



10 December 2010

Discussion Paper – Cost Recovery  
Australian Transaction Reports and Analysis Centre  
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Dear Sir/Madam

### **Discussion paper - Cost recovery for AUSTRAC's regulatory functions**

The Institute of Chartered Accountants in Australia (the Institute) appreciates the opportunity to provide feedback regarding AUSTRAC's regulatory cost recovery model set out in the Discussion Paper – Cost recovery for AUSTRAC's regulatory functions (the Discussion Paper), implementing the measures set out in the Budget Measures Budget Paper No.2 2009-10.

We feel the Discussion Paper has provided a good foundation for future analysis and discussion. It would benefit from greater detail regarding the regulatory costs to be recovered and the different options which were considered in the development of the cost recovery model. As experienced financial experts we would be happy to assist in the development of an alternative model for regulatory cost recovery.

We would welcome the opportunity to apply our 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 of those costs across reporting entities.

The Institute represents 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. Our members who are reporting entities under the Act are individual members and firms which hold Australian Financial Services Licenses and provide services under Item 54. We expect that the majority of our members in public practice will become reporting entities under Tranche 2.

The Institute supports the policy objectives of the Act and the implementation of the Financial Action Taskforce (FATF) Recommendation 12 that the AML/CTF regime be extended to non financial businesses and professions. However, we have concerns regarding the proposal that AUSTRAC's regulatory costs be recovered from reporting entities as well as the proposed means of implementing the cost recovery.

The Discussion Paper distinguishes between AUSTRAC's role as financial intelligence unit and AML/CTF regulator. Whereas the broad public benefit of its activities in gathering financial intelligence are recognised, its regulatory activities are identified as protecting the financial wellbeing of the Australian community and therefore requiring industry to meet the costs of regulation.

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Reporting entities are identified in the Discussion Paper as having to bear the AML/CTF regulatory costs because they create the need for regulation by providing services which may be vulnerable to exploitation by criminals.

The Discussion Paper also proposes that the benefits of regulation are enjoyed primarily by these reporting entities rather than the community and economy at large. However, our members, like reporting entities generally, provide legitimate services to clients who overwhelmingly are law abiding individuals and businesses. If these legitimate services are exploited by criminals, it is the criminals as the wrong-doers who create the need for regulation and who should contribute to the regulatory costs through the confiscated proceeds of their crimes.

Reporting entities incur significant compliance costs to contribute to the achievement of AUSTRAC's regulatory objectives through their cooperation with the requirements of the Act. It is inappropriate that these reporting entities should have to bear additional direct costs. Reporting entities, implementing the AML/CTF regime in good faith, should not be further penalised for their cooperation.

The Discussion Paper identifies that the facilitation of financial flows by reporting entities provides opportunity for criminals to disguise the true origin or eventual use of funds. However, the facilitation of financial flows provides significant benefit to the economy and should not be discouraged by the imposition of unreasonable costs. Of the Institute members who hold AFSLs, a number provide services through small to medium practices. In relation to Tranche 2 reporting entities, approximately 95% of our members' public practice firms are made up of five partners or less. These small practices have limited resources to bear high compliance and/or regulatory costs.

If the compliance costs associated with the introduction of Tranche 2 of the AML/CTF legislation, are determined to be too high and not recoverable from clients, many accountants will withdraw from the provision of designated services. In addition, 30% of our members in practice were 51 years of age or older in 2009. Any additional compliance burden and/or regulatory costs are likely to be factors they consider when deciding whether to retire or continue in practice. As the vast majority of the designated services are provided to legitimate clients and businesses, their withdrawal will create inefficiencies in the operation of the economy as a whole.

### **AUSTRAC regulatory costs**

The Discussion Paper refers to the regulatory costs to be recovered through the levy as being the \$29.6million costs set out in the 2010-2011 Budget papers. It is not clear whether this amount refers to a budgetary allocation. If so then the recovery would be inconsistent with Key policy principle No.7, "Agencies should not cost recover for products and services funded through the budget process, but may cost recover, where appropriate, for commercial, additional and incremental products and services that are not funded through the budget process." In order to evaluate the cost recovery model, a breakdown of AUSTRAC's regulatory costs showing both fixed and variable costs, with some allocation of fixed costs across AUSTRAC's regulatory functions would be of assistance.

### **Annual determination of the levy**

The Institute appreciates the complexity of the process of designing a cost recovery system in a manner appropriate to the form of regulation and the size of reporting entities while ensuring consistency, transparency and accountability of the arrangements.

However, we have several concerns regarding the model proposed in the Discussion Paper, both in relation to the reporting entities under the Act and Tranche 2 reporting entities.



### **Levy components - Base levy/Large entity component**

The Discussion Paper proposes that with 11,726 reporting entities, the base levy component would be \$241 per reporting entity, with an additional large entity component to be levied on reporting entities with 150 FTE employees.

As the reporting entities under the Act range from the Big 4 banks to some of our AFSL members who are sole practitioners, the proposed base level together with the large entity components do not equitably apply regulatory costs across reporting entities.

We consider that it may be preferable to lower the base levy and create a number of levels of additional levy to be applied on the basis of the size of the reporting entity. However, the development of an alternative model would require a more comprehensive understanding of the regulatory costs to be recovered and the options already considered than have been set out in the Discussion Paper. We would be happy to assist in the development of alternative options of achieving the recovery of relevant costs while maintaining equity.

### **Transaction reporting component**

Because of the nature of the designated accounting services, it is not expected that accountants will be lodging transaction reports in significant numbers.

However, we believe that a levy calculated on the basis of the number and value of reports lodged with AUSTRAC could act as a disincentive to free and full reporting.

### **Tranche 2 of AML/CTF legislation**

It is unclear how the model of the AUSTRAC proposed supervisory levy will apply in relation to members of the accounting profession who become reporting entities under Tranche 2 of the AML/CTF legislation.

In the UK, the Institute of Chartered Accountants in England and Wales provides a monitoring function on behalf of the regulator. The ICAEW has incorporated this monitoring into its existing Quality Review process where all member firms are visited on a periodic basis. In the course of these practice visits, compliance with accountants' requirements under the AML/CTF regime is monitored. This may be an issue for discussion in relation to Tranche 2 obligations which could impact the level of AUSTRAC regulation required.

### **Conclusion**

It is crucial that any cost recovery model should present a rigorous and transparent basis for the imposition of a levy on AML/CTF reporting entities. We believe the Discussion Paper should provide more information regarding the regulatory costs to be recovered or the alternative cost recovery options considered to determine how the costs could be recovered from reporting entities on an equitable basis. The Institute recommends further discussion regarding the basis for the calculations and the development of alternative options for cost recovery.

Yours faithfully

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Institute of Chartered Accountants in Australia