CHARTERED SECRETARIES
AUSTRALIA

Leaders in governance

4 August 2006

The Secretary
Criminal Law Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Emailed to: aml.reform@ag.gov.au

Dear Secretary

Revised Anti-Money Laundering and Counter-Terrorism Financing Bill 2006

Chartered Secretaries Australia (CSA) welcomes the opportunity to comment on the Revised Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 and draft AML/CTF Rules, which clearly show the Government's willingness to take on board a large number of the key issues that were raised by industry in the first round of consultation.

CSA is the peak professional body delivering accredited education and the most practical and authoritative training and information on governance, as well as thought leadership in the field. We are an independent, widely respected influencer of governance thinking and behaviour in Australia. We represent over 8,500 governance professionals working in public and private companies, all of whom are involved in corporate administration. We have drawn on their experience in the formulation of this submission.

In preparing this submission, CSA has drawn on the expertise, in particular, of the members of our national Corporate and Legal Issues Committee.

General comments

CSA notes that the Government has met the concerns of many in industry in relation to recognising existing industry structures and regulation in the development of the revised Bill. CSA was particularly appreciative of the Government's concerns to alleviate the impact of the Bill on small to medium-size entities (SMEs). CSA believes that this second round of consultation is an important next step towards developing a risk-based regime that meets the Government's objectives without unduly burdening industry. However, some issues do remain unresolved and CSA is keen to ensure that the risk-based approach inherent in the revised Bill is implemented across all areas.

Remaining areas of concern

Impact on SMEs

CSA understands that the definition of “designated business group” is intended to cover the concerns we raised in relation to the impact of the Bill on SMEs, in that a group can now develop a single program for the entire group. However, there may be circumstances where a group that wishes to rely on a single program will comprise entities that are not related and, in such cases, the revised Bill could still have an unreasonable impact on SMEs. An example would be a financial institution with unrelated agents such as an insurance company or bank with agencies in country towns.

Tipping off

There is an exception from the tipping off offence for designated business groups. However, it will only apply to disclosures between reporting entities if they have adopted a common program and only for the purpose of informing the other about the risks of dealing with a particular customer. This will cause artificial barriers within the group and is likely to cause problems where other entities (whether within or outside the group) perform an administration, compliance, monitoring or risk management function. It will also cause corporate governance issues where the holding company is not a reporting entity. CSA is concerned this may have an unwelcome impact on SMEs.

Issuing, acquiring or disposing of securities in the course of carrying on a business

CSA notes that the manner in which the revised Bill deals with the issuing, acquiring or disposing of securities in the course of carrying on a business has not fully addressed the concerns raised by CSA and other parties when commenting on the original Exposure Draft.

CSA notes that the revised Bill still captures certain activities undertaken by a company when dealing in its own shares. For example, if a company is seeking to raise capital through a fixed interest security, such activity still subjects the company to undertake all of the necessary identification processes, risk mitigation and suspicious activity reporting that the banking system would have already undertaken. This could be addressed by excluding a debenture in Table 1, Item 36 (b) (ii).

CSA notes that, in IPOs, the company does not always issue new shares but may offer a sell-down, which is also still covered in the revised Bill.

CSA recommends that the Bill be amended to provide that activities undertaken by a company when dealing in debentures are not covered. CSA believes companies should be exempt on the basis that any money flowing either to the company or from the company will be via the banking system. As such, the account holders will have already been required to undertake the necessary identification process and the banking system participants will also have to implement the risk mitigation and suspicious activity reporting requirements. Accordingly, to require companies to also undertake these activities is unnecessary..

Guarantees

CSA believes that the manner in which guarantees are dealt with in the revised Bill has not addressed the concerns raised by a number of parties when commenting on the original Exposure Draft.

CSA recommends that the only requirements should be on the entity accepting a guarantee from someone, and that there should be no obligation on the person or entity offering to

guarantee a loan. The lender should be required to perform identity checks and due diligence on the guarantor, but the guarantor should not be obliged to implement an AML compliance program, as is currently required in the revised Bill. For example, this will require each partner in a law firm to individually implement an AML compliance program.

Absence of appeals body

CSA raised in its original submission the absence of an appeals body should a decision taken by AUSTRAC be deemed to be unfair. CSA pointed out that those supervised by APRA can appeal to the Administrative Appeals Tribunal and that a similar provision needs to be made for those supervised by AUSTRAC. This is an issue of procedural fairness.

Timeframe for implementation

CSA again recommends a two-year timeframe for implementation, given the expansive reach of the legislation across groups and to agents.

CSA notes that any organisation subject to the Bill must develop a plan for:

- how to implement a compliance program
- how to train staff across the organisation, and in agencies
- how to set up the supporting documentation for any such training and ongoing compliance
- entering into new agreements with agents to ensure they fall within the compliance program.

The work in the field with the appointment of sub-agents and consulting with intermediate companies is extremely time-consuming and cannot be effected quickly. In many instances, organisations will have to delve down a number of layers to ensure all appropriate personnel are brought into the compliance program.

CSA members have experience in the implementation of complex legislation, such as the *Financial Services Reform Act*. Based on experience, our members note that:

- the development of a training program takes 3 - 6 months
- the implementation of a training program takes 6 months, especially when it involves small agents, such as newsagents and post offices. The realities in this sector are that many staff work part-time, or as casuals; there is a high level of teenage staff; and there is also high turnover of staff. Not all staff are computer literate. Any organisation needs to develop training that is suitable for the role. Internal training cannot simply be rolled out to agents.

Thus the use of agents expands the timeframe that is required to implement complex legislation. A large organisation will probably be able to implement a compliance program relatively efficiently, but its dependence on a chain of players when agents are involved stretches the time required for implementation.

CSA notes that the objective is to have a compliance program in place that meets the objectives of the legislation and its overriding goals, not one that meets the requirements of a tight schedule at the cost of meeting the objectives.

Finally, CSA also notes that the transition period should commence from the time of gazetting of the Rules, not from the passing of the Bill in Parliament.

Fit and proper standards

CSA recommended in its original submission that AUSTRAC recognise the fit and proper processes already in place for APRA-supervised entities and AFS licensees.

CSA notes that care needs to be taken with the rules to ensure that APRA entities and AFS licensees are not presented with an additional set of processes with which to comply.

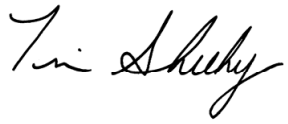
Privacy Act

Currently the *Privacy Act* does not cover all SMEs covered by the revised Bill. CSA recommends that the *Privacy Act* be revised to ensure that any designated business group covered by the AML/CTF Bill will have to meet the demands of the *Privacy Act*. CSA notes that such an extension of the *Privacy Act* affords protection to SMEs.

Conclusion

CSA has sought to address our remaining areas of concern in this submission. We appreciate the distance that the Bill has come from its original draft and would be happy to provide further input in any further deliberations.

Your sincerely



Tim Sheehy
CHIEF EXECUTIVE