DEPARTMENT OF THE PRIME MINISTER AND CABINET

Secretary
s 22(1)(a)(ii)

Mr Sinodinos
s
PMO (x3)

File

Prime Minister (for decision)

ANTI-MONEY LAUNDERING: RELEASE OF EXPOSURE BILL

Summary: The Minister for Justice and Customs has written seeking approval to release an exposure bill on anti-money laundering and counter-terrorist financing ('the exposure bill') for public consultation. The Treasurer (letter also attached) supports the release of the exposure bill. We concur.

s 34(3)

The exposure bill covers a wide range of services offered by banks, building societies, credit unions, insurance companies, securities and derivatives dealers, bullion dealers, currency converters, casinos, other gambling service providers ie TABs, and remittance service providers. In addition, financial planners, lawyers and accountants would be covered when providing designated financial services in direct competition with financial service providers, eg acquiring a security on behalf of a client. The exposure bill requires affected businesses to undertake customer identity verification, due diligence, reporting and record-keeping obligations, and contains offence provisions for breaches of the requirements. An overview of the exposure bill is attached. The exposure bill does not cover real estate agents, jewellers and professionals, and accountants and lawyers when they provide non-financial services. s 34(3)

Issues/Comment:

Views of industry/compliance costs:

The exposure bill is consistent with the agreements reached with industry during the extensive consultations on the proposed reforms, and Treasury and the Attorney-General's Department (AGD) advise that industry appears supportive of releasing the exposure bill for public consultation – indeed some players are anxious for its release.

Estimates of compliance costs are unclear at this stage as key operational details will only be settled with the development of the remainder of the AUSTRAC rules. Once the consultation phase is completed a final Cabinet Submission will be prepared with detailed estimates of compliance costs.

In relation to the AUSTRAC rules, we note that samples will be released outlining what businesses will be obliged to do with respect to the reporting of suspicious matters and the development of anti-money laundering programmes. However, the rules on customer identity verification are yet to be finalised. We consider that as the process nears completion, it will be important that both the exposure bill and the rules are sensitive to compliance cost issues. In this regard the Treasurer has made the point that it will be important that AGD continues to give AUSTRAC clear policy guidance and remains actively engaged. This is especially important as AUSTRAC will gain a significantly expanded role as a regulator in addition to its existing financial intelligence unit operations. We have reinforced with AUSTRAC the government's commitment to minimising compliance costs.

Consultation process:
The establishment of an Advisory Group is proposed, to be chaired by Senator Ellison, consisting of industry representatives, AUSTRAC and Treasury along with other agencies, eg the Office of Small Business as required. The Advisory Group will be supported by working groups in order to complete the full package of AUSTRAC rules. These mechanisms should ensure that the views of industry are taken into account when settling important operational details.

Letters to Premiers and Chief Ministers:
s 34(3) [redacted] This would seem a better way to proceed given that not all AUSTRAC rules are finalised at this point, and it would appear a matter best left, at this stage, with the portfolio minister. We understand that Senator Ellison's office is agreeable to this approach, subject to your approval.

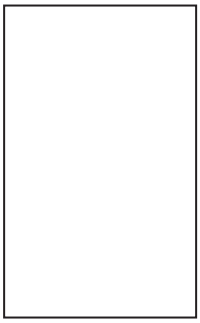
Recommendation: That you sign the attached letter to Senator Ellison:
- agreeing to the release of the exposure bill;
- noting the importance of compliance costs being minimised;
- supporting the Treasurer's comments that AGD closely monitor AUSTRAC, provide it with clear policy guidance and remain actively engaged as it significantly expands its regulatory role; and
- requesting that Senator Ellison advise his state and territory counterparts of the release of the exposure bill.

Signed/Not signed

s 22(1)(a)(ii) [redacted]
Assistant Secretary
Economic Policy Branch
2 December 2005

(John Howard)

Contact Officer: s 22(1)(a)(ii)) Consultation: Legal; Industry Policy; NSD; AGD, Treasury



SENATOR THE HON. CHRISTOPHER ELLISON
Minister for Justice and Customs
Senator for Western Australia
Manager of Government Business in the Senate

05/18092

The Hon John Howard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

21 NOV 2005

Dear Prime Minister

Further to the Government's decision s 34(2) to proceed with reforms to strengthen Australia's anti-money laundering and counter-terrorist financing (AML/CTF) system, I enclose for your consideration and approval an exposure draft AML/CTF Bill (the exposure Bill). Also enclosed is a brief overview of the exposure Bill. Subject to your agreement, I propose to release the exposure Bill on 30 November 2005 for a period of four months consultation.

Release of the exposure Bill forms an important part of Australia's response to emerging money laundering and terrorist financing risks, while at the same time balancing the impact on legitimate business activity. Consultation on the exposure Bill will facilitate broad public discussion of the proposed reforms and inform the development of final AML/CTF legislation. The exposure Bill addresses key components of the Financial Action Task Force on Money Laundering (FATF) Recommendations and will help to reinforce Australia's credentials as a key player in international AML/CTF efforts.

The exposure Bill is consistent with the agreements I have reached with industry groups during extensive consultations on the proposed reforms. It adopts a measured approach, under which much of the implementation detail of proposed reforms will be settled by the Australian Transaction Reports and Analysis Centre (AUSTRAC) in consultation with industry groups. This process has already commenced, with a package of sample AML/CTF Rules currently under consideration for release with the exposure Bill.

Consistent with the Government's decision, the exposure Bill incorporates a first tranche of reforms extending customer due diligence, reporting and record-keeping obligations to financial service providers and to lawyers and accountants when they provide designated financial services in direct competition with the financial sector. The exposure Bill also covers services provided by the gambling sector and bullion dealers. Consultation on the first tranche of AML/CTF reforms will inform the development of proposals for a second tranche of reforms for further Government consideration.

Telephone (02) 6277 7260 Parliament House Canberra ACT 2600 Facsimile (02) 6273 7098

Officers of the Attorney-General's Department have liaised closely with officers of the Department of the Treasury in finalising the exposure Bill.

I propose to release the exposure Bill for public consultation on 30 November 2005 unless I hear otherwise from you. I have written to the Treasurer in similar terms.

The action officer for this matter in the Attorney-General's Department is s 22(1)(a)(ii) who can be contacted on (02) 6250 6210.

Yours sincerely

s 22(1)(a)(ii)

CHRIS ELLISON
Senator for Western Australia

SUMMARY OF EXPOSURE ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING BILL

Part 1—Introduction

- Contains definitions, including 'designated services'.
- Tables list designated services for which affected businesses ('reporting entities') will have customer due diligence, reporting and record-keeping obligations.

  The tables cover financial services, gambling services and bullion dealing.

  As the tables list services rather than specific service providers, any business that supplies one of the listed services will be covered, eg lawyers and accountants when providing financial services.
- Whether the person (legal or natural) providing the designated service is a 'reporting entity' will also be determined by whether the service is provided:
  - at or through a permanent establishment of the person in Australia
  - by a resident of Australia at or through a permanent establishment of the person in a foreign country (foreign branch), or
  - by a subsidiary of a company that is a resident of Australia at or through a permanent establishment of the subsidiary in a foreign country (foreign subsidiary).

  Service providers that do not have one of these geographical links to Australia are not a 'reporting entity' under the Bill.
- Foreign branches and foreign subsidiaries of Australian residents will be required to apply the principles of Australian anti-money laundering and counter-terrorism financing (AML/CTF) obligations through their AML/CTF programs to the extent possible under local law.

Part 2—Identification procedures etc

- Defines the identity verification obligations of reporting entities which form part of their customer due diligence responsibilities.
- Reporting entities will be required to verify the identity of new customers before providing a designated service to that customer.
- In special cases, identity verification procedures may be carried out after the provision of the designated services, where to do otherwise would disrupt the ordinary course of business.
- Existing customers will not be subject to initial identity verification requirements and will only need to have their identity re-verified where warranted by materiality and risk.
- The AML/CTF Rules will set out circumstances in which the identity of all customers will be required to be re-verified.
- The exposure Bill contains the primary obligation to verify the identity of customers.

AML/CTF Rules to be developed by AUSTRAC in consultation with industry will set out face-to-face and electronic identity verification procedures based on risk management.

- There is a mechanism to allow a third party to carry out identity verification procedures on the reporting entity's behalf.

Part 3—Reporting obligations of reporting entities

- Reporting entities must report any suspicious matters to AUSTRAC.

  Issues to be taken into account in determining whether to report a suspicious matter will be set out in AML/CTF Rules developed by AUSTRAC in consultation with industry. Relevant issues may include whether a transaction was complex, unusual or large or whether it involves a resident of a particular foreign country.

  Reporting entities must report to AUSTRAC designated services involving cash or e-currency over a specified monetary threshold ($10,000 unless changed by regulation) and all international funds transfer instructions.

Part 4—Reports about cross border transfers of physical currency and bearer negotiable instruments

- Cross-border transfers of physical currency of $10,000 or more must be reported to a customs or police officer, or AUSTRAC.
- Cross-border transfers of bearer negotiable instruments (eg travellers cheques) must be disclosed to a customs or police officer on request and reported to AUSTRAC.

Part 5—Funds transfer instructions

- Reporting entities must verify the identity of customers originating a funds transfer and transmit originator information with the funds transfer.
- Where a reporting entity receives a pattern of incoming funds transfer instructions from an overseas counterpart that do not include appropriate originator information, it will not be required to block payment. In these circumstances AUSTRAC may direct the reporting entity to request their overseas counterpart to include appropriate originator information in all future funds transfer instructions.

Part 6 —Register of providers of designated remittance services

- AUSTRAC must maintain a register of designated remittance services and persons who provide such services must provide business details to AUSTRAC for inclusion on the register.

Part 7—Anti-money laundering and counter-terrorism financing programs

- Reporting entities must develop, maintain and comply with AML/CTF programs.

- AML/CTF Rules will set out the principles to be applied by reporting entities in developing AML/CTF programs to identify and materially mitigate the risk that designated services might involve or facilitate transactions with money laundering or terrorist financing offences.
- Amongst other things, AML/CTF programs must require the monitoring by reporting entities of their provision of designated services, which forms part of their ongoing customer due diligence obligations

Part 8—Correspondent banking

- Financial institutions must not enter into a correspondent banking relationship with a shell bank or another financial institution that maintains accounts with a shell bank.
- Financial institutions must carry out due diligence assessments of foreign institutions with whom they intend entering into a correspondent banking relationship prior to entering the relationship and throughout the relationship.

Part 9—Countermeasures

- Regulations may prohibit or regulate transactions with residents of prescribed foreign countries.

Part 10—Record-keeping requirements

- Reporting entities must retain customer identity verification records, and records of the provision of designated services, for a period (to be agreed).

Part 11—Secrecy and access

- Specified government agencies will be able to access information held by AUSTRAC, under certain conditions, for law enforcement and security purposes.
- Reporting entities must not disclose they have reported information to AUSTRAC under Part 3 of this Act, or formed a suspicion under Part 3 of this Act about a transaction or a particular matter.

Part 12—Offences

- Establishes offences for providing false or misleading information or documents, forging identity documentation, providing or receiving a designated service anonymously or using a false customer name, or structuring a transaction to avoid a reporting obligation. Other offences are contained in other Parts of the Bill for failure to comply with requirements set out in those Parts.

Part 13—Audit

- Enables authorised officers of AUSTRAC to enter a reporting entity's business premises by consent or under a monitoring warrant to monitor compliance with obligations under the Bill.

Part 14 – Information gathering powers

- Enables authorised officers to obtain information or documents from a reporting entity or a person suspected of being a reporting entity.

Part 15 – Enforcement

- Pecuniary penalties are payable for contraventions of civil penalty provisions.
- Authorised officers, customs officers and police officers may issue infringement notices where a report that is required for cross border movements of physical currency or bearer negotiable instruments is not made.
- AUSTRAC is to monitor compliance by reporting entities with their obligations under this Act.
- The Federal Court may grant injunctions in relation to contraventions of the Bill.
- Customs officers and police officers may exercise powers of questioning, search, seizure and arrest in connection with a cross border movement of physical currency or bearer negotiable instruments.

Part 16—Administration

- Establishes AUSTRAC, its functions and staffing arrangements and provides that AUSTRAC may issue legislative instruments (to be known as 'AML/CTF Rules) after appropriate consultation with stakeholders.

Part 17—Vicarious liability

- Establishes a standard of proof for liability in matters involving employees or agents of reporting entities.

Part 18—Miscellaneous

- Extends operation of the Bill to partnerships, unincorporated companies and trusts, along with various enabling provisions. It includes a provision providing that the law of legal professional privilege is not affected by the Bill.

Schedule 1—Alternative constitutional basis

- Provides alternative constitutional basis for various provisions. The schedule is additional to the objects clause.

PRIME MINISTER
CANBERRA

Senator the Hon Chris Ellison
Minister for Justice and Customs
Parliament House
CANBERRA ACT 2600

My dear Minister

Thank you for your letter of 21 November 2005 regarding the exposure Anti-Money Laundering and Counter-Terrorism Financing Bill 2005. I agree to the exposure bill's release.

The issue of compliance costs and their minimisation will be an important component to ensuring the successful implementation of these reforms. In this regard, I support the comments of the Treasurer in his letter to you of 30 November 2005 that the Attorney-General's Department should closely monitor the Australian Transaction Reports and Analysis Centre, provide it with clear policy guidance and remain actively engaged with it as it significantly expands its regulatory role.

Please advise your state and territory counterparts of the release of the exposure bill.

This letter is copied to the Treasurer.

Yours sincerely

(John Howard)

DEPARTMENT OF THE PRIME MINISTER AND CABINET

AS SB. AC

Document 5

Secretary
s 22(1)(a)(ii)

Prime Minister (for decision)

ANTI-MONEY LAUNDERING: RELEASE OF EXPOSURE BILL 10 DEC 2005

Mr Sinodinos
Mr Crone
PMO (x3)

File

s 22(1)(a)(ii)

Summary: The Minister for Justice and Customs has written seeking approval to release an exposure bill on anti-money laundering and counter-terrorist financing ('the exposure bill') for public consultation. The Treasurer (letter also attached) supports the release of the exposure bill. We concur.

s 34(3)

The exposure bill covers a wide range of services offered by banks, building societies, credit unions, insurance companies, securities and derivatives dealers, bullion dealers, currency converters, casinos, other gambling service providers ie TABs, and remittance service providers. In addition, financial planners, lawyers and accountants would be covered when providing designated financial services in direct competition with financial service providers, eg acquiring a security on behalf of a client.
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s 34(3)

Issues/Comment:

<u>Views of industry/compliance costs:</u>

The exposure bill is consistent with the agreements reached with industry during the extensive consultations on the proposed reforms, and Treasury and the Attorney-General's Department (AGD) advise that industry appears supportive of releasing the exposure bill for public consultation – indeed some players are anxious for its release.

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In relation to the AUSTRAC rules, we note that samples will be released outlining what businesses will be obliged to do with respect to the reporting of suspicious matters and the development of anti-money laundering programmes. However, the rules on customer identity verification are yet to be finalised. We consider that as the process nears completion, it will be important that both the exposure bill and the rules

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Consultation process:

The establishment of an Advisory Group is proposed, to be chaired by Senator Ellison, consisting of industry representatives, AUSTRAC and Treasury along with other agencies, eg the Office of Small Business as required. The Advisory Group will be supported by working groups in order to complete the full package of AUSTRAC rules. These mechanisms should ensure that the views of industry are taken into account when settling important operational details.

Letters to Premiers and Chief Ministers:

s 34(3)

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Recommendation: That you sign the attached letter to Senator Ellison:

- agreeing to the release of the exposure bill;
- noting the importance of compliance costs being minimised;
- supporting the Treasurer's comments that AGD closely monitor AUSTRAC, provide it with clear policy guidance and remain actively engaged as it significantly expands its regulatory role; and
- requesting that Senator Ellison advise his state and territory counterparts of the release of the exposure bill.

Signed/Not signed

s 22(1)(a)(ii)

Assistant Secretary
Economic Policy Branch
2 December 2005

(John Howard)

10/12

Contact Officer: s 22(1)(a)(ii) Consultation: Legal; Industry Policy; NSD; AGD, Treasury

PRIME MINISTER
CANBERRA

Senator the Hon Chris Ellison
Minister for Justice and Customs
Parliament House
CANBERRA ACT 2600

10 DEC 2005

My dear Minister

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The issue of compliance costs and their minimisation will be an important component to ensuring the successful implementation of these reforms. In this regard, I support the comments of the Treasurer in his letter to you of 30 November 2005 that the Attorney-General's Department should closely monitor the Australian Transaction Reports and Analysis Centre, provide it with clear policy guidance and remain actively engaged with it as it significantly expands its regulatory role.

Please advise your state and territory counterparts of the release of the exposure bill.

This letter is copied to the Treasurer.

Yours sincerely

(John Howard)

DEPARTMENT OF THE PRIME MINISTER AND CABINET

Secretary s 22(1)(a) s 22(1)(a)(ii) PMO x 3 File

Prime Minister (to sign letter)

REVIEW OF THE FINANCIAL ACTION TASK FORCE RECOMMENDATIONS

Issue: The Minister for Justice and Customs has written to you advising of the progress of the review of the Financial Action Task Force on Money Laundering (FATF) Forty Recommendations.

Background: The Minister for Justice and Customs wrote to you on 16 April to advise you that FATF's review of its Forty Recommendations for combating money laundering is nearing completion, with the FATF plenary expected to formally endorse a set of revised Recommendations in June. The revised Recommendations will extend anti-money laundering obligations to non-financial businesses and professions and enhance customer due diligence standards for the financial sector.

Issues: Australia's approach to the review has been directed at ensuring that the revised Recommendations provide sufficient flexibility to enable innovative and cost-effective anti-money laundering solutions suited to Australian conditions.

Following FATF endorsement of the revised Recommendations, the Minister for Justice and Customs proposes to bring a package of legislative proposals for enhancing Australia's anti-money laundering system to Cabinet.

Recommendation: That you sign the attached response to the Minister for Justice and Customs.

Signed / Not signed

s 22(1)(a)(ii)
Deputy Secretary
Government and Corporate
May 2003

Contact Officer: s 22(1)(a)(ii)

(John Howard)

SENATOR THE HON. CHRISTOPHER ELLISON
Minister for Justice and Customs
Senator for Western Australia

The Hon John Howard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

The Financial Action Task Force on Money Laundering (FATF) Forty Recommendations are the leading international anti-money laundering (AML) standard. As a founding member of FATF and a leading AML nation, Australia had a major role in establishing the Forty Recommendations. FATF initiated a review of the Recommendations in 2001 to ensure that they continue to provide an effective international AML framework responsive to emerging money laundering threats. Officers from Treasury and the Attorney-General's Department have represented Australia in the review process.

The review is now reaching its final stage. A FATF Special Plenary meeting on 7-9 May will consider a set of revised Recommendations, with a view to their formal endorsement by the FATF Plenary in June.

The revised Recommendations extend AML obligations to a range of non-financial businesses and professions including lawyers, notaries and legal professionals, real estate agents, accountants, trust and company service providers, and investment advisors. The revised Recommendations also augment financial sector customer due diligence standards in areas such as correspondent banking relationships and client identification.

These changes are consistent with Australian policy interests. It is appropriate that Australia endorse the revised Forty Recommendations to ensure that transactions taking place outside the traditional financial sector do not provide opportunities for money laundering and to close any regulatory loopholes within the financial sector. The revised Recommendations provide an opportunity to review Australia's anti-money laundering system to ensure it continues to model best practice while remaining cost-effective.

Ms Joanne Blackburn of the Attorney-General's Department will lead Australia's delegation, which includes Treasury representation, to the Special Plenary meeting. In addition to supporting the proposed changes, the delegation will seek to ensure that overly prescriptive text is avoided and that instead the Recommendations provide clear statements of principle to maintain maximum flexibility for Australia to implement innovative and cost-effective solutions suited to our conditions. Our approach to the review is also guided by the

Government's commitment to counter imposts on industry that would unnecessarily disrupt business activity or that are anti-competitive in nature.

Australian industry representatives have been consulted throughout the review on issues affecting their interests. Their views were provided to FATF and have influenced the position taken on key proposals by Australia's representatives. While generally supporting strengthened AML measures, industry representatives have emphasised the need to minimise the costs of compliance with new Recommendations. I support this view, and will continue to ensure that industry is consulted and its concerns fully considered in the process of formulating legislative proposals.

Once FATF has endorsed revised Recommendations, I propose to prepare a package of legislative proposals. These proposals will provide the basis for discussion with the Office of Regulation Review and subsequent consultations with industry. A Regulation Impact Statement will be prepared following these consultations. I propose to bring a full package of legislative proposals to Cabinet later this year.

In view of their portfolio interests I have copied this letter to our colleagues the Attorney-General, the Treasurer, the Minister for Foreign Affairs, the Minister for Industry, Tourism and Resources, and the Minister for Small Business and Tourism.

Yours sincerely

s 22(1)(a)(ii)

CHRIS ELLISON
Senator for Western Australia

16 APR 2003

PRIME MINISTER
CANBERRA

Senator the Hon Chris Ellison
Minister for Justice and Customs
Parliament House
CANBERRA ACT 2600

My dear Minister

Thank you for your letter of 16 April 2003 advising me of the progress of the review of the Financial Action Task Force on Money Laundering Forty Recommendations.

I agree that the review of the Forty Recommendations provides an important opportunity to ensure that both the international anti-money laundering framework and Australia's anti-money laundering system remain effective and responsive to emerging threats. I note that you propose to bring a package of legislative proposals to Cabinet later this year.

Yours sincerely

(John Howard)

Prime Minister (to sign letter) | Secretary s 22(1)(a)(ii) | s 22(1)(a)(ii) | PMO x 3 | Document to File | AS, PCon

REVIEW OF THE FINANCIAL ACTION TASK FORCE RECOMMENDATIONS

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Background: The Minister for Justice and Customs wrote to you on 16 April to advise you that FATF's review of its Forty Recommendations for combating money laundering is nearing completion, with the FATF plenary expected to formally endorse a set of revised Recommendations in June. The revised Recommendations will extend anti-money laundering obligations to non-financial businesses and professions and enhance customer due diligence standards for the financial sector.

Issues: Australia's approach to the review has been directed at ensuring that the revised Recommendations provide sufficient flexibility to enable innovative and cost-effective anti-money laundering solutions suited to Australian conditions.

Following FATF endorsement of the revised Recommendations, the Minister for Justice and Customs proposes to bring a package of legislative proposals for enhancing Australia's anti-money laundering system to Cabinet.

Recommendation: That you sign the attached response to the Minister for Justice and Customs.

s 22(1)(a)(ii)

Deputy Secretary
Government and Corporate
20 May 2003

Contact Officer: s 22(1)(a)(ii)

Signed / Not signed

John Howard

(John Howard)

PRIME MINISTER
CANBERRA

Senator the Hon Chris Ellison
Minister for Justice and Customs
Parliament House
CANBERRA ACT 2600

29 MAY 2003

My dear Minister

Thank you for your letter of 16 April 2003 advising me of the progress of the review of the Financial Action Task Force on Money Laundering Forty Recommendations.

I agree that the review of the Forty Recommendations provides an important opportunity to ensure that both the international anti-money laundering framework and Australia's anti-money laundering system remain effective and responsive to emerging threats. I note that you propose to bring a package of legislative proposals to Cabinet later this year.

Yours sincerely

John Howard

(John Howard)

COPY

TREASURER

PARLIAMENT HOUSE
CANBERRA ACT 2600

Telephone: (02) 6277 7340
Facsimile: (02) 6273 3420

www.treasurer.gov.au

23 MAY 2003

Senator the Hon. Chris Ellison
Minister for Justice and Customs
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 16 April 2003 informing of the outcomes of the review of international anti-money laundering (AML) standards by the Financial Action Task Force on Money Laundering (FATF).

I agree that Australia should endorse the outcome of the review as it is consistent with our policy interests. In particular, the review will result in a stronger and more consistent international approach to countering money laundering and the financing of terrorism.

However, it is also apparent that the review will deliver less than perfect results, with the wording of some of the revised Recommendations potentially restricting Australia's capacity to tailor innovative and cost-effective solutions to suit Australian conditions.

Treasury consultations with industry reveal disparate views across the financial sector on the need for expanded and strengthened AML measures. In particular, I note that the banking sector generally welcomes stronger AML measures. This reflects their exposure to global finance and their ambition to stay at the forefront of international best practice in relation to AML practices. On the other hand, those sectors with only limited or no exposure to AML provisions can be expected to lobby the Government to minimise the extent to which the revised recommendations apply to them.

All industry groups can be expected to lobby government on the need to minimise the costs of compliance with the new FATF standards. The Government will face a challenging task in seeking to balance Australia's commitment to strengthen our AML regime in line with tougher international standards while simultaneously minimising the costs and disruption to business activity.

I welcome your intention to consult further with industry before bringing a full package of legislative proposals to Cabinet later this year.

I have copied this letter to the Prime Minister.

Yours sincerely

s 22(1)(a)(ii)

PETER COSTELLO

CABINET IN CONFIDENCE

CABINET SECRETARIAT

CORRESPONDENCE

NAME: ..... s 22(1)(a)(ii) redacted .....

DIVISION/BRANCH: ..... Domestic Security & Border Protection .....

COPIES: ..... AS Cabinet .....

..... MCU .....

..... file .....

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The attached correspondence has been referred to you:

☑ for appropriate response, with a copy to the Cabinet Secretariat, please.

☐ For information only.

s 22(1)(a)(ii) redacted

Cabinet Secretariat

s 22(1)(a)(ii) redacted

Date: ...29.../...5...../2003

CABINET IN CONFIDENCE

TREASURER

PARLIAMENT HOUSE
CANBERRA ACT 2600

Telephone: (02) 6277 7340
Facsimile: (02) 6273 3420

www.treasurer.gov.au

- 1 AUG 2003

The Hon Daryl Williams, AM QC MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney General

The Financial Action Task Force on Money Laundering (FATF) has completed its review of the Forty Recommendations. Accordingly, we must now consider how we might proceed domestically to implement these strengthened and expanded international anti-money laundering (AML) standards.

The revised recommendations partially reflect developments that are already occurring in a number of jurisdictions. For example, some of the revised recommendations reflect developments in the United States arising from the passage and implementation of the *USA Patriot Act*. Moreover, I understand that the European Directives, which are due to come into force shortly, will impose strengthened AML measures upon EU members.

Australia cannot afford not to keep pace with the global effort to combat money laundering and the financing of terrorism. Consequently, we need to take action to respond to these international developments if Australia is to stay at the forefront of international best practice.

The Australian Bankers Association has written to me expressing concern about the possible pace of domestic implementation of the revised recommendations. This concern reflects the commercial pressure being placed on their members by US financial institutions.

It is important that the Government show leadership on this issue. I therefore urge you to attach the highest priority to taking the necessary steps, including through consultation with industry, to allow the financial sector to move ahead of the non-financial sector to implement these new international AML standards in a timely manner.

I have copied this letter to the [redacted], the Foreign Minister and the Minister for Justice and Customs.

Yours sincerely

s 22(1)(a)(ii)

PETER COSTELLO

TREASURER

PARLIAMENT HOUSE
CANBERRA ACT 2600

Telephone: (02) 6277 7340
Facsimile: (02) 6273 3420

www.treasurer.gov.au

- 1 AUG 2003

s 22(1)(a)(ii)
Australian Bankers' Association
Level 3
56 Pitt Street
SYDNEY NSW 2000

Dear s 22(1)(a)(ii)

Thank you for your letter of 20 June 2003 concerning the Financial Action Task Force on Money Laundering (FATF) recommendations.

The active involvement of the ABA, and its members, in the domestic consultative process contributed positively to Treasury's capacity to participate effectively in the Review of the FATF Recommendations Working Group meetings held in Paris and Geneva.

As you are aware Australia is a strong supporter of international and regional initiatives to combat financial abuse in the global economy and we have been instrumental in developing a regional response to money laundering through the creation of the Asia Pacific Group on Anti-Money Laundering (APG). Therefore, I am heartened by ABA's advice that its members would like to move quickly to implement the revised Forty Recommendations.

It is important to recognise, however, that not all industry sectors are in the same position as the financial sector. This reflects that the FATF review has resulted not only in stronger recommendations, but has also led to an expansion of the recommendations to sectors not previously covered. I understand that the Attorney-General's Department – which has carriage of money laundering issues within Government – intends giving priority to implementing those recommendations that do not require further extensive consultation with stakeholders from the private-sector and from the State and Territory Governments. This approach should enable those recommendations applying to the financial sector to be implemented expeditiously.

Your letter draws attention to the concern the banks have to ensure that the Australia banking sector does not fall behind international developments in relation to anti-money laundering standards. I am aware that this concern was also expressed during the Treasury workshops in Sydney and Melbourne. The Government has given its encouragement to the development of strong, beneficial links to the world's major financial markets and Australia's financial sector has thrived on its exposure to global markets. I would encourage your members to implement what measures they can without legislation, which will assist your members to safeguard their commercial interests.

It is expected that a draft exposure Bill will be issued in late 2003 with a view to introducing it into the Parliament in 2004 for a new *Financial Transaction Reports Act* (FTR Act). I expect that consultations with the financial sector stakeholders will commence as soon as possible.

Treasury officials will continue to monitor developments in relation to the implementation of the new Forty Recommendations and will keep me informed as the need arises.

I have copied this response to the [redacted] the Attorney-General and the Minister for Justice and Customs.

I trust this information will be of assistance to you.

Yours sincerely

s 22(1)(a)(ii)

PETER COSTELLO

Document 16

Jon Stanhope MLA

CHIEF MINISTER

ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT
MINISTER FOR COMMUNITY AFFAIRS

MEMBER FOR GINNINDERRA

The Hon John Howard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

Thank you for your letter of 23 December 2003 regarding the Australian Government's endorsement of the revised Forty Recommendations of the Financial Action Task Force.

I agree that it is important that we demonstrate continued vigilance and resilience against the threats posed by money laundering and terrorist financing.

It is also important that industry is fully consulted in the process with a view to practicability of compliance, together with minimisation of costs of compliance with new obligations.

I look forward to further consultation as the process progresses.

Yours sincerely

s 22(1)(a)(ii)

Jon Stanhope MLA
Attorney General
26 FEB 2004

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0104 Fax (02) 6205 0432

Tasmania

PREMIER

Hon J W Howard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

0 2 MAR 2004

My dear Prime Minister

Thank you for your letter of 23 December 2003 to the Premier, Jim Bacon MHA, regarding the revised Forty Recommendations of the Financial Action Task Force on anti-money laundering measures.

I note that the Commonwealth Government has given its endorsement to the Recommendations and that Issues Papers have already been released for the Financial Services Sector, Real Estate Dealers and Dealers in Precious Metals and Stones.

Tasmania supports the Recommendations as the foundation of a new global standard, particularly as they now advocate a risk-based approach allowing countries and institutions to tailor the application of the Recommendations to sectoral and local needs. Tasmania also strongly supports collaboration with industry as the basis of implementation in Australia.

The extension of the measures to some forms of non-financial businesses and professions is perhaps of most direct interest. For example, we are justifiably proud of the regulatory regime applying to casinos in this State. We are keen to ensure that this regime continues to reflect international best practice and that it extends to building appropriate measures to prevent and detect money laundering.

Thank you for bringing the Recommendations to the Government's attention.

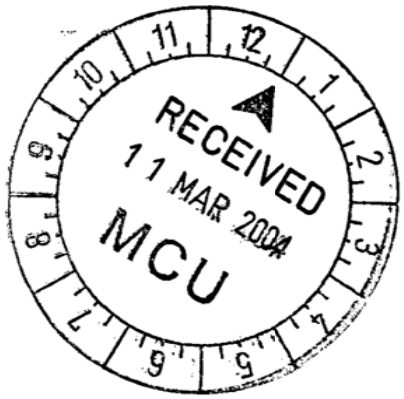
Yours sincerely

s 22(1)(a)(ii)

Paul Lennon
Acting Premier

Level 11, Executive Building, 15 Murray Street, Hobart, Tasmania, 7000
Postal Address: GPO Box 123, Hobart, Tasmania, 7001, Australia
Telephone: (03) 6233 3464 *Facsimile:* (03) 6234 1572

Our Ref: 200400099



The Hon J Howard MP
Prime Minister of Australia
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

Thank you for your letter of 23 December 2003 informing of the Commonwealth's intention to pursue steps to implement the recently revised recommendations of the international Financial Action Task Force on Money Laundering, and as a first step, inviting the initial views of the Western Australian Government.

Having consulted with the Attorney General of Western Australia, and representatives of the relevant Ministerial portfolios, Western Australia's views fall into two categories.

Firstly, there is the view as to the substantive merits of the recommendations. I note the intention of the recommendations is to create a comprehensive, consistent and substantially strengthened international framework, with a key focus on ensuring that businesses and professions such as casinos, lawyers, accountants, real estate agents and trust and company service providers have a full and effective role in the anti-money laundering system. Another focus is to be on addressing the need for expanded customer due diligence for the financial sector to improve transparency and guard against abuse of the financial system for money laundering and terrorist financing. Such objectives and purposes of the recommendations are supported by Western Australia – their implementation will ensure a consistent approach.

Secondly, there is the question of how and by whom the recommendations should be implemented. In that context, the Western Australian Government has approved the drafting of a Bill to amend section 536a of the Western Australian Criminal Code which seeks to extend the scope of the current money laundering offence and to also include an offence of 'dealing' with laundered property. These amendments will implement decisions of the Standing Committee of Attorneys General. As I advised in my letter to you of 18 December 2003, Western Australia considers that a reference of State power to the Commonwealth for money laundering is neither necessary, nor desirable. Similarly, Western Australia considers that any legislative (and administrative) amendments required to implement the international Task Force's recommendations, should also be by way of State, not Commonwealth, legislation. If necessary, this could be achieved by uniform model State and Territory legislation developed by the Standing Committee of Attorneys General.

197 St George's Terrace, Perth, Western Australia 6000
Telephone (08) 9222 9888 Facsimile (08) 9322 1213 Email: wa-government@dpc.wa.gov.au

I am providing a copy of this letter to other Premiers and Chief Ministers.

Yours sincerely

s 22(1)(a)(ii)

DR GEOFF GALLOP MLA
PREMIER

- 8 MAR 2004

Queensland Government

Premier of Queensland
and Minister for Trade

Please quote: 46196/DT06/LJP

15 JUN 2004

The Honourable John Howard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Mr Howard John

Thank you for your letter of 23 December 2003 informing me of the Commonwealth's endorsement of the revised Forty Recommendations of the Financial Action Task Force (the international standard for anti-money laundering) and seeking any initial views on the implementation of the recommendations.

Effective and responsive money laundering measures are a critical component of combating serious criminal activity, and I am pleased with the international and Australian commitments to take further action. I note that the recommendations oblige the Commonwealth to expand the existing customer due diligence, suspicious transaction reporting and record-keeping requirements on those institutions already covered by the *Financial Transaction Reports Act 1998* (Cth) (the Act). They also oblige the Commonwealth to extend these types of anti-money laundering requirements to non-financial businesses and professions such as real estate agents, legal professionals, accountants and dealers in precious metals.

My initial views are that efforts should be made to implement the recommendations in a manner that is tailored to the particular assessment of risk and commercial imperatives of the industry or business activity affected. This will help ensure the reforms are workable and compliance costs do not unduly impinge on legitimate commercial operations. Particular care should be taken with the potential impacts on small businesses and sole practitioners. Considerable consultation and analysis will be necessary to fully assess the ability of the gaming industry and property dealers and motor agents to meet the requirements. Concurrent reporting requirements in State legislation should be kept in mind, as should the potential impact of the new requirements on State corporate treasury entities such as the Queensland Treasury Corporation.

My department has forwarded comments to this effect to the Commonwealth Attorney-General's Department, through your department. I am pleased the Commonwealth is currently consulting the national peak bodies of affected industries in broad terms about implementation. I look forward to your further consultation as proposals become more concrete.

Yours sincerely

s 22(1)(a)(ii)

PETER BEATTIE MP
PREMIER AND MINISTER FOR TRADE

Executive Building
100 George Street Brisbane
PO Box 185 Brisbane Albert Street
Queensland 4002 Australia
Telephone +61 7 3224 4500
Facsimile +61 7 3221 3631
Email ThePremier@premiers.qld.gov.au

Bendigo Bank

Group Managing Director's Office
Direct Telephone 03 5433 9581

RGH:JMW

11 April 2006

The Hon John Howard MP
Prime Minister
Suite MG 8
Parliament House
CANBERRA ACT 2600

s 22(1)(a)(ii)

Dear Prime Minister

AML / CTF EXPOSURE DRAFT – CONSULTATION

I refer to the consultation period regarding the exposure draft (ED) of the Anti Money Laundering and Counter Terrorism Financing Bill 2005 and enclose a copy of the Bendigo Bank submission that has been forwarded to the Minister for Justice and Customs, Senator Chris Ellison.

The issues raised in the submission appear to be an unintended consequence of the ED as currently drafted and we seek specific amendments to the ED to correct what we perceive to be an anomaly.

Yours sincerely

s 22(1)(a)(ii)

MANAGING DIRECTOR
BENDIGO BANK GROUP

Bendigo Bank

Group Managing Director's Office
Direct Telephone 03 5433 9581

RGH:JMW

13 April 2006

The Hon John Howard MP
Prime Minister
Suite MG 8
Parliament House
CANBERRA ACT 2600

s 22(1)(a)(ii)

Dear Prime Minister

AML / CTF EXPOSURE DRAFT – SECOND SUBMISSION

I refer to the consultation period regarding the exposure draft (ED) of the Anti Money Laundering and Counter Terrorism Financing Bill 2005.

I enclose a copy of a second Bendigo Bank submission that has been forwarded to the Minister for Justice and Customs, Senator Chris Ellison.

s 22(1)(a)(ii)

MANAGING DIRECTOR
BENDIGO BANK GROUP

Bendigo Bank

Group Managing Director's Office
Direct Telephone 03 5433 9581

RGH:JMW

13 April 2006

Senator The Hon Christopher Ellison
Minister for Justice and Customs
Parliament House
CANBERRA ACT 2600

Dear Minister

SUBMISSION REGARDING THE ANTI-MONEY LAUNDERING AND COUNTER TERRORISM FINANCING BILL 2005 EXPOSURE DRAFT

I enclose our second submission by Bendigo Bank Limited (BBL) in relation to the Anti-Money Laundering (AML) and Counter Terrorism Financing (CTF) Exposure Draft (ED)[1].

Bendigo Bank

BBL has created a unique business model which has enabled the provision of banking services to rural and remote areas from which other banks had withdrawn. We have also undertaken micro-finance activities through our Community Sector Banking joint venture with the Brotherhood of St. Laurence to assist socially disadvantaged people obtain access to financial services and meet immediate family needs. We are recognised as being a bank that works to add value to communities beyond just banking services in the belief that successful communities create a successful bank – in that order.

We continue to be engaged with other financial institutions and industry bodies, and participate in the advisory framework established by you as the Minister for Justice, to provide advice on the AML /CTF ED. During this period we have continued to consult with the Attorney-General's Department (AGD) and AUSTRAC on the development of AML rules and guidelines.

BBL endorses the ABA's submissions in relation to the ED. However, in addition to the issues raised in our first submission[2], there are a number of issues that we believe are worthy of raising in this submission that are relevant to both ourselves and other similar sized or smaller financial institutions.

We would bring to your attention our concerns that:

- The consultation period is too short given that as at 10 April 2006 a number of rules and guidelines are yet to be released for review and comment. Our concern is that if the AML legislative package is pulled together in a rush to meet the current mid-April deadline, issues will not be properly resolved, or will be overlooked, resulting in implementation difficulties and ongoing operational problems. AUSTRAC advises that some rules may not be available until after the legislation enters Parliament. Given that some of these rules relate, for example to training, it is impossible for us to adequately comment on training regimes and the likely impact of implementation. Whilst we note that the Government has indicated that there will be consultation for a period of three weeks on a further refined package, given the complexity of the issues, we are concerned that this three-week period will not be sufficient.

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[1] The earlier submission related specifically to the impact of the ED on BBL's **Community Bank®** model.

[2] Refer footnote 1

- We believe strongly that a detailed Regulatory Impact Statement (RIS) is required, as the cost of implementation of the legislation could hamper growth in our businesses, which affects our shareholders and customers. This is compounded when there are a series of regulatory overlays such as the Financial Services Reform Act, Privacy Act, and Uniform Code of Consumer Credit as currently exists in the Financial Sector. We note that the recommendations contained in the report "Rethinking Regulation" raised the issue of considering compliance costs before regulating in Section 7.2 of the report. Currently we do not believe sufficient data exists to enable the detailed RIS to be prepared.

- There has been little consultation with the community, of whom we will we be asking intrusive questions on behalf of the Government and whose privacy will be impacted. We are concerned that no public education campaign has commenced and see no evidence of any being launched. Financial Institutions still recall that the promised education program for Financial Services Reform Act failed to materialise and recall the customer concerns that the legislation brought about.

- The timing of the commencement of the legislation is of serious concern. We note that your stance has been to maintain that a 12-month implementation period is appropriate. We do not agree and we see little understanding of the cost and logistics for the changes required. BBL believes that a minimum three years is required to implement a solution. For some smaller institutions, such as ourselves, operating on a variety of legacy systems, the required changes may impact on our capacity to provide business as usual activities or product development. We require IT personnel who know our systems to implement changes and whilst we continue to run and upgrade our business platforms, IT resource shortages will make this difficult and expensive. There will also be an impact on the development of the business, which may restrict our capacity to launch new products during the implementation period.

Please find attached specific detail to support this submission.

Thank you again for the opportunity to consult with Government and express our views on this significant legislative regime. Should you have any questions in relation to this submission please do not hesitate to contact me or (for more technical aspects of the submission) either David Harley, Senior Manager Fraud Prevention & Control on 03 5433 9831 or Dion Gooderham, Head of Legal Services on 03 5433 9524.

Yours sincerely

s 22(1)(a)(ii)

MANAGING DIRECTOR
BENDIGO BANK GROUP

Competitive Environment

All legislation should allow a level playing field for business. The compliance requirements contained in the ED, even though they are risk based, will put our business at a competitive disadvantage on the following grounds.

Politically Exposed Persons

The identification of Politically Exposed Persons[3] (PEP) has been dealt with in two ways in the ED. An institution can purchase a proprietary list (which may not be comprehensive and provides no guarantees as to accuracy) or rely on self-identification. We would suggest that pricing for proprietary lists is currently prohibitive for smaller institutions, which may lead to institutions choosing self-identification as an option.

We have considered the self-identification process and are concerned at the competitive disadvantage that will arise from customer reaction at being asked whether they are or are not a PEP and how we train our staff to ask these questions empathetically. We are also concerned that it may lead to discrimination complaints or allegations of racial bias, the burden of which will rest with our frontline staff.

Our belief is that institutions that rely on lists will be better positioned than those institutions that are forced economically to adopt self identification.

We would recommend the provision of a PEP list authored by the Australian Government.

Cost of Implementation

Cost of implementation will be significant even using a 'risk based' approach. BBL's early estimates for implementation of the IT solution alone will be in the vicinity of $15M – $20M which is a huge impost when considered as a proportion of net profit (about one fifth of our 2005 net profit). We believe that the implementation of the legislation imposes a disproportionate cost burden to smaller financial service organisations.

As previously indicated, the cost and key personnel time constraints will also have an impact on our ability to provide both business-as-usual and business development. This impact will again be disproportionately laid on the shoulders of smaller financial service organisations.

We consider that AML is an implementation project where key staff, who are fundamental to our day-to-day operations, will be required to undertake project work for extended periods. This then creates an impact on our ability to conduct business-as-usual.

As an example of the IT issues, BBL operates a number of different databases for different product types. These databases all hold customer information. Even if BBL took a minimalist approach, each of these databases must be altered in order to capture the additional customer information that is required or may be required at some future date if the AML risk profile alters.

Altering and managing all databases is a significant ongoing cost.

To assist in alleviating the burden of compliance, there should be special incentives or tax relief that enables the cost impact (eg IT, training cost, legal and consultancy fees) to be minimised for individual institutions.

Implementation Period

Our assessment is that BBL will need at least three years to develop, purchase or implement IT systems, develop and implement procedures, train staff, develop Correspondent Banking and Third Party/Agent Due Diligence. The proposed implementation period of 12 months, with or without phased implementation, is not sufficient to develop, test and implement an AML program.

[3] We note, that at the time of writing the definition of a PEP has not yet been determined

IT resources are in short supply at the best of times. We do not believe the Government has considered the drain, particularly on IT resources of this implementation. Businesses based in rural areas such as ourselves experience issues with recruitment of IT resources. We will have to manage business as usual activities at the same time as we use experienced resources on implementation.

As the training rules have not been provided, we are unable to assess the implementation cost. Further, Financial Services staff face increasing training requirements due to regulatory change and this implementation will have to be factored into that training. Currently staff are required to undertake substantial regulatory training for example FSRA, Privacy Act, UCCC training and so on. All new staff undertake one to two weeks of regulatory training, depending on their role, before they can assist a customer, and this is in addition to our own internal training.

The impact of training on the operation of our branches cannot be under-estimated as all training must be scheduled while still providing service to our customers.

Implementation should allow delivery of AML training to our staff to be spread over time and complement our other regulatory, customer service and product training requirements.

Other Issues with the AML CTF ED

Exchange of AML/CTF related information

The ED provides no 'safe harbour' provisions that enable the exchange of information between reporting entities when undertaking ECDD or in making an initial AML risk assessment. The US Bank Secrecy Act provides a 'safe harbour' for the flow of information between banks when it is AML or CTF related. We consider that it is crucial that similar legislative relief be provided to Australian reporting entities, as this will enable smaller organisations to make better risk assessments in comparative safety.

Likewise there is no legislative relief or requirement for Austrac to supply data back to the reporting entities in relation to typologies, specific events, or suspicious transaction reporting. It may well be that timely release of information relating to CTF typologies or specific customers may forestall a terrorist attack or other incident.

Risk Triggers approach is overly prescriptive

The multiple circumstances that could lead to customer re-identification obligations contained in Part 2, Division 5 of the exposure draft, and associated risk triggers concept are a duplication of the AML/CTF Program's enhanced due diligence obligations and are unduly prescriptive. Recent undertakings from Government, to ensure the ED and Rules reflect a risk-based approach, have placed customer AML/CTF risk grading and transaction monitoring at the centre of the monitoring obligations under the ED.

The risk triggers concept was initially proposed to conduct customer due diligence on existing customers whose account conduct fits AML/CTF typologies. BBL accepts the need to monitor customers for AML/CTF indicators and believes that the draft AML program rules will identify possible conduct on both existing and new customers. This approach renders the Risk Triggers rule requirement obsolete.

Employee Due Diligence

We are yet to see the rules and what, if any, requirements are put in place on top of the FSRA requirements. Consideration must be given to the interaction and interdependence of other regulatory accreditation requirements including those required by APRA and ASIC.

Electronic Verification

BBL regards Electronic Verification (EV) as critical to the engagement of rural and remote customers and the provision of banking services to them. However we do not believe EV currently provides sufficiently robust identity validation, particularly in light of increased KYC and CDD requirement of the proposed legislation.

We believe that the only appropriate EV system is one that provides the verification of Government documents such as Drivers' Licences, Passports, Healthcare Cards and the like. At this time we believe that privacy as well as technical issues will mean that it will be some years before the Government can provide robust EV to accredited institutions.

Customer Obligations

BBL believes that the legislation places no legal obligation on the customer to comply with requests that the reporting entity is legally obliged to make. For example if a customer fails to disclose themselves as a PEP or if a customer refuses to provide additional KYC information there is no liability on the customer.

The fact that there is no reciprocal requirement in the legislation makes it appear that the Government is relying on the reporting entity, to refuse to open or to close an account rather than making compliance by the customer a legal requirement.

Liability and Defences for Staff and Directors

BBL is not satisfied that the proposed legislation provides sufficient protection from liability where staff fulfil their obligations under this legislation. The protection offered only applies to acts or omissions 'in good faith and without negligence'.

In our experience it can be very difficult to prove that one did act 'in good faith and without negligence', particularly on a civil law basis. In light of the very significant liability that may arise if the protections do not apply, our recommendation is that this should be changed to 'in good faith'.

In addition, section 110 of the Bill makes it an offence for a reporting entity to commence to provide a designated service using a false name or on the basis of customer anonymity. The Bill does not expressly require that the service provider *knows* that the name is false in order for the offence to have been committed. Our recommendation is that Section 110 be amended so that it expressly applies only where the reporting entity knows the name is false. If it is not so amended, it effectively introduces an identification offence outside of the Part 2 identification requirements.