bank is the debtor of the customer and is not for a debtor to presume to question what its creditor is doing with its money.

the attractiveness of Australia as a destination for proceeds of foreign crime and corruption, including evidence of such proceeds in the Australian real estate and other markets since the enactment of the Act;

If the Parliament is concerned about the proceeds of foreign criminal activity being invested in Australian real estate, it might be better advised to stop the selling of Australian citizenship to so-called "business" migrants who bring nothing by way of real investment to the country in terms of creating new assets, but are in many cases simply placing the proceeds of foreign corruption or criminal activity into buying Australian real estate and making sure young Australians are priced out of buying homes to raise families.

Australia's compliance with the Financial Action Task Force (FATF) recommendations and the Commonwealth Government's response to:

i. applicable recommendations in applicable FATF reports, and

ii. *the April 2016 Report on the statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and associated rules and regulations;*

The Financial Action Task Force is a club of unelected bureaucrats, mainly from tax offices, who gather to enjoy themselves in Paris from time to time and dream of ways to subvert the liberties of their peoples and oppress businesses with obnoxious requirements to report on their customer's private affairs.

It is an unaccountable body of no legal status, not recognised as a legitimate organ of Australian government, and should not be allowed to dictate in any way the form of Australian domestic legislation. Australian taxpayers should not be expected to pay for flights and accommodation of Australian public servants to go to Paris to enjoy themselves and dream up ways of further invading the privacy of Australians back home. Why should the Parliament of the Commonwealth degrade itself by letting foreign bureaucrats dictate laws to take away common law rights of bank customers?

the extent to which adherence with FATF recommendations prevents systemic and reputational risks to Australia, the Australian economy, and Australia's capacity to access international capital;

Australia would have far more access to a *useful* pool of capital, if it simply ignored the Financial Action Task Force, prohibited foreign investment in real estate and required foreign capital to be invested in job-creating factories and trading businesses or as minority holdings in Australian public listed companies.

AML/CTF is the wrong legislation applied as the wrong solution to problems or opportunities that could be much better handled in other ways.

the regulatory impact, costs and benefits of extending AML/CTF reporting obligations to designated non-financial businesses and professions (DNFBPs or 'gatekeeper professions'), often referred to as 'Tranche two' legislation

Apart from the fact that the Commonwealth has no power to impose reporting obligations on non-corporate intra-State businesses and professions, conducted as partnerships, or as individuals e.g. barristers, solicitors, real estate agents, it is obvious that many such small businesses would not have the capacity to provide the sorts of reports which AUSTRAC might want.

More seriously, any such reporting will usually be in serious conflict with their ethical duties. Any lawyer would rightly regard it as fundamentally inconsistent with his or her ethical duty to a client to report on the client's affairs to a third party without the consent of the client. Lawyers are not public servants, nor are they spies for the government, nor are they police investigators.

the extent to which:

i. *DNFBPs take account of money laundering and terrorism financing risks, and*
ii. *the existing professional obligations on DNFBPs are compatible with AML/CTF reporting obligations; and*

It is not the job of lawyers, real estate agents, or other small businesses to take account of money laundering and terrorism risks. It is enough, and it is perfectly enough, that lawful businesses do not knowingly associate with criminals. If the authorities have any concern that legitimate service providers are being exploited by criminals, they can simply get a warrant to inspect the businesses' records.

As to professional obligations, it is a matter of absolute principle that no lawyer will ever report on the affairs of his client without that client's consent. To pass such a "law" is simply to ask that it be ignored.

any other related matter.

The AUSTRAC legislation is well overdue for a fundamental stripping back to principle.

It is one thing to require banks and financial institutions to collect and have information on the customers available for inspection by the authorities *on production of a warrant*: it is quite another to demand that *they send such information routinely* to a government bureaucracy where any public servant can spy into the affairs of any Australian. Indeed it would be a very good long term investment for organised crime or a foreign security agency to plant some operatives in AUSTRAC for the purpose of identifying wealthy Australians with young children who might be the subjects of kidnapping – or even better, to spy on the affairs of politicians and senior public servants so as to acquire material for blackmail.

Furthermore there is the question of who pays for this. At the moment, banks dump the cost of the compliance on their unfortunate customers. If the principle of "user pays" has any logical meaning, it should be the Commonwealth government through AUSTRAC who pays the banks for the costs of producing any information required by law. Customers should not be asked to pay for the dubious privilege of being spied upon by their banks as surveillance agencies for government bureaucracy. To call that a form of "user pays" financing is as offensive as it would be to demand that teetotallers pay alcohol taxes.

Dr Kristine Klugman
President
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