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

Dear Secretary,

Inquiry into the Financial Transaction Reports Amendment Bill 2006

This submission is provided by the Australian Bankers' Association on behalf of the AML/CTF Technical Working Group (TWG) which represents finance sector associations and individual institutions engaged in the AML/CTF policy consultation process.

The proposed FTRA Amendment Bill is intended to more closely align customer information requirements for international funds transfers in the Financial Transaction Reports Act (FTRA), as amended by the Anti-Terrorism Act (No.2) 2005 (ATA2), with the originator information requirements for international and domestic funds transfers proposed in the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 (AML/CTF Bill).

In this regard, the TWG generally supports the Bill and gratefully acknowledges the Government's initiative, which recognises issues debated within the TWG over recent months. However, we raise the following issues for the Committee's consideration:

- The Bill creates a heightened and, in the belief of the TWG, unintended risk of fraud in its requirement to include credit card numbers with outward remittances funded from credit card accounts. We seek a small amendment to avoid this occurrence;
- The Bill still raises some practical concerns relating to international funds transfer instructions (IFTIs), particularly those relating to foreign transactions that pass through Australia. We seek a

clarification in the Explanatory Memorandum and a minor amendment to the Bill to deal with these concerns;

- There are still subtle but operationally important differences in the precise information required to accompany IFTIs under the FTRA and the AML/CTF Bill. The TWG seeks the requirements for international and domestic funds transfers to be the same. We discuss these differences in the 2 pieces of legislation and explain the TWG's preferences below; and
- The TWG strongly urges the Government to conduct an effective public awareness campaign to minimise adverse customer reaction to these changes.

Section 2 – Subsection 17FAA - Definition of account

The definition of account includes, at 17FAA(a), a credit card account. The practical effect of this proposed amendment is that when providing customer information on IFTIs, the account number that must now be included, if an international funds transfer is funded by credit card, is a credit card account number.

Credit card account numbers correspond to credit card numbers, i.e., the number which is used to signify transaction authorisation for non-signature based purchases, for example telephone and internet purchases. Disclosure of a credit card number creates a much greater risk of fraud than disclosure of other account numbers.

The TWG believes that the supply of credit card numbers with IFTIs would unacceptably compromise credit card security as there are no mechanisms available to ADIs to control or protect this information once it has been sent the destination institution.

The TWG proposes that credit card account numbers be excluded from the definition of account for the purposes of Division 3A. The TWG notes that the same concerns arise in relation to debit and charge card arrangements and suggests that section 17FAA be amended as follows:

17FAA Definition of account

In this Division:

account includes:

- (a) a loan account (other than a credit card account); and*
- (b) an account of money held in the form of units in:*
 - (i) a cash management trust; or*
 - (ii) a trust of a kind prescribed by the regulations;*

but does not include a credit or debit card account which adopts a card number corresponding to the cardholder's account number.

To avoid doubt, it is immaterial whether:

- (a) an account has a nil balance; or*
- (b) any transactions have been allowed in relation to an account.*

The practical effect of this exclusion would be that where a credit, charge or debit card account is used to fund an international funds transfer, an identification code may be used to satisfy the customer information requirements in the IFTI.

Section 4 – Subsection 17FA(1)(b)

Our members wish to clarify their understanding of the obligations facing an ADI in passing on payment messages originating from, or destined for, their offshore branches or subsidiaries.

Members typically operate hub and spoke payments messaging systems involving a hub computer located in Australia and spoke connections to their offshore branches and subsidiaries. Payment instruction messages sent by other financial institutions to such offshore sites (or vice-versa) are routed through hub computer systems in Australia. Our members do not consider that they are the "senders" of such messages for the purposes of section 17FA, but seek the Government's confirmation of this understanding.

Our members draw a distinction between messages merely routed via systems in Australia and messages forming part of a payment chain in the sense contemplated by clause 58 of the AML/CTF Bill.

Our members are concerned that in passing on payment instructions as part of a payment chain, Part II Division 3A of the FTRA may treat them as "senders" of the message, and require inclusion of full originator information even though our member is not the originating institution, and unable to collect the information directly from the sender of the payment. This is because s.17FA(1)(b) only grants an exemption where the ADI sending the message acts on behalf or, or at the request of another ADI. The definition of "ADI" in section 3 of the FTRA does not extend to overseas or international financial institutions. The practical effect of this would be to require ADIs to block or hold over serial payments until the customer information can be completed.

The TWG does not believe that this is the Government's intention and considers, consistently with clause 58(7) of the AML/CTF Bill, that where an ADI receives an IFTI as an interposed person in an international payment chain, the ADI should be at liberty to pass the IFTI on to the next institution in the payment chain, provided it contains so much of the originator information as appeared in the inward IFTI.

In support of this view, the TWG observes that:

- (1) A key purpose of the Bill is to align the processes which institutions must install in order to comply with Division 3A and Part 5 of the AML/CTF Bill;
- (2) The Government's approach (stated in subsection 17FB(5) of the FTRA) is to allow receipt of inward payments which lack originator information in Australia, subject to the obligation to request originator information in future messages if directed by AUSTRAC (sub section 17FB(2)). It would not be consistent with this approach for ADIs to be required to block or hold over payments destined for recipients outside of Australia; and
- (3) The Director's power under subsection 17FB(2) does not depend on whether the end recipient of a payment chain is located in Australia or elsewhere.

To redress these issues, the TWG recommends:

Firstly, that a statement be included in the Explanatory Memorandum to the effect that Section 17FA is not intended to apply to payment instruction messages passing between overseas financial institutions and offshore sites that are merely routed through computer systems in Australia.

Secondly, the TWG recommends that s.17FA(1)(b) be altered to read:

- (b) *the ADI is acting on behalf of, or at the request of, another person who is not:*
 - (i) *an ADI; or*
 - (ii) *a foreign banking institution that holds a correspondent banking relationship with the ADI.*

Section 10 – Subsection 17FA(3)

The policy objective of both the FTRA Amendment Bill and the AML/CTF Bill is to ensure that the origin of the funds can be traced if it becomes necessary to do so for law enforcement purposes.

Both will deliver this outcome and satisfy Financial Action Taskforce (FATF) Special Recommendation VII which requires countries to be able to trace all wire transfers.

However, the wording of 17FA(3) and the wording of Part 5 of the AML/CTF Bill in regards to IFTIs is different. The TWG considers it fundamentally important that both pieces of legislation be aligned to ensure that there is no change at all in the obligations of its members as the FTRA is replaced by the AML/CTF Bill when it passes into law. Any change in these obligations may require costly system re-engineering.

The TWG wishes to raise a specific issue with both clause 17FA(3) and Division 2 of Part 5 of the AML/CTF Bill.

At present, the Government proposes separate standards of originator information for domestic and international payments respectively. Under the AML/CTF Bill as drafted, members must include, as part of the "appropriate originator information", an account number if it exists or alternatively a unique reference number (as defined in clause 5). The preference for an account number is not mandatory for domestic payments, in relation to which our members may choose either an account number or a reference number.

In the view of our members, the distinction is unwarranted. Our members draw the Committee's attention to the following matters in support of this view:

- (1) Under clause 58(2) of the AML/CTF Bill, originating institutions will be obliged to obtain full originator information in relation to both international and domestic payments;
- (2) Under clause 58(4) of the AML/CTF Bill, originating institutions will be obliged to supply that information to a destination institution on receipt of a written request. These obligations satisfy the policy underlying the originator information provisions, namely that meaningful originator information be readily available at the destination point of all payments;
- (3) Reference numbers in the wrong hands pose a much lower risk of identity fraud than account numbers; and
- (4) There is no material difference between the utility to a destination institution of a reference number which identifies the sender of the payment as opposed to the sender's account number.

Engineering systems to seek an account number initially, and default automatically to a reference number in its absence, is a costly task serving no discernible policy or law-enforcement objective.

The TWG recommends importing the language in section 68 of the AML/CTF Bill to the FTRA and that this section apply to both domestic and international payment instructions in each case.

Sections 3-9 and 11-16.

These sections replace the term 'cash dealer' in the FTRA with 'ADI'. The effect is to make these provisions apply only to authorised deposit-taking institutions (banks) and not to non-bank money remitters.

We understand the reason for this is that non-bank remitters do not send instructions to transfer money from particular accounts in Australia and pay them into particular accounts in another country. Rather, they send an instruction to their office in another country to pay money already held by the remitter in that country to the end customer.

This situation creates a competitive imbalance as non-bank remittance providers will be subject to less onerous requirements than banks that are providing the same service.

We have been assured in discussions with the Attorney-General's Department that this situation as a temporary measure and that competitive neutrality will apply once the draft AML/CTF legislation becomes law and all money remitters – whether banks or non banks – will be obliged to conform with the same law. We accept these provisions on the basis of this assurance from the Government.

Public Awareness

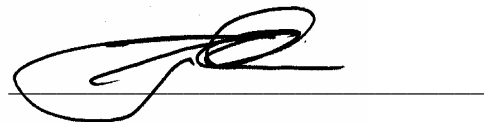
Finally, given the new changes require financial institutions to disclose potentially sensitive customer information on IFTIs, we strongly urge the Government to conduct an effective public awareness campaign to ensure any adverse customer reaction to these changes are minimised.

Recommendation

We recommend that the Committee supports passage of the Bill with the amendments both to the Bill and the Explanatory Memorandum as proposed above.

We would be pleased to appear before the Committee.

Yours sincerely



Tony Burke