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AML-CTF legislation - Second Tranche

Draft tables of designated services

Submission to the Commonwealth Attorney-General's Department

7 September 2007

The Australian Privacy Foundation

The Australian Privacy Foundation (APF) is the leading non-governmental organisation dedicated to protecting the privacy rights of Australians. We aim to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians.

Since 1987 the Australian Privacy Foundation has led the defence of the rights of individuals to control their personal information and to be free of excessive intrusions. We use the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed.

For further information about the organisation, see www.privacy.org.au

Introduction

The draft tables confirm our fears, expressed in previous submissions, that the second tranche of the AML-CTF legislation will represent another major extension of the level of financial surveillance in Australia. Millions of ordinary people will be subjected to identification requirements in a wide range of additional circumstances, and to both mandatory and subjective discretionary reporting of jewellery transactions, and of not only transactions but also mere enquiries in relation to real estate and financial planning. The scope of the proposed 'designated services' goes well beyond what is actually required to meet the recommendations of the Financial Action Task Force.

This is simply bad and unworkable law, and a wholly disproportionate response to the identified risk.

Table 2 – Jewellery

It is most unhelpful to define precious stones as including 'semi-precious' stones, as there is a common lay understanding of the distinction.

Inclusion of semi-precious stones means that a very wide range of cheap jewellery will be caught, unless there is a minimum value threshold. Is it intended that there will be a minimum value threshold for jewellery?

We note that FATF Recommendations 12(c) and 16(b) refer to 'Dealers in precious metals and dealers in precious stones ... when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.' This implies not only that the FATF Recommendations do not require that jewellers be brought more generally within the scope of the Act including 'Know You Customer' obligations and the various reporting requirements. We submit that the proposed scope of the designated services listed in Table 2 goes well beyond what would be required to meet the FATF Recommendations.

Table 4 - Real Estate

Items 3 & 4A, together with the definition of 'real estate service' means that a wide range of advice and enquiries will be caught even where no transaction results. This is an unacceptably wide definition, which will mean significant intrusion into individuals' financial planning activities.

It is bad enough having the law apply to all real estate transactions without also capturing mere enquiries. There is no reference to minimum value thresholds.

FATF Recommendation 12 includes '(b) Real estate agents - when they are involved in transactions for their client concerning the buying and selling of real estate'. We submit that the proposed scope of the designated services listed in Table 4 goes well beyond what would be required to meet this Recommendation.

Table 5 – Professional Services

Some of the items in this table (especially 1AA) raise the same issue as under Table 4 – i.e. the inclusion of advisory services and enquiries whether or not an actual transaction results. This is an unacceptably wide definition, which will mean significant intrusion into individuals' financial planning activities. There is no reference to minimum value thresholds.

Please note that postal correspondence takes some time due to re-direction – our preferred mode of communication is by email, which should be answered without undue delay.