25 July 2006

Ms Julie Dennett
Acting Committee Secretary
Senate Legal and Constitutional Committee

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

Dear Ms Dennett

Thank you for your email of 27 June 2006 addressed to Dr Laker who has asked me to respond on his behalf.

Attached is APRA's submission in respect of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 as requested.

Please contact me if you require further information.

Yours faithfully

Thea Rosenbaum
Secretary

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APRA is a party to the whole of Government approach to Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) and is specifically assisting the Australian Transaction Reports & Analysis Centre (AUSTRAC) in building its capacity for on-site reviews of compliance with the proposed legislation.

The Federal Government has consulted generally in respect of the implications of the Bill and APRA is committed to the refinements of the system which will be applied to entities it regulates, principally banking.

In the mutual evaluation of Australian's approach to Anti-Money Laundering and Counter-Terrorism Financing the Financial Action Task Force (FATF) identified deficiencies in Australia's current approach particularly relating to the absence of an effective on-site review program. The Bill seeks to address this and other issues identified by FATF.

Within Australia's functional approach to financial sector supervision, APRA is responsible for the prudential regulation of banks, insurers, credit unions, friendly societies and large superannuation funds. But APRA does not regulate the broader industry population which will be eventually captured by the Bill.   In line with this functional approach and in order to achieve consistency it would seem appropriate that one agency conducts on-site reviews of the total population to be subject to the Bill. AUSTRAC is already moving to establish that capability.

APRA's on-site reviews are only a component of its prudential supervision activities, but they are mostly focussed on the various risk management frameworks and policies which APRA-regulated entities should have in place for their prudent management of the various major risks they have. While APRA's on-site reviews do at times involve some transaction testing this is to check that the frameworks and policies are not simply decorative. APRA expects that AUSTRAC's regulatory approach and associated reviews will be more compliance focussed. Generally compliance reviews would be more resource intensive and far more transaction focussed than prudential reviews, so it would not be easy to structure on-site reviews to achieve both the prudential and AML/CFT compliance objectives in single reviews.   Where there is potential for regulatory overlap APRA and AUSTRAC would need to understand well each other's approach to reviews and work to minimise overlaps and duplication for the common regulated entities. Occasionally there would likely be advantages in AUSTRAC and APRA participating in coordinated visits to APRA regulated entities.

Both APRA and AUSTRAC are currently working to finalise a Memorandum of Understanding to cement and demonstrate the co-operation and communication between the two organisations where their functions overlap.   From April 2002, APRA has been empowered to provide to financial sector supervisory agencies, of which AUSTRAC is one, information which APRA obtains if that information will assist the financial sector supervisory agency to perform its functions. However, AUSTRAC has not been empowered to provide information it receives to APRA, even if that information is likely to assist APRA perform it functions, but the Government has decided to amend the Financial Transaction Reports Act 1998 to include APRA as an agency within Section 27 to allow the Director of AUSTRAC to authorise APRA to have access to FTR information for the purposes of performing its functions.