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17 November 2006

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department Of The Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Email Legcon.sen@aph.gov.au

Dear Committee Secretary

Anti-Money Laundering and Counter Terrorism Financing Bill 2006 ("Bill")

This letter contains a further submission from Insurance Australia Group Limited ("IAG") following my appearance before the Committee on Tuesday, 14 November 2006 and is in addition to the written submission IAG lodged on 14 November 2006.

I also attach for information some background information on the consumer credit insurance products issued by IAG which we discussed at my appearance before the Committee.

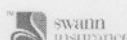
Yours sincerely



Ann Stubbings
Australian General Counsel
Insurance Australia Group Limited



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Anti-Money Laundering and Counter-Terrorism Financing Bill 2006

Insurance Australia Group

Further Submission to the Senate Standing Committee on Legal and Constitutional Affairs

1 AUSTRAC's powers in relation to APRA regulated entities

1.1 IAG is concerned about the additional regulation for Australian Prudential Regulation Authority ("APRA") regulated reporting entities following enactment of the Bill, having regard to the broad powers given to AUSTRAC in the Bill.

Relevant AUSTRAC powers include the power to:

- (a) **risk assessments:** require a reporting entity to carry out a money laundering and terrorism financing risk assessment and provide a copy of a written report to AUSTRAC CEO¹;
- (b) **remedial directions:** issue a written direction requiring specified action wherever the AUSTRAC CEO is satisfied the reporting entity has contravened, or is contravening, a civil penalty provision²;
- (c) **information and documents:** issue notices requiring a reporting entity to provide information and documents³;
- (d) **risk management audits:** require an external auditor to carry out an audit of a reporting entity's capacity and endeavours to identify, mitigate and manage money laundering and financing of terrorism risks⁴;
- (e) **compliance audits:** require a reporting entity to appoint an external auditor to audit compliance with the AML/CTF legislative package⁵; and
- (f) **compliance reports:** require a reporting entity to lodge a compliance report with the AUSTRAC CEO⁶.

1.2 There are additional reporting and compliance obligations for a reporting entity which is regulated by APRA. For a general insurer such as IAG, these include the following obligations in the Insurance Act 1973 (Cth) ("**Insurance Act**"):

- (a) **prudential standards:** to comply with the prudential standards issued by APRA⁷ and also with a direction from APRA to comply with such a standard⁸. These

¹ Clause 165

² Section 191-examples of the kind of provisions that may be given include a requirement to implement effective administrative systems monitoring compliance and to give relevant officers, employees and agents a reasonable knowledge and understanding of civil penalty requirements.

³ Clause 202

⁴ Clause 161

⁵ Clause 162

⁶ Clause 47

⁷ Section 35

include for a general insurer Prudential Standard GPS 220 "*Risk Management*" which aims to ensure that a general insurer has systems for identifying, assessing, mitigating and monitoring the risks that may affect its immediate obligations to policyholders;

- (b) **investigations:** to comply with a direction from APRA in relation to an investigation⁹; and
- (c) **appointment of actuary:** to appoint an actuary (at the insurer's expense) to investigate the insurer's liabilities and provide a written report¹⁰.

1.3 IAG considers that the powers given to are:

- (a) excessive (importantly, it is not clear why AUSTRAC requires a power to require a risk assessment when it separately has power to issue directions, require compliance reports, obtain information and documents and require external audits); and
- (b) inconsistent with the government stated intent to reduce the regulatory burden¹¹. This is especially having regard to the regulatory obligations that general insurers such as IAG will have to APRA under the Insurance Act, as well as its obligations to ASIC under Chapter 7 of the Corporations Act as an Australian Financial Services licensee.

1.4 IAG proposes that:

- (a) the ability for the AUSTRAC CEO to require a risk review be deleted from the Bill; and
- (b) AUSTRAC be required to consult with APRA before performing its functions in relation to an APRA regulated entity. This might be achieved through an amendment to clause 212.

2 Overseas Operations

2.1 IAG also has a general concern that there may be regulatory overlap for its overseas operations where there is an obligation to comply with the AML/CTF legislative package as well as overseas laws. It is, however, difficult to understand the extent of that overlap given the absence of the proposed Rules and regulations.

2.2 That said, IAG asks that provisions be included in the Bill to the effect that:

- (a) a reporting entity with overseas operations can comply with any obligation under the Bill by complying with the AML/CTF regulatory regime in prescribed countries (such as the United Kingdom); and

⁸ Section 36

⁹ Section 56

¹⁰ Section 49E

¹¹ See, for example, the recent endorsement by the Government of relevant recommendations in the January 2006 Report of the Taskforce on Reducing Regulatory Burdens on Business ("**Banks Report**"). The Treasurer said in his press release of 15 August 2006 (in summary) that the Government was on "*an ongoing red tape reduction agenda*" and very much focussed on making sure the benefits of regulation justified their costs.

- (b) at a minimum, where a report is required to be provided to AUSTRAC in respect of such overseas operations, by providing to AUSTRAC a copy of any report covering the information required by AUSTRAC which has been submitted to a relevant overseas regulator.

3 AUSTRAC Guidelines

- 3.1 AUSTRAC has indicated its intention to issue guidelines on the Bill and the related regulations and Rules. Unlike the Rules, these guidelines will not have mandatory effect. They are nevertheless likely to provide important guidance as to AUSTRAC's interpretation of obligations under this complex new legislative package. Accordingly IAG considers that there should be a requirement for AUSTRAC to consult with industry when the guidelines are being developed. This might be achieved through an appropriate amendment to clause 212¹².
- 3.2 A formal consultation program on AUSTRAC guidelines would also be consistent with the approach that the Australian Securities and Investments Commission ("ASIC") has taken in relation to Policy Statements issued by ASIC.

¹² This might be done also through making the guidelines be "*legislative instruments*" for the purposes of the *Legislative Instruments Act 2003* (Cth).

Consumer Credit Insurance – additional information

In IAG's written submission of 14 November 2006 section 4, we commented that while general insurance is not considered a designated service within the Bill and CCI is now excluded from the definition of a "life policy", we had some further concerns relating to the Bill and its potential impact on Consumer Credit Insurance ("CCI"). In addition to the comments made in our written submission, the Committee asked several questions at the hearing with regard to CCI. This additional information may assist the Committee.

CCI policies generally offer insurance cover in respect of the policy holders' obligations to repay a credit contract in the event of disability, illness, unemployment or upon the death of the insured on certain conditions. That part of the CCI policy that provides insurance cover on the death of the insured, and in some cases a lump sum cash amount in the event of the insured suffering certain types of illness, are life insurance covers, provided by a life insurer. The life insurance component of IAG's CCI policies is underwritten by a life insurer external to the IAG Group. The other components of the policy, that is the 'non-life' components, are provided by a general insurer within the IAG Group.

The Corporations Regulations 2001 Reg 7.1.15 defines a "consumer credit insurance product" as a contract or part of a contract that has the following characteristics:

- (a) the contract provides insurance cover (whether the cover is limited or restricted in any way) in respect of:
 - (i) the death of the insured person; or
 - (ii) the insured person contracting a sickness or disease; or
 - (iii) the insured person sustaining an injury; or
 - (iv) the insured person becoming unemployed;
- (b) the amount of the liability of the insurer under the contract is to be ascertained by reference to a liability of the insured person under a specified agreement to which the insured person is a party.

The Insurance Contracts Regulations and the Consumer Credit Code have similar definitions.

There are variations in the structures of the legal and administrative arrangements behind CCI policies between the general insurer and the life insurer. The structures utilised by the insurer that issues CCI policies within IAG are:

- A group policy is issued by the life insurer to the general insurer in respect of the life insurance component of the CCI policy and held on trust by the general insurer for the benefit of the insured/ultimate customer; or
- The CCI policy is jointly issued by the general insurer and the life insurer to the insured/ultimate customer.

In either case, the general insurer collects the premium from the customer and has administrative arrangements in place with the life insurer in respect of managing the flow of payments.

To reiterate the issues raised in our submission of 14 November 2006, our concerns are as follows:

- Table 1, item 31 and 32 (designated remittance arrangements): It is IAG's submission that item 32 or the rules should specifically exclude an arrangement where a general insurer intermediates between the client and the life insurance provider of a CCI policy, for example the collection of premium payments by the general insurer from the customer in respect of the life insurance component of the CCI policy.
- A general insurer holding a life insurance policy on trust for a client under a CCI policy should be exempted from item 46 in table 1 (custodial or depository service): It is IAG's submission that greater certainty is required in relation to the definition of '*providing a custodial or depository service*' by deleting the word "includes" and replacing it with the word "means" because the definition as it stands it could capture the trust arrangements between the general insurance provider and the life insurance provider in respect of CCI.