



**The Institute of
Chartered Accountants
in Australia**

Cost Recovery Impact Statement – Exposure Draft
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Dear sir/madam

Cost Recovery Impact Statement – Exposure Draft

The Institute of Chartered Accountants in Australia (the Institute) is providing feedback on AUSTRAC's Cost Recovery Impact Statement (CRIS) – Exposure Draft as the representative of members who are reporting entities under the Anti-money laundering and Counter-terrorism financing Act 2006 (the Act) as well as members who will become reporting entities under Tranche 2 of the Anti-money laundering and Counter-terrorism financing (AML/CTF) legislation.

The proposed adjustments to the model, previously presented in AUSTRAC's Cost Recovery Discussion Paper (the Discussion Paper), go some way to addressing the equity issues we raised in our response to that Discussion Paper. However, a number of issues which we raised in our earlier submission and our fundamental concerns with the cost recovery model have not been addressed.

The Institute continues to support the policy objectives of the Act and the implementation of the Financial Action Taskforce (FATF) Recommendation 12 that the AML/CTF regime should be extended to non financial businesses and professions. We would appreciate some indication of what cost recovery model is intended for 2nd tranche reporting entities and whether there will be a similar consultation process regarding the calculation methodology to be applied to those reporting entities. It is clear that the cost recovery model developed for 1st tranche reporting entities cannot be applied to the majority of our members in public practice, as 2nd tranche reporting entities, with equitable outcomes.

Policy

As stated in our response to the Discussion Paper, we reject the assertion that entities regulated under the AML/CTF Act have created the need for regulation by providing services that are vulnerable to exploitation for money laundering and terrorism financing. Our members, like reporting entities generally, provide legitimate services to clients who overwhelmingly are law abiding individuals and businesses. The Australian Government has implemented the AML/CTF regime to meet its obligations as a member of the Financial Action Taskforce and to address the economic distortions created by money laundering and to reduce the security risks of terrorism financing.

We do not believe that the provision of services, which are essential to the efficient operation of the economy, justifies the imposition of a levy for regulation intended to identify the small proportion of those services which might have been exploited by criminals. It is particularly inequitable that this levy is to be charged in addition to the significant costs already borne by reporting entities in implementing their obligations under the AML/CTF Act. The imposition of further costs, in the form of a levy, on reporting entities, particularly those smaller reporting entities with more limited resources, is unlikely to contribute to their acceptance of new compliance obligations.

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The benefits of the AML/CTF regime, identified in the CRIS as being enjoyed by AML/CTF reporting entities, are benefits to the whole economy, in reality public goods, not benefits restricted to the reporting entities. The CRIS identifies direct benefits which it says will be enjoyed by reporting entities. However, this assumes that reporting entities do not already have systems in place to achieve these benefits, outside of the AML/CTF regime. There is no certainty that these benefits will only be achieved, or will even be enhanced by the implementation of the AML/CTF regime.

CRIS - Costs to be included in charges

A number of issues regarding the AUSTRAC costs to be recovered, set out in the CRIS, require clarification to ensure a fully transparent process.

The CRIS nominates that base line expenses relating to regulating all reporting entities are to be recovered. Without further explanation of these base line expenses it is difficult to fully evaluate the basis of the charges to be recovered from reporting entities.

In our response to the Discussion Paper we recommended a breakdown of AUSTRAC's regulatory costs into fixed and variable costs with a reflection of the allocation of fixed costs across AUSTRAC's regulatory functions. The CRIS does not clarify the components of the regulatory costs to be recovered from all reporting entities and there is inconsistency between the expenses set out in the CRIS cost component tables. Whereas the AUSTRAC Budget Table refers to support services and capital items, the Table listing cost components for AML/CTF regulation reflects only employee and supplier expenses.

We repeat our earlier offer to apply our financial expertise in further discussions with AUSTRAC to determine other viable options regarding recoupment of AUSTRAC's regulatory costs taking full consideration of the appropriate calculation of regulatory cost as well as equitable options for allocation across reporting entities.

Proposed cost recovery model

Accounting firms will not generate transaction reports. Therefore, under the proposed cost recovery model, the regulatory costs recovered will be the base and if applicable, the large entity component. Additional bands are required to apply equity to the cost recovery model. The thresholds set in the proposed cost recovery model do not adequately recognise the difference in the resources available to reporting entities to meet the costs of implementing the AML/CTF regime as well as the proposed levy. It is not appropriate for reporting entities with 6 full time employees (FTEs) to pay the same levy as those with 199 FTEs. Nor is it equitable for reporting entities with 200 FTEs to pay the same large entity component of the levy as those with in excess of 1,000 FTEs.

| Proposed thresholds for cost recovery | Proposed levy to be charged | Proposed \$ charge |
|---|-----------------------------|--------------------|
| Non employing entities and Micro businesses | Excluded | No charge |
| Reporting entities with from 6 up to 200 FTEs | Base component | \$284 |
| Reporting entities with 200 FTEs | Large entity component | \$9,120 |

CRIS - Base component

We welcome the decision to exclude from the application of the base component of the cost recovery levy those entities with no or limited requirements under the AML/CTF Act and non-employing entities and micro-businesses, using the Australian Bureau of Statistics (ABS) criteria. The definition of small business used by the Australian Taxation Office (ATO) could also be considered. The ATO has sought to bring the definition of small business into alignment in the interests of reducing compliance and administrative costs for small business and defines a small business as being one with an aggregated turnover of less than \$2 million.



However, we believe that some accommodation should be made for small business reporting entities with up to 49 FTEs, the ABS threshold for small enterprises, either through an exemption or a reduction of the base component applicable to them.

CRIS - Large entity component

The change to the large entity definition as being one with 200 full time employees goes some way to addressing the equity issue which we raised in our response to the Discussion Paper.

The CRIS acknowledges the diminishing marginal costs of regulating entities in a corporate group. However, the setting of the maximum cap at 40 times the large entity component for entities in a designated business group (DBG) will not adequately reflect these diminishing marginal cost savings in the levy charged for many DBGs.

CRIS - Consultation

The CRIS sets out the timetable for the passage of legislation required to establish the cost recovery arrangements. It is noted that draft legislative instruments will be available for discussion during the time the legislation is before Parliament. The opportunity for amendments to the draft legislation will be limited by this time. It would be preferable for draft legislation to be made available for consultation with stakeholders prior to the time it is presented to Parliament.

Conclusion

We do not accept the policy basis for the imposition of the levy set out in the CRIS. The Institute did not have the opportunity to participate in the industry forums in December 2010. Given the short timetable outlined for finalisation of the AUSTRAC supervisory levy arrangements we would like to meet with you as a matter of some urgency. Can you please contact Jane Eden on [redacted] to arrange a suitable time.

Yours faithfully,

Lee White FCA
Executive General Manager - Members
Institute of Chartered Accountants in Australia

