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Committee Secretary
Senate Standing Committee on Environment,
Communication and the Arts
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Secretary,

Keeping Jobs from Going Offshore (Protection of Personal Information) Bill 2009

Thank you for the opportunity to provide comments on the *Keeping Jobs from Going Offshore (Protection of Personal Information) Bill 2009* ("the Bill").

The stated objects of the Bill are:

> *(a) to ensure that personal information held by businesses in Australia is not transferred overseas without the informed consent of the individual to whom the information relates;*
>
> *(b) to protect employment in Australia by reducing the outsourcing of customer service and call centre jobs overseas.*

We address each of these in turn, but note that they are tangential to the apparent aim of the Bill – protecting jobs in Australia.

Consent to cross-border data flows

Protection of personal information is fundamental to the operation of our member banks and is deeply embedded in their systems and processes, as well as in the legislation, rules and standards that apply to this strongly regulated sector. It is also essential to the relationship between a customer and their bank – customers will not do business with a financial institution if they cannot trust that institution to protect their personal information.

Information security is also fundamental to the relationship between a bank and its suppliers, and to the other customers of those suppliers. A business process outsourcer (BPO) could not survive in the market without having the systems, processes and procedures necessary to ensure the security of personal information.

The Government is intending to enact legislation to implement proposed Unified Privacy Principle ("UPP") 11 on cross border data flows, amending National Privacy Principle ("NPP") 9 of the Privacy Act 1988 (Cth) ("the Act").

Under the Government's proposed amendment to UPP 11 (as it was developed by the Australian Law Reform Commission ("ALRC")), banks will have three alternatives to choose from when transferring "personal information" overseas:

(1) the transfer of personal information must be made only to a country that does "effectively uphold" privacy protections that are substantially similar to the model Unified Privacy Principles;

(2) the individual must have provided "informed consent" to the transfer and the bank must have expressly advised the individual that the consequence of providing consent is that the bank will no longer be accountable for the individual's personal information once transferred; or

(3) the transfer is authorised by law.

The Government has stated that it accepts the "general principle that an organisation will remain expressly accountable for the future handling of that personal information" once transferred offshore, with the exception of the informed consent option (2) [1].

If the personal information is handled overseas in a way that would constitute a breach of the Act, the bank will be liable for that breach (including for any act or omission by any related entity or third party) of the Act.

The provisions of the Bill are inconsistent with the approach recommended by the ALRC, which the Government has accepted (with amendment), and for which the Government is expected to prepare draft legislation in the near future. The foreshadowed legislation would significantly strengthen the regulatory protection already provided for customer information.

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[1] On its face, option (2) is inconsistent with the application of APRA's standard on outsourcing: APS 231 Outsourcing (http://www.apra.gov.au/ADI/upload/APS-231-Outsourcing-Oct-06-1.pdf). An Authorised Deposit-taking Institution (ADI) with outsourced functions offshore will always retain accountability for a depositor or borrower's personal information, and will have conducted extensive due diligence, site reviews and security reviews in order for the regulator to agree to allow off-shore outsourcing. The Bill suffers from the same inconsistency with prudential regulatory standards.

Call centre disclosure

The second object of the Bill relates to trade in services and Australia's trade policy, which is a very different context to the first object, which is about information privacy.

It is important to note that there is very limited offshoring of call centre operations by Australian banks, and that ABA members have continued to increase the number of banking jobs in Australia. Over 2008, although the global financial crisis was having a significant impact in many areas, the numbers of bank employees (located in Australia) increased by 1.6% or 2,300, to 146,700.

Globalisation of banking

A number of Australian banks have developed capacity offshore in order to remain competitive, drive innovation, improve service and manage costs - to the benefit of their Australian businesses, and other parts of their banking groups. Australian banks conduct business globally and seek to locate work in the most appropriate centres for access to specific skills, located in time zones that extend the Australian working day, and to achieve cost savings and economies of agglomeration.

In their offshore locations, banks employ in-house staff and/or have arrangements in place with specialist vendors to provide a range of information technology development, back office and support roles to service the conduct of their Australian businesses. Examples include credit assessment for mortgages, month-end reporting for finance, credit analytical modelling for risk and some HR functions. These centres of excellence in many instances also support operations elsewhere in the world, including Asia and the Pacific.

International banks operating in Australia have large scale, low cost back office operations, which deliver lower processing costs than can be achieved within Australia. Australian banks' operating expenses have traditionally been high in comparison with many other countries.[2]

Benefits of offshoring

Offshoring enables financial services companies to develop the capabilities required to operate a modern banking system, by drawing on expertise where it is located to support back office functions. When bank functions in Australia are offshored, banks seek to redeploy staff into comparable roles in Australia and to also manage their contractor pools to minimise the impact on permanent staff.

Offshore providers deliver quality and efficiency gains, which reduce the production cost of banking services and, therefore:

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[2] In a 2003 survey commissioned by the ABA, average bank operating expenses (as a proportion of assets) for Australia was 4.5%, compared with 2.0% for a sample of 15 comparable countries including the USA, UK, Canada and Germany.

- help contain product prices for customers, enabling further investment in product and process innovation;
- provide greater returns for shareholders; and
- make an institution more attractive to investors.

When offshoring or outsourcing, Australian banks have confirmed their commitment to their Australian businesses: excellence in people management, including early and transparent communication; redeployment and/or retraining, wherever possible, for affected staff; robust data security processes; and customer contact roles, such as call centres, as far as possible remaining in Australia.

There have also been examples of banking jobs being offshored to Australia. For example, the Business Council of Australia reported in 2004 that Deutsche Bank had made Sydney one of two global processing hubs for foreign exchange and that UBS selected Sydney for its global IT support centre.

Trade liberalisation

Australia has sought to expand its access to overseas markets through Free Trade Agreements (FTAs). The Bill under consideration is contrary to Australia's international positioning on trade liberalisation and is potentially inconsistent with agreements Australia has in place with other countries and ASEAN not to raise barriers to trade in services, including in finance, telecommunications and professional services.

Yours faithfully

Steven Münchenberg