

NATIONAL SECRETARIAT

Level 7, 34 Hunter Street, SYDNEY NSW 2000
GPO Box 1595, SYDNEY NSW 2001
Telephone: (02) 9221 1983
Facsimile: (02) 9221 2639
E-mail: association@trustcorp.org.au
Website: www.trustcorp.org.au



**Trustee
Corporations
Association
of Australia**

10 December 2010

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

Dear Sir / Madam

Cost recovery for AUSTRAC's regulatory functions

The TCA is the peak representative body for the trustee corporations industry in Australia.

It represents 16 organisations, comprising all 8 regional Public Trustees and the great majority of the 11 private licensed trustee company groups.

Our members provide a wide range of financial services to individual, family and corporate clients, including:

- traditional activities, such as estate planning, wills, powers of attorney, deceased estate administration, and management of charitable and other personal trusts.
- superannuation fund trustees / administrators.
- responsible entity for managed investment schemes.
- other corporate activities such as debenture trusteeships, securitisation facilities, and custodial services.

We are pleased to offer comments on the proposed cost recovery model for AUSTRAC's regulatory functions.

ANZ Trustees

Australian Executor
Trustees

Equity Trustees

National Australia
Trustees

New South Wales
Trustee and Guardian

Perpetual

Public Trustee for the
Australian Capital
Territory

Public Trustee for the
Northern Territory

The Public Trustee of
Queensland

Public Trustee
South Australia

The Public Trustee
Tasmania

Public Trustee
Western Australia

Sandhurst Trustees

State Trustees
Victoria

Tasmanian Perpetual
Trustees

The Trust Company

Comments

General approach

We strongly support a risk-based approach to supervision, which involves applying relatively higher amounts of regulatory effort in supervising entities that have a higher exposure to money laundering and terrorism financing risk.

In this regard, we have sought exemptions from the *Anti-Money Laundering and Counter-Terrorism Act 2006* for the privately owned trustee company members of the TCA in respect of their 'traditional trustee company services'.

That application was on the basis that those services should be regarded as low risk activities from an AML / CTF perspective. Similar exemptions were granted to the several Public Trustees.

We have no difficulty with the principle of a 'user pays' approach to the recovery of the costs of AUSTRAC's regulatory function.

We believe that the levy should apply separately to each reporting entity within a designated business group.

While we agree that a 3 component approach is an appropriate method of calculating levies for reporting entities, we feel that the weights given to those components need to be reconsidered.

Base component

A base component levy of the order of \$200-250 pa does not seem unreasonable.

However, with a view to simpler administration, consideration might be given to setting the base rate at a flat \$250 pa for say 3 years.

Large entity component

While AUSTRAC may apply relatively more supervisory resources toward regulating larger entities than smaller entities, irrespective of the volume or value of their transactions, we believe that less weight should be given to the large entity component and more to the transaction reporting component, on the basis that the latter is more relevant in terms of actual ML/TF risk.

We consider it to be an inequitable and inaccurate approach to apply a criterion based solely on employee numbers, particularly if using a single threshold (ie: 150 FTE), as this factor does not provide a meaningful indication of the actual risk level, or the supervisory burden on AUSTRAC, of the activities of the entity.

Further, we recognise that it may be very difficult in practice to seek to exclude from the employee numbers those staff not involved in the provision of designated services.

As an alternative approach, we suggest that a flat fee, to be reviewed after 3 years, be based on 3, rather than 2, levels of employees, as shown in the table below:

Number of employees (FTE)	'Size' component of levy
Small: up to 250	Nil
Medium: 251 to 750	\$2,500
Large: over 750	\$5,000

Transaction reporting component

Consistent with our above recommendations, the balance of AUSTRAC's regulatory costs (ie: after deducting the base and size components) would be recovered from relevant reporting entities via the proposed transaction reporting component.

The suggested 50/50 split of those residual costs between volume/value measures would seem to be a reasonable approach, as would be the suggested annual thresholds of 10,000 transaction reports and \$100m value of transactions.

Registered remittance affiliates

We understand that registered remittance affiliates are to be excluded from the levy, which seems inappropriate as they arguably sit at the higher-risk / burden end of the regulatory spectrum.

Low risk entities

We suggest that any entities which are deemed by AUSTRAC to be low risk from an ML/TF perspective should be subject only to the base level component of the supervisory levy.

This approach would reflect the fact that the compliance obligations for those entities would be minimal, as would the devotion of AUSTRAC resources to their activities.

.....

We look forward to seeing the exposure draft of the Cost Recovery Impact Statement and the draft rules in due course.

Yours sincerely

Ross Ellis

Executive Director