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13 November 2006

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: LegCon.Sen@aph.gov.au

Dear Ms Morris

Inquiry into the Provisions of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006, and the Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006

The Institute of Chartered Accountants in Australia (the Institute) and CPA Australia appreciate the opportunity of providing the Senate Legal and Constitutional Legislation Committee their views on the *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006* (the Bill) which was referred to the Senate on 8 November 2006. The Institute and CPA Australia look forward to meeting with the Committee to provide any further information that may be required.

The Institute and CPA Australia support the objectives of the Financial Action Taskforce (FATF) Recommendations and have worked with government throughout the consultation process leading up to the release of the draft Bill. We wish to commend the government on the consultative approach it has taken in this process and for its willingness to take on the views of industry.

The majority of the concerns of the accounting profession have been addressed in the revised Bill. However we would like to raise a few outstanding issues.

S38 Third party customer identification

It is important for accounting practices that there be flexibility in relation to the third party customer identification procedures. Accountants are usually providing services after the client has had identification procedures completed by another reporting entity. It will minimize the duplication of these procedures and the regulatory burden on accountants if there is clarity regarding the circumstances in which they can rely on customer identification procedures performed by other reporting entities. We are encouraged that the Bill provides that customer identification procedures may be deemed to be carried out by a reporting entity in such circumstances as are specified in the AML/CTF Rules. However, as these Rules have not yet been released their efficacy is uncertain.

S41 – Suspicious Matter Reporting

The current drafting of this clause in a substantial improvement on the previous draft, however it continues to place obligations on business with which they will have difficulty complying.

The obligation exists to report suspicions that may be relevant to an investigation or prosecution of an offence against a Commonwealth, State or Territory law. In order to form such a suspicion, one must be aware of what constitutes an offence which implies that any compliance program must include training for front line staff in a range of laws that bear no relevance to the performance of their job.

The objective of this section should be to ensure that only relevant and useful information is reported yet it is drafted as a catch-all clause, placing an obligation on business to report any suspicion of virtually any possible crime. This requirement amounts to regulation for the lowest possible risk without consideration for the practicality of implementation.

CPA Australia and the Institute's last submission on this issue has been included as background.

Second tranche of the legislation

A number of our concerns about the draft Bill related to the unintentional consequences of definitions in s6 which were drafted in such a manner as to capture non-financial services businesses. These definitions have been altered appropriately and the most accounting professionals (except those with an Australian Financial Services License) will not be caught by the Bill in line with the Government's stated intention that these professionals will be covering in the second tranche. However, it is understood that the framework in this Bill is likely to apply to the second tranche. With this issue in mind, we believe that the current Bill will not be directly applicable to small professional practices such as accountants, real estate agents and jewelers and some amendments or exceptions will be required. For example, the Bill does not consider the long-term professional relationships between an accountant and his/her client and the impact on trust that suspicious reporting obligations will create.

In reviewing this Bill, CPA Australia and the Institute have focused on the businesses that are caught under this tranche and reserve judgment on how this Bill will impact on the professional accounting sector until further discussions with the government during the development of the second tranche of the legislation,

We would be pleased to provide the Committee with the outcomes of these activities once they have been undertaken.

Yours sincerely



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Australia