THE SENATE

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING BILL 2006

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2006

TELECOMMUNICATIONS AMENDMENT (INTEGRATED PUBLIC NUMBER DATABASE) BILL 2006

CUSTOMS LEGISLATION AMENDMENT (NEW ZEALAND RULES OF ORIGIN) BILL 2006
Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (4.24 pm)—I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in Hansard.

Leave granted.

The speeches read as follows—

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING BILL 2006

The Anti-Money Laundering and Counter-Terrorism Financing Bill and the Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006 (Consequential Bill) are the first part of a legislative package that will reform Australia’s anti-money laundering and counter-terrorism financing (AML/CTF) system. The primary purpose of the legislative package is to ensure Australia has a financial sector that is hostile to criminal activity and terrorism.

The reforms will bring Australia into line with international standards set by the Financial Action Task Force’s (or “FATF”) Forty Recommendations and Nine Special Recommendations on Terrorism Financing. The FATF recommendations provide an enhanced and comprehensive framework of measures for combating money laundering and terrorism financing.

Business has supported the development of this legislative package as it will ensure that Australia’s financial sector remains robust and internationally competitive. The international financial services sector must take into account adequacy of AML/CTF compliance when dealing with foreign counterparts and jurisdictions. Australian business faces reputational risk and financial loss if Australia fails to observe international standards.

As a significant contributor to the development and implementation of AML/CTF systems in our region, Australia needs to take the lead in meeting international best practice.

The current legislative package implements the first tranche of AML/CTF reforms covering the financial sector, gambling sector and bullion dealers as well as lawyers and accountants, but only to the extent that they provide services in direct competition with the financial sector. The second tranche will cover real estate agents, jewellers, lawyers and accountants. Work on the second tranche reforms will commence after implementation of the first tranche has started. The second tranche legislation will be tailored to meet the particular needs of the small business sectors to which it will apply.

The Anti-Money Laundering and Counter-Terrorism Financing Bill will impose a number of obligations on businesses called reporting entities under the legislation, including customer due diligence, reporting, record-keeping and developing and maintaining an AML/CTF program. The banking sector will also be obliged to conduct due diligence on its correspondent banking relationships and ensure appropriate identifying information is included in international electronic transfers of funds.

Under the legislative package, the Australian Transaction Reports Analysis Centre (AUSTRAC), which will have a range of new regulatory functions, will receive an additional $139 million over four years. Further to its enhanced role as a financial intelligence unit, AUSTRAC will now have a significantly expanded role as the national AML/CTF regulator with supervisory, monitoring and enforcement functions over a diverse range of industry sectors. AUSTRAC will also have a major role in education, awareness raising and providing guidance on AML/CTF compliance for businesses.

The Government is committed to ensuring that Australians understand their new obligations under the legislation and has provided $13.1 million for a public education and awareness campaign.

Consistent with the Government’s commitment to reducing regulatory burdens on business, the legislative package implements a risk-based approach to regulation. Reporting entities will manage operational risks through AML/CTF programs developed in accordance with operational Rules. AUSTRAC will monitor compliance with these programs and will assess the reasonableness of the entity’s risk assessment.
The risk-based regulatory approach recognises that reporting entities have the experience and knowledge needed to assess and mitigate risk. It will also help mitigate compliance costs by providing industry with the tools to concentrate their resources on areas where money laundering and terrorism financing risk is higher. Industry has endorsed the risk-based approach. Australia’s risked-based approach is similar to that taken in the United States and the United Kingdom.

The Anti-Money Laundering and Counter-Terrorism Financing Bill will be implemented in stages, with the most complex and costly obligations to be implemented twenty four months after Royal Assent. This will allow industry time to develop necessary systems in the most cost efficient way. There will also be a period of twelve months after each stage is implemented during which AUSTRAC will focus on education, with punitive action only being taken if a business is making no reasonable attempt to move towards compliance.

The Anti-Money Laundering and Counter-Terrorism Financing Bill extends the current regulatory regime imposed by the Financial Transaction Reports Act 1988. This Act was developed at a time when most financial transactions were conducted face to face and over the counter at branches of financial institutions. The Financial Transactions Reports Act regime needs to be upgraded to combat the substantial changes to money laundering and terrorism financing risks associated with the increase in cashless, non face to face electronic transactions and global development in value transfer technology.

Most of the provisions of the Financial Transactions Reports Act will eventually be superseded by the Anti-Money Laundering and Counter-Terrorism Financing Bill, however, those provisions which apply to cash dealers who are not reporting entities under the bill will continue to apply.

The new regime will impact on privacy but the impact is a proportionate response to the problems caused by money laundering and terrorism financing in the current climate of heightened organised criminal and terrorist activity. The legislative package includes provisions to ensure that the privacy of legitimate customers is not unnecessarily affected by the legislation. The Government is confident that the legislative package strikes a balance between privacy interests and the needs of law enforcement agencies for targeted information about possible criminal activity.

The Government recognises that AML/CTF compliance may impact small business. The first tranche of AML/CTF reforms will, however, only affect a small number of small businesses which will receive additional guidance and assistance from the Government through AUSTRAC and the Office of the Privacy Commissioner. Initial funding of $1.8 million over four years has been provided to the Office of the Privacy Commissioner for this purpose.

Finally, I am pleased to say that the legislative package is the product of extensive consultation between Government, business, and the community. Since December 2003 we have all been working together to develop a regulatory regime that is robust but ensures the impact on business is minimised. The Government is now confident that the legislative package achieves a balance between the Government’s law enforcement obligations and industry’s day-to-day operational reality. The Government will continue to work closely with affected sectors in ongoing refinement of this new regulatory regime to ensure that the impact on legitimate business activity is minimised.

I commend the bill.
Most other changes to the Financial Transaction Reports Act are minor, for example reflecting the change in title of the Director of the Australian Transaction Reports and Analysis Centre (AUSTRAC) to the AUSTRAC Chief Executive Officer.

The Consequential Bill also amends other Acts to mirror the existing interaction of these Acts with the Financial Transaction Reports Act.

For example, the Financial Transaction Reports Act currently excludes decisions from review under the Administrative Decisions (Judicial Review) Act. The Consequential Bill amends the Administrative Decisions (Judicial Review) Act, to also exclude decisions made under the Anti-Money Laundering and Counter-Terrorism Financing Bill from judicial review pursuant to the Administrative Decisions (Judicial Review) Act.

Amendments to the Freedom of Information Act will exempt reports of suspicious matters under the Anti-Money Laundering and Counter-Terrorism Bill. This mirrors the existing exemption of suspicious transaction reports made under the Financial Transaction Reports Act.

Amendments to the Commonwealth Electoral Act permit a copy of a Roll or an extract of a Roll to be given to a reporting entity or agent of a reporting entity for the prescribed purpose of the reporting entity or its agent carrying out an applicable customer identification procedure under the Anti-Money Laundering and Counter-Terrorism Financing Bill. The provision is equivalent to provisions in the Commonwealth Electoral Act that apply to the Financial Transaction Reports Act.

Amendments to the Crimes Act, dealing with pardons, quashed convictions and spent convictions, change the existing exemption for AUSTRAC, allowing disclosure of pardons, quashed and spent convictions for the purposes of AUSTRAC assessing prospective members of staff or consultants or other persons assisting AUSTRAC.

The Consequential Bill will also amend the Criminal Code Act by expanding the definition of “dealing in money or property” to include proceeds of State and Territory indictable offences. Money laundering offences in Chapter 10 of the Criminal Code Act will therefore relate to a wider range of predicate offences. The application to State and Territory indictable offences has been limited by another amendment in the Consequential Bill to ensure that their inclusion does not violate the Commonwealth’s constitutional power to make legislation under the external affairs power.

The Consequential Bill also amends the Privacy Act, bringing small business operators under the umbrella of the Privacy Act for the purposes of collection of personal information under the Anti-Money Laundering and Counter-Terrorism Financing Bill.

The Consequential Bill also amends the Financial Management and Accountability Regulations. The step of using an Act to amend Regulations is being taken because otherwise these Regulations would have to be amended in the one day period between Royal Assent of the Anti-Money Laundering and Counter-Terrorism Financing Bill and the commencement of the relevant Part of the Anti-Money Laundering and Counter-Terrorism Financing Bill which will commence the day after Royal Assent.

I commend the Consequential Bill.

TELECOMMUNICATIONS AMENDMENT (INTEGRATED PUBLIC NUMBER DATABASE) BILL 2006

The Telecommunications Amendment (Integrated Public Number Database) Bill 2006 amends the Telecommunications Act 1997 to provide for information contained in the integrated public number database (IPND) to be used to assist in conducting research that is considered to be in the public interest, while at the same time providing additional safeguards to ensure that IPND information is only disclosed and used for purposes specified in Part 13 of the Telecommunications Act.

The IPND is an industry-wide database of all residential and business phone numbers, both listed and unlisted and associated customer information, including name and address information. The IPND was established, and is maintained, by Telstra as a condition of its carrier licence. Carriage service providers are required to provide Telstra with customer information for inclusion in the IPND and do so on a daily basis.

In recent years the Government has become aware of reports of customer information contained in the IPND being used for inappropriate purposes such as the compilation of marketing databases and debt collection. Concerns about the inappropriate use of the IPND were first raised in the former Australian Communications Authority discussion paper “Who’s Got Your Number: Regulating the Use of Telecommunications Customer Information.” This paper received over 50 submissions on issues relating to access to the IPND.

Use of IPND information for these purposes is currently not authorised by the Telecommunications Act and raises privacy concerns, as consumers of telecommunications services are unlikely to be aware of, or to have consented to, the use of their personal information for purposes beyond the existing public interest uses currently permitted by the Telecommunications Act such as emergency services and law enforcement.
At the same time, a number of research organisations have also expressed an interest in accessing information contained in the IPND to conduct research.

The bill is intended to strengthen the privacy protections for telephone subscribers in relation to use of their personal information in connection with the publication and maintenance of public number directories while permitting disclosure and use of IPND information for some limited public interest research purposes that have been specified by the Minister.

Outline of the bill

The bill defines the term ‘public number directory’. The definition exhaustively specifies what information a public number directory can contain and gives the Minister the ability, through a legislative instrument, to specify additional requirements to be met in order for a record to be a public number directory. For example, the Minister might specify additional requirements relating to the format in which public number directories are prepared.

Introducing a definition of public number directory into the Telecommunications Act is intended to prevent IPND information from being directly used for inappropriate purposes such as marketing, data cleansing and appending, debt collection and credit checking. The intention is to limit the use of IPND information to the production of genuine telephone directories similar to the White and Yellow Pages (whether these are in electronic (including online) or hardcopy form).

The definition would allow use of IPND information to produce residential and business directories while protecting the privacy of individuals by permitting only their name, public number and, optionally, address to be included in a directory.

Such additional contact information as specified by the Minister in a legislative instrument could be included in a public number directory if it is in relation to persons or bodies carrying on a business, government organisations, charities, religious or educational institutions and any other category of persons or bodies specified by the Minister. Such additional information could include website addresses, email addresses, maps and advertisements.

The bill also permits access to IPND information for the first time to assist with the conduct of some specified research purposes that the Minister considers to be in the public interest. These research purposes will be specified by the Minister in a legislative instrument.

The legislative instrument will list specific types of research that the Minister considers to be in the public interest, for example, health and medical research.

By permitting access to IPND information for some limited research purposes, the bill recognises the value of the IPND as an accurate and up-to-date source of information that may assist researchers in producing quality research that will be of benefit to the public.

As is currently the case, public number directory producers and the new research users will not be permitted to use unlisted customer information, including silent number information, to produce their public number directories or conduct their research.

Also, use of IPND information for commercial purposes will continue to be limited. At present only carriage service providers and public number directory producers have access to the IPND to provide commercial products and services, and then only in limited circumstances. This will continue to be the case.

The bill gives ACMA a ‘gatekeeper’ role in deciding applications for access to IPND information by public number directory producers and researchers. Under the existing arrangements Telstra, as the IPND Manager, is responsible for deciding applications for access to the IPND for all users. Giving the key authorisation role to ACMA will enable greater scrutiny of persons seeking access to the IPND for these purposes and the way in which IPND information is used. Scrutiny by ACMA is intended as an additional safeguard for preventing misuse of IPND information by both public number directory producers and the new research users.

Giving ACMA the key role in authorising access to the IPND is also intended to remove the existing potential conflict of interest whereby Telstra is responsible for authorising access to the IPND for persons seeking to produce public number directories that compete with its White Pages and Yellow Pages directories.

The bill will require ACMA, by legislative instrument, to establish a scheme for the granting of authorisations permitting persons to use and disclose IPND information. The bill requires that ACMA consult with the Privacy Commissioner and Secretary of the Attorney-General’s Department on development of the scheme. ACMA will be limited in its discretion by the framework for the scheme as set out in the bill. ACMA will also be required to have regard to criteria specified by the Minister when considering an application for access.

Persons seeking access to IPND information to produce public number directories or to conduct specified research will be required to apply to ACMA for an authorisation. Telstra will not be able to disclose IPND information for such purposes unless the user holds the appropriate authorisation from ACMA.
ACMA will be able to grant authorisations subject to conditions. The Minister will also be able, by legislative instrument, to specify conditions of authorisation. I intend to specify a condition restricting the transfer of IPND information outside of Australia and a condition requiring the destruction or secure disposal of IPND information once an authorisation ceases. The Privacy Commissioner and Attorney-General will be consulted during the development of the legislative instrument regarding other privacy-related conditions that may be appropriate.

When making authorisation decisions ACMA may consult with persons it considers appropriate including relevant experts in the area of the research for which an authorisation is being sought and the Office of the Privacy Commissioner.

Key ACMA decisions will be reviewable by the Administrative Appeals Tribunal. These decisions include decisions to refuse or grant an authorisation, impose conditions on the grant of an authorisation, and vary or revoke an authorisation. The Minister will be able to specify in a legislative instrument additional reviewable decisions.

ACMA will be required to report annually to the Minister on compliance with authorisations and on any other matter related to the operation of the scheme that ACMA considers appropriate. This report will be tabled in Parliament.

The bill empowers ACMA to undertake administrative decision-making in relation to the scheme and enables it to vary or revoke authorisations in the event of a user breaching an authorisation requirement. The bill also provides ACMA with a range of options to enforce compliance with conditions applying to authorisations, including the ability to issue remedial directions or formal warnings where ACMA is satisfied that a person has contravened or is contravening a condition of an authorisation.

The bill also includes new criminal offences and penalties where a person breaches a condition of an authorisation or discloses or uses IPND information other than for the authorised purpose, whether that be for the production of a public number directory or the conduct of specified research, and for disclosing and using data if an authorisation is no longer in force.

Persons who currently have access to IPND information to produce public number directories will need to apply to ACMA for an authorisation to receive IPND information. The authorisation could only be granted where the use for which IPND information is proposed would meet the new definition of public number directory. Assessment of products against the definition will be on a case-by-case basis.

The bill contains transitional arrangements to assist current users to manage the process of achieving compliance with the new definition and applying to ACMA for an authorisation to access the IPND. The transitional arrangements require persons currently using IPND information to make arrangements to apply for an authorisation within 28 days of the commencement of the transitional provision. Existing users will be deemed to hold an authorisation during the 28 day period and, provided that an application is made to ACMA within that period, until such time as ACMA decides their application for authorisation.

Conclusion

The bill sets out a comprehensive approach to balancing the privacy needs of Australian telecommunications subscribers in relation to the use of their personal information to produce commercial directory products, with the needs of the research community to conduct social research of benefit to the public.

I commend the bill to the Senate.

CUSTOMS LEGISLATION AMENDMENT (NEW ZEALAND RULES OF ORIGIN) BILL 2006


In accordance with one of the current rules, manufactured goods imported from New Zealand are originating, and therefore eligible for a preferential rate of duty, if the last process of manufacture occurs in New Zealand and the goods satisfy a regional value content requirement.

This bill implements amendments to the ANZCERTA that would also allow the ‘change in tariff classification’ method to be used, along with a regional value content requirement, to determine whether goods from New Zealand are New Zealand-originating goods. The new rules would only apply to goods imported on or after 1 January 2007.

As announced by the Minister for Trade and his New Zealand counterpart in February 2006, the last process of manufacture method will continue to be available alongside the new ‘change in tariff classification’ method until 31 December 2011, to allow importers, exporters and manufacturers time to adapt to the changes.
This bill also contains minor consequential amendments to Customs related legislation and the Legislative Instruments Act.

This bill is designed to simplify the process of determining whether a good from New Zealand is a New Zealand originating good and therefore eligible for a preferential rate of duty.

Debate (on motion by Senator Colbeck) adjourned.

Ordered that the Telecommunications Amendment (Integrated Public Number Database) Bill 2006 and the Customs Legislation Amendment (New Zealand Rules of Origin) Bill 2006 be listed on the Notice Paper as separate orders of the day.