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Cost Recovery Impact Statement – Exposure Draft
Australian Transaction Reports and Analysis Centre
PO Box 13173
Law Courts Post Office
Melbourne VIC 8010

Dear Sir / Madam

Cost Recovery Impact Statement – Exposure Draft

The Financial Planning Association of Australia (FPA)¹ welcomes the opportunity to provide input into the development of AUSTRAC's cost recovery model.

The FPA welcomes the improvements AUSTRAC has made to its cost recovery model and seeks the following clarification on its application to:

- Authorised Representatives (as defined under the Corporations Act 2001) of Licensees where the Licensee is a leviable entity for the purposes of the large entity component.
- Financial planners that provide item 54 and item 33 services (even one item 33 service a year) in relation to the large entity component.
- Suspicious matter reporting.
- Tranche II.

Authorised Representatives

The licensing of financial planners as required under the Corporations Act 2001, permits entities to:

- hold and operate under their own Australian Financial Services License (AFSL); or
- become an Authorised Representative operating under the AFSL of another entity.

While Authorised Representatives are licensed to provide a financial services via another entity, they are different registered businesses to the Licensee they operate under. Authorised Representatives are independently owned (ie. not owned by the Licensee) and control the business model they choose to implement and the running of their business. They are responsible to the Licensee for compliance with relevant laws.

¹ The Financial Planning Association of Australia (FPA) is the peak professional organisation for the financial planning sector in Australia. With approximately 12,000 members organised through a network of 31 Chapters across Australia, the FPA represents qualified financial planners who manage the financial affairs of over five million Australians with a collective investment value of more than \$630billion.

A large proportion of Authorised Representatives are small business, and many may fall with the Australian Bureau of Statistics definition of non-employing entities (sole proprietors and partnerships without employees) and micro businesses (businesses employing less than five people), as referred to in the Exposure Draft.

The AUSTRAC large entity definition refers to "entities controlled by" the leviable large entity (for the purposes of the large entity component). The FPA is concerned that an unintended consequence of the proposed large entity definition could be to negate the exemption extended to non-employing entities and micro businesses who are Authorised Representatives and will therefore inadvertently incur the cost of the large entity component via their licensee.

The FPA requests clarification be included in the AUSTRAC cost recovery legislation as to the intended application of the large entity definition (for the purposes of the large entity component) in relation to the entities "controlled by" the large entity, and its interaction with other laws, particularly the Corporations Act 2001 licensing arrangements for Authorised Representatives.

Item 33 services

The exposure draft states that "the large entity component will not be applied to leviable entities which **solely** provide 'item 54' services. An item 54 provider is a holder of an Australian Financial Services License who only makes arrangements for a person to receive a designated service (such as financial planners)."

The FPA request clarification on the application of the large entity component to financial planners who predominantly provide item 54 services and may on occasion provide item 33 services. For example:

If a financial planner (who falls within the AUSTRAC definition of large business entity for the purposes of the large entity levy component) provides one item 33 service over the course of a year, is it the intention that they will then incur the full large entity component of the levy?

The clarification on the application of the large entity component to financial planners, who predominantly provide item 54 services and may on occasion provide item 33 services, should be included in the relevant legislation instruments required to enact the AUSTRAC cost recovery activity.

Suspicious matter reporting

The Exposure Draft is silent in relation to cost recovery fees for suspicious matter reporting obligations. The FPA requests clarification on whether AUSTRAC intend to charge an additional fee for the regulatory activity it undertakes in relation to suspicious matter reporting, or whether the cost of this activity is already covered within the proposed levy components. If an additional fee is to be charged for suspicious matter reporting regulatory activity, the FPA recommends consultation should be undertaken on the details of any additional fees.

Tranche II application

The FPA commends AUSTRAC for granting an exemption to the base component of the levy to non-employing entities (sole proprietors and partnerships without employees) and micro businesses (businesses employing less than five people), as defined by the Australian Bureau of Statistics (ABS). Many FPA members who provide item 54 services fall within these small business categories and either hold their own Australian Financial Services License or are an Authorised Representative of an AFS Licensee. These small practices have limited resources to bear high compliance and regulatory costs.

The FPA also welcomes the exemption from the large entity component to leviable entities which solely provide 'item 54' services (such as financial planners).

However, the FPA is aware that the pending introduction of Tranche II of the AML / CTF Act may impact the level of regulatory activity required by AUSTRAC in relation to financial planners. While the FPA would anticipate the above levy exemptions would remain in place for small businesses and for financial planners (in relation to the large entity component), it is unclear how the proposed cost recovery model would apply under Tranche II.

The FPA recommends further consultation be undertaken by AUSTRAC should changes to the proposed cost recovery model be considered in relation to Tranche II.

Should you require further information or wish to discuss the issues raised in this submission, please contact me on _____ or _____

Yours sincerely

Dante De Gori
General Manager, Policy and Government Relations

