

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE
QUESTIONS ON NOTICE TO ATTORNEY-GENERAL'S DEPARTMENT

RESPONSE TO QUESTION ON NOTICE BY SENATOR PARRY

Senator Parry asked the following questions on 24 November 2006:

Question 1. Has the Attorney-General considered the potential implications for an APRA regulated entity, which is subject to stringent capital and solvency requirements, of a civil penalty order of the magnitude of up to \$11 million? If so, what view does the AG have with respect to enabling the Federal Court to consider the prudential standing of an entity when determining the magnitude of a civil penalty order?

Response: The Minister for Justice and Customs has carriage of the legislation. \$11 million is the maximum civil penalty. A court in sentencing a person for any of these offences is best placed to make appropriate penalty decisions. If a reporting entity has been found to have breached a civil penalty provision in the AML/CTF Bill the court would be entitled to consider the reporting entity's prudential standing in assessing an appropriate penalty order. It would be expected that the court would be likely to consider a reporting entity's prudential standing in most cases where a civil penalty order is to be made. The court does not need statutory authority to be able to do so.

Question 2. Would the Attorney General comment on the intended timeframe for the making of the Rules that are necessary for reporting entities to establish AML/CTF programs and customer identification procedures, etc and in particular, whether the AG has considered that the transition period should not commence until the main package of Rules are available?

Response: The Bill provides for a transition period of 12 months after Royal Assent before Part 7 commences (Part 7 deals with AML/CTF programs). All relevant Rules relating to Part 7 will be made by 31 March 2007 after consultation with industry. In addition the Minister for Justice and Customs has announced that there will be a further 12 month 'amnesty' period during which punitive enforcement action will only be taken if a reporting entity is not making a reasonable effort to comply with its obligations under the Bill.