



AUSTRALIAN HOTELS ASSOCIATION

24 Brisbane Avenue Barton ACT 2600 • PO Box 4286 Manuka ACT 2603 • Australia
email: aha@aha.org.au • Facsimile: (02) 6273 4011 • Telephone: (02) 6273 4007
Web: www.aha.org.au

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Regulatory Burdens: Business and Consumer Services
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Attention: Maggie Eibisch

Annual Review of Regulatory Burdens on Business: Business and Consumer Services
AHA Response to Productivity Commission Draft Research Report

We reiterate the following submission as it was not addressed in the Draft Report.

Data capture and reporting requirements

AHA members have noted that the initial registration process and dealings with the Department of Climate Change (DCC) have been satisfactory overall.

However, the main issue reported is that those who were captured by the legislation needed to have had a robust and flexible system in place to begin with in order to capture and report on the necessary data. If this was not the case, hotels have had to employ additional people and invest in tools and technology to establish such a system, which has been an additional expense on their books. The monitoring and reporting systems also need to be able to maintain and store this data.

For future reference, with reference to effectiveness of communications, the Department was seen as less effective in communicating whether hotels needed to register for reporting, if they did not already hold the data, which caused some uncertainty and confusion.

In future it would be of benefit if the DCC, or any agency requiring data reports from hotels, could consult on the rationale as to why the information is required, and if it is determined that the information is required, then provide more clear and timely advance warnings of the information and the format required. This relates to draft recommendation 2.1 which proposes better consultative processes prior to introducing further regulatory requirements.

We make a further submission on AML/CTF Compliance.

The issue with AUSTRAC and AML/CTF compliance relates to the disproportionate efforts (and costs) required by captured businesses to meet their AML / CTF compliance and reporting obligations, compared to the assessed risk that criminals or terrorists will actually use licensed businesses to undertake money laundering and associated criminal activities.

Our hotel members are spending millions of dollars to prevent money laundering and the financing of terrorism in Australia. The AHA questions the real assessment of what the potential risk was or is? The risk / return equation appears to be disproportionate, and the Government has not re-visited it because it has simply delegated the task to its financial intelligence agency (AUSTRAC) which is now getting on with its business of toughening up Australia's financial protections. The Government has met its moral obligation by passing the total responsibility onto AUSTRAC and complying businesses.

The AML / CTF compliance obligations fall mainly on those hotels with electronic gambling through Electronic Gaming Machines (EGMs). Under the legislation, complying businesses are required to report on occurrence, and annually in a return, cash payments of >\$1,000, together with any 'suspicious activity' related to financial transactions. With regard the former, in most State jurisdictions, there are existing State regulations which preclude the payment of amounts anywhere near \$1,000. For example in Queensland, cash payments are limited to \$500 so licensees are confused that the Federal legislation requires them to set up a complex training, compliance and reporting regime for an eventuality that State legislation forbids them from undertaking.

With regard the 'suspicious activity' requirement, most hotel businesses simply see this as a political anxiety, with the definition of such behaviour being so broad that it's almost impossible for reasonable people to apply effectively.

Businesses that potentially pay \$1,000 in cash to a customer are caught in the regulatory net, and are therefore required by the *AML/CTF Act* to:

- Undertake a risk assessment of their business;
- Develop and implement an AML / CTF compliance plan;
- Formally appoint an AML / CTF Compliance Officer;
- Train their staff with follow-up training as required;
- Register online with AUSTRAC; and
- Meet their on-occurrence and annual reporting requirements with AUSTRAC

All of this has been done at the direct cost of the individual businesses or the peak industry bodies which assist them. There has been and is not intended to be any financial assistance to businesses to meet the establishment and ongoing costs of compliance. In NSW alone, 538 hotels earn less than \$5,000.00 a week from gaming machines.

In addition, we now have a proposal that, commencing in 2011/2012, AUSTRAC intends to recover the costs of its regulatory activities from businesses that have obligations under the AML/CTF Act including gambling service providers.

AUSTRAC proposes to recover costs from the industry through:

- A flat annual levy (initially proposed to be set at \$500.00)
- A fee for each international funds transfer instruction report and threshold report (proposed to be \$1.06 per transaction)

The regulatory burden has now been increased as hotel businesses not only have to meet all of their own costs of compliance, but also have to pay an annual and on-occurrence fee to the Government for the privilege of meeting this very burdensome regulatory burden, which is of dubious effectiveness.

As one member shouted in an AHA meeting recently "This AML / CTF regime is red tape gone mad – what kind of criminal is going to launder large amounts of tainted money through poker machines ? A dumb one."

It is a regulatory impost that our hotels are required to apply for an exemption from the AML/CTF regulations.

Hotels as a general rule should be exempt from the AML/CTF reporting requirements. In exceptional circumstances AML/CTF should apply where a hotel has been the subject of a major audit irregularity with respect to its gaming operations or the hotel has been breached for exceeding the maximum cash payment regulations.

We acknowledge that casinos are in a different category and our comments are not directed to casino operations. They are however directed to the 4000 hotels required to comply with the AML/CTF regime.

Should you require further information on these topics and the matters you have already addressed in your Draft Report please do not hesitate to contact the writer.

Yours faithfully

Des Crowe
National Chief Executive Officer