



AUSTRALIAN HOTELS ASSOCIATION

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28 February 2014

Issues Paper – AML/CTF Act Review
Legislative Review and Mutual Evaluation
Criminal Law and Law Enforcement Branch
Attorney-General's Department
4 National Circuit
BARTON ACT 2600

By email to amlreview@ag.gov.au

Dear Sir or Madam

Re: AHA Submission into the Review of Australia's AML/CTF Regime

The Australian Hotels Association (AHA) welcomes the opportunity to provide a submission for the review of the Anti-Money Laundering and Counter-Terrorism Financing Regime (AML/CTF).

For your reference, the AHA is an organisation of employers in Australia's hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. Its membership includes more than 5,000 licensed hotel businesses includes pub-style hotels plus three, four and five-star accommodation hotels located in each state and territory of Australia.

The AHA's members are serviced by branches located in every Australian capital city and a Canberra-based national office. Accommodation hotels are represented by Tourism Accommodation Australia (TAA), a division of the AHA.

You can find more information about the AHA at www.aha.org.au

Australia's hotel industry – a significant AML/CTF reporting sector

Australia's hotels are engaged with the AML/CTF regime by virtue of their provision of gambling services to customers in the form of electronic gaming (poker machines) and wagering activities (betting on sports and various forms of racing).

The AHA would welcome the opportunity to provide a verbal presentation of our submission to either the review committee and/or a relevant staff member from the Department.

Yours sincerely,

Mr Stephen Ferguson
National Chief Executive Officer
Australian Hotels Association
Email: ceo@aha.org.au

Enc:



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Review of the AML/CTF Regime

Submission by

Australian Hotels Association (AHA)

28 February 2014

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Executive summary

- 1.1 The Australian Hotels Association (AHA), representing the vast majority of hotels with gaming machines across Australia, focuses its targeted submission to this review on key areas of concern to its members. It submits that existing red tape is imposing an undue cost and regulatory burden on relatively low risk businesses, which is out of proportion to known and potential risks.
- 1.2 The existing scope of Australia's Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) regime is generally seen as disproportionate in its application to the limited risks associated with the hotel gaming sector in particular.
- 1.3 While hotels are committed to meeting their reporting obligations, they feel burdened by a compliance regime that fails to take account of their demonstrated limited risk factors, and fearful of the consequences of falling foul of existing formal enforcement mechanisms before being given the opportunity to resolve complex risk-based systems and control requirements.
- 1.4 The intention of the AML/CTF compliance regime is firmly supported, but the cost to business is out of proportion to the benefits, and falls almost exclusively on businesses which can ill afford the additional regulatory burden.
- 1.5 In response to the Issues Paper's request for stakeholders suggestions on possible areas of improvement of the AML/CTF regime, the AHA seeks to work co-operatively with AUSTRAC to cut red tape and promote compliance among its members, while at the same time reducing costs to business.
- 1.6 It is submitted that the following reforms would address the challenges faced by the industry since the introduction of the AML/CTF regime:
 - (a) compliance requirements to be proportional to low-level risk;
 - (b) raise the gaming machine exemption threshold; and
 - (c) adopt a substantive co-operative approach to regulation.

2 Introduction

- 2.1 This submission is in response to the statutory review of Australia's Anti-Money Laundering and Counter-Terrorism Financing regime (the Review), initiated by the Australian Government in December 2013.
- 2.2 For the purpose of the Review, the AML/CTF regime includes reference to the *Anti-Money Laundering and Counter Terrorism Financing Act 2006 (AML/CTF Act)*, AML/CTF Regulations and AML/CTF Rules.
- 2.3 The AHA represents the majority of Australian hotels operating gaming machines. AHA members support the aim of enhancing the AML/CTF regime to maintain a regulatory framework which conforms with international standards and effectively and efficiently prevents money laundering and terrorism financing.
- 2.4 Our members are committed to meeting their AML/CTF obligations, but in our submission most hotels conduct their gaming operations in the context of a very low-risk profile. Many AHA members are small hotels exempt from the parts of the AML/CTF regime involving customer due diligence requirements, as the gaming machine designated service they provide is capped at 15 or fewer gaming machines.
- 2.5 This easing of AML/CTF compliance requirements has been a most welcome concession which demonstrates that government recognises and appreciates that the AML/CTF regime must be tailored to suit relevant business circumstances, insofar as there is a need for proportionality between risk and regulatory burden.
- 2.6 However, there are many other AHA member hotels which exhibit similarly minimal ML/TF risk in their operations and so fall within a low risk profile, that are nevertheless caught up in a compliance regime which imposes an unreasonable and unnecessary burden on their business. These small businesses are compliant, but struggle to balance meeting their compliance obligations with other regulatory and business demands.
- 2.7 All our members are subject to internal compliance costs associated with staff training, and completing annual reports monitoring any changes in their requirements. In return they receive no compensation from government and, while incurring these costs, are also burdened financially by AUSTRAC's levy costs.
- 2.8 In our submission the regulatory burden imposed on the majority of AHA members who operate above the 15 or fewer gaming machine cap significantly outweighs any demonstrable contribution to a regulatory framework which conforms with international standards to effectively prevent serious and organised crime, money laundering and terrorism financing within Australia.
- 2.9 The AHA has already made a number of submissions to AUSTRAC on its current cost recovery model and fee structure. This submission refers to and repeats our 2011, 2012 and 2013 submissions to AUSTRAC, which analysed the limited ML/TF opportunities to engage in ML/TF in hotels, the effectiveness of the current regime, and alternative approaches for achieving the stated public policy objectives of the AML/CTF compliance regime. We particularly emphasise that our members are very concerned that under government's present cost recovery guidelines, the base levy component is unjustified for most Australian hotels.
- 2.10 Many of the issues raised by the Review are outside the scope and influence of our members. This submission is therefore not directed to providing a comprehensive response to the Review, but rather focuses on the three key areas of concern to AHA members identified in the Issues Paper:

- (a) Striking the appropriate balance between a risk-based and a rules-based approach to AML/CTF regulation, to ensure that compliance costs to the industry are in proportion to known and potential risks.
- (b) The current scope of the AML/CTF regime and whether the present coverage of designated services and industry sectors is appropriate to the hotel gaming sector in particular.
- (c) Whether existing enforcement mechanisms are appropriate to promote reporting entity compliance by hotels.

3 Striking the appropriate risk balance

- 3.1 It is submitted that the regulatory regime needs to strike an appropriate balance between a risk-based and a rules-based approach to AML/CTF regulation, to ensure that compliance costs to the industry are in proportion to known and potential risks.
- 3.2 The current regulatory regime continues to impact adversely on the hotel industry which is made up of a diverse range of businesses, largely small country pubs concentrated in non-metropolitan areas, but also includes urban hotels and four and five-star accommodation hotels located in the bigger cities and resorts.
- 3.3 The AHA supports a risk-based approach to the AML/CTF regime insofar as it allows different industries and providers of different designated services to be treated in an appropriate way, according to the relative level of ML/TF risk posed by their service provision. (This issue is addressed further in Section 5.)
- 3.4 In previous submissions we have sought to demonstrate the relatively low level of risk associated with hotel EGMs, particularly compared to financial businesses and other gambling businesses.
- 3.5 We submit that the degree of ML/TF risk is not sensitive to the number of machines in a venue, as gaming machines are only one type of designated service.
- 3.6 The minimal level of ML/TF risk posed by a very small number of machines (15 or less) at one venue (acknowledged by the compliance regime) does not increase at venues which have a marginally greater number of machines. By this reasoning, two different hotels in common ownership pose no greater risk than either hotel in single ownership, and an obligation to conduct individual risk assessments amounts to an unnecessary duplication and an unreasonable burden on the hotel operator.
- 3.7 Many country hotels operate gaming machines which are old and near obsolete. With only a small number of gaming machines these hotels do not have the financial strength or economies of scale to implement substantial gaming-related regulatory programs without undermining the ongoing financial viability of their businesses.
- 3.8 The current ML/TF risk assessment guide for hotels and clubs licensed to operate EGMs outlines a six-step process for our members to follow, including identifying, treating and allocating risks. We submit this is an ineffective and disproportionate response to the generally low level of ML/TF risks inherent in the majority of Australian hotels.
- 3.9 The two compliance guides released by AUSTRAC in January 2014 are a welcome recognition of the compliance burden, but do little to address the disproportionate load carried by smaller hotels. This issue has severe implications for the thousands of staff employed by these small business and the communities that rely upon them.

Contribution to the national economy

- 3.10 A 2009 PriceWaterhouseCoopers report into the industry found that our members together make a significant contribution to the Australian economy, employing more than 188,862 people and supporting the community to the extent of \$75 million a year. Of the approximately 6,500 hotels operating throughout Australia, an estimated 75 per cent provide gaming services.
- 3.11 Many of the hotels currently providing gaming services do so with far less than 20 EGMs per premises. There is presently a high concentration of hotels with gaming machines in country and regional NSW, where about one-third of all Australia's hotels with gaming machines are located.

- 3.12 About 66 per cent of NSW hotels operate no more than 15 EGMs, while the majority of NSW hotels operating gaming machines are located outside the Sydney metropolitan area. In South Australia 48 per cent of hotels operate no more than 20 EGMs and 27 per cent of hotels operate no more than 10 gaming machines.
- 3.13 We submit that all of these hotels are low risk service providers, and pose no appreciable risk to AML/CTF compliance.
- 3.14 The Issues Paper recognises that of the 13,800 enrolled reporting entities, about 70 per cent are classified as small businesses with 20 or less employees, and as such pose a unique range of regulatory challenges in balancing the management of ML/TF risk with the impacts of regulation. The hotel gaming sector in particular falls into this category, and smaller country hotels which operate throughout Australia are generally not in a financial position to adapt to any major regulatory change.

Burden imposed on small hotel operators

- 3.15 The Issues Paper recognises that the hotel industry's experience of the AML/CTF regime's operation since 2006 has produced a wealth of practical experience and information on the ML/TF risk associated with designated services provided in hotels.
- 3.16 The following first-hand accounts of our members suggest that the compliance regime is out of proportion to the low level of risk which has presented itself in this time.

Scott Armstrong, AT Hotels, Queensland

"The AML/CTF regime for hotels is frustrating because our State's gaming laws preclude us from paying a gaming customer more than \$500 in cash. Why can't the Commonwealth legislation take account of the tight gaming rules that already apply at State level?"

Barry Allen, Licensee, Denison Hotel, Bowen Queensland

"We're a small gaming venue in a small country town. We know our customer base well and find terms like 'Enhanced Customer Due Diligence' to be very confusing. The language of AML/CTF compliance is not that used in everyday usage."

David Basheer, Strathmore Hotel, Adelaide South Australia

"The nature of my hotel gaming operation is such that it makes no sense for anyone contemplating money laundering to do so at my hotel. For starters, in South Australia, only \$1 coins are able to be used to place credits on gaming machines. It therefore makes absolutely no sense, and would be a time-consuming and attention-generating activity for a patron to load large amounts of \$1 coins into a gaming machine, only to push the 'payout' button in order to secure a cash or cheque payout. Such activity would immediately give rise to close scrutiny and, likely, a Suspicious Activity Report by my staff. Given this typical and unlikely scenario, it seems to me that the very significant training, compliance and reporting burden inherent in the current AML/CTF regime is way over the top for the typical South Australian gaming hotel, irrespective of the number of gaming machines operated by that venue. "

Michael Porter, Plainland Hotel, Plainland Queensland

"The AML/CTF regime is complex, confusing and challenging for a small family-run business. We've put a lot of effort into our compliance and training regime but our risk profile is very low and we've not had to submit a single Suspicious Activity Report. In my view, the effort required to meet our legal obligations under AML/CTF laws is way out of sync with any threat of money laundering."

Sandy McDonald, Licensee, Manly Hotel, Manly Queensland

"The compliance requirement is way out of kilter with any threat of money laundering in my hotel business and the legislation talks in a foreign language."

Will Cordwell, Licensee, Ascot Hotel, Rockhampton Queensland

"Any criminal who decided to launder money in my hotel in Rockhampton would need their head read. Their activity would stick out like a sore thumb in my place and that's why they don't frequent regional or rural hotels. Most publicans of small hotels are at a loss to explain why the AML/CTF regime has been put in place."

Gaming machine threshold

- 3.17 It is submitted that the current gaming machine threshold of 15 or fewer machines is a welcome exemption to the Customer Due Diligence (CDD) provisions of the AML/CTF regime, on the basis that the risk of money laundering occurring in these hotels is extremely low. The AHA believes this exemption should be extended to more hotels.
- 3.18 The exemption acknowledges that the collection of detailed personal information about their customers is not part of the usual business practice of most small to medium-sized Australian hotels. It is applied under Chapter 52 of the AML/CTF Rules, which requires hotels operating 15 or fewer gaming machines to lodge only suspicious matter reports.
- 3.19 While the CDD enhancements are specifically excluded from this Review, the Issues Paper notes that the Review will consider any additional issues which may arise, or residual issues remaining, from last year's review process as well as broader CDD issues.
- 3.20 At present our members who are licensed to operate 15 or less EGMs are not required to adopt an AML/CTF program, verify the identity of customers or submit threshold transaction reports. However, they are still required to report suspicious matters, undertake record keeping and meet certain strict enrolment obligations, which imposes a more manageable level of scrutiny on operators.
- 3.21 While this reduced level of regulation does still impose a significant load on very small businesses, most of whom have no formal relationships with their customers who enter the hotel to have a drink or a meal and play the gaming machines, it is a more acceptable response to the very limited risks. It also acknowledges that while there are no conditions imposed on members of the public to qualify to use the gaming machines, they remain anonymous to the hotel staff.
- 3.22 Once hotels cross the threshold to more than 15 EGMs their compliance obligations increase significantly. They must have a written AML/CTF program in place to help identify, mitigate and manage ML/TF risks and the long checklist of obligations includes: appointment of an AML/CTF compliance officer; putting in place a risk awareness training program and due diligence program; conducting a regular independent review of their AML/CTF program; documenting their customer due diligence and reporting procedures; collecting and verifying their 'know your customer' information, and ensuring oversight of their AML/CTF program.
- 3.23 The penalties for failure to comply with the regime are heavy, including a maximum civil penalty for a single contravention of up to \$17 million for a corporation and up to \$3.4 million for an individual. The penalties for criminal offences include imprisonment for up to 10 years and fines of up to \$1.1 million.

4 Refining the scope of the AML/CTF regime

- 4.1 It is submitted that refining the current scope of the AML/CTF regime would not only take account of the low risk profile of hotels with EGMs, it would remove the existing inequality when comparing hotels with other designated services and industry sectors.
- 4.2 Under the AML/CTF regime hotels are deemed to be 'reporting entities', defined in the Act as including an individual, company or other entity that provides a 'designated service'. These so-called 'reporting entities' have mandatory obligations to monitor customers and their transactions on an ongoing basis. They must make and retain a record of their applicable customer identification procedures, and retain that record for seven years after the end of their relationship with the relevant customer.
- 4.3 However, gaming machine venues are simple business with little complexity in their product and service offering. Players voluntarily attend a venue and choose to play gaming machines, which they are free to do without opening an account or identifying themselves in any way. The transactions they make are much like purchasing a lottery ticket or playing a game of pool in a hotel. Such transactions are fragmented and difficult to anticipate.
- 4.4 Although gaming venues monitor their gaming rooms through staff presence and closed-circuit television monitoring, gaming customers are fundamentally anonymous in such an environment, and the reporting entity rarely gets to know the customer to the extent contemplated by the AML/CTF regime. As a result suspicious matter reporting obligations on our members creates a burden out of proportion to that which is imposed on a designated service provider that has a relationship with its customers.
- 4.5 State-based gaming legislation requires the payment by cheque rather than cash of amounts far less than the \$10,000 threshold transaction amount. Accordingly, the vast majority of hotels and AHA members are small compliant entities, seldom reaching the \$10,000 transaction threshold. Nevertheless those with more than 15 EGMs are currently subjected to these threshold transaction requirements as reporting entities under the Act.
- 4.6 In these circumstances it is questionable why for reporting purposes, hotels and other gaming service providers are lumped in with banks and other financial institutions, non-bank finance service providers, remittance service providers and bullion dealers, with ongoing responsibilities to monitor customers and their transactions to mitigate and manage money laundering or terrorism financing risks.
- 4.7 Such a regime adds a heavy load of red tape and paperwork associated with even the minimal requirements of reporting and record keeping obligations imposed on our members.
- 4.8 Government at all levels is now committed to regulatory reform and red tape reduction to enhance the productivity and competitiveness of the Australian economy. We recognise that while regulation is an important tool in achieving important policy objectives, it is also important that unnecessary regulation and red tape does not impose a stifling burden on business.
- 4.9 The red tape reduction commitment of the incoming Coalition Government resonates with our members after more than seven years of grappling with the AML/CTF regime. The Parliamentary Secretary to the Prime Minister, the Hon Josh Frydenberg MP, outlined the government's plan to cut \$1 billion a year in red and green tape affecting Australian business, in an Opinion column published in *The Australian* in mid-January.
- 4.10 Mr Frydenberg highlighted the experience of our members when he pointed out that every industry and every stakeholder has their own horror story about the "costly and detrimental impact" of burdensome regulation.

- 4.11 Most of the compliance burden carried by smaller hotels is in the training and overheads associated with reporting, and regulatory ambiguity for small operators. This sector, consisting of hundreds of small to medium sized businesses, is well placed to contribute to the national benefits that will flow from red tape reduction, including around any unnecessary burden on their small, low-risk, and compliant businesses.
- 4.12 The reason hotels are covered by the AML/CTF regime and treated as 'designated services' in the Act is because some of the activities which they undertake have been identified by AUSTRAC as being vulnerable to abuse by criminals. We submit that for the reasons outlined above, this risk has been grossly over-rated.
- 4.13 The stated purpose of the transaction monitoring program is to identify and detect any "complex, unusual large transactions and unusual patterns of transactions," which have no apparent economic or lawful purpose. It is up to each reporting entity to decide the most appropriate form of transaction monitoring.
- 4.14 However, no explanation is given for why small hotels, operating predominantly in regional and rural communities, with unidentified customers who have no formal relationship with the service provider, can be treated for reporting and compliance purposes under the AML/CTF regime alongside banks and currency dealers.
- 4.15 The compliance requirements for hotels are clearly disproportionate to the risks, as hotels with gaming venues are radically different, conceptually and practically from the other designated services.

5 Adopting a co-operative approach to regulation

- 5.1 It is submitted that the existing enforcement mechanisms are inappropriate to promoting reporting entity compliance by small hotels, which would benefit from the ability to work co-operatively with the regulator before matters are escalated to a more formal enforcement process.
- 5.2 AHA members would like to work co-operatively with government to satisfy the objects of the AML/CTF Act.
- 5.3 We submit that face-to-face contact should be encouraged between our members and AUSTRAC to address any compliance concerns, and that it would be the most effective way to give effect to Australia's international obligations to combat money laundering and terrorism.
- 5.4 There is an opportunity to build compliance with the AML/CTF Act, to more efficiently identify and manage risk, and thereby assist hotels to fulfil their legal obligations without excessive regulation.
- 5.5 The objects of the AML/CTF Act could be expanded to include a clause requiring AUSTRAC to work co-operatively with designated service providers to ensure their compliance with the Act to effectively identify and manage risks including:
 - (a) from being used as a vehicle to launder money or finance terrorism, and
 - (b) to adequately meet the legal obligations set out in the Act and Rules.

6 Conclusions & recommendations

- 6.1 It is submitted that the following recommendations be adopted to overcome the unrealistic regulatory and cost burden on the small businesses identified in this submission, and to build a culture of compliance with the AML/CTF regime in Australian hotels.

Compliance requirements to be made proportional to relatively low risk

- 6.2 It is submitted that the risk analysis imposed on individual small hotels operating throughout Australia is over-rated by the current compliance regime. All hotels operating gaming machines do so at low risk from an AML/CTF perspective, given the relatively low transaction values and anonymity of their customers.
- 6.3 It is submitted therefore that what is appropriate is a light-handed approach to compliance, commensurate with this demonstrated low-risk regime.
- 6.4 Current compliance costs are out of step with this low-risk environment, and are having a dampening effect on the sector. We recommend that these two indicators be brought into better balance.
- 6.5 Many hotels and AHA members are small, compliant entities not required to make any transaction reports to AUSTRAC, but still find themselves tied up in red tape associated with staff training, filing annual compliance reports and a complex levy collection system.
- 6.6 We recommend the end of unnecessary red tape as part of a refreshing government-wide campaign to boost productivity and stimulate business activity.

Consider raising gaming machine threshold [from 15 to 25 machines], over time

- 6.7 Small hotels operating with relative low margins are struggling to carry the burden of a supervisory levy, on top of the compliance costs described in this submission.
- 6.8 The decision to except small hotels operating 15 or fewer gaming machines from the CDD provisions of the AML/CTF regime has released these businesses from an unreasonable burden in relation to the risk posed by their operations. However, there is no obvious explanation for why the reporting requirements for hotels with more than 15 EGMs, still a small number, are significantly more onerous.
- 6.9 We submit that the current threshold is still unnecessarily low, and could be raised to 20 or 25 gaming machines, with no impact on stated public policy objectives under the compliance regime.
- 6.10 The AHA therefore recommends that consideration be given to progressively raising the threshold to at least 25 gaming machines over the next two years.

Adopt an effective and cooperative 'work with industry' approach to regulatory regime

- 6.11 AHA members would like to work co-operatively with government to satisfy the objects of the AML/CTF Act and build their compliance with the Act to effectively identify and manage risks without excessive regulation.
- 6.12 We recommend more face-to-face contact between our members and AUSTRAC to address any compliance concerns as the most effective way to give effect to Australia's international obligations to combat money laundering and terrorism.