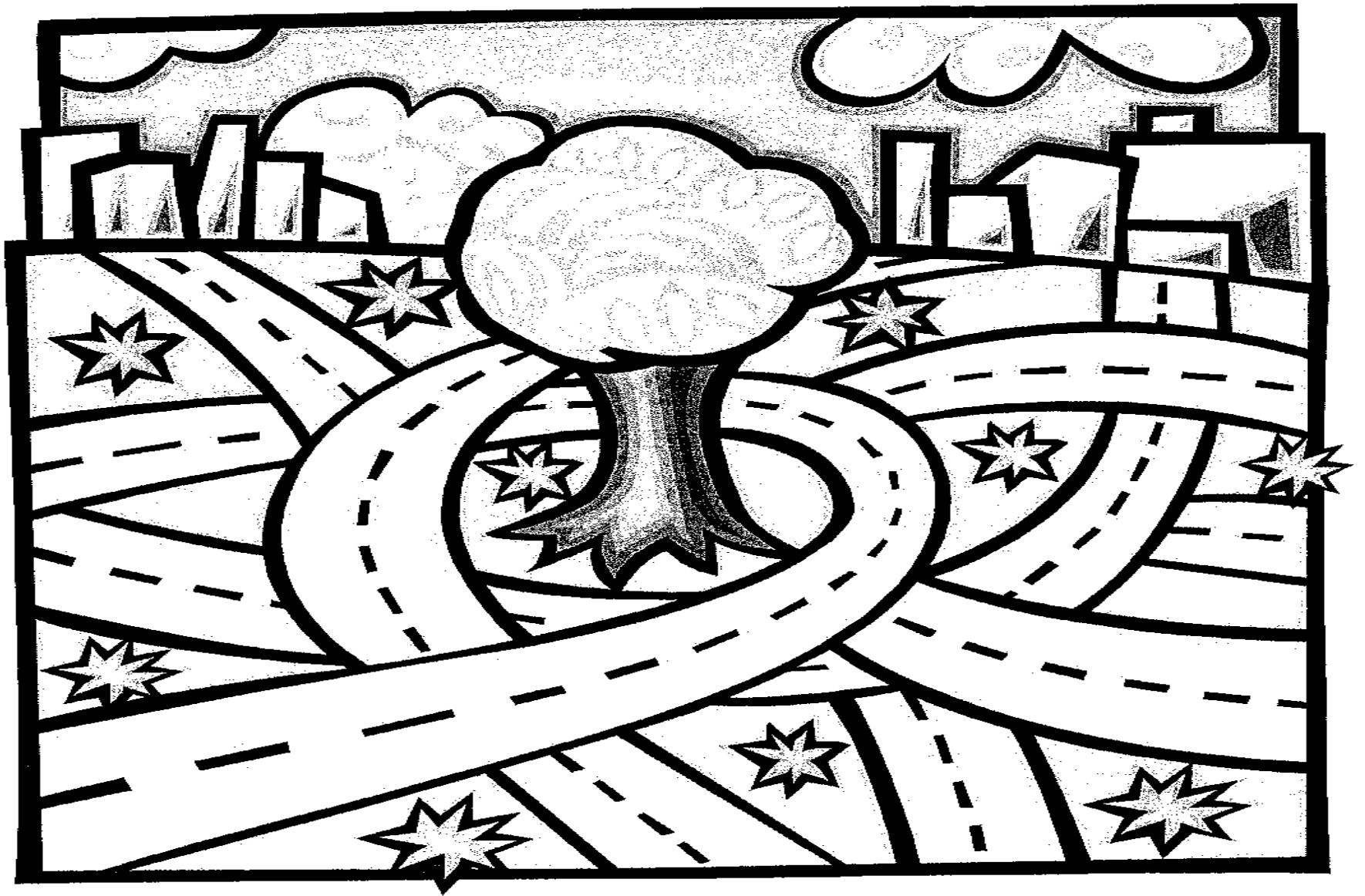**National**

CLAYTON UTZ

CLAYTON UTZ

AML, Proving Identity and Privacy Tensions

Joy M. Geary, Group AML, National Australia Bank

Mark Sneddon, Partner, Clayton Utz

6 August 2005

National

AML	KYC
TFS	CDD
CTF	FIU
FATF	PEPS
FATF 40	LISTS
FATF 8	OFAC
FATF 9	DFAT

Anti Money Laundering
legislation

Terrorist Financing
somehow

Counter Terrorist
Financing

Financial Action
Task Force (FT)

Related to TFS

Development of AML & TFS laws

- 1988 Austrac and the FTRA

- 1989 Financial Action Task Force

- 1995 Egmont Group established

- 2000 The Wolfsberg Forum

- 2001 September 11 bombings

FATF 40 Revised Recommendations

- 2003 major revisions to recommendations

- Australia is a member of FATF

- FATF completing a country review of Australia

- Current law reform process is aiming at a draft legislative package October 2005 to deliver compliance by Australia to the revised recommendations.
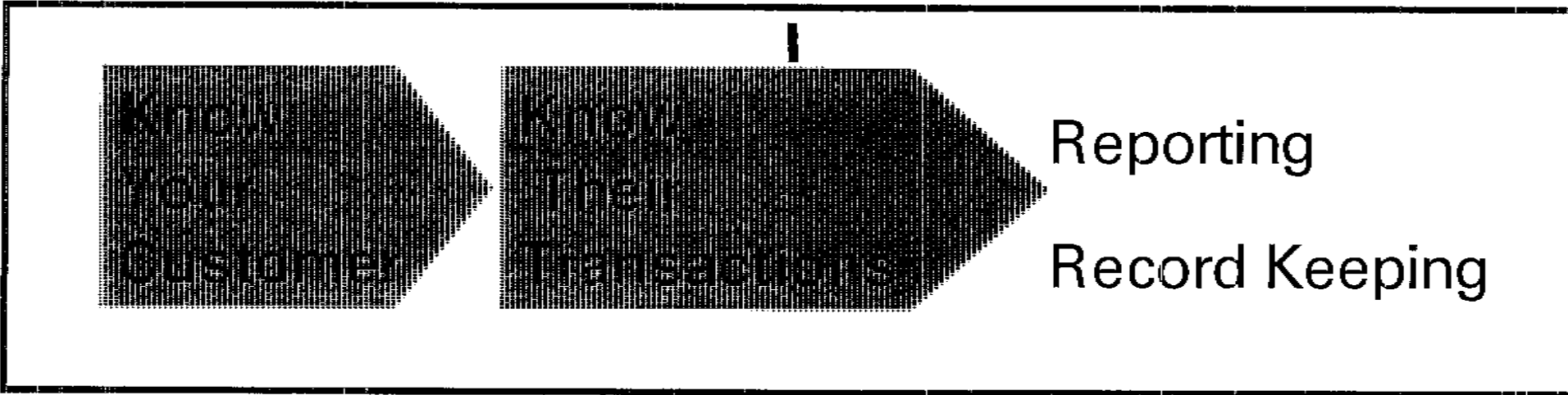
Consequential amendments

*Predicate crimes, *Evidence, *Confiscation of assets, *Privacy, *Discrimination, *Banking Secrecy laws, *Defamation laws, *Record retention laws, *Movement of currency, *Gambling and casinos, *the powers of intelligence organisations to interact domestically and internationally, *Laws on corporations e.g. bearer shares, *Extradition, *Ratification of UN instruments, *Licensing of money services businesses

Standard Concepts

Rejection or freezing or blocking of Prohibited Transactions

Know Your Customer → Know Their Transactions → Reporting

Record Keeping

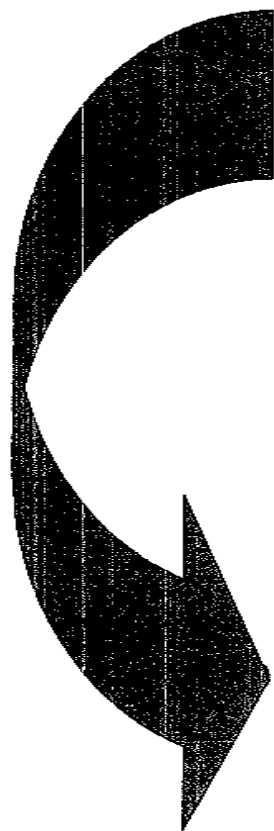Compliance Program & Training

National

Customer Identity

- What is identity

- The role of identity in AML laws and TFS

- Difference between identity and identity verification

- Challenges:

  - false documentation

  - Non face to face

National

FATF Recommendation 5

Risk based customer due diligence when:

- Establishing relationship with new customers
- Carrying out occasional transactions
- If suspicion of ML or TF
- If doubt about adequacy of previous ID

Identify; verify; beneficial ownership; purpose of relationship; ongoing due diligence

National

Basel Recommended Requirements

*Legal name and any other names used (such as maiden name); *correct permanent address; *telephone number, fax number, and e-mail address; *date and place of birth; *nationality; *occupation, *public position held and/or name of employer; *an official personal identification number or other unique identifier contained in an unexpired official document (e.g. passport, identification card, residence permit, social security records, driving licence) that bears a photograph of the customer; *type of account and nature of the banking relationship; *signature.

National

Basel Verification Requirement

- Confirming the date of birth from an official document (e.g. birth certificate, passport, identity card, social security records); OR

- Confirming the permanent address (e.g. utility bill, tax assessment, bank statement, a letter from a public authority); OR

- Contacting the customer by telephone, by letter or by e-mail to confirm the information supplied after an account has been opened.

- Verification by an embassy official/notary public.

What = Identity

- Now:
  - Individuals - Austrac 100 point test
  - Companies – Incorporation, ASIC search

- The future
  - UK Single document
  - Australian Wallet test
  - Beneficial ownership of corporations

What is an individual's identity?

1. Bare Identity

    - What is commonly accepted to uniquely identify an individual for general purposes?

    - Name, appearance, other attributes needed to uniquely identify (e.g. date of birth)

2. Multiple Social and Business Identities

    - Made up of other attributes, eg mother, lawyer, employee, soccer club member, driver.

Identity in AML

AML processes seek to verify

1. Bare Identity

2. Documentary confirmation of bare identity, e.g. driver's licence, birth certificate, bank statement BUT these carry more data than bare identity

    and then add purpose, transaction history and reports to 1 and 2.
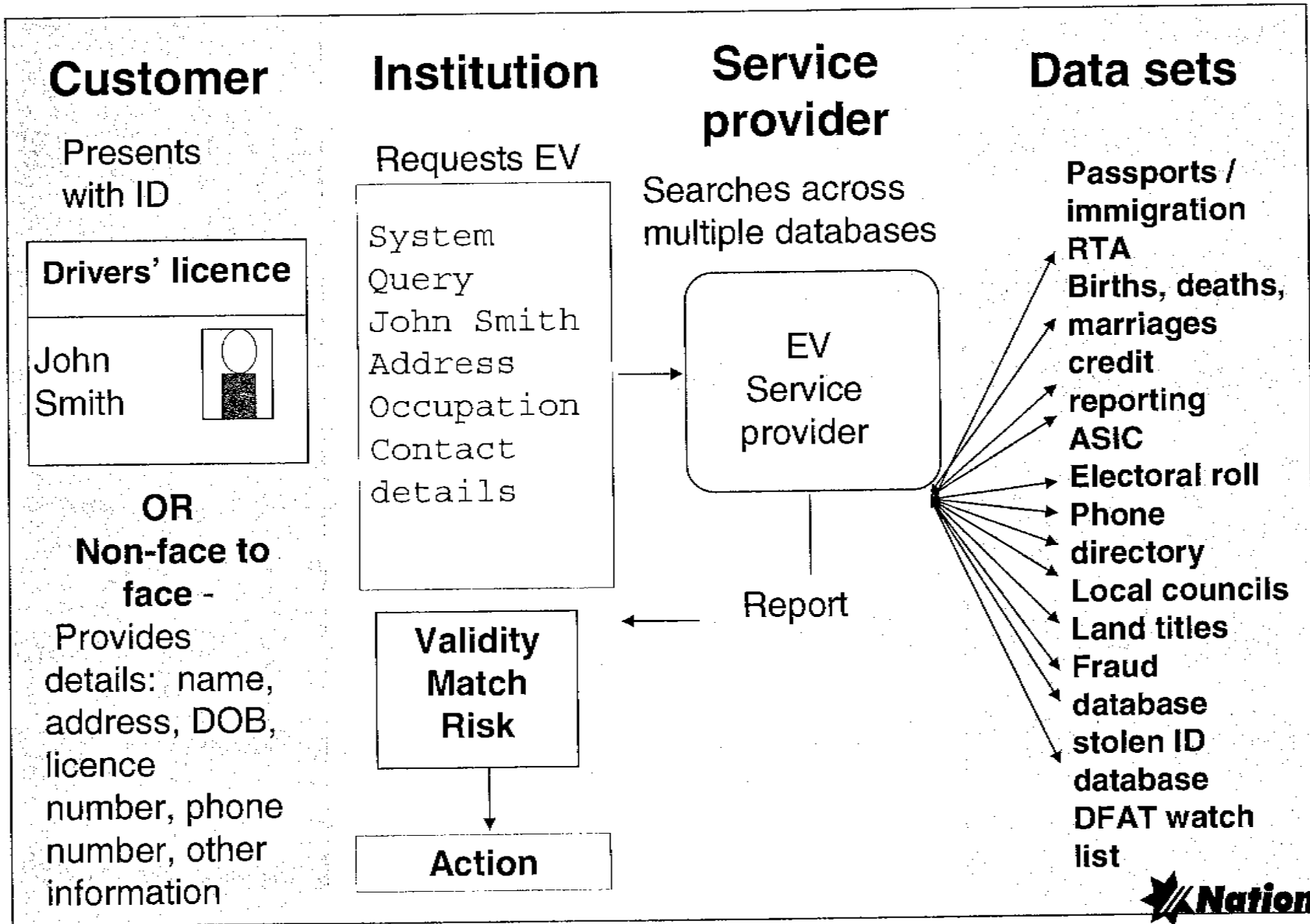
National

Verification of identity

- Physical resemblance plus validation of document by issuer

- Non face to face situations

- Corporations – proposed disclosure statement

- Businesses without branch environments, customers who represent or act for their own customers

Customer

Presents with ID

Drivers' licence
John Smith

OR
Non-face to face -
Provides details: name, address, DOB, licence number, phone number, other information

Institution

Requests EV

```
System
Query
John Smith
Address
Occupation
Contact
details
```

Validity Match Risk

↓

Action

Service provider

Searches across multiple databases

EV Service provider

Report

Data sets

Passports / immigration
RTA
Births, deaths, marriages
credit reporting
ASIC
Electoral roll
Phone directory
Local councils
Land titles
Fraud database
stolen ID database
DFAT watch list

EV Service Issues

- Protects against Fictitious Identities

- Does not protect against Identity Theft - need additional steps, e.g. out of band communication to verified address?

- Query assumptions as to IT readiness of source databases to EV queries and reliability of data matching

EV Service Issues

- Who bears costs?

- Privacy issues in data transfer and data aggregation by EV Service Provider

- Liability issues for government

- Liability issues for EV Service Provider if results or algorithm are inaccurate or misleading

EV Service Issues

- Liability if data repositories are hacked

- Liability of Financial Institution in relying on EV Service Provider's match confidence score

- Function Creep re use of service and database

Outsource Customer Document Verification

ABN Digital Signature Certificate

1. Company enrols with CA Authorised Officers

2. CA checks form signed by a person listed in ASIC return for Company.   Opens account under ABN.

3. CA sends AO details to Australia Post.

Outsource Customer Document Verification

4. Nominated AO attends Australia Post with 100 points of ID documents and letter of authority from Company signed by Authoriser

5. Australia Post sends positive ID check and authorisation letter to CA. CA checks Authoriser.

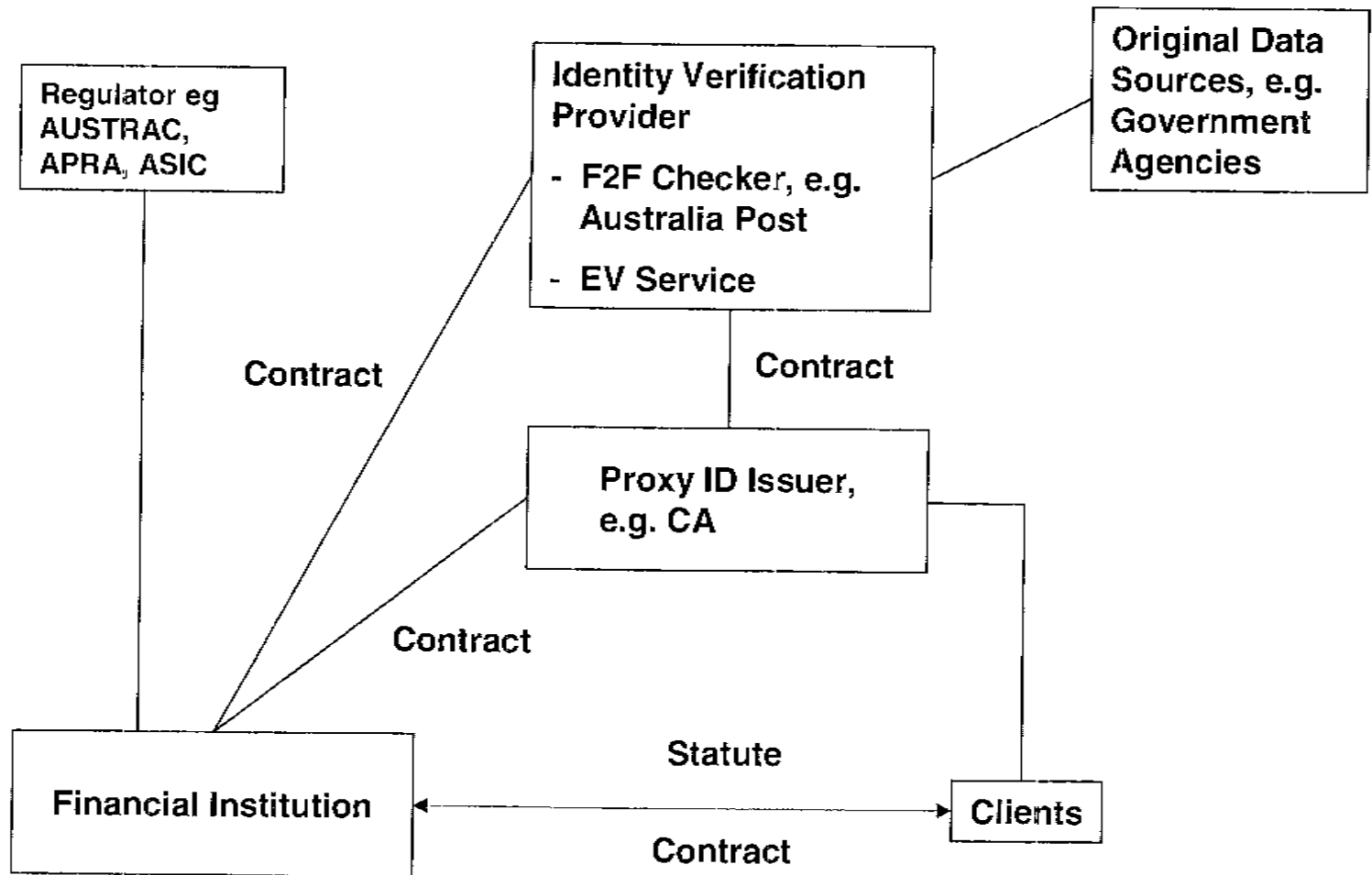6. CA issues certificate to AO by email listed on Company's enrolment form

National

Outsource Customer Document Verification

7. Certificate contains

- AO's name

- Company name

- ABN

- key (proxy ID)

and represents that these are bound together

National

Regulator eg AUSTRAC, APRA, ASIC

Identity Verification Provider

- F2F Checker, e.g. Australia Post

- EV Service

Original Data Sources, e.g. Government Agencies

Contract

Contract

Proxy ID Issuer, e.g. CA

Contract

Financial Institution

Statute

Clients

Contract

National

Privacy Issues

1. AML compliance is primarily related to bare identity.

    BUT it confirms identity by requiring disclosure and confirmation of social and business identity.

2. Can a financial institution refuse to supply a product or on less favourable terms because of a person's perceived higher risk of ML?

National

Privacy Issues

3. Financial Institution A collects 12 pieces of information for AML purposes but Financial Institution B collects 7. Are all 12 necessary for functions of Financial Institution A?

4. What secondary uses of data gathered for AML purposes will be permitted by regulator and collecting Financial Institution and any intermediary? Credit / insurance assessment?

Privacy Issues

5.   How does a Financial Institution handle a request for access to all data of a customer (including Sustrans report and WorldCheck lists)?

6.   Can disclosure by Financial Institutions to foreign regulators be done without consent?

National

✦ National

CLAYTON UTZ