Clubs Australia

Discussion Paper: Cost recovery for AUSTRAC's regulatory functions

Clubs Australia is pleased to provide comment on the AUSTRAC Discussion Paper on Cost recovery for AUSTRAC's regulatory functions. Clubs Australia supports the objectives of the Government in protecting the Australian community from the social and economic impacts of organised crime, and is committed to working collaboratively with Government to ensure our venues are responsible in maintaining robust anti-money laundering programs. However, Clubs Australia has concerns about a principle which asks industry to assist government to protect Australia's financial integrity through assessing risk, submitting reports and installing procedures and training, and then separately charges industry to cover administration costs.

Australia's clubs are not-for-profit organisations that build sporting and community infrastructure, support charities and provide a comfortable and affordable place to socialise. Our members include RSL clubs, golf, bowling and other sports clubs, ethnic clubs and general interest clubs. Many clubs across Australia operate electronic gaming machines, and thus are captured as a provider of a designated service under s6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act* ('AML/CTF Act').

Clubs are unique as providers of member-based community gaming activities, and this special status should be taken into account when Government develops regulatory policy and charges imposts. We welcomed the Government's previous announcement that it is committed to strengthening the not-for-profit sector, including through taxation and regulatory reform. Therefore, it is disappointing at this time to see a new impost placed on the not-for-profit sector at the same rate as for corporate entities.

Any government charges and levies faced by clubs take money away from local members and the broader community. Although a proposed base levy of $241 per annum may appear small, it is estimated that in NSW alone, over 30% of clubs are either non-profitable or only marginally profitable.[1] Additional levies will particularly impact clubs in rural and regional areas, where decline is the local economy has increased the number of clubs forecasting amalgamations of closures. A copy of a media article reporting an example of the latest club in financial hardship, the Deniliquin Golf Club, despite the revenue from poker machines, is at Attachment A.

[1] The Allen Consulting Group, *Socio-Economic Impact Study of Clubs in NSW (2007).*

The risk profile for money laundering and terrorist financing activity from community gaming services provided by clubs is low. The internationally recognised vulnerabilities of the gaming sector focuses predominantly on the services provided by casinos, given their size, breadth of operation, ownership structures and potential profits. These features are not present in Australian clubs. Clubs find it difficult to identify the benefit they obtain by being regulated by AUSTRAC (p1 of the Discussion Paper) especially given the low money laundering risk presented. This submission looks at greater detail of the money laundering risk of its members' services below.

Under the provisions of s248 of the AML/CTF Act, Clubs Australia has sought a full exemption for small clubs from the legislative obligations. In the application, Clubs Australia has suggested that an appropriate definition of a small club may be one with annual gaming machine revenue of less than $3 million. A copy of the exemption request is at Attachment B. At the time of this submission, we have not been advised as to a decision on this application. Should AUSTRAC decide to accept this exemption application, Clubs Australia would submit that the exempted entities should not be liable for any cost recovery levy, as no regulation or supervision of that entity would be undertaken by AUSTRAC. However, even if AUSTRAC determined that compliance with AML/CTF obligations remained necessary, Clubs Australia would seek an exemption for these clubs to pay the base component of the levy.

Clubs Australia notes that the Discussion Paper's proposed model for calculating the supervisory levy includes a component not included in the original proposal announced in the Budget Papers: the Large Entity Component. The Large Entity Component is an additional charge to businesses with a total staff of 150 full-time equivalent employees, and according to the Discussion Paper is designed to cover the expenses incurred by AUSTRAC in supervising entities "which typically provide more products that are more complex over multiple distribution channels and multiple jurisdictions." On 1 December 2010, at the Sydney industry consultation meeting, AUSTRAC confirmed that its calculation of staffing numbers for the purposes of imposing this levy would include all staff employed by an entity, irrespective of whether the staff were working in designated services covered under the AML/CTF Act or not.

Clubs Australia notes that a small proportion of its members would have more than the equivalent of 150 full-time employees, as calculated in the methods proposed by the Discussion Paper. However, the majority of these employees would not be working in gaming-related services, but rather would be employed as chefs, waiters, baristas, member relations personnel, event management personnel and other staff. We note that under state gaming regulation (such as Queensland), only staff that perform designated gaming related duties are eligible for recognised accreditation for responsible service of gambling training.

We do not believe it was AUSTRAC's intention to capture clubs in the payment of the Large Entity Component. We note that on page 11 of the Discussion Paper, Figure 3.2 outlines AUSTRAC's expected applicable levies broken down by industry sector; under the 4,899 'leviable entities' listed as Pubs and Clubs, none was estimated to be large entities. Clubs do not have the attributes of large entities: they do not offer multiple products, do not have multiple distribution channels and do not operate in multiple jurisdictions.

Clubs Australia submits that the calculation of staff should be restricted to only those working in gaming services. If the additional entity is designed to assist AUSTRAC meet the costs of increased

supervisory activity, it is difficult to understand how the inclusion of staff whom do not require anti-money laundering regulation of supervision can be justified in AUSTRAC's calculations. Moreover, the hours that clubs operate are, by their nature, much longer than financial institutions, so the total number of FTE hours would be disproportionally represented in this type of calculation.

Irrespective of staffing numbers, Clubs Australia maintains that the money laundering and terrorism financing risk posed by gaming services provided by its members is low. The 2009 Financial Action Task Force Report into Vulnerabilities of Casinos and Gaming Sector provided an overview of sector specific indicators in possible money laundering and terrorism financing techniques. Particular vulnerabilities in determining higher risk activity for money laundering in the gaming sector included:

- high volumes of large cash transactions in casinos;
- additional financial services offered by casinos, including remittance, foreign exchange and the issuing of cash;
- ownership of casinos;
- the use/purchase of casino chips;
- operation in multiple jurisdictions;
- junkets;
- VIP Rooms and 'high roller' customers;
- high staff turnover resulting in poorly understood risk assessment and compliance awareness.

Access to club gaming is restricted to club members and their guests. Guests must be registered and sign-in before entering club premises, eliminating the anonymity provided by gambling in other venues. Different state and territory governments have imposed a variety of gaming regulations designed to reduce possible harm which has the subsidiary effect of reducing money laundering risk. Some of these measures include:

- restrictions on the use of credit accounts;
- restrictions on the use of bank note acceptors;
- limitations in the size of maximum bets and prize jackpots;
- restrictions on the size of cash winnings;
- delays in the cashing of winning cheques.

In the absence of new products and new electronic gaming machine-related typologies, revision of clubs' AML/CTF programs and risk assessments would require only minimal monitoring, rather than the heightened level of supervisory activity considered in the Discussion Paper when calculating the Large Entity Component of the levy.

Finally, Clubs Australia notes that at the time of the passage of the AML/CTF Act, the Government stated its intention to proceed to capture the "tranche two" regulated population, estimated to be double the size of current number of regulated entities under tranche one of the legislation. The introduction of these entities would enable the costs of regulation to be more accurately spread among those businesses which potentially facilitate money laundering or terrorism financing opportunities, and require a more robust regulatory response from AUSTRAC. The continual delay

by the Government in extending the obligations of the AML/CTF Act to these entities, contrary to the Government's obligations to uphold the Financial Action Task Force's 40+9 Recommendations, places an disproportional financial burden on those entities already complying by the legislation.