
From: Secretary, Tasmanian Hotels Corporation
Sent: Thursday, 17 February 2011 7:31 PM
To: Cost_recovery
Subject: AUSTRAC's Cost Recovery Impact Statement - Exposure Draft

Dear AUSTRAC

Again, thank you for the opportunity of again commenting on AUSTRAC's proposed cost recovery model. Of course I'm disappointed that, while there's been some minor change in the approach, the substantive issues raised by me previously have not been addressed in the review or otherwise responded to.

The bottom line change is to increase the charge. Sorry, "an in-principle decision to issue draft AML/CTF Rules for consultation that will exempt (subject to certain conditions) reporting entities with a gaming machine entitlement of 10 gaming machines or less from obligations under the AML/CTF Act other than those obligations relating to the lodgement of suspicious matter reports" remains "in-principle", subject to undefined conditions and consultation, and must be viewed as a maybe at best.

The changes certainly don't address the fundamental issue being that the users of AUSTRAC's services/data and the beneficiaries of the AUSTRAC activity are not the ones paying for it; instead many of the "victims", such as I, of the AUSTRAC regime are not only bullied and threatened to provide the information AUSTRAC demands but now must pay for that "service". This is clearly in breach of the Cost Recovery Guidelines where the obligation is on those causing the need and/or utilising the service should be the payers.

Moreover, we are denied training and support when it's been requested and now must pay for enhanced enforcement (not support or assistance, enforcement).

The suggestion that the likes of us "obtain a benefit through being regulated by AUSTRAC. By complying with the requirements of the AML/CTF Act, the risk that a reporting entity will be used for money laundering or terrorism financing purposes is reduced. Further, to the extent that reporting entities operate internationally, they obtain a benefit from operating in a jurisdiction that complies with the requirements of the Financial Action Task Force." Is laughable. We don't have a money laundering or terrorism risk, we don't operate beyond the venue's four walls in Queenstown Tasmania.

AUSTRAC's approach is telling – we'll meet with people in Sydney, Melbourne and Brisbane but not the rest of Australia. In a budget of \$30m couldn't funds be found to get out to the field and support those of us struggling in Queenstown in Tasmania, or Parkes in NSW, etc. No, you're too remote but we'll find the money to prosecute you in the Courts.

From the table in the report one finds that the sector I'm in is budgeted to be 0.00024% of the Report Volume, 0.00003% of the Report Value but we get to pay 8.31348% of the tax being levied, i.e. 30,000 and 300,000 times the prorata respectively, and that's meant to be fair! Would someone please explain how that is equitable and is in conformity with the Cost Recovery Guidelines. We're 4th from the top in the tax being levied and 5th from the bottom in reportable events.

Rather than restate what was raised previously, I again make that submission.

Sorry to be repeating the words of the discussion paper but there's a few quotable quotes, namely (with emphasis added):

- *The Gillard Government is committed to protecting the Australian community and businesses from the social and economic impacts of organised crime, estimated to cost the community \$15 billion a year.*
 - *The Australian Government's cost recovery guidelines require agencies providing government goods and services (including regulation) to the private and other non-government sectors of the economy to set charges to recover all the costs of such products or services, where it is efficient to do so, in consultation with stakeholders*
 - *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.*
 - *Law enforcement agencies use AUSTRAC's data to disrupt criminal activities*
 - *Collection of monies for ...*
 - o *The business-as-usual cost of AUSTRAC's regulatory activities (including support services and costs associated*
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- with capital projects necessary to support regulation)
- o some small businesses captured by the AML/CTF Act have had difficulty in implementing compliant AML/CTF programs. This proposed component would include the development of simplified guidance materials and redevelopment of AUSTRAC's website to enhance its usability for small business
 - o to meet the specific legal costs associated with significant enforcement activities undertaken by AUSTRAC. Enforcement activity is a necessary and significant deterrent to non-compliance in any effective regulatory regime

From this it is obvious that the view is that organised crime is creating the need for the regulation and should bear the cost; alternatively, as it is the Australian community and businesses that derive the benefit from the products and services, it is therefore they that should bear the charges; and, as a further alternative position, it is others who use the data collected. And it's being argued that we need to fund AUSTRAC so it can initiate legal action against us and charge for providing support that to date AUSTRAC has refused to give – setting up someone to fail by not providing support and demanding funding so that there's resources available to prosecute the people they've set up to fail is un-Australian. Whatever, a small country pub that has its bar trade and some gaming revenue is not the reason why the regulation is needed nor the beneficiary of the products and services, nor does it receive or use the data.

Accordingly, there is no nexus to the assertion that our pub derives a benefit and should pay, and pay not just the costs but also fund capital needs. Moreover, we've been denied product to help us deliver on the obligations imposed, our call for more realistic reference materials to gather the information required and used by others has been ignored, and our request for on-site assistance refused (we're too remote). All we've ever got are threats arising from AUSTRAC failing to correctly maintain its data and not actioning repeated advice on who is the contact.

And why do you need to recover costs at all? The Prime Minister tells us that an effective AUSTRAC will save the community and businesses \$15 billion a year. Business pays tax at 30% and the average personal income tax is around 20% - this means that an effective AUSTRAC will deliver over \$3 billion of taxation revenue to the Government and 10% of that additional income means that AUSTRAC needs nothing from the likes of us. If the Government gets such a gain why shouldn't it pay? Isn't it the Government that is a substantial beneficiary who has actually ordered the activity? If it doesn't isn't that what they call double-dipping? or is it more akin to gouging such as what the Government is accusing banks of doing?

From what's in the paper we'll be in the "Base component" category and paying 10% of the monies needed by AUSTRAC to run itself, meet its capital outlays, fund training (bit late for that after 3 years of nothing meaningful or relevant), pay for AUSTRAC's legal costs so it can harass with greater effect, and pay AUSTRAC's costs for bleeding us. We have no say in AUSTRAC's budget - \$32 million dollars of wages and on costs pa, \$7½ million spent so far on purchasing land, buildings and equipment, \$5 million on capitalised costs, paying a CEO \$370,000 pa and seven other executives a total of \$2 million a year. These are astonishing amounts which are not of our making and which we're given no right of comment or input (yet the Government has legislated under the Corporations Law that shareholders can be heard on Executive Remuneration and generally), the Prime Minister states that we haven't created the need that they be spent and we derive no benefit, product, service, data or support.

So what do we get for the \$241? AUSTRAC's track record indicates nothing other than threats and an inability of AUSTRAC to maintain its own database. It seems we'll be simply funding greater levels of harassment.

We shouldn't even be part of the scheme – we'd like to even get within 10% of the amounts used in the examples of turnover/event for the smallest category used in the AUSTRAC examples. We're a pub in Queenstown in Tasmania with declining turnover servicing, overwhelmingly, locals. We're not Crowne Casino, we're not a drug hub, if someone wanted to launder money I doubt that \$100 through pokies is of interest (our average gaming turnover for all forms (pokies, Keno and TAB) is only \$10,000 per day which equates to about \$20 per player/punter).

We have no problem with the concept of "user pays". But this is not user pays as we are not the user nor the cause of why AUSTRAC must exist. If anything, we should be being paid to collect data for the AUSTRAC. Any cost recovery regime must be levied on the beneficiary of the activity. If it isn't so then be honest and call it what it is – taxation, oops, sorry, I forgot, you can't admit that as calling it what it is would be to admit an illegal impost!

I doubt the comments made will be receive any attention but they are legitimate. I hope I'm wrong and we do receive a substantive response.

I also don't repeat the last parragraph of the above – I can now see that my previously expressed hope was in vain and it's pointless to think that AUSTRAC cares in the slightest.

Yours sincerely
Bob Cox