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

Second Reading

SPEECH

Thursday, 7 December 2006

BY AUTHORITY OF THE SENATE
Senator MURRAY (Western Australia) (1.40 pm)—The Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 and related bill implement changes to Australia’s anti-money-laundering and counter-terrorism financing regulatory regime regarding identification, management and litigation of money laundering and terrorism financing. The bills introduce reporting obligations for the financial sector in relation to customer due diligence, reporting of certain matters, development and maintenance of money-laundering and counter-terrorism programs and record keeping. The changes are to be phased in over two years and incorporate a risk based approach to compliance. They also expand the regulatory role of AUSTRAC to provide advisory, monitoring and enforcement functions across a range of industry sectors. The bills provide for review of the operation of the provisions, regulations and money-laundering and counter-terrorism rules at the end of seven years.

These bills are the first tranche of the anti-money-laundering legislation to implement reforms which are proposed to cover the financial sector, gambling sector, bullion dealers, lawyers and accountants to the extent that they provide financial services. It imposes obligations on businesses, including customer due diligence, reporting, record keeping and developing and maintaining an anti-money-laundering program.

These bills have been a long time in coming because of slow, ongoing consultation with industry and stakeholders. Of specific concern to the Australian Democrats with respect to the exposure draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 was the lack of appropriate balancing of matters of privacy, matters of security, issues relating to commercial needs and the competitive needs of the business community in international trade. However, as I have said in the past, a less than perfect anti-money-laundering regime is essential and much better than continuing with the present minimalist regime.

Australia must become truly serious about combating corruption and ensuring that criminals cannot live in luxury off the proceeds of their crimes. Recently, we have seen the fallout from corruption and bribery with the AWB scandal, and the Australian people will pay the price for that scandal, not just the wheat farmers of Australia. I will use the right language for a money-laundering bill. With AWB, ministers have washed their hands of any ministerial responsibility. Bribery, corruption, crime and money laundering are irrevocably intertwined, and any steps the government takes to counter that axis of evil will be for the better. This government has not shown itself too keen on implementing effective and wide-reaching domestic legislation against bribery, something which was negatively commented on by the OECD recently, and this failure will no doubt be reflected in whether or not successful prosecutions can be secured against AWB officials under the bribery of foreign officials legislation. It is arguable that stronger antibribery legislation would have allowed much stronger legal action against AWB officials caught in the scandal.

It has to be said that the main reason this government has finally set its mind to money-laundering legislation is international pressure to counter terrorism. It should be remembered that most money laundering has its origins in proceeds of tax evasion, crime and other ill-gotten gains and has been going on for decades. This reminds me of an article I read in the Age a couple of weeks ago about the actions of the Victorian police in attempting to trace the money trail of some of the more high-profile drug traffickers in Melbourne. Detective Superintendent Richard Grant is tracing the proceeds of the convicted drug dealer Tony Mokbel and is reported as saying:

It is no longer enough to just lock up some of these people. Many are prepared to risk long stints in jail if they know that on their release they can live million-dollar lifestyles.

This reminds me of those sleazy well-known Western Australian white collar business crooks of the eighties. There are a number now happily enjoying their criminal gains and some of them, unfortunately, are happily strolling down our beaches.

Detective Superintendent Grant also pointed out that organised crime groups use professionals to assist in concealing assets. Although he did not fully articulate it, professionals in that context means lawyers, accountants


and brokers. Every successful crook has a professional or two in his pocket, going all the way back to Al Capone. As their past large-scale failure to put in tax returns shows, many lawyers are unfortunately not exactly model citizens. This legislation attempts to curtail the way that dirty money can be washed through a legitimate transaction. The ways in which such laundering can happen are manifold, from property transactions to gambling. Because of the variety of ways in which a corrupt individual can launder money, it is necessary for the legislation to be far-reaching. However, there should still be checks and balances to ensure that the legitimate right of people to privacy is not impacted too severely, that people are able to appeal decisions and that the parliament has some role in monitoring the effectiveness of the legislation in achieving its goals.

The Australian Democrats welcome this bill. There remain some concerns of industry which have not been addressed since the exposure draft and which were brought up in the truncated committee hearings into the bill. The Attorney-General’s Department and AUSTRAC have apparently worked hard with industry and stakeholders to address concerns and to change a prescriptive regime into a risk based scheme. These efforts have broadly met with approval.

There remain difficulties with the bill. Those difficulties were identified in the report of the Senate Standing Committee on Legal and Constitutional Affairs on the bill and should be addressed by the government through amendments. Certainly, both Senator Ludwig and I have amendments to address the recommendations of the committee. I draw the attention of the Senate in particular to recommendation 5, which recommends that the Office of the Privacy Commissioner conduct periodic audits of the compliance of AUSTRAC with privacy obligations in its administration of the bill. This oversight is essential.

However, the Democrats would go further and suggest that the recommendations of Minter Ellison and Privacy Victoria be considered as a further oversight mechanism. Minter Ellison suggested that AUSTRAC:

... should be subject to the scrutiny of and accountable to a Parliamentary Committee. We also believe that it should be required to consult with other regulators of the financial services industry (such as ASIC and the Australian Prudential Regulation Authority), in addition to the industry itself, when making Rules or modifications to ensure that the impact of its proposals are fully considered and understood and to limit any regulatory overlap.

The suggestion has great merit, as it was obvious between the exposure draft and this bill that many of the difficulties which were not foreseen by the drafters were pointed out by industry and have made this a better and more workable piece of legislation.

Privacy Victoria said:

... greater transparency and public accountability should be guaranteed. The Bill should specify the matters that will be examined, establish an independent review committee, compel public consultation, and provide for timely tabling of the review report.

In this regard, I support my committee colleagues from the Labor Party who, in their additional comments to the report, suggested that the Australian Commission for Law Enforcement Integrity, once it is established, would be an appropriate body to perform this oversight role. This suggestion has merit because it means that a separate and separately financed independent entity does not have to be created to perform the oversight role. On the other hand, a parliamentary committee could fulfil the task as well. Just as there is an ASIC oversight committee—namely, the Joint Committee on Corporations and Financial Services—it would be appropriate to have a similar parliamentary committee overseeing the work of AUSTRAC in relation to this. This legislation allows AUSTRAC a high level of discretion. Oversight is therefore extremely important, whatever form it takes.

It was also clear from the committee hearings that the transitioning period was of concern to a range of businesses. There is no doubt that aspects of the bill put a great deal of pressure on business to check their clients and what they are doing and report suspicious matters. However, business needs to have systems in place before that can be successfully achieved so that customers are not unnecessarily alienated, persons of certain races or ethnic groups are not unnecessarily subjected to increased scrutiny and business is not burdened with the role of detective.

In order to achieve that, the government needs to provide assistance to business and to educate the public about the impact of this legislation on some quite everyday transactions—in particular, on the requirements of customer identification. I have had some sympathy for the government, because it is very obvious that when you are trying to deal with money laundering issues you have to extend the reach so far that ordinary everyday transactions are going to be affected and people who are entirely innocent are going to be annoyed.
Large companies may be able to set in place the appropriate risk based systems required to detect and report on suspicious transactions, but smaller businesses such as suburban accountants or sole practitioners may find it more difficult. In that regard, the government needs to provide tangible assistance to small business, small business associations or professional associations with a small business basis to ensure that they are in a position to implement the changes that this bill requires, rather than telling them what it requires and, if they do not deliver, bringing action against them for not doing so.

Money laundering is an international problem and the remedy therefore must be an internationally coordinated approach. The United Kingdom and the United States have had legislation in place for several years to try to combat it. As many in the Senate know, I have been through an almost decade-long process of actively supporting and campaigning for standard international accounting standards so that there is a common system of reporting accounts all over the world. The same is true of this system: it is only effective if the standards which apply and the enforcement mechanisms that are used are similar internationally.

I have previously spoken about the Financial Action Task Force in relation to the Financial Transaction Reports Amendment Bill 2006, but those comments are relevant to this legislation as well. The FATF are an intergovernmental body designed to establish international standards and develop and promote policies to combat money laundering and terrorist financing. They conducted an evaluation of Australia’s anti-money-laundering and counter-terrorism financing legislation and wrongly estimated that the value of money laundering offences in Australia was between $2 billion and $3 billion a year. Well over a decade ago, the National Crime Commission estimated the value of drug dealing alone at over $2 billion. I have heard estimates of up to $11 billion as the annual value of laundered money in Australia, which would be about one per cent of our trillion dollar GDP. I think that higher figure is likely to be nearer the mark.

Money laundering was a matter high on the agenda of the previous Labor government, but its importance was lost on the Liberal-National government until after the September 11 attacks. It is now of greater concern, thank goodness. It is recognised that terrorism cannot operate at a high level of activity without a significant injection of funds. Of course, the Democrats strongly support antiterrorism bills like this which seek to restrict or stop the financing of terrorists. This new interest in anti-money-laundering will have useful effects mainly on criminal and drug activity, and the way in which the people involved in those activities move moneys around the world, and on tax evasion.

An evaluation of Australia’s anti-money-laundering and counter-terrorism financing laws by the financial action task force on money laundering in 2005 found that our system was falling behind the task force standards. These bills, along with the recently passed Financial Transaction Reports Amendment Bill 2006 are part of the government’s long-in-coming response to international pressure to crack down on the potential for money laundering, particularly with respect to the financing of terrorism.

These bills, like several before them, impact on an issue of central and increasing concern in our society—that of privacy. Privacy is a matter which has rightly concerned this government in its nearly 11 years in office, and it is a matter which concerns our society. Privacy concerns were issues strongly highlighted by the Senate Standing Committee on Legal and Constitutional Affairs in its report on the exposure draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005, and several submissions to the committee on these bills continued to voice concerns.

The Office of the Privacy Commissioner made submissions to the committee in relation to these concerns. The committee, recognising the importance of this matter to many people in an increasingly watched society, made a recommendation that the Office of Privacy Commissioner conduct privacy audits of AUSTRAC on a regular basis. The Australian Democrats will be moving amendments to reflect that recommendation.

As I pointed out in my speech, in relation to the Financial Transaction Reports Act a great deal of information is required to be collected by banks and all other institutions and professions covered by this legislation. It means that, to fulfil customer identification in compliance with the anti-money-laundering bills, a substantial amount of personal information will be collected. That being the case, the privacy protection measures in these bills should be of paramount importance.

We have already seen that some workers at the tax office think nothing of accessing the tax and financial information of well-known people without authorisation or reason, and this danger should be guarded against when this new regime is set in place. While there is a genuine need for anti-money-laundering and counter-
terrorism financing laws, there is also serious need for an increased campaign of public awareness about what goes on in these respects. The government needs to provide the funding for such an education campaign and assistance to those bodies and businesses that will be charged with the collection of much of the information and the duty to report on suspicious transactions.

In all the various legislative responses that have been implemented in the post-September 11 world, it is important not to forget who these laws are meant to protect: the people of the strong democracy of Australia. Recognising the need for some things to change and that we do need a tighter regulatory environment is, of course, entirely acceptable and proper, but it must be done with a recognition and understanding of the consequences and results and how perfectly innocent people going about their business can be caught up in new bureaucratic systems.

I encourage the government in its efforts to implement a sound legislative framework which minimises money laundering, exposes the financing of terrorist and criminal activities and reduces the evasion of tax. However, it is also of fundamental importance that, in enacting such laws, the competing interests of the privacy of personal information be balanced against the need to outlaw and prohibit activities and actions which run contrary to a safe, civil and enduring society. The Australian Democrats support this bill overall, but we will be moving amendments to reflect the recommendations of the Senate Standing Committee on Legal and Constitutional Affairs to ensure the impact of the legislation is carefully monitored for its effects and consequences.