

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING BILL 2006

Second Supplementary Submission by Australian Privacy Foundation

1. At the hearings on 22 November, the Committee invited us to make additional submissions following review of other submissions and transcripts of the hearings. We accept this invitation and make the following additional comments.

Suspicious matter reporting

2. In relation to our supplementary submission sent in on 22 November¹, Senator Parry asked for a response from Ms Blackburn from AGD at the 23 November hearings. We do not think that Ms Blackburn's reply adequately clarified the point we were making, which is fundamental to the scope and reach of the legislation.

3. Without the benefit of a transcript, I recall Ms Blackburn again mentioning the concept of a 'predicate' matter/suspicion/offence, which serves only to confuse.

4. We repeat our view that proposed section 41 clearly requires separate reporting of any suspicion about an individual in relation to any offence, without any initial requirement of suspicion in relation to money laundering or terrorist financing.

AGD comments on the Privacy Impact Assessment

5. The explanation of why the Government has rejected 66 of the PIA recommendations was not convincing. It was suggested that the rejected recommendations fell into four 'groups':

6. Those concerning 'transparency' of provisions in Rules relative to in legislation. The government does not see any difference, but the overwhelming sense of the submissions and oral evidence is that a wide range of stakeholders see a very clear and important difference, which also goes to accountability.

7. Those calling for greater prescription, which are rejected on the grounds that the government has decided on a balance between prescription and flexibility. Again, stakeholders appear to overwhelmingly see a need for greater prescription and certainty. We point to the continued confusion over matters such as the definition of loans, and the application of the law to pre-paid mobile phone accounts and gift cards as examples of why greater prescription is required

¹ note that we forgot to change the footer which mistakenly remains 17 November on the version submitted. I attach a corrected version which you could put on the Committee website.

8. Those recommending greater and more specific privacy protection, which the government rejects on the grounds that changes to the Privacy Act are premature in advance of the ALRC Inquiry Report (in 2008). This response fails to acknowledge the argument in the PIA, and in our and other submissions, that the 'base level' protection offered by the existing Privacy Act provisions do not adequately address the specific privacy risk associated with this highly intrusive and pervasive AML-CTF regime.

9. Those recommending more specific limits on purposes and uses, which the government dismisses on the grounds that the AUSTRAC information is 'only intelligence' and that substantive protection is provided by rules applying to 'user' agencies. This response fails entirely to address the reasons for the recommendations, which go to the issue of proportionality and the clear expansion of the scope of the scheme well beyond the AML-CTF.

10. AGD also responded to several questions by saying that the government has decided against any 'rollback' from the FTRA regime. That is of course not the government's decision to make, but Parliament's, and we hope the Committee will remind the government of this important distinction.

Yours sincerely

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