



**NSW Trustee  
& Guardian**  
Justice & Attorney General

25 February 2011

Our ref: Jill Day  
Principal Legal Officer

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

By email to: [cost\\_recovery@austrac.gov.au](mailto:cost_recovery@austrac.gov.au)

Dear Sir or Madam,

**Response to AUSTRAC's Cost Recovery Impact Statement – Exposure Draft**

Thank you for the opportunity to comment on the Exposure Draft of the Impact Statement (**Draft Statement**).

This submission is made by the NSW Trustee and Guardian (**NSWTG**) on its own behalf, and also on behalf of the equivalent public-trustee entity in Victoria, namely State Trustees Limited (**STL**).

Throughout this submission, for ease of reference the above entities are collectively referred to as the **Public Trustees**. However, the other State and Territory public-trustee entities<sup>1</sup> are not parties to this submission. This is due to time constraints and is not an indication that they have conflicting views. It is our opinion that the views expressed herein are equally applicable to all public-trustee entities.

NSWTG is the successor entity to the merger of the Public Trustee of NSW (**PTNSW**) and the NSW Office of the Protective Commissioner (**NSWOPC**). STL is the successor entity to the Public Trustee for Victoria.

Due to the particular circumstances of the Public Trustees, we consider it appropriate to make this submission separate to any which the Trustee Corporations of Australia (**TCA**) may make.

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<sup>1</sup> Namely: the Public Trustee for the Australian Capital Territory; the Public Trustee for the Northern Territory; the Public Trustee for Queensland, the Public Trustee of South Australia; the Public Trustee of Tasmania, and the Public Trustee of Western Australia.

We have a number of continuing concerns with the features of the proposed cost recovery model (**the Model**).

### **Alignment of regulatory costs with exemptions from the Model's coverage**

We note AUSTRAC's recognition (at page 6 of the Draft Statement) that where a reporting entity has been exempted from all operative provisions of the Act or the only obligation retained is an obligation to lodge suspicious matter reports under section 41 of the AML/CTF Act (**Act**) the cost to AUSTRAC of regulating that entity is "not material".

We submit that AUSTRAC's regulating costs are also "not material" in respect of entities, such as the Public Trustees, to which broad exemptions have been granted such that they have minimal reporting obligations under the Act.

The proposed definition of "Exempt Entities" is:

Entities which have been exempted from **all** of the provisions of the AML/CTF Act or where an entity has been exempted from all requirements of that Act other than those relating to the lodgement of suspicious matter reports. [Our emphasis.]

As AUSTRAC is aware, the Public Trustee entities have all been granted extensive exemptions in relation to their provision of designated services.

Some public trustee entities (such as NSWTG and STL) continue to be regulated for non-exempt services, such as financial planning or managed investments. Such services are a small and low-risk component of the public-trustee entity's service provision, and it would be inequitable for the definition of "exempt entity" not to apply in those circumstances.

### **Extent of exemption for Exempt Entities**

The Model proposes that Exempt Entities be exempt from the application of the base component of the levy.

We assume (based on the statement at page 6 of the Draft Statement that such entities "should not be subject to cost recovery") that Exempt Entities will, ipso facto, also be exempt from both the large entities component and the transaction reporting component.

If this is not the case, we submit that it should be so.

### **Inequitable application of Large Entity Component**

Even if the public-trustee entities are to be excluded from the definition of "Exempt Entities", we submit that the application of the Large Entity Component to them would involve a disproportionate burden.

The Public Trustees satisfy the new proposed definition of a "large entity" for the purposes of the large entity component.

As noted, however, the scope of the exemptions granted to the Public Trustees means they have minimal regulatory requirements under the Act, and the supervisory burden on AUSTRAC in relation to them is, in our view, immaterial.

The disproportionality between the quantum of the large entity component and the actual regulatory costs to AUSTRAC is further exacerbated by the fact that the number of FTEs is a largely inaccurate indicator of the level of designated services provided by the entity. For example STL has over 550 FTEs, but only seven of those FTEs are actually providing the designated services that remain after taking into account the exemptions granted to STL.

### **Conclusion**

On the grounds of equity, and consistent with the risk-based approach to supervision, we strongly urge that the Model be revised to:

1. ensure that entities subject to broad exemptions, such as the Public Trustees, are not excluded from the definition of "Exempt Entities"; and
2. in any case, ensure that the Large Entity Component is based upon the number of FTEs actually engaged in the provision by the entity of non-exempt designated services.

Please direct any queries in relation to this matter in the first instance to Jill Day of the NSW TG on \_\_\_\_\_ or Alistair Craig of STL on \_\_\_\_\_

Yours faithfully,

Imelda Dodds  
**Chief Executive Officer**  
**NSW Trustee and Guardian**

