

Secretary

Senate Legal and Constitutional Legislation Committee

Parliament House

Canberra ACT 2600

11 July 2006

Dear Secretary

**Submission to Inquiry into the Financial Transactions Reports Amendment Bill 2006 (Cth)**

Thank you for your invitation to make a submission to the Committee's inquiry into the Financial Transactions Reports Amendment Bill 2006 (Cth) ('the Bill'). This submission is made on behalf of Liberty Victoria.

In essence, the Bill seeks to relax obligations imposed on non-bank 'cash-dealers' to include 'customer information' in relation to international fund transfers by restricting these obligations to authorised deposit-taking institutions.<sup>1</sup> These proposed changes to amendments made by Schedule 9 of the *Anti-Terrorism Act (No 2) 2005* (Cth) have been justified on the basis that 'certain legitimate non-bank money remitters assert that they could be put out of business'<sup>2</sup> if these changes are not made.

Liberty Victoria's main observation is that issues arising from the compliance costs of non-bank money remitters will be much more acute once the Anti-Money Laundering and Counter-Terrorism Financing Bill Exposure Draft 2005 (Cth) ('AML/CTF Bill') is passed. The scope of

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<sup>1</sup> The Bill, Schedule 1, cl 3-9, 11-16.

<sup>2</sup> Explanatory Memorandum to the Financial Transactions Amendment Bill 2006 (Cth), section headed 'Financial Impact'.

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the AML/CTF Bill clearly encompasses non-bank money remitters as these entities provide ‘designated services’ and, as a consequence, are ‘reporting entities’ under the Bill.<sup>3</sup> Indeed, it is clear from AUSTRAC’s documents that certain non-bank money remitters, in particular, remittance through the Islamic *hawala* system is seen as suspect and, therefore, are being (or will be) targeted in efforts to prevent money-laundering and financing of terrorism.<sup>4</sup>

Moreover, the AML/CTF Bill seeks to impose obligations far more onerous than requirements relating to international funds transfers under the *Financial Transactions Reports Act 1988* (Cth). For instance, the AML/CTF Bill, if enacted, will require non-bank money remitters to develop, maintain and comply with an anti-money laundering and counter-terrorism financing program.<sup>5</sup>

Liberty Victoria, therefore, recommends that a public inquiry be conducted into the specific issues relating to non-bank money remitters that arise from the AML/CTF Bill.

Besides the compliance costs to be incurred by non-bank money remitters, there are two further reasons why such an inquiry is needed. First, the targeting of Muslim ‘alternative’ methods of remittance raises real issues of racial and religious discrimination. Second, it is very unclear whether the extension of obligations under the AML/CTF Bill to non-bank money remitters or, for that matter, other providers of financial services, will enhance efforts to prevent terrorism. This stems from the extreme difficulty in detecting when funds will be used to finance terrorism simply because these funds will frequently come from legal sources. As an AUSTRAC manual puts it, ‘terrorist financing often involves the task of filtering *legitimate funds* into terrorist hands’.<sup>6</sup> This is a point of distinction between money-laundering and financing of terrorism<sup>7</sup> that has prompted commentators to dub financing of terrorism as ‘reverse money-laundering’.<sup>8</sup>

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<sup>3</sup> AML/CTF Bill ss 5-6.

<sup>4</sup> AUSTRAC, *Anti-Money Laundering eLearning Application* (2006), Modules 3 and 14 (available at [http://www.austrac.gov.au/aml\\_elearning/html\\_version/html/aml\\_3.html](http://www.austrac.gov.au/aml_elearning/html_version/html/aml_3.html); [http://www.austrac.gov.au/aml\\_elearning/html\\_version/html/aml\\_14.html](http://www.austrac.gov.au/aml_elearning/html_version/html/aml_14.html) on 6 June 2006) and

<sup>5</sup> AML/CTF Bill s 73. See also Senate Legal and Constitutional Legislation Committee, *Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005* (2006) 42-4.

<sup>6</sup> AUSTRAC, *Anti-Money Laundering eLearning Application* (2006), Module 14 (available at [http://www.austrac.gov.au/aml\\_elearning/html\\_version/html/aml\\_14.html](http://www.austrac.gov.au/aml_elearning/html_version/html/aml_14.html) on 6 June 2006) (emphasis added).

<sup>7</sup> Alyssa Philips, ‘Terrorist Financing Laws Won’t Wash: It Ain’t Money Laundering’ (2004) 23 *University of Queensland Law Journal* 81, 88-9.

<sup>8</sup> Tan Sin Liang, ‘The Threat of Terrorism and Singapore’s Legislative Response to Terrorism Financing’ (2003) 7 *Journal of Money Laundering Control* 139.

We hope this submission has been of assistance. If you have any queries, please do not hesitate to contact the author of this submission.

Yours sincerely,

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