



Submission to the Productivity Commission's Draft Report on Cost Recovery

May 2001

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1 Introduction

1.1 Background

1.1.1 This submission responds to the Draft Report on Cost Recovery, which was released by the Productivity Commission (the Commission) in April 2001. The structure of this paper is as follows:

- a brief reiteration of some of the main arguments regarding a cost recovery system applying to AUSTRAC's activities;
- an examination of the possible application of the Recommendations contained in the Draft Report to AUSTRAC; and
- other comments on the Draft Report.

1.1.2 This submission restates and builds on AUSTRAC's previous submission in response to the Commission's Issues Paper on Cost Recovery, of November 2000.

1.2 Arguments against cost recovery

1.2.1 The arguments for and against an organisation such as AUSTRAC adopting a user pays system have already been extensively examined and dealt with by various bodies. For example, the Senate Standing Committee on Legal and Constitutional Affairs in 1993 and the Taskforce of the Office of Regulation Review in 2000 have considered the issue. Both have concluded that AUSTRAC should not adopt a user pays system.

1.2.2 Essentially, the rationale underlying the concept of cost recovery would not be satisfied if AUSTRAC adopted a user pays system. The arguments regarding AUSTRAC adopting a user pays system, some of which were presented in AUSTRAC's November 2000 submission to the Commission, can be summarised as follows:

- **no increase in efficiency** – AUSTRAC's efficiency would not increase if a user pays system were adopted;
- **decline in fulfillment of policy objectives** – contrary to its intention, the implementation of a cost recovery system would

reduce AUSTRAC's effectiveness and have the effect of AUSTRAC redirecting its scarce resources from compliance, regulatory and analytical activities to marketing and accounting functions. This would have the more significant and longer term effect of reducing the organisation's capacity to administer the FTR Act and potentially weakening the organisation's ability to aid in preventing major crime and tax evasion;

- **revenue raising not relevant** – it would not be appropriate to raise AUSTRAC's revenue through a user pays system as it would effectively be a reshuffling of taxpayers' money and serve no purpose;
- **unnecessary complexities** – the adoption of a user pays system would lead to unnecessary complexities and potential for dispute where, as is commonly the case, a variety of agencies are using (often the same) AUSTRAC information or services;
- **already low costs** – AUSTRAC already has low compliance costs and, in any event, it would be illogical for AUSTRAC to "charge" the financial institutions and others which report to it. As for those who use AUSTRAC's information; using it makes partner agencies more efficient and effective. To charge them for it would jeopardise this;
- **inconsistent with policy objectives/no public good** – no public good would be served by AUSTRAC having a user pays system. AUSTRAC must discharge those functions which are basic to its purpose and to allow the meeting of that purpose to be determined by market forces would be inconsistent with its policy objectives and serve no public good;
- **counter productive** – assuming demand for AUSTRAC services did decrease if a user pays system was introduced, this would lead to AUSTRAC holding information of significant interest to agencies, which would either not be used, or, not used at its full potential. In this respect, the implementation of a cost recovery system would be counter productive for Australia's anti-money laundering program;
- **erode partner agency relationships** – if the users of AUSTRAC information, that is, AUSTRAC partner agencies were required to pay for AUSTRAC information they may become disinclined to aid AUSTRAC in certain matters. For example, they might take the view that having paid for the information, they need not provide useful feedback to AUSTRAC on the effectiveness of AUSTRAC's information or services; and
- **partner agencies undue influence** – it was suggested that another consequence of partner agencies having to pay for AUSTRAC information would be that paying or partner agencies may wish to influence what is reported. For example, the ATO may wish to ensure that cash dealers concentrate on reporting indicators of tax

evasion, while the police services may have many different ‘targets’ in mind.

2 Comments

2.1 Recognition of cost recovery limitations

- 2.1.1 The Draft Report recognises the limitations of and some of the arguments outlined above, against cost recovery applying to an agency's activities. Consistent with this, the Draft Report also outlines a few key exceptions to its application. For example, cost recovery is not applicable to the provision of core information services (see Draft Recommendation 6.5) or where it would be inconsistent with the organisation's regulatory or policy objectives (see page XXXVII). AUSTRAC is supportive of the Draft Report recognising these limits on the appropriateness of implementing a cost recovery system.

2.2 Regulatory/information agency distinction

- 2.2.1 The Draft Report appears to make an exclusive distinction between regulatory and information agencies (for example, see page XXXI of the Draft Report). It should be noted that AUSTRAC has two roles. It is:

- Australia's anti-money laundering **regulator**; and
- Australia's specialist financial **intelligence unit**.

Accordingly, it is suggested that this mutually exclusive distinction may not be appropriate in AUSTRAC's case.

2.3 Core information/non-core information distinction

- 2.3.1 The Draft Report also makes a distinction between core and non-core information services. In AUSTRAC's case, this distinction is of limited use, as all of AUSTRAC's information services are core services. For example, AUSTRAC's provision of financial intelligence information to government entities is definitely a core service it provides as an intelligence unit. Similarly, the publication of reporting obligations of cash dealers and the like, on AUSTRAC's website, is part of AUSTRAC's core educative role as a regulator. Therefore, the distinction between core and non-core information is of little help to

AUSTRAC. Both of these information services are considered in more detail below.

2.4 Possible application of the Draft Recommendations and Guidelines

2.4.1 AUSTRAC is clearly an information agency as it collects, retains, compiles, analyses and disseminates information received under the *Financial Transaction Reports Act 1988* (the FTR Act). As an information agency, AUSTRAC's duty is to supply financial intelligence information to a variety of partner agencies, which include a range of Commonwealth, State and Territory enforcement and revenue agencies such as the Australian Federal Police (AFP), Australian Taxation Office (ATO), National Crime Authority (NCA) and Australian Customs Service (ACS). The information provided is core and accordingly, consistent with the Recommendations of the Draft Report (refer to Draft Recommendation 6.6), a cost recovery system would have no application to the provision of this type of information to partner agencies.

2.4.2 It is submitted that any other information services that AUSTRAC provides, such as providing information on its website to cash dealers about their reporting obligations under the FTR Act, should not be subject to a cost recovery system. It would be inconsistent with the Government's policy objectives to make cash dealers pay for the provision of such information and the adoption of cost recovery for these activities would not be cost effective. Accordingly, these exceptions to the adoption of cost recovery would be satisfied (see page XXXVII and Draft Recommendation 6.1).

2.5 Quotes used in the Draft Report on Cost Recovery

2.5.1 It is noted that page 68 of the Draft Report contains an extract of part of the AUSTRAC submission. Although the text of the quote is correct, it is recommended that it be placed in context. In preparing its submission to the Commission, AUSTRAC quoted from its 1993 submission to the Senate Committee. While still a useful statement, it was made in 1993 and in a different context from the Commission's inquiry.

2.5.2 The Draft Report also states (see the first line of page 73) that all information agencies which responded to the Commission's questionnaire have some cost recovery arrangements. This is not correct, as AUSTRAC (as an information agency, as well as a regulatory agency) does not have any cost recovery arrangements in place. AUSTRAC was a respondent to the Commission's questionnaire and advised it has no cost recovery arrangements.

3 Conclusion

Cost recovery is not appropriate to be adopted in an organisation such as AUSTRAC and the Draft Report appears to recognise this. As AUSTRAC understands them, if the Guidelines and Recommendations of the Commission are adopted, cost recovery will have no application to any of AUSTRAC's activities, as its services are either core information services or fall within one of the other exceptions to cost recovery applying.

Should AUSTRAC's understanding of the effects of the Guidelines and Recommendations be inaccurate, AUSTRAC would appreciate the opportunities of making a further submission to the Commission and appearing before the Commission at its June 2001 hearings.

4 Recommendations

1. It should be noted that an agency might be both an information agency and a regulatory agency. AUSTRAC is such an agency.
2. The quotes from AUSTRAC's November 2000 submission to the Commission contained in the Draft Report should also be amended to show their origins, as outlined in this submission (or other quotes, more relevant to the context, could be used).