



**The Institute of
Chartered Accountants
in Australia**

26 May 2011

Mr Shon Fletcher
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
Legcon.sen@aph.gov.au

Dear Mr Fletcher,

Inquiry into the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011; Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Correction) Bill 2011; Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2011

The Institute of Chartered Accountants in Australia (the Institute) welcomes the opportunity to present to the Senate Legal and Constitutional Affairs Committee our views on the above Bills currently being considered as part of this inquiry.

As the Committee will be aware, the Institute represents more than 55,000 Chartered Accountants who work in diverse roles across commerce and industry, academia, government and public practice throughout Australia and in 140 countries around the world. The depth and diversity of our membership allows the Institute to provide informed advice in relation to policy, regulatory and law administration issues such as those being examined as part of this inquiry.

Relevantly for the purposes of this inquiry, a proportion of the Institute's members already satisfy the definition of a 'reporting entity' under the Anti-money laundering and Counter-terrorism financing Act 2006 (the Act) and it is expected that a significant proportion will also be considered 'reporting entities' under the planned Tranche 2 amendments to the Act when they come into force.

While the Institute continues to unequivocally support the policy objectives of the Act, and the implementation of the Financial Action Taskforce (FATF) Revised 40 Recommendations, we fundamentally disagree with the policy principles underpinning the above Bills. In our assessment, the imposition of a levy on AML/CTF reporting entities would fall outside the Australian Government's own Cost Recovery Guidelines and on that basis the merits of the proposals contained in the Bills should be reconsidered and an alternative approach adopted.

At an overarching level, the Institute is concerned that the proposed cost recovery levy model set out in the above Bills will serve as the basis for a similar approach being adopted in respect of Tranche 2 reporting entities in the future. The adoption of such an approach would, in our view, place an unreasonable burden on small to medium sized professional accounting practices across Australia.

Customer Service Centre
1300 137 322

NSW

33 Erskine Street
Sydney NSW 2000
GPO Box 9985
Sydney NSW 2001
Phone 61 2 9290 1344
Fax 61 2 9262 1512

ACT

L10, 60 Marcus Clarke Street
Canberra ACT 2601
GPO Box 9985
Canberra ACT 2601
Phone 61 2 6122 6100
Fax 61 2 6122 6122

Qld

L32, 345 Queen Street,
Brisbane Qld 4000
GPO Box 9985
Brisbane Qld 4001
Phone 61 7 3233 6500
Fax 61 7 3233 6555

SA / NT

L11, 1 King William Street
Adelaide SA 5000
GPO Box 9985
Adelaide SA 5001
Phone 61 8 8113 5500
Fax 61 8 8231 1982

Vic / Tas

L3, 600 Bourke Street
Melbourne Vic 3000
GPO Box 9985
Melbourne Vic 3001
Phone 61 3 9641 7400
Fax 61 3 9670 3143

WA

Ground, 28 The Esplanade
Perth WA 6000
GPO Box 9985
Perth WA 6848
Phone 61 8 9420 0400
Fax 61 8 9321 5141



Policy

The Explanatory Memorandum to the Bills suggests that reporting entities have created the need for additional regulation by providing services that are vulnerable to exploitation for money laundering and terrorism financing purposes. We reject this assertion.

The Australian Government has implemented the AML/CTF regime to meet its obligations as a member of the FATF, to address the economic distortions created by money laundering and to reduce the national security risks that arise from terrorism financing. It is widely accepted that these are the broad objectives and benefits which are expected to be achieved from the successful implementation of the AML/CTF regime.

The professional services provided by our members contribute to the efficient operation of the economy by ensuring that individuals and businesses understand and meet the legal obligations that arise in respect of the conduct of their affairs. It is worth noting that almost all of these services are provided to law abiding individuals and businesses.

By imposing a levy across all reporting entities, the cost burden will be borne by reporting entities that have no contact or exposure to money laundering or terrorism financing activities, or clients who may be engaged in those activities.

Where, in an extremely small proportion of cases, legitimate professional services are in fact exploited by criminals, policy should dictate that the criminals themselves ought to contribute to the regulatory costs arising from the AML/CTF regime. One sensible approach would be to meet some or all of those costs through use of the confiscated proceeds of crimes. Where the proceeds of crime are insufficient to meet the costs AUSTRAC's regulatory activities, it would be appropriate for the shortfall to be funded through consolidated government revenues.

The Cost Recovery Impact Statement on Anti-money laundering and counter-terrorism financing regulatory activities (CRIS) states that reporting entities are best placed to minimise the costs of regulation and the cost to the community of money laundering and terrorism financing activities by undertaking appropriate countermeasures. Following the logic that the provision of services vulnerable to criminal exploitation creates the need for regulation, the only way to comprehensively eliminate the need for regulation would be to cease providing those services entirely. Withdrawing from the provision of such services would clearly be inconsistent with the Government's policy objectives in this area. Economy-wide, a reduction in the pool of service providers would have a potentially devastating impact on the ability of law abiding individuals and businesses to access affordable advice from those most capable of providing it.

Reporting entities already incur significant compliance costs to contribute to the achievement of AUSTRAC's regulatory objectives through their cooperation with the requirements of the Act. The imposition of further costs, in the form of a levy, on reporting entities, which would be particularly burdensome on smaller reporting entities with more limited resources, would clearly serve as a disincentive to participation in the AML/CTF regime.

It is our understanding that in the United Kingdom, where the AML/CTF regime requires accountants to register as an accountancy service provider (ASP) and regulatory costs are recovered, HM Revenue & Customs discovered in 2009 a significant shortfall between the number of accountants lodging tax returns and the number registered as ASPs. This was in spite of a penalty of £5,000 applying for failure to register.

Of the Institute members who hold an Australian Financial Services Licence (or are authorized representatives of a licence holder), most would provide their services through small to medium sized practices. In relation to Tranche 2 reporting entities, approximately 95 percent of our members' practices are made up of five partners or less. As to be expected, such small practices have limited capacity and resources to bear high compliance and regulatory costs.



For those practices, if the compliance and regulatory costs associated with the introduction of Tranche 2 of the AML/CTF legislation are considered to be too high [and typically not recoverable from clients], many professional accountants will withdraw from the provision of designated services. In addition, in 2010, 30 percent of the Institute's members in practice were 51 years of age or older. Where compliance and regulatory costs are onerous, this is likely to be a factor considered when those members decide whether to continue to provide professional services or retire and exit from the marketplace. As the vast majority of the designated services are provided to law abiding individuals and businesses, the withdrawal of professional advisers would have a significant and adverse impact across many sectors of the economy.

Australian Government Cost Recovery Guidelines

We do not believe that AML/CTF reporting entities will receive a direct benefit from AUSTRAC regulation and it is not the primary purpose of the Act to deliver a direct benefit to reporting entities.

The Explanatory Memorandum to the Bills states that industry must meet the costs of the regulatory systems that ensure the integrity of their operating environment. In the CRIS, the Government identifies further benefits to reporting entities, such as the ability to operate in a jurisdiction that complies with the requirements of FATF. Whilst it can be argued that such benefits do in fact arise, they must be considered as being broad and general in nature, and certainly do not amount to specific direct benefits to individual reporting entities.

The CRIS also seeks to identify direct benefits which, it is suggested by the Government, will be enjoyed by reporting entities. Such benefits are said to include the detection of embezzlement activities by employees and the investigation of fraud committed on reporting entities.

However, in our view a limited number of the direct benefits listed in the CRIS are applicable to the Institute's members. Of those which might be applicable, professional accountants are likely to already have systems and controls in place to address such risks, outside of the specific requirements under the AML/CTF regime. Such systems and controls are likely to already exist given they represent a fundamental design feature of most accounting systems, and form an integral component of any well-designed risk management framework. It is therefore inappropriate for the Government to assume that reporting entities did not already have systems in place to achieve many of the direct benefits that are said to be attributable to the introduction of the AML/CTF regime.

Furthermore, the benefits of the AML/CTF regime should be viewed as broad public policy outcomes that are more appropriately characterised as 'public goods' in an economic sense. The benefits derived are not restricted to reporting entities alone. This fact is important in the context of assessing whether or not the regulatory costs should be met from consolidated government revenues.

On the basis of the arguments outlined above, as well as our understanding of the Government's own Cost Recovery Guidelines, the costs of AUSTRAC's regulatory activities should not be recovered via a specific levy on reporting entities.

Conclusion

The Institute does not accept the veracity of the policy arguments that form the basis of the proposals contained in the Bills which seek to impose an AML/CTF levy on reporting entities.

It is not the provision of legitimate services which creates the need for regulation but the activity of criminals themselves. There is no direct benefit delivered to reporting entities which can be separated from those delivered to the community as a whole. The imposition of a levy



is likely to have a significant adverse impact on the capacity of many professional accountants to provide advice to countless individuals and businesses across all sectors of the economy.

It is therefore our recommendation to the Committee that they propose amendments to the Bills to transfer the costs of AUSTRAC's regulatory activities to be met from the confiscated proceeds of crime, with any shortfall being met from consolidated government revenues. In relation to the regulation of the Institute's members under Tranche 2 of AML/CTF legislation, we propose a similar model to that adopted in the UK whereby the Institute of Chartered Accountants in England and Wales is a supervisory authority under the UK Money Laundering Regulations.

If you would like to discuss any aspect of this submission further, please contact Ms Catherine Kennedy in the first instance on

Yours faithfully,

Lee White FCA
Executive General Manager – Members
Institute of Chartered Accountants in Australia