

Australian Friendly Societies Association

17 November 2006

Ms Jackie Morris
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Ms Morris,

Inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006

The Australian Friendly Societies Association ("AFSA") is the peak industry body representing friendly societies across Australia.

Friendly societies in Australia today encompass a range of institutions including a number of demutualised listed companies, several large mutual organisations each managing more than \$1 billion on behalf of their members and then a diverse spread extending through to the smaller end of the market, including sixteen mutual societies managing less than \$50 million in assets. In the financial services and life insurance market, AFSA represents 96% of the APRA-regulated friendly societies, which in total manage \$6 billion on behalf of approximately 1,000,000 Australian members and customers.

On behalf of AFSA, I would like to express our appreciation for the opportunity to comment in respect of the Senate Legal and Constitutional Committee's Inquiry into the *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006*.

Firstly, we would like to acknowledge the commitment of the Minister for Justice and Customs, Senator Chris Ellison, to public consultation in the development of this Bill and in particular, for taking into account a number of the matters raised by AFSA in its submissions.

Secondly, we make a number of brief comments in relation to the Bill and request the Committee's considered attention to these matters:

1. Civil Penalties and APRA-regulated entities

Division 2 of Part 15 of the Bill deals with civil penalties. Pursuant to section 175, the Federal Court can make civil penalty orders of up to \$11 million (100,000 penalty units) for bodies corporate and \$2.2 million (20,000 penalty units) for other persons.

Where conduct subject to a potential civil penalty order is engaged in by a prudentially regulated body corporate, AFSA believes that it is important that, in determining any civil penalty, the Federal Court has regard to the prudential standing of the contravener, where that contravener is an APRA-regulated entity, such as a life company (which term includes friendly societies) and ADIs.

This is because it is important to ensure that any penalty does not prejudice the financial standing of the regulated organisation. Rather, the penalty should be appropriate without affecting the company's ability to honour its obligations to its customers, being depositors or insured persons. In other words, the penalty to be imposed should have regard not only to the offence committed, but also to the prudential standing of the contravener.

Such an approach is not new. A similar approach is taken in section 102(3) of the *Consumer Credit Code* (which is an appendix to the *Consumer Credit Act 1994 (Qld)* but due to arrangements between the States, has largely national operation).

AFSA therefore submits that a new clause 175(3A) be inserted immediately after clause 175(3) along the following lines:

"The Federal Court, in considering the imposition of a civil penalty on a body corporate, must have primary regard to the prudential standing of the body corporate, where that body corporate is an ADI or is a life insurance company regulated by the Australian Prudential Regulation Authority under the Life Insurance Act 1995 (Cth). However the Federal Court is only to have regard to that prudential standing if the body corporate requests the Federal Court to do so".

2. Commencement dates, transition periods and the Rules

Section 2 of the Bill sets out the commencement dates of the various Parts and Divisions of the Bill, which include periods commencing on the day on which the Bill receives Royal Assent to a period of up to 24 months after that date.

The Rules are a vital element of the AML/CTF regime and the release of the Rules in their final form is intrinsic to and essential to an organisation establishing systems and procedures in order to achieve compliance with the AML/CTF regime. This is particularly so for friendly societies and other financial services organisations that have not been subject to the *Financial Transaction Reports Act 1988* (FTRA) and therefore have to start from scratch in setting up technology, systems, processes and training to establish appropriate customer identification systems.

In addition, we note that there is likely to be a severe shortage of IT support as relevant institutions compete for the same resources to implement necessary changes within the transition period. This is particularly a concern to us due to the size of many friendly societies, which do not have the scale of operations of banks or large financial services companies.

We highlight the above in order to emphasise our strong **submission that the transition periods not be allowed to be diminished in any way due to a delay with finalising the Rules**. As the transition clock effectively starts to run from the date of Royal Assent, then notwithstanding any passage of the Bill in December, **we would submit that Royal Assent not to be given until the full and final package of Rules is available**.

On behalf of members of AFSA, we would welcome the opportunity to present support for this submission to the Committee or to provide any additional information. Please do not hesitate to contact me on 03 9685 7543 or by email jane.southwell@afsa.com.au.

Yours sincerely



Jane Southwell
Executive Director