



Min-it Software



Joint Submission –

**AUSTRAC Discussion Paper –
Cost Recovery for AUSTRAC’s regulatory functions**

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Background Information

This submission is made on behalf of the Financiers Association of Australia (“FAA”) and Min-it Software clients.

Aside from the software produced in-house, specifically by or for franchised organisations, Min-it Software is the industry leader in the Australian market.

The Financiers Association of Australia is recognised as one of the industry's specialists on all matters relating to finance and credit management. The Association, having been established since the 1930's, is an organisation for individuals and companies involved in the fields of finance and credit provision. By promoting professional unity amongst its members, the Association is able to represent the industry with the objective of educating, training and informing its members with a view to expanding the proficiency of the Association.

Min-it's clients (some of whom are not FAA members) are both short term (so called “payday”) and micro lenders, with others operating in the business loan, rental and invoice discounting arenas. The FAA's members are non-ADI micro-lenders, generally providing loans up to \$5,000 over terms of up to 2 years.

Between us, we have made substantial submissions to both State and Federal Government.

We welcome this opportunity to contribute to the discussion on how AUSTRAC strikes its fees.

Foreword

In our original submissions on AUSTRAC's creation, the FAA and Min-it Software requested some form of exemption or at the very least, a simpler way of complying with the anti-money laundering and counter-terrorism law as we saw that the incidence of one of our clients or members having a suspicious incident or a threshold transaction to report was negligible. We are still of the same opinion.

To our knowledge, AUSTRAC has not found nor reported any suspicious incident from lenders that lend money up to \$5,000 or from any of our clients who are small businesses providing larger loan facilities. If they have, they are certainly not in sufficient numbers to warrant constant monitoring.

Rather than creating an administrative exemption as ASIC has done in many instances for businesses operating under the National Consumer Credit Protection Act 2009 (Cth) (NCCPA) that recognises scalability, AUSTRAC's requirements have been implemented rigidly across the board, regardless of size of the business. This approach has added considerably to our clients and members costs of operation and it is on these aspects we will focus for this submission. As ASIC administers both the Australian Securities and Investments Commission Act 2001 (Cth)¹ and the Corporations Act 2001 (Cth)², it has been mindful of the definitions contained in both pieces of legislation, namely, a business employing less than:

- (a) if the business is or includes the manufacture of goods—100 people; or
- (b) otherwise—20 people

and recognized that a one-sized approach is totally unsuitable when administering the NCCPA. We will suggest that as an alternative charging methodology, AUSTRAC does the same.

Transaction Reporting

In the table, Figure 3.1 (Reporting entities with significant transaction reporting obligations)³, those Industry Groups that have to pay volume and value fees (i.e., those with significant transaction reporting requirements) have been determined by the use of some arbitrary figure

¹ Australian Securities and Investments Commission Act 2001, s12BC(2)

² Corporations Act 2001, (Cth), s761G(12)

³ AUSTRAC Discussion Paper, 2010. Page 8.

of 600 reports per annum. How this has been determined to be the figure as to which groups pay or do not pay is unexplained. For those that are to be exempt from paying, it represents the equivalent of less than 2 reports per day.

Clearly, domestic banks, remittance network providers, foreign and investment banks, other money service businesses and foreign exchange providers are the largest group as is to be expected, with the minimum number of reports generated by one of these industry groups being in excess of 1,000,000 per annum. These top five industry groups account for 98.46% of all AUSTRAC reporting.

In his Minister's Foreword, the Hon Brendan O'Connor acknowledges AUSTRAC is fighting organized crime. He acknowledges that "financial integrity and financial stability are closely connected". He then makes the comparison with "how the Australian Prudential Regulatory Authority (APRA) regulates the financial services industry to protect the financial well-being of the Australian community and AUSTRAC's activities" and states "[i]n both cases, it is appropriate that industry meet the costs of the regulatory systems that ensure the integrity of their operating environment." We do not agree.

The discussion paper makes the comment

*"In the case of regulatory activities, the cost recovery guidelines require that the individuals or groups that **have created the need for regulation** should bear the cost of that regulation".⁴*

The bolding and underlining is ours and we suggest the small lending sector of the finance industry has not created the need for regulation. APRA regulates the Authorised Deposit Taking institutions as well as life and general insurers. These are all substantial, and often internationally-based, businesses. For FAA members and Min-it Software clients and those other small lenders that have applied to ASIC for their Australian Credit Licence ("ACL"), APRA has no control whatsoever over them. The financial well-being of their businesses is determined by their own actions, regulated previously at state level by the Consumer Credit Code and Fair Trading legislation and more recently, at federal level by the National Consumer Credit Protection Act 2009 (Cth) and Trade Practices Act 2004 (Cth). Additionally, as of 01 January 2011, the Competition and

⁴ Ibid, page 1

Consumer Act 2010, generally being referred to as the Australian Consumer Law, will also impact on our clients and members.

In Figure 3.1 all other lenders, not being banks, foreign and investment banks, and credit unions and building societies are lumped together in a general ‘wash up’ heading. As this heading will also cover mortgage lenders that are non-banks and as well as other private business lenders that will have both suspicious activity and threshold reporting requirements, we feel this is both discriminatory and detrimental to our clients and members.

The categorization of industry groups should accurately reflect the sectors they are in for two reasons:

1. It attributes the reporting to a particular target sector of the industry; and
2. It enables government to accurately cost services to the relevant sectors.

On this basis, the need to accurately disseminate reporting into correct industry segments is critical. The whole ideology of the costing process is one of user pays. If there is no need or a reduced regulatory need, then the costs attributable to that sector should reflect it and be properly reflected in reporting, otherwise there is unwarranted cross-subsidisation by certain industry sectors for AUSTRAC’s activities.

Base Fee construction

We have no issue with paying a small nominal fee for being licenced by AUSTRAC but would suggest that there should be some scalability applied to the base fee. Whilst the methodology being suggested in the Discussion Paper may be an easy one for AUSTRAC to administer, it does penalise those that are consistently providing “NIL” returns or that have relatively small reporting requirements. Those 7,214 entities⁵, for example, below the line in table 3.1 have provided a total of just 1,155 reports to AUSTRAC. Of the 7,214 entities, 459 are classified as “large entities” and so will attract, on the basis of the proposed charging method, a large entity fees component of \$4,545,995 in addition to the base fee of \$1,721,463. If they have no

⁵ Ibid , see figure 3.2 , page 11.

reporting, what are they paying \$6,267,458 for? We suggest the ‘privilege’ for being licenced is not being reflected accurately in their fee. This is cross-subsidisation at its very worst.

The cost of compliance to the predominantly small business that makes up our clients and members and the entities in table 3.1 that provide “NIL” returns is substantial. Despite the Gillard Government assurances that it will cut red tape for small businesses⁶, AUSTRAC’s bureaucracy is yet to comply and implement it. We suggest this is an opportune time to implement change and bring in the promised red tape reduction.

Alternate Charging Methodologies

We propose two methods.

Firstly, and our preferred method, rather than the proposed base fee of \$241, we would suggest a nominal (maximum say \$200 per annum but ideally below this, say \$100) fee but particularly for all those that are below the line in figure 3.1. Those above the line where there is a greater need to regulate could have a higher fee imposed. In addition, we would like to see the “Other Lenders” segment broken down further so that those lending under \$5,000 for any single loan are included in this sector so that no additional fee, other than an annual base fee, be payable.

In return for this low base fee, the reporting entities may be exempted from “NIL” reporting requirements. This would have the effect of reducing small business costs in line with Government policy and reducing AUSTRAC’s regulatory role to those entities that require the focus. However, suspicious activity or threshold reporting should continue, as we do not suggest they be exempted entirely. If an audit then shows one of these entities failing to report a suspicious or a loan exceeds a threshold reporting requirement, a financial penalty with a minimum set by AUSTRAC, could be applied to the offender. Essentially, we propose a “carrot and stick” approach that provides a ‘win-win’ for both the regulator and the reporting entity.

⁶ Australian Labor Party, 2010. “Labor’s plan for all small businesses”. Available online <http://www.alp.org.au/agenda/more---policies/labor%E2%80%99s-plan-for-all-small-businesses/> viewed 09/12/2010.

The large reporting entity and other fees, derived from volume and value reporting, could be slightly increased to offset any loss in operating costs. In this way, true user pays methodology is evident.

Secondly, AUSTRAC may care to employ the ASIC approach and calculate base fees based on the number of employees as defined under the Corporations Act 2001 (Cth). Whilst this would require the entity to report employees numbers annually, it would be possible to employ this approach and still retain the user pays methodology suggested above.

Either of these alternate costing methods that are suggested above will result in a more equitable result than the one being offered and create a fair distribution of the costs associated with protecting reporting entities as envisaged.