



9 December 2010

Discussion Paper – Cost Recovery
Australian Transaction Reports and Analysis Centre
PO Box 13173
Law Courts Post Office
MELBOURNE VIC 8010

cost_recovery@austrac.gov.au

Dear AUSTRAC Cost Recovery Staff

Thank you for the opportunity to submit comments in relation to the AUSTRAC cost recovery discussion paper.

The Queensland Hotels Association has considered the Discussion Paper prepared and issued by the agency, and is pleased to make a submission, which is attached.

The following contact details apply:

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|------------------------|--|
| Name of Organisation - | Queensland Hotels Association Union of Employers |
| Contact person - | Justin O'Connor, Chief Executive |

Please do not hesitate to contact me should you require clarification or expansion on any of the issues raised.

Yours sincerely

Justin O'Connor
Chief Executive

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QUEENSLAND HOTELS ASSOCIATION

SUBMISSION ON THE COST RECOVERY PROPOSAL FOR AUSTRAC'S REGULATORY FUNCTION

UNDER THE *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)*

References:

- A. *AML / CTF Act 2006*
- B. AUSTRAC Discussion Paper dated November 2010

Introduction

The Queensland Hotels Association welcomes the opportunity to comment on the cost recovery proposal outlined in the Discussion Paper.

The Association's comments will address only those issues raised in Reference B which it considers impacts or potentially impacts upon the licensed hotel industry and/or its key stakeholders.

Preamble

The Association submits that, generally, the requirement for medium and small hotel businesses being caught in the AML / CTF compliance net is misplaced. In particular, the latent and actual risk of money laundering and terrorism-related financing being undertaken in medium and small gaming hotels is minimal and it is our firm view that such businesses should be excluded from the scope and nature of complying businesses / entities under the *Act*. There is not much terrorist or money laundering activity in Birdsville, Eromanga or Quilpie.

The principle of cost recovery

The discussion paper refers to Federal Government policy around cost recovery to claim that in relation to AML / CTF compliance, "it is appropriate that reporting entities meet the costs of that regulation. Further, reporting entities are best placed to minimise the costs of regulation and the cost to the Australian community of money laundering and terrorism financing activities by undertaking appropriate countermeasures. Reporting entities obtain a benefit through being regulated by AUSTRAC". It further states that "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".

This association and its members cannot support these claims as they apply to the proposed AML / CTF cost recovery model.

At the outset, small and medium hotel businesses have not “created the need for regulation”. This need was spawned from the 9/11 terrorist attacks which spurred Western countries to tighten money laundering and financial reporting systems in their coordinated response to more sophisticated terrorism-related activity.

In relation to costs of regulation, reporting entities are **not** “best placed to minimize the cost of regulation”, as stated in the Discussion Paper, as the parameters, standards, frequencies and policies around AML / CTF compliance are established by AUSTRAC. If reporting entities were empowered to set such standards, under the current system they would promote an ‘on occurrence’ style of reporting, rather than the relatively comprehensive, arduous and inefficient annual reporting and audit regime imposed under the *Act*.

The bottom line for the Queensland hotel industry is that the compliance and reporting obligations flowing from the AML / CTF *Act* have been created by Government and imposed on industry reporting entities without a rational, global risk assessment to inform where the line should be drawn. For example, the primary area of concern under the *Act* is cash payouts from gaming wins (poker machines), as it is possible to win up to several thousands of dollars in credits on a poker machine and, occasionally, such wins including jackpots can exceed the AML / CTF reporting threshold of \$10,000. However, under separate requirements of the Queensland *Gaming Act* and its ancillary rules for gaming, the maximum cash payout permitted by a venue is \$250, with the remaining amount of the payout being made by cheque. So, in Queensland, there will be no cash payouts of more than \$1,000 from gaming hotels because such payouts are forbidden by State gaming legislation. Similar rules apply in other gaming States. See attached document – (Queensland) *Rules Ancillary to Gaming*.

In applying the *Act* to Queensland hotel businesses, AUSTRAC failed to recognize this in-place regulatory control when considering the risk inherent in hotel gaming businesses, and simply applied an ‘all gaming hotels are in’ approach. Such an approach is flawed, and imposes unnecessary cost and compliance obligations on up to 450 small and medium hotel businesses across this State.

Costs already borne by Industry

The proposal for all reporting entities to contribute to the costs of AUSTRAC operations fails to recognize that such businesses have already met their own costs of compliance. Every gaming hotel in Queensland that is a complying and reporting entity has to date met the following costs:

Formal advice relating to their compliance and reporting obligations;

Cost of undertaking a risk assessment;

Cost of developing, producing and maintaining an AML / CTF Compliance Plan for the Business;

Cost of training relevant staff, including the opportunity costs of paying staff not to undertake their primary duties whilst being initially and refresher trained;

Cost of purchasing and maintaining computer equipment to register with AUSTRAC online;

Ongoing costs of labour to maintain records, maintain the supervisory regime on the premises, prepare and deliver training, and to complete occasional and annual reporting.

Opportunity and labour costs associated with preparing for, hosting, and responding to AUSTRAC liaison and audit visits.

For small businesses, with low or no AML / CTF risk which now have a three year track record of no incidents, these costs are an unnecessary and ongoing burden. AUSTRAC already acknowledges that hotels with gaming machines have a “small AML footprint” due to the nature of their customers, the fact that cash transaction amounts are relatively low, and that such hotel businesses involve only one location, one regulatory jurisdiction, and anonymous but local customers.

Indeed, the Australian Hotels Association (being the peak body and national representative group for the hotel industry) has flagged with the Minister for Home Affairs a pending application for hotels to be made exempt from any requirements under Table 3 Section 6(4) of the *Act* for a range of obligations under the *Act*.

To now propose that these businesses must make an annual levy payment to meet AUSTRAC’s costs of operation because they, as “reporting entities obtain a benefit through being regulated by AUSTRAC” is insensitive, and inequitable. The inequity arises from the proposal that such businesses be required to contribute to the full cost of national AML / CTF regulation and compliance, even though their business activities contribute in a minimal way to any latent or actual money laundering or terrorism financing activity, or specific transaction reporting.

Equity

Figure 3.1 of Reference B shows that pubs (and clubs) fall into the industry groups without significant transaction reporting obligations and, of greater relevance, that pubs generate 0.00% of ‘significant transaction reporting’. Given the equity principles which underpin AUSTRAC’s proposed cost recovery approach, it would seem to be demonstrably inequitable that hotels which burden AUSTRAC with ‘no significant transaction reporting’ are obliged to make an annual payment to the base component of the levy. If applied across the whole of the reporting entity group of hotels, this would potentially raise 4% of total funds sought from a sector that places little or no administrative burden on AUSTRAC, which is of acknowledged low risk, and which intends to apply to the Minister for widespread exemption under the provisions of the *Act*.

Conclusion

The QHA and the Queensland hotel industry have been and remain supportive of the Federal Government's and AUSTRAC's efforts to tighten controls over money laundering and terrorism-related finance activities. However, we remain of the firm view that any reasonable assessment based on a risk-based approach, will conclude that hotel businesses, particularly small and medium size gaming hotels, should not be in the net or Reporting Entities. However, given the costs already expended by hotel businesses in meeting their extant compliance and reporting obligations under the *Act*, and given the demonstrably low level of significant transaction reporting generated by the hotel sector, we consider that there is a clear argument, based on equity principles, that hotel businesses not be required to contribute to the 'base component' of the proposed AUSTRAC levies.

Gaming Machine Act 1991 – Section 236

RULES ANCILLARY TO GAMING

(Schedule 3 of the Regulation)

1. A person under the age of 18 years must not play a gaming machine.
2. A gaming employee may determine that 1 gaming machine only may be played by a person at the same time.
3. A gaming machine may be reserved by a person without play for a maximum period of 3 minutes.
4. No person, other than a person permitted under the Act, is to touch an internal part of a gaming machine.
5. A gaming employee must refuse to pay a cancelled credit or jackpot payout if he or she believes on reasonable grounds that –
 - (a) the gaming machine credits were not accumulated, or the winning combination was not obtained, during permitted hours of gaming under section 235 of the Act; or
 - (b) the person claiming the cancelled credit or jackpot payout is not the person entitled to the payment or a person acting on behalf of that person; or
 - (c) the Act has been contravened by the person claiming the cancelled credit or jackpot payout.
6. If, under section 5, a gaming employee refuses to make a payment, the gaming employee must as soon as practicable submit a report to the chief executive.
7. (1) For section 242(2)(b) of the Act, a licensee required to make a payment to a player for a cancelled credit or jackpot payout of more than \$250 must make the payment in 1 of the following ways –
 - (a) \$250 of the payment in Australian currency and the balance of the payment by cheque;
 - (b) if requested by the player –
 - (i) an amount less than \$250 of the payment in Australian currency and the balance of the payment by cheque; or
 - (ii) the entire payment by cheque.
- (2) For making a payment under subsection (1) –
 - (a) if part of the payment is in Australian currency – the licensee must pay the Australian currency when the player claims payment; and
 - (b) the licensee must give a cheque to the player or post it to the player's address, within 24 hours after the player claims payment.