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14 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 Committee Secretary

Anti-Money Laundering and Counter Terrorism Financing Bill 2006 ("Bill")

Insurance Australia Group Limited is pleased to have the opportunity to make this submission on the Bill.

Given the short time frame in which to make submissions, and the Committee's stated intention to concentrate on issues arising from changes to the Bill since the initial exposure draft, the issues in this Submission are discussed at a very high level and relate principally to those changes.

I look forward to appearing for the Committee on Tuesday, 14 November 2006.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ann Stubbings'. The signature is fluid and cursive, with a large, sweeping 'S' at the end.

Ann Stubbings
Australian General Counsel
Insurance Australia Group

Anti-Money Laundering and Counter-Terrorism Financing Bill 2006

Insurance Australia Group

Submission to the Senate Standing Committee on Legal and Constitutional Affairs

1 Who is Insurance Australia Group?

- 1.1 IAG is the largest general insurance group in Australia and New Zealand (by reference to premium written in these countries). It provides personal and commercial insurance products under some of the most respected and trusted retail brands including NRMA Insurance, SGIO, SGIC, CGU and Swann Insurance in Australia, and State and NZI in New Zealand.
- 1.2 IAG's core lines of business include:
- (a) Home insurance
 - (b) Motor vehicle insurance
 - (c) Business insurance
 - (d) Consumer credit insurance
 - (e) Product liability insurance
 - (f) Compulsory third party (CTP) insurance
 - (g) Workers' compensation insurance
 - (h) Professional risk insurance
- 1.3 IAG has a crucial interest in the long-term viability of insurance as a product valued by the Australian community. IAG believes that there are four principal ways in which the insurance industry can best meet these objectives. These are:
- (a) investing in robust risk control frameworks and mechanisms that protect policyholders and provide certainty to shareholders;
 - (b) pricing products realistically;
 - (c) ensuring that customers understand what they are buying when they purchase a policy, and that products do not arbitrarily advantage or penalise particular individuals or groups; and
 - (d) committing to, and supporting, on a continuing basis, a comprehensive and clearly defined regulatory framework that facilitates more affordable premiums and more predictable claims costs.

- 1.4 IAG's interest in the Bill is multi-faceted and includes:
- (a) ensuring that the Federal Government and other participants in the financial services sector have an appreciation of the low risk nature of the Australian general insurance sector in relation to money laundering. IAG does note that general insurance is not a designated service;
 - (b) ensuring the distinction between insurance fraud and money laundering is appropriately understood by both Government and regulators; and
 - (c) where appropriate, provide comment on the potential unintended consequences of the Draft Exposure Bill, that have the potential to effect the operations of businesses throughout Australia.

2 Further Consultation

The mandatory Rules and Regulations to be made under the Bill will contain important compliance obligations and there will be potentially severe penalties for non compliance. As previously submitted, IAG considers there should be an adequate period in which industry can consider all aspects of the legislative package ie including the Bill, Rules and Regulations. This would enable training, intra group relationships and compliance arrangements to be simultaneously assessed and gaps identified against the requirements of the package.

IAG accordingly considers that the Bill should not be finalised until there has been an adequate amount of time to make submissions on the proposed Rules and Regulations together with the Bill.

3 Transition Arrangements

IAG appreciates the proposed 24 months implementation period and the announcement by Senator Ellison that there will be a 12 month period after each stage is implemented where AUSTRAC will focus on education with punitive action only being taken if reasonable efforts are not made to comply.

However IAG does not consider that any parts of the Bill should commence on the day after Royal Assent as is currently proposed. This is particularly the case for those parts of the Bill which may require systems changes and staff training (such as Part 5 "Electronic Funds Transfer Instructions" and Part 10 Divisions 1, 2, 4 and 7 "Record Keeping Requirements").

IAG considers there should be at least 6 months after Royal Assent, and finalisation of the relevant Rules and Regulations, before any Part of the Bill commences.

4 Designated services

- 4.1 Whilst general insurance is not considered a designated service and consumer credit insurance ("CCI") is helpfully now excluded from the definition of a "life policy", IAG has some specific concerns relating to the designated services in clause 6 of the Bill.
- 4.2 **Table 1, Items 6 and 7 (Loans):** The designated services relating to a "loan" now only apply where the loan is provided "*in the course of carrying on a loans business*" (our emphasis). The Explanatory Memorandum states that one of the results of this limitation

is that “*item 6 is limited to businesses where lending is a core activity ... some businesses may have more than one core activity and whether an activity is a core activity of the business will be determined by the circumstances in each case*”¹.

The term “*core activity*” is not otherwise defined. IAG believe that further clarification is required in the Bill as to what constitutes a “*core activity*” given:

- (a) the clause 5 definition of a “*loan*” is very broadly defined; and
- (b) the clause 5 definition of “*business*” continues to capture one off transactions and the Explanatory Memorandum expressly provides that the definition “*is intended to ensure that when the term is used in the Bill that it will be given a broad interpretation*”²

- 4.3 **Table 1, Items 31 and 32 (designated remittance arrangements):** IAG is concerned about the ramifications of this designated service where a general insurer offers CCI. Many CCI products contain a life insurance component. In some circumstances, the general insurer may accept premium payments from a client in respect of the life component of the CCI policy to be transferred to the CCI provider.

IAG believes that item 32 or, alternatively, the Rules should specifically exclude an arrangement where a general insurer intermediates between the client and the CCI provider in respect of the life insurance component of the CCI policy.

- 4.4 **Table 1, Item 46 (custodial or depository service):** IAG notes that the definition of “*providing a custodial or depository service*” both “*includes*” and specifically excludes certain conduct under Chapter 7 of the *Corporations Act 2001 (Cth)*. IAG has concerns about this definition in relation to CCI, in that a general insurance provider may hold a life insurance policy on trust for or on behalf of, its customers.

IAG submits that:

- (a) a general insurer holding a life insurance policy on trust for a client in relation to CCI should be exempted from item 46; and
- (b) greater certainty is required in relation to the definition of “*providing a custodial or depository service*” by deleting the word “*includes*” and replacing it with the word “*means*”.

Although it is helpful that item 46 refers to a service being provided “*in the course of carrying on a business of providing a custodial or depository service*”, IAG repeats its concerns about the breadth of the definition of a “*business*” mentioned above.

- 4.5 **Table 1, Item 54 (AFSL holder):** The Explanatory Memorandum provides that item 54 is designed to implement paragraph 8 of the Glossary definition of “*financial institutions*” in the FATF Forty Recommendations, which relates to the issue of securities and the provision of financial services related to such issues. IAG submits that item 54 is therefore not intended to apply to general insurers and that the Bill should clarify that item 54 is limited to situations where an AFSL holder arranges for a client to receive a designated service in relation to the participation in securities issues and the provision of financial services related to such issues.

¹ Page 55

² Page 27

5 Designated Business Groups

IAG welcomes the revised definition of a “*designated business group*” and the extent to which one member of a designated business group can discharge obligations on behalf of another member³. However IAG further submits that there should be a general provision to the effect that any obligations of a reporting entity under the Bill can be discharged by another member of a designated business group.

Further, the Bill still provides no qualification or exception where a designated service is provided to another member of a designated business group. IAG submits that a designated service will not be deemed to have been provided in these circumstances. For example, where intra group loans and guarantees are provided in these circumstances.

6 AUSTRAC Powers

AUSTRAC can now require a reporting entity to carry out a money laundering and terrorism financing risk assessment and provide a copy of a written report to the AUSTRAC CEO⁴.

IAG submits that this new power should be deleted from the Bill on the basis that:

- (a) AUSTRAC already has very broad powers under the Bill to supervise compliance including the ability to seek production of documents⁵, issue remedial directions⁶, obtain injunctions⁷, obtain enforceable undertakings⁸, issue notices to reporting entities⁹ and require audits by an external auditor¹⁰;
- (b) it must be queried whether AUSTRAC will have sufficient industry expertise and knowledge of the relevant reporting entity’s business to review the risk assessment, and
- (c) the likely significant expense caused by such a risk assessment which presumably the reporting entity would be expected to bear.

7 Civil Penalties

7.1 The civil penalties that can now be imposed under the Bill have significantly increased¹¹. A reporting entity can now face a civil penalty of up to \$11 million for each breach of a civil penalty provision.

7.2 IAG notes the Explanatory Memorandum comments on ¹² the Bill’s civil penalty regime and submits that a standard of proof higher than “*on the balance of probabilities*” should

³ The obligations that can be discharged include undertaking ongoing customer due diligence, providing the AUSTRAC CEO with AML/CTF compliance reports, making and retaining records, performing the customer identification procedure for another reporting entity and retaining customer provided documents in an AML/CTF Program and related records

⁴ Clause 165

⁵ Clause 150 and Part 14

⁶ Clause 191

⁷ Clause 192

⁸ Clauses 197 and 198

⁹ Clause 202

¹⁰ Clause 161

¹¹ Clause 175

apply to a civil penalty provision that carry a significant penalty such as \$11 million and that consideration should be given to requiring a fault element in relation to civil penalties.

- 7.3 IAG also submits that consideration should be given to the inequity in the Bill that a person convicted of an offence under the Bill cannot have a civil penalty imposed on them for the same breach whereas a person upon whom a civil penalty is imposed can still be convicted of an offence under the Bill for the same breach¹³.

8 Overseas Businesses

A particular concern arising from the absence of the proposed Rules is the obligation to have an AML/CTF Program in relation to the provision of designated services through a “*permanent establishment*”¹⁴ of IAG in a foreign country.

As well as the lack of detail around these obligations, IAG is concerned that the definition of a “*permanent establishment*” is drafted in extremely broad terms to include a place “*at or through which the person carries on **any** activities or business, **and** includes the place where the person is carrying on activities or business through an agent*” (our emphasis). Further, there is provision for a person to be taken to have a permanent establishment if they provide services through an agent, while operating on a mobile basis or travelling or through electronic communications.

IAG submits that the Rules applying to overseas establishments should be the subject of consultation, and the definition of a “*permanent establishment*” should be narrowed, before any aspect of the Bill commences to apply in respect of such an establishment.

¹² Page 169

¹³ Clause 180

¹⁴ Clause 21