

privacynsw

Office of the NSW Privacy Commissioner

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Our ref: A06/051  
Your ref:

Jonathan Curtis  
Committee Secretary  
Senate Legal and Constitutional Legislation Committee  
Department of the Senate  
Parliament House  
CANBERRA ACT 2600

3 MAR 2006

Dear Mr Curtis

**Inquiry into the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005**

We are writing with respect to your invitation received at this Office on 15 February 2006 to provide comments in relation to the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005.

We appreciate strict timeframes the Committee has to follow in conducting the inquiry and have endeavoured to comply with tight deadline for making submissions as nominated by the Committee. Brevity of our contribution is largely due to the time factor necessary to be followed.

Our main concern is in relation to a large amount of personal and at times highly sensitive information that reporting entities will be required to collect from individuals as part of Customer due diligence under Draft AML/CTF Rules for Discussion- clause 74 of the Bill. It is our experience that many small businesses are either not very familiar with best privacy practice or choose not to follow it for a variety of reasons, predominantly because they do not have an obligation under the law to protect personal information of individuals. We receive a steady stream of complaints from members of the public alleging privacy breaches by medium and small businesses of the like that are likely to become reporting entities under the Bill. Unfortunately, under the current legislative regime neither state nor federal privacy agencies have effective powers to deal with such complaints.

We note you are aware of the above issue and seeking comments on the privacy aspect of the Bill. It is our strong opinion that legal obligations should be imposed on reporting entities to protect customers' personal information. This measure would be in public interest and would show the government's commitment to respect of individual privacy. It would also assist in achieving the main objects of the Bill in combating money laundering and financing of terrorism, as individuals not involved in illegal activities would be more willing to provide timely and accurate information about themselves knowing that this information will not be misused in the hands of reporting agencies.

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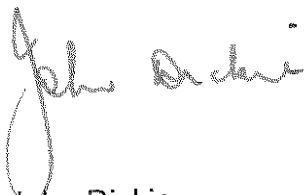
We are of the view that customers' personal information should be protected by imposing compliance of reporting entities, their agents and bodies accredited under AML/CTF Rules with the National Privacy Principles for private sector organisations as set out in the *Privacy Act* 1988 as a minimum. There is an argument that, given the scope and scale of personal information collected by reporting entities, privacy protections afforded to individuals affected should preferably be even higher than those in the *Privacy Act* 1988.

It would appear to us that the most expedient way to legislate for protection of personal information is by inserting relevant provisions into the Bill and by providing for appropriate civil penalties. Another option would be to amend the *Privacy Act* 1988 accordingly and to enact the amendments in time to coincide with the commencement of the AML/CTF legislation. May we suggest you take a view from the Office of (Federal) Privacy Commissioner on this issue.

Another aspect of the Bill likely to have privacy implications is the requirement on a reporting entity to assign each of its customers with a risk classification. It appears that an arbitrarily determined level of risk may disadvantage customers in their dealings with reporting entities. Also, if an adverse level of risk assigned to a particular customer were made known to a third party, it would have a potential to detrimentally affect that customer's relationships with the third party. Perhaps the arrangements can be improved by reporting entity having an obligation to inform its customers of the levels of risk they been assigned and the reasons. Even more important is the need to prevent reporting entities from disclosing levels of risk of their customers to third parties. We would recommend creation of a separate offence prohibiting such a disclosure similar to the 'Offence of tipping off' under section 95 of the Bill.

If you have any queries, please contact Alex Barski at Privacy NSW on (02) 9228 8581. Please quote the reference number at the top of this letter.

Yours sincerely



John Dickie  
Acting Privacy Commissioner