

17<sup>th</sup> November 2006

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Phone: +61 2 6277 3560  
Fax: +61 2 6277 5794  
E-mail: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Secretary

**Inquiry into Provisions of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006, and the Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006**

ING Bank welcomes the opportunity to provide comments to the Senate Legal and Constitutional Committee into the above Bill.

ING Bank (Australia) Limited has been an authorised deposit-taking institution since 1994. ING Bank is part of the global ING Group, one of the world's largest financial institutions offering banking, insurance and asset management to more than 60 million clients in over 50 countries. Along with high interest, fee-free savings products, the ING DIRECT Savings Maximiser and Business Optimiser, ING Bank also offers a range of mortgages.

ING Bank recognises the importance of an effective and efficient Anti-Money Laundering (AML) regime to counter money laundering and terrorist financing. It strongly supports the Government's commitment to introducing an enhanced AML regime that meets Australia's international obligations and has welcomed the opportunity to be involved in the formulation of that regime.

ING Bank has been actively involved in the consultation process being lead by Senator the Hon Chris Ellison, the Attorney General's Department and AUSTRAC. We have also previously submitted and presented to the Senate Legal and Constitutional Committee during their initial inquiry into the Bill in March 2006. We appreciate the opportunity to provide additional commentary and feedback to the Committee.

Whilst we recognise the Attorney General's Department and AUSTRAC have acknowledged industry concerns throughout the consultation process, we still have some key issues which remain unresolved for the financial services industry. We outline them in this submission under the following key headings:

1. Rule Development
2. Commencement Dates
3. Consequential Amendments required for the Privacy Act

We also support and have contributed to the Australian Banker's Association submission to the Committee.

## 1 Rule Development

ING Bank acknowledges the Government's intention to have the Bill passed by Parliament by the end of 2006. However, the latest version of the Rules were released in July 2006 and these Rules are still currently in a draft format. In addition, there are still outstanding Rules which are critical in assisting the industry to understand the full impact of the Bill.

The Rules are a key component of the AML/CTF package and without the full package of finalised legislative instruments, financial institutions cannot begin to fully plan and start the implementation of the Bill's obligations.

We refer to the views expressed by the Committee following the initial inquiry into the Bill in March / April 2006. Specifically, the Committee noted "since much of the detail of the regime is contained in the Rules, the committee believes it is imperative that the complete set of Rules be released for comment prior to the final version of the bill being introduced into Parliament."<sup>1</sup>

ING Bank has received information that AUSTRAC may not finalise critical rules until next year. Whilst compliance with such Rules is not required for 6, 12 or 24 months following Royal Assent, implementing the changes required to fully comply within these timeframes will take time. For example, AUSTRAC has committed to providing Rules at the end of March 2007, relating to sections of the Bill that require compliance 12 months after Royal Assent. These sections, and the related Rules, relate to the key obligations of the Bill, namely identification of customers and the development of an AML Program. It is highly likely that Financial Institutions will need to change their processes, systems and procedures and undertake significant training of staff in order to comply with these requirements. If, as envisaged, the Rules are not released until March 2007, this will effectively only allow Reporting Entities nine months to significantly change systems, processes, procedures, train staff and educate customers regarding the new requirements.

Whilst ING Bank appreciates that prompt action needs to be taken so that Australia is compliant with the FATF Recommendations, we request that the Committee consider the impact of this on Reporting Entities.

## 2 Commencement Dates

ING Bank also wishes to express concern regarding the commencement dates provided for in Section 2 of the Bill. We note that the Government has taken a staggered approach to implementation, with some requirements applicable from the date of Royal Assent and the remainder within 6, 12 or 24 months following Royal Assent.

ING Bank believes that commencement dates should begin, not from the date of Royal Assent, but from the date that Rules applicable to the relevant Part have been released and finalised. Alternatively, Royal Assent should not occur until the Rules have been finalised. This is because, whilst in theory, implementation can begin from date of Royal Assent, the detailed obligations are contained within the Rules and implementation can not realistically commence until Reporting Entities are aware of the requirements outlined in the Rules.

## 3 Consequential Amendments required for the Privacy Act

As mentioned in our previous submissions and hearings with the Committee, ING Bank offers banking services to customers through the use of third parties, over the internet and by telephone. With no branch network, ING Bank's primary distribution network for its savings products is electronic: approximately 70% of ING DIRECT "Savings Maximiser" customers

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<sup>1</sup> The Senate Legal and Constitutional Committee, Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill, Hansard, April 2006

use the internet to conduct their banking, with the remainder of customers using telephone banking.

ING Bank strongly supports the Government's commitment for a regulatory regime that allows non face-to-face verification procedures, and in particular electronic verification. Electronic verification is widely used and accepted by financial institutions and regulators across the UK and the US.

ING Bank has closely considered the draft Rule that outlines the "safe harbour" in relation to electronic verification. For the benefit of the Committee, in order to verify a customer's identity electronically using the safe harbour outlined by AUSTRAC, the Reporting Entity must verify:

- (i) the customer's name and the customer's residential address using reliable and independent electronic data from at least two separate data sources;
- (ii) the customer's date of birth using reliable and independent electronic data from at least one data source; and
- (iii) that the customer has a credit or transaction history for at least the past 3 years

### **3.1 Credit History**

ING Bank recognises that it is not the Committee's intention to provide comment or views on the Rules, however the Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006 must consider the implications of the safe harbour requirements on the Privacy Act. Currently, Parts 18K and 18L of the Privacy Act restrict both the disclosure by a credit reporting agency and the use by a credit provider of credit reports generally for any other reasons except for the provision of credit (or related purposes). These sections currently prevent a credit report being obtained for the purpose of identification.

ING Bank submits that, in order to facilitate the "safe harbour" contained in the draft Rule, a provision must be inserted in the Transitional Provisions and Consequential Amendments Bill authorising Reporting Entities to have access to information held within credit reports for the limited purposes of verification of identity in accordance with the Reporting Entities' AML/CTF programs, and authorising credit reporting agencies to disclose such information to Reporting Entities.

### **3.2 Date of Birth**

Currently, the only available sources for verifying a customer's date of birth electronically are restricted to the customer's credit information, as part of the credit bureau. Other currently available data sources do not hold the customer's date of birth, and therefore there will be limited opportunity to electronically verify these customers and comply with the safe harbour provision if they do not have a recent credit profile.

In addition, under the Privacy Act (Part 18F) credit reporting providers are obliged to delete certain information on a credit file within five to seven years. This will potentially exclude customers, who do not represent a money laundering / terrorist financing risk, from being electronically verified if they have not applied for credit in some years.

We recommend that these inconsistencies with the Privacy Act be addressed in the Transitional Provisions and Consequential Amendments Bill as currently, the two pieces of legislation do not allow for the effective verification of identity.

ING Bank welcomes the opportunity to provide further information. Adriana Kvesic, AML Program Manager can provide further information, or we are available to meet with you to

discuss the matters raised in this submission if required. (Telephone: (02) 9028 4410, e-mail: adriana.kvesic@ingdirect.com.au)

Yours sincerely

**Mark Mullington**  
**Executive Director, Risk Management**  
**ING Bank (Australia) Limited**

ABN 24 000 893 292

140 Sussex Street  
SYDNEY NSW 2000

GPO Box 2299  
SYDNEY NSW 2001