



AUSTRALIAN BANKERS' ASSOCIATION INC.

Tony Burke
Director

Level 3, 56 Pitt Street
Sydney NSW 2000
Telephone: (02) 8298 0409
Facsimile: (02) 8298 0402

1 March 2007

Mr Alastair Sands
Senate Finance and Public Administration Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Sands,

Access Card

Inquiry into Human Services (Enhanced Service Delivery) Bill 2007

The ABA welcomes the opportunity to comment on the Human Services (Enhanced Service Delivery) Bill 2007 (**the Bill**). The ABA is the peak industry body for the banking industry in Australia and its 26 members include all of Australia's major banks.

Banks are key stakeholders in the access card project, being the major participants in the payments systems, providers of services to all Australians and Australian businesses and other organisations, and owners of some of the largest distribution and delivery networks in the country.

ABA member banks are also major players in the management and security of identity details, and contribute strongly to the privacy and identity security regimes in place in Australia.

Additionally, banks are also key contributors to the prevention of financial crimes in Australia, including money laundering and terrorist financing, for which there are now stronger and more extensive obligations under the Anti Money Laundering and Counter Terrorism Finance Act (**AML/CTF Act**).

In relation to the access card, we are most interested in the efficient management of personal information, to the benefit of our customers, and believe that a suitable balance can be found between protecting the privacy of individuals and ensuring the card has practical benefit. The ABA has not taken a position on private uses of the card outside this context.

ABA-#55813-v5-Access_Card_-_Letter_to_Senate_Inquiry.DOC

The access card has the protection available under current law, including the Privacy Act 1988 (Cth), as well as the new provisions of the Bill. The simple request from banks is, if the customer chooses to offer the card for identification to fulfil Commonwealth Government requirements to establish their identity, for example to open a bank account, banks should be able to accept it, in a manner similar to the process currently applicable to Medicare and other benefit cards, passports and drivers' licences.

As the legislation currently stands, there would be new and onerous compliance obligations on both the bank and the individual. This is of particular concern if use of the access card is extended to facilitate emergency payments by all banks.

The access card project is a crucial undertaking. The ABA and its members have engaged, in many aspects of the development to date in order to ensure the best outcomes for customers and shareholders.

Banks are interested in and will be impacted by nearly all announced components of the project, in all features of the current Bill, and parts of the legislative package which are to come.

They are also essential to the realisation of all the announced benefits of access card. This is particularly evident with the proposed provision of emergency payments and bank infrastructure will also be essential in the delivery of e-claiming for eligible individuals. On this matter, we recommend all banks be given the opportunity to provide input to the development and implementation of this provision to ensure that there is no unfair commercial advantage gained by some and that the facility is viable.

Attached are copies of our submissions to the Consumer and Privacy Taskforce and on the Exposure Draft.

Our specific concerns about the Bill as currently drafted include:

- leads to conflicting legal obligations for banks;
- unduly increases the regulatory compliance burden already imposed on banks by Commonwealth legislation;
- creates impediments and inconvenience for businesses and individuals in performing their banking and general commercial activities; and
- has the potential to impose large implementation costs in relation to the proposed emergency provision payments.

In our submissions to the Minister and the Taskforce we raised two issues with the current Bill. First, the offence in clause 57 of the Bill - prohibiting the unauthorised copying and making records of the access card number, photograph or signature - has the potential to conflict with obligations imposed on the banks under the (**AML/CTF Act**).

This issue was raised in the ABA's submission on the Exposure Draft of the Bill. In response, the Bill now states that the prohibition does not apply if the owner of the access card consents in writing to the recording. While this may appear to be an improvement, the requirement to seek consent in writing is problematic because it requires a costly new business process for all bank customers, many of whom have relationships with more than one bank, creates new record keeping obligations and raises questions over the status of the consent: for example, would this consent endure until expressly revoked and what would constitute consent?

The ABA recommended a draft amendment to the Minister on 14 February which could resolve the clause 57 issue.

Second, the offences in clauses 45(2) and 46(2) - prohibiting the making of a statement that could reasonably be interpreted to mean that a person is being asked to produce their access card for identification or to obtain products and services - could have significant unintended effects when applied to banks.

Banks are subject to strict identification obligations under the new AML/CTF Act, and are required to ensure that their customers identify themselves by appropriate means. For example, many bank customers use as means of identification either their Medicare card, or some of the other cards that will be replaced with the access card. Many of those customers may in the future have only an access card in their wallet or purse, and when asked for proof of identity, might mistakenly believe that a breach of clauses 45(2) or 46(2) has occurred when banks seek to comply with their obligations under the AML/CTF Act.

This issue was also noted in the ABA's submission on the Exposure Draft of the Bill. Acknowledging the banks' predicament, the Explanatory Memorandum of the Bill now notes that a person will only be taken to have "required" the production of an access card if they "provide no other reasonable option for a card owner to prove they are who they say they are". A contravention will only occur if banks require the access card as the only acceptable proof of identity. These comments are useful and welcome. However, their inclusion in the Explanatory Memorandum creates uncertainty because there is a risk that a Court would not take these comments into account when interpreting the relevant sections of the Act.

The ABA and member banks look forward to a continuing and high level of engagement with the Minister, the Office of the Access Card and the Government's advisers, and would welcome the Committee's further discussion about the access card legislation and all other features of the project into which Committee members might inquire.

Yours faithfully

Tony Burke