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17 November 2006

Ms Jackie Morris
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

By email to: LegCon.Sen@aph.gov.au

Dear Secretary,

**Inquiry into the Anti-Money Laundering and Counter-Terrorism
Financing Bill 2006 (the Bill)**

I refer your letter of 8 November 2006 and thank you for providing us with the opportunity to make a submission into the above inquiry.

The Australian Finance Conference (AFC) is a national finance industry association established in 1958. Our members include finance companies, building societies, banks, leasing companies, manufacturers and general financiers; our associate members include receivables management companies and credit reporting agencies. This submission is made on behalf of members of the AFC and its sister bodies the Australian Equipment Lessors Association (AELA) and the Australian Fleet Lessors Association (AFLA), which together represent more than 130 organisations operating in the financial services market.

The AFC is a member of the AML/CTF Advisory Group established by the Minister for Justice and Customs, Senator Chris Ellison, and has participated in various industry / government roundtable meetings and working groups which have considered drafts of the Bill and AML/CTF Rules. The AFC lodged submissions with the Attorney-General's Department in April, August and September 2006 in relation to exposure drafts of the Bill. We had input into, and support, the submissions lodged by the Australian Bankers' Association in relation to the earlier inquiry conducted by the Committee into the draft AML/CTF Bill and into the current enquiry.

We commend the Minister, his staff and representatives of the Attorney-General's Department and AUSTRAC for their commitment to working with the financial services industry towards achieving workable anti-money laundering and counter-terrorism financing laws that are consistent with Australia's international obligations. The Bill takes into account many of the concerns expressed in our submissions and more broadly by the financial services industry during the consultation process. However several, as outlined in the latest ABA submission, remain; rather than repeat them here, AFC simply notes our support for those views. Described below are two issues of particular concern to our members.

1. Commencement Timetable, AML/CTF Rules and Exemptions

The Bill allows for a phased introduction over twenty four months from the date it receives Royal Assent. Many of the “designated services” offered by our members are not currently regulated under the Financial Transaction Reports Act. Examples include business and consumer loans, hire-purchase, equipment leasing and debt factoring. A number of our members are stand-alone finance businesses and do not benefit from the sharing of resources which may be available within large corporate groups. For smaller businesses, the cost of preparing for the new regime will be considerable in the context of their overall size. Given that many operational provisions remain to be specified in the AML/CTF Rules, it is unfortunate that updated draft Rules were not made available for consideration together with the Bill, as this makes it difficult to assess the full impact of the measures and for our members plan for implementation of the new laws.

We are working with our members to assess whether their products present a high, medium or low money laundering or terrorism financing risk. This will assist them in determining how to implement the various risk-based measures provided for in the Bill and the draft Rules and whether to make exemption applications in respect of any of their products. However, without access to all operational Rules, it is not possible to make substantial progress with these matters. We would therefore prefer that the proposed period of twelve months after each stage of the Bill commences, during which AUSTRAC will focus on education and only take punitive action if a business is not making reasonable attempts to move towards compliance, should allow for Rules development and should only commence once the Rules relevant to a particular stage have been settled between government and industry. This would allow our members appropriate time to implement the new laws. It would also allow time for any exemption applications to be submitted to, and considered by, AUSTRAC within a workable timeframe.

2. Proposed Amendments to the Commonwealth Electoral Act

Clause 37 of the Bill refers to agents of reporting entities carrying out customer identification procedures. We have some overall concerns with clause 37 and support the ABA submission on this. We would like to add a particular concern about the carry over of the reference to agents in clause 37 into the Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006 (the Consequential Amendments Bill).

In our submission to the Attorney-General in August 2006, we requested that, in order to facilitate the verification of customer information, access to government databases for AML/CTF compliance purposes by reporting entities, or through information brokers, be recognised in the Bill or through consequential amendments to the laws supporting maintenance of those registers.

The Consequential Amendments Bill includes proposed amendments to the Commonwealth Electoral Act. These would replace current provisions in the Electoral Act to the effect that persons or organisations to whom the Electoral Commission may give electoral roll information include “a prescribed person or organisation that verifies, or **contributes to** the verification of, the identity of persons for the purposes of the Financial Transaction Reports Act.” The Consequential Amendments Bill proposes only allowing access to a prescribed person or organisation that is a reporting entity or “an **agent** of reporting entity”. This reflects clause 37 of the Bill, but its effect appears to be a narrowing of the current Electoral Act provisions, which only require a **contribution** to the verification of identity, without the

need for formal appointment as an agent. As members may source particular information from more than one service provider, we submit that it would be appropriate for clause 13 of the Consequential Amendments Bill to be amended to reflect the reference in the Electoral Act to a person who contributes to verification of identity. This will ensure carry over into the new laws of practices developed and access allowed under the current Electoral Act provisions.

We look forward to continuing to participate in the consultation process and to working with the Attorney-General's Department and AUSTRAC on the AML/CTF reform process.

Yours truly,

A handwritten signature in black ink, appearing to read "Ron Hardaker". The signature is written in a cursive, flowing style with a large initial "R".

Ron Hardaker
Executive Director