

17 November 2006

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Email legcon.sen@aph.gov.au

Dear Committee Secretary,

Anti-Money Laundering and Counter Terrorism Financing Bill 2006 (“Bill”)

Baycorp Advantage Limited is pleased to have the opportunity to make this submission on the Bill.

Please see the attached submission for an outline of our position.

Should you have any questions or wish to discuss the submission please contact us.

My contact details are on the attached submission.

Yours sincerely,



Erica Hughes
General Manager
Information Services and Solutions
Baycorp Advantage Ltd

BAYCORP ADVANTAGE LIMITED

Response to the Senate Legal and Constitutional Affairs Committee, as part of its review of the proposed *Anti-Money Laundering and Counter- Terrorism Financing Bill 2006* and a related transitional Bill.

The Committee Secretary
Senate Legal and Constitutional
Affairs Committee
Department of the Senate
PO Box 6100
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Submission to the Senate Legal and Constitutional Affairs Committee, on the Senate's review of the proposed Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 (Bill) and a related transitional Bill

1 About Baycorp Advantage

1.1 Our business

Veda Advantage Limited trading as Baycorp Advantage Limited (Baycorp) is Australia and New Zealand's leading supplier of business intelligence. We provide products that help address identity theft and fraud. One of our core products is a credit referencing facility.

Baycorp is a key provider of identity verification information for financial services providers. For example, our report has a 35 points of probative value in the in the 100 points test under the Financial Transactions Reports Act (1988).

Baycorp customers cover a wide range of industries, including banking, telecommunications, finance, retail, utilities, trade credit, government, credit unions and mortgage lenders, among others. Baycorp's top tier customers are major banks, telecommunications and finance companies. Baycorp has a client base of over 4,500 subscribers in Australia.

In recent years Baycorp Advantage has continued to support government initiatives to combat identity fraud, money laundering and terrorist financing. It was the sole private sector participant in the Australian Bureau of Criminal Intelligence's Fraud Register Pilot, supplying 46% of the data for the pilot, and also was a participant and major data source for the *Identity Fraud in Australian*, a study commissioned for AUSTRAC.

1.2 Automated channels and identity verification

Our processes do not involve the provision of any customer data to subscribers, but operates by matching data provided by subscribers against a set range of data. Our products provide a report to the subscriber as to whether the data matches or otherwise. This allows Baycorp to confirm the identity of a prospective customer and at the same time respect the privacy of the individual.

Generally our products are delivered electronically. As a business we have developed appropriate information technology platforms to support our work.

2 Submission

2.1 Executive Summary

It is imperative that the Bill should expressly contemplate:

- the use of electronic verification (EV)

- the use of credit information held by a credit reporting agency in EV for the purposes of identifying money launderers, terrorist financiers, and money laundering and terrorist financing risk
- The participation of specialist third party verification service providers.

Baycorp is considering providing EV and identification services, but needs a higher degree of certainty than is provided by some references to EV in draft Rules (that, even if introduced, could be changed at any time) in order to commit funds for the development.

To facilitate the availability of the tools that regulated reporting entities will need in order to comply with their obligations, Baycorp believes that it should be invited to participate in the process of developing relevant AML/CTF Rules.

Developing the tools is likely to be an iterative process. Development cannot start until the reporting entities have determined their applicable customer identification procedures, which in turn cannot happen until all relevant Rules are finalised. Customer identification obligations should therefore not commence until 12 months after all material and relevant Rules have been finalised.

2.2 Confirmation of Electronic Verification (EV) as an appropriate identification system

- (a) Without the availability of EV, it will be difficult for many designated service providers to effectively comply with the stringent customer identification obligations within the AML Bill. Instances include organisations with no branch networks or customers that live in remote areas where it would not be possible for them to be identified in person.
- (b) Baycorp's electronic databases of information about Australian residents have broad coverage and (if available) would significantly increase the accuracy of electronic verification as compared with other currently available sources.
- (c) Developing a system that meets the EV needs of Australian reporting entities will involve significant expense for Baycorp. It will be difficult to commit to this investment (or appropriately price the final product) if there is no certainty that electronic verification using the product will continue to be a valid method of customer identification.
- (d) Baycorp's concern is that all references to electronic verification as a component of an appropriate customer identification procedure identification system are only within the Rules and not within the Bill itself. This is unsatisfactory as the Rules may be easily amended as AUSTRAC sees fit. It is unreasonable to expect an organisation such as Baycorp to invest in the significant development of its business infrastructure to cater for a method of customer identification that is so easily subject to change.
- (e) Baycorp believes that electronic verification (and appropriate definitions for independent and reliable electronic information)

should not be left solely to the Rules. They should be included in the body of the legislation.

- (f) If this cannot be dealt with in the legislation, then the safe harbour provisions should be included in Regulations, as these are subject to direct ministerial oversight. Regulations are intended to deal with the more technical aspects of the legislation.

2.3 Privacy Act issues

- (a) As stated, implementation of the regime will be more difficult without the availability of a robust EV system.
- (b) To make the EV system robust, good and reliable data, from a variety of sources, is needed. This is recognised in the draft Rules.
- (c) The credit database maintained by Baycorp is unique within Australia. When combined with other publicly available databases (such as the Electoral Roll - see 2.4 below) it becomes a powerful tool for determining whether a particular person exists, and what level of comfort can be ascribed to the claim that a particular customer is that person. In order to make sure that the best quality data is available for purposes of EV, it is vital that credit database information can be used.
- (d) Section 18K of the *Privacy Act* 1988 (Cth) imposes numerous restrictions on a credit reporting agency from disclosing personal information to other parties.
- (e) The July draft Rules contemplate a reporting entity using credit information for customer identification (for example, the EV safe harbour). This might amount to an authorisation by or under law for the purposes of section 18L (1) (e) of the *Privacy Act*. However, the fact that reporting entities are permitted to use credit information for certain non credit related purposes does not mean that the credit reporting agency (which is unlikely to itself be a reporting entity) is authorised by or under law (for the purposes of section 18K (1) (m)) to use or disclose any credit information for the purposes of reporting entity complying with their obligations.
- (f) For Baycorp to be sure that it is permitted to use, or to disclose any information from a credit information file (other than solely publicly available information, which would be no more useful than the publicly available information itself - section 18K (1)(k)), there needs to be an express legislative provision authorising it to do so. This should be included in the Bill itself, or in Regulations made under the Act. Any Regulations should be passed promptly so that the systems can be developed in time for the commencement of Part 2 of the Bill, currently proposed to take place 12 months after royal assent.
- (g) Baycorp submits that, as a matter of good public policy, it is appropriate that all reliable information should be made available for the purposes of simplifying compliance, and actually identifying money laundering and terrorist financing activity.

- (h) If Baycorp is prevented from using its credit database as part of the data set for providing EV services to reporting entities, it will not have the same capacity to identify, or assist reporting entities in identifying, potential terrorist financing or money laundering activity. Arbitrary distinctions between information sources are inappropriate in the modern world. It is not appropriate to effectively quarantine Baycorp's credit database (which is one of the most accurate and valuable private sector databases in Australia) from use in the fight against money laundering and terrorist financing. This is especially the case as the entire point of the Bill is to enhance Australia's ability to use financial intelligence to track money laundering and terrorist financing activity.
- (i) Accordingly, information that is originally collected for the purposes of credit reporting should become available for the purposes of reporting entities complying with their obligations under the Bill (including, but not limited to applicable customer identification procedures). The quality and accuracy of personal information possessed by Baycorp in its credit reporting agency capacity would greatly assist in improving the robustness of customer identification within Australia.
- (j) In addition, no limitations should be imposed on the type of information that may be made available under the Privacy Act. The draft Rule relating to EV does not contemplate disclosure of an entire credit file, only the existence of a credit file over the relevant period, and information necessary to identify the individual.
- (k) If information held by credit reporting agencies such as Baycorp cannot be used for AML/CTF risk mitigation purposes, this would arguably render Australia non-compliant with the FATF recommendations. Recommendation 4 states that "countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations". Customer due diligence is one of the key obligations highlighted in the FATF recommendations and accordingly, the AML laws should expressly override the Privacy Act to the extent necessary to facilitate the use of credit data in customer identification.
- (l) Baycorp suggests the following wording as a possible provision to be included in the Bill (potentially as a new section 240(2)) or as a regulation:

(XX) *Notwithstanding Part IIIA of the Privacy Act 1988, a credit reporting agency may provide personal information contained in a credit information file to a reporting entity or an accredited person, and may use such information, for the purposes of this Act.*

Alternatively, the Transitional Amendments and Consequential Provisions Bill could be changed so that it makes an additional change to the Privacy Act as follows:

152A Before subsection 18K(1)(m)

Insert:

- (ka) *the information is contained in a record given to a reporting entity or an accredited person (within the meaning of the Anti-Money Laundering and Counter-Terrorist Financing Act 2006) who requested the report for the purposes of that Act.*
- (m) Baycorp also notes that many of the provisions of the AML/CTF legislation will operate as an exception to the Privacy Act. This will inevitably lead to the increased work load of the Office of the Federal Privacy Commissioner. The work load is likely to come in the form of additional inquiries, complaints and requests for advice and training. This inevitably leads to pressure on existing resources.
- (n) Baycorp suggests that additional resources should be allocated to the Office of the Federal Privacy Commissioner to reflect the additional work load and pressure on resources more generally. Baycorp believes that such resources should be in addition to the funds allocated to address the additional privacy issues raised by small business compliance. This will assist with the implementation and compliance issues surrounding AMT/CTF and privacy and help with the efforts to shorten the complaints handling and dispute resolution time frames.

2.4 Electoral Roll access - transitional Bill

- (a) Baycorp's current access to the Electoral Roll is dependent on it having a recognised connection to identification procedures carried out by "cash dealers" under the *Financial Transaction Reports Act* (see *Commonwealth Electoral Act* 1918 (Cth), section 90B(4), Item 5 and section 91A(2C)). In order for that mechanism to continue in operation, Baycorp (or service providers in Baycorp's position) require some form of recognition under the Bill.
- (b) Baycorp believes that the current arrangement for access to electoral rolls is appropriate. Although cash dealers that must carry out the "100 point check" procedure under the FTRA may obtain copies of the electoral roll for this purpose, in many cases they rely on a single information provider to hold a copy so that they can check on individual customers as and when needed.
- (c) The proposed amendments to the Commonwealth Electoral Act in the *Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006 (Transitional Bill)* are in Baycorp's view insufficient.
- (d) Firstly, they would not permit Baycorp to obtain a copy of the Commonwealth Electoral Roll for the purpose of enhancing its databases that are used to provide services to reporting entities.
- (e) Secondly, they would not permit use by a reporting entity of Commonwealth electoral roll information for any purpose *other than* carrying on applicable customer identification procedures. For example, electoral roll data *could not* be used for ongoing customer due diligence, and (depending on the drafting of the Rules) may not be able to be used for re-identification.

(f) Item 13 of the Transitional Bill should be amended as follows:

13 Subsection 90B (4) (at the end of the table)

Insert:

6	A prescribed person or organisation that:	A copy of a Roll (or an extract of a Roll)	(a) on request by the person or organisation; and
	(a) is a reporting entity or an agent of a reporting entity <u>or is [an accredited person / a prescribed organisation]</u> ; and		(b) on payment of the fee (if any) payable under subsection (9)
	(b) carries out, <u>or contributes to the carrying out of,</u> applicable customer identification procedures <u>or other procedures in relation to customer verification or ongoing customer due diligence</u> under the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>		

13B Subsection 90B (10)

Insert:

Accredited person has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

16 After subsection 91A (2C)

Insert:

(2D) For information provided under item 6 of the table in subsection 90B (4), the only permitted purpose in relation to a prescribed person or organisation is for the person or organisation to carry out, or contribute to the carrying out of, an applicable customer identification procedure or other procedures in relation to customer verification or ongoing customer due diligence under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

2.5 Accreditation

- (a) Clause 38 allows for applicable customer identification procedures to be deemed to be carried out by a reporting entity. As redrafted, Baycorp submits the clause is unduly limited. It can only apply when a *reporting entity* has carried out the original procedure.

- (b) The equivalent clause in the July 2006 draft allowed for an *accredited person* - an entity other than a reporting entity - to carry out customer identification procedures. Where this happened, a reporting entity could rely on a customer identification procedure carried out by the prescribed entity, in circumstances specified under the Rules.
- (c) Baycorp suggests that draft sections 34A (3) of the July draft Bill should be reinstated as a new section 38(2) of the Bill currently under review. This will add flexibility.
- (d) In particular, it will facilitate the development of third party service providers that can verify the identity of persons and provide customer identification and verification services to reporting entities. Baycorp's proposal is that any third party service provider (and the identification procedures that they would use) would be subject to AUSTRAC approval.

2.6 Availability of Rules and consultation

- (a) Many procedures relevant to customer identification depend on methods and concepts to be defined in AML/CTF Rules to be released by AUSTRAC. Final Rules are not yet available. Although customer identification requirements are not proposed to commence operation until 12 months after royal assent is given to the Bill, it is important that the Rules are available long before the obligations commence.
- (b) Of course, it is necessary for reporting entities to develop appropriate systems and determine what their own applicable customer identification procedure will be.
- (c) However, from Baycorp's perspective it will also be necessary to develop applications and customer interfaces that can deliver the necessary data to facilitate customer identification. Adequate time must be allowed after the AML/CTF Rules are finalised so that Baycorp can identify the requirements of reporting entities and then develop the relevant systems. Accordingly, Baycorp believes that if the final Rules are not available when the Bill commences, the customer identification requirements should not commence until 12 months after the final rules become available.
- (d) Further, Baycorp submits that it would be appropriate for Baycorp to be closely involved with AUSTRAC and industry in the development of any Rules relating to electronic verification.

2.7 Integrated Public Number Database (IPND)

- (a) Baycorp notes that the proposed Telecommunications Amendment (Integrated Public Number Database) Bill 2006 will make changes to the Telecommunications Act 1997. Specifically, the Telecommunications Amendment (Integrated Public Number Database) Bill provides that the information contained in the IPND may only be used to conduct research that is considered in the public

interest. Subject to a number of exceptions, the use of information contained in the IPND for any other purpose is expressly prohibited (see sections 267, 277 and 278 of the Telecommunications Act 1997).

- (b) Baycorp submits that there needs to be express provision allowing information contained in the IPND to be used for identity verification purposes. Baycorp suggests the following wording as a possible provision to be included in the Bill.
 - (xx) *Notwithstanding section (xx) of the Telecommunications Act 1997, information contained in the Integrated Public Number Database may be used for the purposes of complying with this Act.*
- (c) Alternatively, the Transitional Bill needs to revise to include the required changes to the Telecommunications Act.

3 Conclusion

Baycorp thanks the Senate Legal & Constitutional Affairs Committee for the opportunity to make a submission and would welcome the opportunity to expand and explain on the matters raised as part of the Senate's standing committee hearing process or, if required, as part of other consultation processes and forums.
