



Association of Building Societies and Credit Unions

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Committee Secretary
Senate Finance and Public Administration Committee
Parliament House
Canberra ACT 2600
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Dear Committee Secretary

Human Services (Enhanced Service Delivery) Bill 2007

Abacus – Australian Mutuals is the peak industry body for credit unions and mutual building societies.

Thank you for the opportunity to contribute to the Committee's inquiry into the *Human Services (Enhanced Service Delivery) Bill 2007* - the "Access Card Bill".

Our submission will focus on the provisions of the Bill relating to use of the access card for identity verification purposes.

These provisions will create significant new regulatory risk for financial institutions seeking to meet existing statutory obligations under the *Anti Money Laundering and Counter-Terrorism Financing Act 2006* - the "AML/CTF Act".

Credit unions and building societies, along with banks, have for many years relied on Government-issued documents, such as passports and Medicare cards, to verify the identity of customers.

Prospective members of credit unions and building societies, along with prospective customers of banks, must provide proof of identity before they can obtain financial services.

However, AML/CTF regulated entities will be exposed to severe penalties by relying on what is likely in the very near future to be the most common Government-issued document.

It is unreasonable to command business to become more vigilant about verifying identity and to simultaneously impose significant new risks and obstacles around such vigilance.

Onerous restrictions around use of the access card for identity verification will make it harder for many Australians to provide proof of identity just as demand for proof of identity rapidly expands.

We strongly recommend a more effective reconciliation of the policy objectives of AML/CTF with the objectives of the Access Card Bill.

Credit unions and building societies

Abacus was formed in July 2006 with the merger of the Credit Union Industry Association (CUIA) and the Australian Association of Permanent Building Societies (AAPBS). Abacus' 122 credit unions and 9 building societies make up 95 percent of the mutual Authorised Deposit-taking Institution (ADI) sector. Mutual ADIs have a strong presence in all States and Territories, with 4.5 million members and total assets of \$58.7 billion.

Mutual ADIs are subject to prudential supervision by APRA under the *Banking Act 1959* and are Australian Financial Services Licensees administered by ASIC under the *Corporations Act 2001*. Mutual ADIs are "reporting entities" under the AML/CTF Act and "cash dealers" under the *Financial Transaction Reports Act 1988*. Mutual ADIs are subject to the *Privacy Act 1988*.

Customers of mutual ADIs are also owners. Mutual ADIs are run for the benefit of their members. Profits are returned to members in the form of fairer fees, better service and a commitment to their local community. This mutual approach is reflected in the consistently high customer satisfaction ratings that credit unions and mutual building societies achieve.

Mutuals provide a competitive alternative to the big banks, offering a different kind of banking that puts members' interests first.

Individually, credit unions and building societies are the smallest players in the retail banking market and therefore bear a disproportionate share of the burden imposed by regulatory compliance. Abacus urges legislators not to unnecessarily increase the complexity and weight of regulatory compliance.

AML/CTF obligations

Under the AML/CTF Act, a reporting entity, such as a credit union or building society, must carry out a procedure to verify a customer's identity before providing a designated service to the customer.

This requirement builds on the *Financial Transaction Reports Act 1988*, which for almost 20 years has obligated cash dealers to verify the identity of persons who are signatories to accounts, and also prohibits accounts being opened or operated in a false name.

The AML/CTF Act brings Australia into line with international standards, including standards set by the Financial Action Task Force (FATF).

Severe new penalties apply to reporting entities, including credit unions and building societies, that fail to meet their obligations. The maximum penalty for failing to meet the identity verification obligations under the AML/CTF Act is a fine of \$11 million.

Under FTRA, various documents are allocated a weighting for identity verification purposes. This "100-point check" system gives a birth certificate or passport 70 points, and a driver's licence 40 points. Also worth 40 points is "an identification card issued by the Commonwealth, a State or Territory as evidence of the person's entitlement to a financial benefit." A Medicare card is worth 25 points.

According to evidence to the Committee on 16 February 2007 by the Department of Human Services¹, 40 per cent of the Australian population has a passport (or, put another way, 60 per cent of the population does not have a passport). During the same testimony, the Department of Human Services said “we do have a real issue with fraudulent use of Medicare cards” and that “the Australian Federal Police has indicated that 50 per cent of fraud cases involve fraudulent use of Medicare cards.”

Under the latest version of the Draft Consolidated AML/CTF Rules, a reporting entity must collect at a minimum:

- (a) the customer’s full name;
- (b) the customer’s date of birth; and
- (c) the customer’s residential address.

A reporting entity must verify, at a minimum:

- (a) the customer’s full name; and
- (b) either:
 - (i) the customer’s date of birth; or
 - (ii) the customer’s residential address.

The verification of information collected about a customer must be based on:

- (a) reliable and independent documentation;
- (b) reliable and independent electronic data; or
- (c) a combination of (a) and (b) above.

Reliable and independent documentation includes but is not limited to:

- (a) an original primary photographic identification document;
- (b) an original primary non-photographic identification document; and
- (c) an original secondary identification document.

A primary photographic identification document is a driver’s licence or passport. A primary non-photographic identification document is a birth certificate or “a pension card issued by Centrelink that entitles the person in whose name the card is issued, to financial benefits.”

The AML/CTF Act requires a reporting entity to make record of a customer identification procedure, including information obtained in the course of carrying out the procedure. The record must be retained for 7 years after the end of the reporting entity’s relationship with the relevant customer.²

The access card will replace documents that are currently used by consumers as proof of identity. The example was recently given of a “typical Australian senior” who could currently hold a Medicare card, an Australian organ donor registration card, a Commonwealth seniors

¹ Senate Finance and Public Administration Committee hearing, 16 February 2007.

² Sections 112 & 113, *Anti Money Laundering and Counter-Terrorism Financing Act 2006*

card, a Centrelink low-income healthcare card and possibly a Department of Veterans' Affairs repatriation health card. The access card will replace all these documents.

Australia's AML regime has for almost two decades obligated regulated entities to rely on Government-issued documents to verify the identity of customers and to record details about the method of verification.

Those obligations have now been strengthened and updated in the AML/CTF Act 2006.

In our view it is critically important to AML/CTF "reporting entities" and to consumers that there is a realistic appreciation of the AML/CTF regulatory framework in the Access Card Bill.

Access Card Bill Offences

Abacus is concerned that the Access Card Bill goes too far in seeking to block use of the access card for identification purposes.

Although the Bill's Objects include "to permit access card owners to use their access cards for such other lawful purposes they choose", the likely practical effect of the Offences created by the Bill is to reduce card owners' choice.

This is potentially a significant problem for businesses and consumers.

AML/CTF regulated entities will have to enter a minefield of legal risk if they seek to accept an access card owner's offer of the card for identification purposes.

It appears to Abacus that the drafters of the Access Card Bill have discounted the interaction of their Bill with the AML/CTF laws.

Part 4 of the Access Card Bill creates offences that apply:

- if a person requires you to produce your access card;
- if a person makes a statement that you could reasonably understand to mean that you are required to produce your access card for the purpose of identifying you;
- if a person requires you to produce your access card in connection with supplying goods or services or admitting you to membership of a body;
- if a person makes a statement that you could reasonably understand to mean that you are required to produce your access card in connection with supplying goods or services or admitting you to membership of a body; and
- if a person copies or records the access card number, photograph or signature on the surface of an access card.

Penalties for some of these offences are imprisonment for 5 years or fines of \$550,000 or both.

The access card will replace various Government-issued cards that are now used – and officially prescribed for use - by AML/CTF regulated entities for identity verification and, unlike those cards, will have a photo of the card owner.

The value of the photo is noted in the Bill's Explanatory Memorandum:

"The verification of existing cards depends heavily on visual checks of paper, cardboard and simple plastic cards. Verification of these cards is becoming less reliable. The absence of a photograph on existing cards is a limitation on identity verification."

This observation is endorsed by credit unions and building societies and other entities involved in the fight against money laundering and fraud.

Once the Access Card replaces various other documents it will become for many Australians a convenient document for use as proof of identity.

However, businesses will take on considerable risk if they seek to rely on the access card for AML/CTF purposes. Firstly, they will have to take steps to avoid making a "statement" that a card owner could "reasonably understand" to mean the card owner is required to produce the access card.

The AML/CTF reporting entity can't provide a designated service, such as opening a transaction account, unless the customer's identity can be verified.

If the card owner does not have a passport or a driver's licence, they may form the view they are being told that the only way they can open the transaction account is to produce an access card.

Secondly, once the card owner produces the access card the AML/CTF regulated entity will be at risk of committing an offence when details of the Access Card are recorded.

The AML/CTF regulated entity will have to obtain the card owner's consent "in writing" to record the information. According to the Explanatory Memorandum:

"Such consent will need to be obtained in a way that ensures that it is specific and informed consent. In accordance with the principle of informed consent, an individual can withdraw his or her consent."

This is not practical for AML/CTF purposes.

The Explanatory Memorandum also says that AML/CTF entity would have a defence under the Criminal Code for recording Access Card information for AML/CTF purposes. However, AML/CTF reporting entities would prefer not to have to rely on a court to determine whether or not they are criminally responsible under clause 57.

One of Abacus' members, a large credit union, has advised us that it sees too much risk in relying on the access card for identity verification purposes:

"Clause 45 prohibits anyone, other than an authorised agency, intentionally requiring a card for ID purposes. The burden of proof and the definitions of 'intention' outlined in the EM are such that we would be foolish to even consider using any of the card details in our identity process. We consider this a very significant issue and believe it

is not worth the risk in even considering using the card in the identity process or even asking for it for fear of breaching this section. We can see numerous situations arising where staff innocently may ask to see the card or a member offers it as ID willingly but we do not obtain written consent and would therefore be liable for prosecution. We can also see disputes arising where a member accuses us of using the information without consent. The net result will only be to reduce the effectiveness of the AML provisions.

“The whole concept of spending billions on a card that effectively can’t be used for identity purposes is nothing short of ludicrous.”

Abacus strongly supports giving card owners the right to use the access card for lawful purposes they choose. We recommend amendments to the Bill to ensure that card owners can exercise their right to use the Access Card as proof of identity without putting AML/CTF reporting entities at risk.

Credit unions and building societies do not want to be forced into a position where they alienate potential members by not accepting what is likely to become the most commonly available proof of identity document.

Recommendations

Abacus recommends the following amendments:

- redraft subclause 45(2) to provide an exemption for AML/CTF reporting entities;
- redraft subclause 46(2) to provide an exemption for AML/CTF reporting entities; and
- redraft clause 57 to permit copying of an Access Card number, photograph or signature - without the requirement for consent in writing from the card owner - where the Access Card has been provided for AML/CTF identification purposes.

These amendments would promote freedom of choice for card owners without watering down the prohibitions in subclauses 45(1) and 46(1) on “requiring” a card owner to produce their access card for identification purposes or supply of goods and services.

Abacus appreciates the opportunity to contribute to the Committee’s inquiry. We would welcome an opportunity to appear before the Committee to discuss this submission.

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Yours sincerely



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