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Dear Sirs/Mesdames

Westpac Group (including BT Financial Group) Submission on the

- **Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Bill 2006 (Bill)**
- **Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006 (Transitional Bill)**

We thank you for the opportunity to comment on the abovementioned legislative package and commend the Government on progressing to this point in a consultative, proactive and positive manner.

We are very keen to appear before the Senate Legal and Constitutional Committee and look forward to presenting our key issue, i.e**. Customer Identification Standards - Individuals**. Whilst this issue relates to Rules as currently drafted, rather than the Bill, it reflects a fundamental matter of policy and is one that underpins the whole AML/CTF regime. We therefore believe that it needs to be considered in the context of the Bill.

A number of other important policy issues still need to be resolved and these are contained in submissions by the Australian Bankers Association (ABA) and the Investment & Financial Services Association Ltd (IFSA). We endorse those industry submissions to the extent that they cover our issues.

This submission is divided into two sections:

- Our primary issue in relation to Customer Identification Standards – Individuals.
- Other key issues that, in our view, require attention prior to the Bill being enacted.

1. Customer identification standards- individuals

One of the objectives of the AML/CTF Bill is to protect the integrity of the financial system and reputation of Australian business.

Westpac believes a robust system of individual identification is the cornerstone of the fight against money laundering and terrorism financing (ML/TF). We believe both industry and Government each has a role to play in developing and maintaining a strong identification system.

Industry should adopt processes that both establish that their customer exists and that **they are who they say they are.** We believe this to be a core tenet of the AML/CTF legislation. We feel that strong identification processes are those that are structured with a clear link between the documents or credentials presented and the individual themselves.

The safe harbour provisions outlined in 2.2.11-14 of the Draft AML/CTF Rules provide one way to identify customers where the ML/TF risk is medium to low. Indications from overseas jurisdictions show that a significant percentage (98-99.5%) of individual customers were assessed as low to medium ML/TF risk. As these percentages are highly likely to be similar in Australia, these safe harbour provisions will become the standard for the majority of product offerings and customer relationships in the Australian marketplace.

In recent months Westpac highlighted concerns with the drafting of the safe harbour provisions. These concerns stem from the fact that the standards outlined in the safe harbour provisions present a weaker form of identification compared to the current Financial Transaction Reports Act (FTRA) standards and are inadequate in establishing that the person is who they are purporting to be. Given the likely percentage of customers who will be assessed as low to medium ML/TF risk, the current FTRA standards will be substantially replaced with the safe harbour provisions. This would represent a "wind-back" of the FTRA, weakening the financial system and increasing rather than decreasing the risk of ML/TF as well as fraud and identity theft for Australia.

The safe harbour standards proposed **do not** align with nor support the Government's Access Card initiative and the associated robust Secure Customer Registration Service standards (refer Hon. Joe Hockey MP – Minister for Human Services speech to National Press Club, 8.11.06).

We also hold that the concept of a safe harbour is inconsistent with a risk based approach. Reporting entities should be free to determine processes and standards that will mitigate the level of ML/TF risk that they determine to be appropriate to the circumstances (including for example whether face-to-face identification is required). In this way entities are directly accountable for the consequences of their approach.

1.1. Safe harbour provisions – documentation based verification

The documentary standards as set out in the safe harbour provisions are weaker than the FTRA as they permit verification using less information than today. Under the safe harbour, identity can be verified using only a driver's licence. While the current system has its flaws, multiple documentation is required to pass the 100 point check.

This safe harbour standard could be made workable if industry had some way to check on-line with the issuing agency that the documents presented are legitimate.

A suitable Documentary Verification Service (DVS) would provide the necessary capability to ensure a strengthened process. This would not in any way require the sharing of confidential information between the agency and the financial institution – it could be as simple as a yes/no validation.

1.2. Safe harbour provisions – electronic verification procedure

Westpac strongly supports initiatives that develop electronic sources of identification and verification (EV) to the same standards as we outlined above.

While there is a strong demand to access EV sources, the current capability existing in the Australian marketplace does not provide this functionality. The EV Rules as currently drafted will assist in confirming the existence of an individual but fall short of reasonably satisfying the obligation to ensure that the person is who they claim to be. The increasing incidence of identity theft heightens our concerns particularly in circumstances where identification could take place without face-to-face contact.

An example that permits exploitation of the EV standards is a situation where one individual may gain access to another's basic information (name, address, date of birth) and use this information to gain access to products and services remotely, i.e. the verification process would only go as far as determining existence of the individual and that the applicant is in fact the person they claim to be.

1.3. Safe harbour provisions – recommendation

We submit that the Government should direct AUSTRAC to remove the safe harbour provisions for both documentary and electronic verification from the Draft Rules.

2. Other key issues that require attention prior to enactment of the Bill

Points 2.1 and 2.2 below relate to matters which are covered in the ABA's submission, but we have some further views that we wish to specifically highlight in this submission due to their significance to Westpac.

2.1. Framework for ongoing Rule development and implementation timetable

The structure of the legislation is such that much of the operational elements are determined by Rules developed by AUSTRAC. There is no framework proposed to manage the ongoing development of Rules including AUSTRAC's obligations to consult, how industry feedback will be incorporated and how compliance timelines will be set.

- The absence of such a framework will result in **major challenges to the industry** in terms of the intensive planning required for relevant process and IT system changes and the ability to meet implementation timeframes.
- There will be significant **impacts to customer relationships** without a clear framework and associated planning.

The current **implementation timetable** as set out in the Bill includes a number of obligations that require commencement within the immediate to short term post enactment. Many of these obligations do not as yet have associated Rules.

We acknowledge the significant progress made to date and whilst we are closer to commencement of a transition period, we do not believe that the Government (due to some key Bill and Rules issues) and industry will be ready to commence implementation until three months later than is currently contemplated. The three month period is based on our understanding of what was to be in place when implementation began, what still needs to be done and the time consumed developing the Rules that have been developed so far. The point of the staggered approach was to recognise the lead time for industry to plan and implement the necessary obligations as set out in the Government timetable

Industry's endorsement of the staggered implementation timetable was based on the assumption that **all** Rules impacting any element to be implemented in the first three years would be complete before the Bill was given Royal Assent. If a part of the Bill is to commence 6 months after Royal Assent, the Rule should be available at time of Royal Assent. If, in this case, the Rule becomes available three months after Royal Assent, that part should then not commence for 6 months after the Rule becomes available.

We believe that a comparison with the Financial Services Reform (FSR) is instructive. The AML/CTF legislative package is significantly larger and covers a much broader range of products/services than the FSR. The FSR legislation was passed in March 2002 with a two-year transitional period for retail customers and an extension to 2006 for wholesale customer services.

We strongly believe that the commencement date/s for implementation should shift in accordance with availability of agreed Rules.

Taking the above into consideration and based on previous experience and work with Government, an extension period of approximately three months (from the original commencement date of 1 January 2007) should be sufficient to develop the necessary Rules required to commence the implementation period, i.e. a commencement date of 31 March 2007.

2.2. Overseas permanent establishments (OPE's) and extra-territorial obligations

Whilst some exclusions exist in the new Bill, they do not completely exclude OPE's, such as New Zealand (NZ) where legislation is currently still being developed. We support the ABA position in terms of extending the time frame for OPE obligations.

There is a requirement under the AML/CTF Programs Rule (para 8.9) for reporting entities to put in place risk based systems and controls in respect of any OPE's through which it provides designated services to the extent it is 'reasonable and practicable to do so having regard to local laws and circumstances'.

In addition, where a foreign country, for example NZ is regulated by AML/CTF legislation that is comparable to our own, only minimal additional controls need to be considered.

Westpac has substantial operations in NZ, and in the absence of a comparable regime, will be required to implement Australian compliant AML/CTF risk based systems and controls in that jurisdiction.

NZ is in the process of drafting and implementing its own AML/CTF legislation. However, we understand that the timing of this legislation is at a slight delay to our own.

It is therefore possible, depending on the transition timeline, that many Australian reporting entities will have to "roll-out" AML/CTF procedures twice in NZ as a result of Australia's regime having extra-territorial application. NZ has existing suspicious transaction reporting obligations, and this will operate to mitigate NZ being a target for money laundering in the interim.

In the interest of Trans-Tasman harmonisation, Westpac is seeking an exemption from the requirement to meet Australian AML/CTF requirements for permanent establishments in NZ, until NZ legislation in this area has been implemented and assessed.

Please do not hesitate to contact Andrew Smith (02 8253 1129), Victoria Somlyay (02 8253 3138) or myself in the event that you would like to discuss any of the above issues further.

Yours sincerely

Andrew Carriline
General Manager