

Senate Legal and Constitutional Legislation Committee

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

PUBLIC HEARING

TUESDAY, 14 MARCH 2006

Questions on Notice

Question 1 (Ms Liz Atkins – AUSTRAC p. 80, 81, *Proof Hansard*)

CHAIR—In that case, this will be a longer discussion. The Office of the Privacy Commissioner makes quite clear what I would describe as its significant concerns about the arrangements that will obtain under the bill as it is currently drafted. These concerns are not just in relation to AUSTRAC's capacity to hold information already but that under the new bill other federal, state and territory agencies, including welfare and support agencies like Centrelink and the Child Support Agency, will retain the ability they currently have to access personal financial information held by AUSTRAC, and then AUSTRAC will be able to decide which other agencies, subject to the provisions in division 4, will be permitted to access personal information that AUSTRAC retains.

They then go on to say that replacing the existing provisions of the FTR Act with new legislation that has a greater scope and impact does not actually justify the continuance of the present data sharing arrangements, particularly in relation to welfare and assistance agencies. The Office of the Privacy Commissioner put quite forcefully that they believe a statement of the legislative objects of the exposure bill should 'reflect an intention to allow such agencies to scrutinise the AUSTRAC data for their purposes'. So the bill should be clear on that. It should not be a matter of people having to work out who has access to what and second-guess the process. The bill should make it clear, and this committee has always been quite explicit on those points. We also believe these things should be made clear in legislation.

The office then raise three factors which they believe support the need for careful review of access provisions to PI which is held by AUSTRAC under the exposure bill. They include, firstly:

The likely increased volume and richness of personal data that will be available for collection by AUSTRAC—

On the face of it, that is absolutely compelling. There is no argument there. Therefore, that will be accessible by other agencies for purposes which are, as the bill is currently structured, not related to anti-money laundering and counter-terrorism activities. It will just be accessible. Secondly:

the extent to which the community may be aware that personal information provided by individuals in the course of a wide range of financial and commercial transactions may be scrutinised by a number of government agencies;

And thirdly:

the extent to which the exercise of the discretion reposed in AUSTRAC to make its data accessible to other agencies is a transparent and accountable process.

The office of the commissioner makes the observation that that process should be 'proportionate to the breadth of the scheme and the amount of data the designated agencies will have access to'. They make some suggestions in relation to an alternative approach to access. For example, they note that in section 99(1) of the exposure bill, AUSTRAC is currently permitted to authorise in writing other

agencies to access AUSTRAC-held data for purposes of ‘performing that agency’s functions or exercising its powers’.

If you look at the substantive legislation that establishes any of those agencies, from the tax office to Centrelink, they can be defined very broadly and in very general terms in any of those other pieces of legislation. So the commissioner suggests that it might be appropriate for those purposes to be defined in greater specificity. They also suggest that 99(1) could be amended to be much more privacy sensitive, by narrowing the purposes for which information can be accessed to those purposes which are consistent with and relevant to the underlying policy intent of the AML/CTF regulatory scheme. They also suggest that the section could be amended by requiring transparency, including by mandatory consultation, and oversight over how that authority is exercised by making the written authority made by AUSTRAC subject to parliamentary scrutiny and disallowance.

In light of the current discussions about shared information, identifiers and things like that, the Privacy Commission makes some very valid points about the information which would be held by AUSTRAC and the powers that AUSTRAC will have to gain access to other agencies for very broad and completely general purposes. Confining that to purposes to do with anti-money laundering and counter-terrorism financing would seem—to me, at least—to be a sensible restriction. I am interested in AUSTRAC’s comments. That is a lot of information out of the Privacy Commissioner’s submission. I understand that. I had hoped that that would be something which could have been brought to your attention earlier. If you want to take that on notice, we would appreciate your comments.

Ms Atkins—I am happy to take it on notice. Some of the issues are issues that the department will need to comment on, and some are for our partner agencies. Could I say, though, that section 99(1) of the bill allows AUSTRAC to authorise specified officials of specified designated agencies. It does not allow us to decide which agencies may have access. The designated agencies are those agencies listed in section 5 under the definition. That provision is about what we do now, which is not specifically set out in our act. In our MOUs with our partner agencies, we actually specify a limited number of officers who have access to our information. This is a provision that legislatively for the future will require us to specify them. So it is not like AUSTRAC can say, ‘These are more agencies, other than are on the face of the bill, that can have access to our information.’

CHAIR—But it still does not avoid the point that agencies like Centrelink, the tax office or child support already have access under your legislation.

Ms Atkins—That is right.

CHAIR—The bill leaves that structure based on the aims and objectives of those agencies under their legislation which, as the commissioner observes, can be very broad and very general, not related at all to the purposes for which you are collecting the information which is supposed to be, under this bill, anti money laundering and counter-terrorism financing.

Ms Atkins—Some of this comes back to the questions about the definition of money laundering and the fact that the predicate offences for money laundering are extremely broad. We will take it on notice, but some of those issues are matters of government policy about who should have access to our information and for what purposes.

Answer

It is noted that subsection 99(1) of the AML/CTF Bill does not permit AUSTRAC to authorise agencies other than those listed in the definition of “designated agency” to have access to AUSTRAC information. AUSTRAC may only specify an agency from those listed in the definition and access is then limited to specified officers of that agency.

Access by officers of designated agencies is to be for the purposes of their agency’s functions and powers. The agencies included in the list of designated agencies have a range of functions and it would be difficult to draft a provision which provided officers of those agencies with the flexibility required to carry out their functions if those functions were limited to matters related to the Bill. The

Bill does, however, place limitations on the use designated agencies can make of AUSTRAC information, by limiting the officers who may have access to specified officers. In addition, the Privacy Act applies to AUSTRAC's Commonwealth partner agencies except for ASIO and subsection 99(2) of the Bill requires AUSTRAC to seek undertakings from State and Territory partner agencies that they will comply with the Privacy Act.

The FTR information available to the designated agencies assists them to stop illegal conduct which would otherwise result in the laundering of money. If the agencies were not able to use the information to identify and prosecute offenders for predicate offences, where money laundering has not occurred because of the timing of the identification and investigation of the predicate offence, then the success of Australia's very effective anti-money laundering program would be severely diminished.

Question 2 (Ms Liz Atkins – AUSTRAC p. 82, *Proof Hansard*)

CHAIR—Obviously the committee does have some concerns in relation to the privacy issues—and the issue was mentioned in both the Office of the Privacy Commissioner's submission and the APF's submission. If there are issues that you see that are changing with the iterative process of the bill or other matters that you can readily address to give the committee some assistance we would be grateful.

Ms Atkins—We will do that.

Answer

The Privacy Commissioner raises a number of other issues in her submission, as do the Australian Privacy Foundation. Most of these relate to policy and to the Bill, rather than the Rules being drafted by AUSTRAC. Issues about coverage of the Privacy Act are being dealt with between the Privacy Commissioner's office and the Attorney-General's Department. In addition, the Department and AUSTRAC have been involved in discussions with privacy, civil liberties and consumer groups. All matters raised during the consultation period, including in submissions to this Committee, will be taken into account in reviewing the drafting of the Bill and the Rules. AUSTRAC is consulting with the Privacy Commissioner's office on the draft Rules and on guidance which will underlie the Rules, both directly and through its Privacy Consultative Committee, which also includes privacy, civil liberties and consumer groups.

The Privacy Commissioner raises the question of the threshold for reporting of significant cash transactions. AUSTRAC's view is that \$10,000 remains the appropriate level for this threshold. While the number of transactions at this level has increased, this amount remains significant. The Bill does provide for the threshold to be raised, as well as lowered, by regulation, not by AUSTRAC. The amount will be kept under continuing review and if it appears that it should be raised, recommendations will be made to the Minister for Justice and Customs about the need for regulations.

It is noted that since the Australian Privacy Foundation's submission and since the hearings of the Committee, the policy in relation to customer identification has changed. The Bill will be redrafted to provide for customer identification programs, to be developed by reporting entities, which take into account the level of risk in determining

what identification process is to be applied to particular customers. Draft Rules have been prepared reflecting this change. Those Rules are currently with industry working groups but will be made more widely available after industry's views have been received. This will include discussions with the Privacy Commissioner's office.