Law Council
OF AUSTRALIA

27 May 2011

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Senate Standing Committees on Legal and Constitutional Affairs
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Dear Ms Dennett

AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE SUPERVISORY COST RECOVERY LEVY BILL 2011; AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE SUPERVISORY COST RECOVERY LEVY (COLLECTION) BILL 2011; AND AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE SUPERVISORY COST RECOVERY LEVY (CONSEQUENTIAL AMENDMENTS) BILL 2011

Thank you for the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the above package of Bills.

The purpose of the Bills is to provide a legislative basis for the imposition of a cost-recovery levy on those businesses which are regulated by AUSTRAC under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* (the AML/CTF Act).

In general terms, the provision of legal services is not captured by the AML/CTF Act in its current form. Therefore, most legal practices do not presently qualify as "reporting entities" under that Act and will not be subject to the levy.

For that reason, the Law Council has not participated directly in consultations with AUSTRAC about the appropriateness of the levy or its method of calculation and imposition.

However, the Law Council notes that it is the Government's longstanding intention to introduce a second tranche of AML/CTF reforms, which would expand the current regulatory regime to a range of so-called "gate-keeper" industries, including the legal

profession. Should this occur, the Law Council would be quite concerned if legal practices, in addition to incurring the substantial compliance costs associated with the regime, were also required to pay a direct fee to be regulated. The combined effect of such an impost may prove prohibitive for smaller practices and result in the withdrawal of certain services or an increase in the cost of such services.

The Explanatory Memorandum accompanying the Bills states that:

> *Reporting entities provide services that are vulnerable to exploitation for money laundering and terrorism financing purposes, creating the need for regulation by AUSTRAC. It is appropriate that industry meet the costs of regulatory systems that ensure the integrity of their operating environment.*

In that regard, the Law Council notes the following:

- Legal practitioners are already subject to, and bear the cost of, significant professional regulation designed to ensure the integrity of their operating environment. For example, money entrusted to law practices on behalf of clients (or third party payers) in the course of legal practice or in connection with the provision of legal services is generally trust money[1]. Trust money is, in every Australian state/territory jurisdiction subject to rigorous regulatory oversight.

- The types of services which are provided by the legal profession and which are likely to be subject to regulation under tranche two reforms are, for the most part, concerned with assisting clients to undertake their business activities in compliance with law and in a manner which maximises their protection under the law. They are not services which are, in and of themselves, inherently risky from a money laundering perspective. They are services which benefit the community and enhance the efficacy and stability of the economy. The assertion that legal practitioners may, in the course of providing these services, be approached by and obtain information about people seeking to undertake illegitimate business activities, should not justify the imposition of a levy on all those who provide the relevant service.

- To date, no evidence has been provided to support the assertion that legal practitioners are being used to inadvertently facilitate money laundering and the financing of terrorism. As such, the need for AUSTRAC regulation and the likely effectiveness of the proposed regulatory measures has also not been established.

- If law practices become subject to AML/CTF reporting obligations and consequently the cost recovery regime, the Law Council would have particular concerns about the impact on smaller firms. The Australian legal profession overwhelmingly comprises sole or small practices. For example, 86.41% of private solicitor practices in New South Wales and all barristers are sole practitioners. A further 11.4% of law practices in NSW involve only 2 to 4 solicitors.

- The proposed cost recovery levy, which would apply above and beyond a legal practice's compliance costs, would almost certainly lead, in the Law Council's

[1] For example, see section 237 of the *Legal Profession Act 2007* (Qld)

opinion, to an increase in the cost of legal services, making such services less affordable.

The Law Council is grateful for the opportunity to note its reservations on this matter and looks forward, in due course, to reading the Committee's report on the precise provisions of the Bills.

Yours sincerely,

Bill Grant
Secretary-General