



Clubs Australia

Executive Summary

Clubs Australia opposes the passage of the *Anti-Money Laundering Amendment (Gaming Machine Venues) Bill 2012*, which seeks to reduce the threshold transaction reporting level for gaming machine payouts from \$10,000 to \$1,000. It is our view that while the Bill seeks to increase the compliance burden for clubs, it does not demonstrate any significant gain in financial intelligence for the benefit of the law enforcement community.

The key reasons justifying our position are:

- The potential for money laundering through electronic gaming machines has not increased since the passage of the original legislation, when the issue of appropriate thresholds for reporting was extensively analysed;
- Obligations under the legislation to report behaviours described in the Explanatory Memorandum already exist, through the Suspicious Matters Reporting (SMR) channel; and
- No other jurisdiction seeks to impose differentiated reporting for any gambling service, much less an individual gambling service, than is imposed for the broader regulated population.

The current AML/CTF Act

The *Anti-Money Laundering and Counter-Terrorism Financing Act* (AML/CTF Act) was passed by the Federal Parliament less than seven years ago. The legislation was an important reform to ensure Australia was compliant with the Recommendations of the Financial Action Task Force (FATF), the global intergovernmental body responsible for developing and promoting policies to combat money laundering and terrorism financing, to which Australia is a member. FATF and its regional bodies (for Australia, the Asia Pacific Group on Money Laundering) undertake extensive mutual evaluations of jurisdictions and report back on areas of non-compliance. Australia must submit regular updates to FATF about the strength and effectiveness of its AML/CTF regime.

At the time of drafting the legislation, the Government undertook extensive consultation within government, including law enforcement and intelligence agencies, as well as with businesses that were to be regulated under the Act. In doing so, the Government sought to ensure that if regulated entities had reporting obligations and other compliance burdens, these requirements would not be disproportionate to the intelligence value derived from the information the reports provided. To do otherwise would be to impose an unfair and unnecessary regulatory burden on business. A balance was struck between the needs of the law enforcement and intelligence community with the day-to-day realities of business.

Similar to other Anglo-American jurisdictions, the Australian Government adopted a risk-based approach to the legislation. By adopting this approach, the Government chose to set out broad obligations which reporting entities and others affected by the legislation must meet, but left the methods of meeting those obligations to be decided by those on whom the obligations fell.

As currently outlined in AUSTRAC's supervisory framework, this approach was based on the assumption that businesses are best placed to know their products, operating structure and business environment. As a result, they are also best placed to assess the risks that their business will be used for money laundering or terrorism financing purposes. They will be able to tailor mitigation strategies to the circumstances of their products, business structure, financial resources and staff.

Under its legislative power, AUSTRAC may make subordinate Rules which give effect to expanding or excusing particular obligations or procedures to ensure the legislation's intended outcomes are achieved. The benefit of the principles-based approach is that this leaves the regulator with flexibility in adapting to changed environments where there is clear evidence of necessity, without needing the Parliament to encumber its flexibility through alterations to the framework legislation.

Obligations for clubs

Clubs have a number of obligations under the AML/CTF Act. They include developing an up-to-date AML/CTF Program, which clearly defines the AML risk associated with operating gaming machines, a risk profile of its gaming machine patrons, training for gaming employees to understand these risks and risk profiles, customer identification and verification for transaction threshold and suspicious matter reporting, on-going customer due diligence, submitting annual compliance reports, record keeping and senior level monitoring of the program's operations. All details of the program are

independently reviewed. Gaming clubs register with AUSTRAC Online, and receive periodic information keeping them informed of important and emerging issues concerning AML/CTF. Additionally, Clubs Australia provides its members with additional support and information to ensure industry compliance.

Since the passage of the legislation, AUSTRAC has determined that it was acceptable to reduce the compliance burden for clubs and pubs with 15 machines or fewer, due to the very lower risk of money laundering. These entities have a reduced compliance burden, but must still report activities that they regard as suspicious, through the standard SMR procedure. This determination was made after extensive consultation within Government to determine the likely value of intelligence from transaction threshold reporting, compared with the compliance burden for small clubs.

Additional obligations for clubs in state and territory legislation

Beyond what is required under the AML/CTF Act, Clubs Australia notes that clubs have obligations to identify patrons when they enter clubs,¹ as members or guests, and to provide winnings (or credit reimbursements) by cheque to identified patrons at varying threshold amounts (depending on the jurisdiction). This ranges from \$250 in Queensland to \$2000 in New South Wales. Clubs Australia notes this is well below thresholds in other jurisdictions, and well below the threshold recommended by FATF.

Money laundering through electronic gaming machines

For money to be laundered through gaming machines, there are generally two options. Structuring involves the distribution of cash into smaller amounts, below the threshold of transaction reporting, to evade detection. Cash amounts below the threshold are loaded into a machine, and then these credits are cashed out after minimal play in order to be given a cheque for the winnings. Alternatively, launderers may purchase winning docketts from other players and cash those docketts themselves. These two methods have been identified in the annual AUSTRAC typologies reports, and were confirmed in the National Threat Assessment undertaken by the Government in 2011. Additional typologies have not been identified.

Clubs Australia notes that should either of these behaviours come to the attention of the gaming venue, there is already an obligation to advise AUSTRAC through the SMR procedure, irrespective of the amounts of money involved in the transaction. If any gaming venue employee suspects on reasonable grounds that a patron may be engaging in money laundering or terrorism financing, the obligation is invoked. Clubs Australia notes that if a venue submits an SMR, the AML/CTF obliges that the entity does not disclose this to a third party. Clubs Australia also notes that these behaviours are not new, but were identified when the original legislation was considered and passed by Parliament.

Further, there are no provisions under the AML/CTF Act that places an obligation on the venue to refrain from providing a designated service to someone about whom they have lodged an SMR.

¹ South Australia no longer has this requirement.

Each venue must determine based on its own risk assessment as to whether to continue the relationship.

International comparison

Clubs Australia notes that the transaction threshold limit imposed in other FATF jurisdictions does not distinguish between gambling and non-gambling types of transactions, and does not distinguish within these categories. In the United States and Canada, authorities impose a reporting threshold of \$10,000 of the local currency for all types of transactions, and in Europe the threshold is higher, at Euro 15,000. No jurisdiction has sought to depart from these established thresholds, and no country has identified a specific money laundering or terrorism financing risk attached to gaming machines that warrants extraordinary attention.

Ongoing engagement between clubs and AUSTRAC

Clubs Australia notes that while clubs continue to improve their understanding and engagement with AUSTRAC, that there have been to date no enforcement action or civil penalty made by AUSTRAC against any club. Clubs Australia is a member of AUSTRAC's regular Gambling Consultative Forum, and at no time has AUSTRAC advised of systemic or regular non-compliance by the club industry, or raised an operation or intelligence need for reporting at lower transaction thresholds. Clubs Australia has engaged with AUSTRAC in the design and content of its compliance guidance targeted directly for the club and pub industries, and we look forward to the publication of that guidance in due course.

The Anti-Money Laundering Amendment (Gaming Machine Venues) Bill

In its explanatory memorandum to the *Anti-Money Laundering Amendment (Gaming Machine Venues) Bill*, no reason was provided as to why the original transaction threshold set by Government when it passed the original AML/CTF Act was no longer appropriate. No additional typologies of money laundering or counter terrorism financing were identified. No systemic industry non-compliance to the legislative obligations was alleged. No additional intelligence or law enforcement value of reporting at lower thresholds was enunciated. No explanation as to why electronic gaming machines required a lower threshold for reporting compared with other forms of gambling, including casino table games or bookmaking, where it is arguable easier to move larger amounts of money in single bets than it is in loading banknotes into a machine over a much longer time frame through smaller bets. Indeed, the author of the Bill did not seek to consult AUSTRAC or any law enforcement or intelligence agency to ascertain the value of additional reporting of gaming machine related transactions.

The AML Amendment Bill does not seek to reduce transaction threshold reporting for any other type of designated service regulated by the Anti-Money Laundering and Counter-Terrorism Financing Act, and indeed does not seek to change the transaction threshold reporting obligation on any other type of gambling product.

Clubs Australia believes that imposing a lower transaction threshold reporting amount for gaming machine related activities would not create a deterrence for money launderers, but simply

encourage them to use other types of gambling product, including online gaming. Clubs Australia notes that there is nothing in the literature from AUSTRAC or any other government agency, or in international literature from the Financial Action Task Force or Asia Pacific Group on Money Laundering, to say that gaming machines present a higher risk of money laundering than other gambling products. Indeed, most international literature concerning the money laundering risk in casinos focuses on the financial services provided by casinos, the use of junkets, high-stakes and VIP rooms and the unlimited betting available on table games. For example, casinos in Australia allow bets in excess of \$300,000 per game, whereas the maximum bet per spin of a gaming machine is \$5 or \$10 depending on the jurisdiction. There is also evidence of an increasing risk of money laundering through internet gambling and other online financial transactions. No cost-benefit analysis or regulatory impact statement has been undertaken to determine the effectiveness of the measure compared with the increased obligations for industry.

Finally, Clubs Australia and its members are committed to working with the Government in contributing to the administration of justice in countering money laundering and the financing of terrorism. As not-for-profit organisations, there is no benefit for a club to support or tacitly approve of money laundering activity in the venue, and Clubs Australia continues to work constructively with AUSTRAC and its designated partners to improve industry awareness of evolving issues and compliance with all obligations.