

21 May 2008

Assistant Secretary
Strategic Policy Coordination Branch
Attorney General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Dear Sir

**SUBMISSION TO THE ATTORNEY-GENERAL'S DEPARTMENT
PROPOSED SECOND TRANCHE DESIGNATED SERVICES OF ANTI-MONEY
LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006 (AML Act)**

We are aware that submissions have closed in relation to the proposed second tranche Designated Services Tables of the AML Act however we request that the following submissions be taken into account.

By way of background, our business is an agent of ASIC. We provide company formations, establish trusts and self managed superannuation funds and offer all ancillary ASIC compliance (company secretarial) work to a large number of accountants, law firms, businesses small and large and individuals. We have been in this business for the last 20 years. We do not provide legal or accounting advice in relation to the activities we perform, rather we complete all necessary forms and minutes based on information provided to us by our customers and make ASIC lodgements online and over-the-counter.

It is our understanding that the services that our business and all similar businesses provide will fall within Items 1B, 1BA, 5, 5A and 7 in Table 5 and Items 2, 3, 5 and 7 in Table 6 of the proposed second tranche.

Our submissions are based on three areas of concern.

ASIC and its Agents

For many years it has been the policy of ASIC to appoint agents (in the main, businesses like ours and accountancy firms) for the purpose of the lodgement of ASIC compliance forms.

Over the last 10 years it has been ASIC's policy to reduce manual over-the-counter lodgements by the systematic closure to their business centres, the appointment of more agents and the development of an electronic lodgement process (ECR). ASIC and company formation businesses like ours have invested heavily in the creation of software programs to facilitate and expand ECR.

Our business is a member of the ASIC Business Advisory Committee. At the last meeting of the committee held earlier this month the effects of the second tranche of the AML Act were discussed.

At the meeting the following was determined.

- ASIC has received legal advice that it does not fall within the proposed second tranche of the AML Act.
- The proposed legislation will impact on company service providers and other information brokers.

ASIC has been advised that as the proposed designated services do not include the registration of new companies and the maintenance of the national company register it will not be a reporting entity under the AML Act.

Should ASIC not be subject to the second tranche as proposed the effect would be that,

- promoters of new companies will be able to incorporate companies by lodging a form 201 over-the-counter at an ASIC business centre without having their identities verified; and
- existing companies will be able to make arrangements for persons to act as a director or secretary by lodging the appropriate forms either over-the-counter at an ASIC business centre or electronically through ASIC's website without having identities verified.

ASIC has not ruled out that it may introduce the ability for promoters to incorporate companies online through its website.

In summary, should the proposed amendments to the AML Act be adopted and should the current rules apply in relation to the verification of identity, businesses such as ours will be required to verify the identity of our customers but ASIC will not.

Apart from this inconsistency creating an unlevel playing field in our industry, it will mean that ASIC's database, which reporting entities are permitted to rely upon in the identity verification process, will include entities and individuals whose identities have not been verified.

It seems illogical that our business is deemed to be a 'gatekeeper' yet the organisation that accepts documents for company registration has no role to play in the fight against money laundering and terrorism financing.

Our Industry

The nature of our business and certainly that of ASIC and its agents is increasingly internet based. Nearly 100% of all instructions received by us are received through our website, by email, telephone or facsimile. The collection of the required information from the customers is not an issue but the verification of it will effectively make the industry unworkable. As corporations law is legislated for on a national basis it is common for us to receive instructions to incorporate a company from 'promoters' or their agents who reside in other States and Territories. In these circumstances how can verification of identity be conducted?

In summary, our industry, unlike others that fall within the ambit of the AML Act, is not set up for face-to-face, over-the-counter service. Many company service providers throughout Australia are entirely website based. Compliance will slow and stifle commerce and substantially increase the costs of doing business in Australia.

It is our recommendation that consideration be given to the nature of our industry in relation to the obligations imposed upon us by the AML Act especially in relation to the compliance

program. We suggest that our industry be exempted from the verification of identity rules or for the rules to exempt our industry from sighting original identification documents.

Drafting Comments

The drafting issues that concern us include:

- The meaning of the term ‘promoters’. Are they to be the proposed directors or members of the new company or both?
- The meaning of the term ‘management activities’. What in fact do such activities include?
- The meaning of the term ‘in the course of carrying on a business’. This term is extremely broad.
- The meaning of the term ‘making arrangements or preparations’.
- Will different rules apply in relation to the designated services included in Tables 5 and 6?

We sincerely hope that you will consider these submissions. We would welcome the opportunity to meet with you to discuss these issues and other implications of the proposed legislation.

Yours faithfully

Judi White
Partner