



24 October 2014

Consultation Paper #2 – AUSTRAC Industry Contribution
Legal and Policy Branch
AUSTRAC
PO Box 13173
Law Courts
MELBOURNE VIC 8010

By email: Policy_Consultation@austrac.gov.au

Dear Sir/Madam,

AUSTRAC Industry Contribution Second Stakeholder Consultation Paper

The Australian Financial Markets Association (AFMA) is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets and provides leadership in advancing the interests of all market participants. AFMA represents over 130 members, including Australian and international banks, leading brokers, securities companies, fund managers, traders in electricity and other specialised markets and industry service providers.

Further to our submission on the AUSTRAC Industry Contribution Discussion Paper (**the Discussion Paper**), dated 25 July 2014, we welcome the opportunity to provide comments to the "AUSTRAC Industry Contribution: Second Stakeholder Consultation Paper" (**the Consultation Paper**), released on 25 September 2014.

Changes from the Discussion Paper

At the outset, AFMA notes a number of changes to the model for the Industry Contribution. In particular, the model appears to have changed in the following ways:

- (i) An increase in the earnings component maximum from \$500,000 to \$1,000,000;
- (ii) The removal of the reported transaction value of \$200 billion or more as attracting the maximum payment cap;

- (iii) A change in respect of the calculation of the earnings component for Australian headquartered companies, with the earnings component now calculated with reference to global earnings;
- (iv) An increase in the transaction value component from 0.0007512% to 0.0008051%; and
- (v) An increase in the indicative maximum payment ceiling from \$4,144,000 to \$5,898,741.

We address some of these specific changes below. However, we note that, in our view, it is incumbent on AUSTRAC to explain the basis for these changes and the effect on the quantum of the Industry Contribution to be paid by Reporting Entities.

Inconsistency with the Independent Review

We note AUSTRAC's view that the proposed arrangements as articulated in the Consultation Paper do not represent cost recovery and, accordingly, are not required to comply with the Government's Cost Recovery Guidelines. In AFMA's view, this is sub-optimal from a policy perspective and we continue to engage with Government and other stakeholders regarding this position. In this regard, we note the comment in the Cost Recovery Guidelines that "(I)t is usually inappropriate to cost recover some government activities, such as general policy development, ministerial support, law enforcement, defence and national security."

While AUSTRAC may maintain that the decisions of Government have relieved the Industry Contribution model from the requirement to adhere to the Government's own Cost Recovery Guidelines, there is no basis, in AFMA's view, for the Industry Contribution not to adhere to all of the recommendations of the "AUSTRAC Supervisory Levy Review Report: The Independent Review 2013" as conducted by Jim Flaye and delivered to the Minister for Justice in December 2013 (**the Independent Review**).

As noted in AFMA's previous submission, the Independent Review stated that "small business is treated very favourably under the AUSTRAC cost recovery arrangements," and that, accordingly, "(T)he minimum levy should be lowered to capture some small to medium sized entities that currently escape the large entity component, thereby broadening the base."

Both the Government and AUSTRAC have ignored this recommendation, through the announcement in the 2014 Budget of the removal of the Base Component fee and also the imposition of the minimum payment floor of \$1,000. The effect of these two decisions is to impose a higher burden on the larger reporting entities to pay the industry contribution, given the amount to be contributed is finite.

AFMA submits that the removal of the requirement for smaller entities from the requirement to contribute to AUSTRAC's operations is particularly inequitable as it may not be consistent with the money-laundering/terrorism financing risks posed by such entities. AFMA cites the recent decision to suspend the registration of remittance providers AVS Forex Pty Ltd and Bisotel Rieh Pty Ltd on the basis that they were potentially engaged in money laundering and/or terrorism financing activities. In addition, we note

the comment included in the “Terrorism Financing in Australia 2014” publication that “(T)he Australian remittance sector is an attractive vehicle for terrorism financing and...carries a higher risk than most other channels of being exploited to transfer funds for terrorism financing.” However, it appears that under the revised model, the remittance sector would be relieved of the requirement to pay the industry contribution, notwithstanding the risks posed by entities in the sector.

AFMA continues to maintain that the major reporters, who we understand will bear the vast majority of the burden to pay the Industry Contribution, are those entities/groups that have invested significant sums to ensure that their control frameworks and programs are as robust as possible, such that they pose a low residual risk from a money laundering/terrorism financing perspective. The proposed Industry Contribution model recognises neither the risk mitigation practices that have been imposed by such entities nor the investment undertaken to implement such practices.

Accordingly, we submit that, based on the comments from the Independent Review the model for Industry Contribution be re-calibrated so as to give effect to the Review’s recommendations and the residual risks posed by various reporting entities.

Amendments to the Earnings Component – Foreign Entities

AFMA notes that, under the proposed model set out in the Consultation Paper, there is an earnings component that is applicable where the group has reported earnings in excess of \$100 million. Reported earnings is defined differently between a foreign company and a non-foreign company, namely:

- Where a reporting entity is not a foreign company, earnings comprise total earnings from all operations; and
- Where a reporting entity is a foreign company or a subsidiary of a foreign company, earnings will be determined only from that entity’s operations in Australia.

In our view, these definitions create a discrepancy in the treatment of outbound and inbound organisations. While we agree that it is appropriate to quarantine the Australian earnings only for inbound organisations, it is not clear as to why Australian headquartered organisations should not similarly have foreign earnings excluded from the earnings component. This is particularly the case given an expectation that any profits derived by a foreign subsidiary would be repatriated to the Australian headquarter by way of dividend, resulting in a potential double counting of these amounts.

Amendments to the Earnings Component – Increased Cap

As noted above, one of the amendments between the first iteration of the Industry Contribution model and that set out in the Consultation Paper is an increase to the cap for earnings component from \$500,000 to \$1,000,000.

We request that AUSTRAC articulate the basis for this increase, i.e. whether there were submissions/other consultation on the first model which caused this component to increase, and quantify the effect of the banking sector (in terms of overall contribution).

Amendments to the Maximum Payment Amount

A further change from the previous version of the Industry Contribution model to that set out in the Consultation Paper is the removal of the transaction report value (set at transaction value of \$200 billion or more) as a metric by which the maximum payment amount would be imposed. A corollary of the removal of this as a metric which would attract the maximum payment amount would appear to be an increase in the indicative maximum payment amount (which would apply to entities with reporting earnings in excess of \$5 billion) from \$4,144,000 to \$5,898,741, an increase of over 40% for such entities.

We would expect that, given previous statements from AUSTRAC regarding the quantum of transactions value being an appropriate proxy for the risk of an organisation, that it may be appropriate for entities with high transaction values being charged the maximum payment amount. Accordingly, we query the basis for its removal in the Consultation Paper and request that AUSTRAC quantify the effect for the banking sector (in terms of overall contribution).

Calculation of Maximum Payment Amount

Based on AFMA's reading of the proposed model for charging the Industry Contribution, it would be theoretically possible for a reporting entity to be charged an amount in excess of the maximum payment amount (indicatively \$5,898,741) in circumstances where the reporting entity had reported earnings of less than \$5 billion and a sufficient number/value of transactions to result in a total contribution of more than the maximum, given the two components of the charging model operate independently.

In our view, the maximum payment amount should not operate solely with reference to the earnings component but should apply in all circumstances where the sum of the earnings component and the transaction reporting component exceed the stipulated maximum amount. This would ensure that reporting entities with large reported earnings but low transaction reports are not inequitably charged the maximum payment amount and also that all entities are capped to pay the maximum payment amount and not more.

Contributions in respect of supplementary budget appropriations

The Consultation Paper states that, in the context of the statutory cap for the amount that may be raised for industry contribution, "(T)he revised definition of the statutory cap is intended to cover any supplementary budget appropriations made by the Government to AUSTRAC..." This means, in effect, that AUSTRAC has the ability to issue subsequent invoices to reporting entities within a particular financial year. This is a matter of significant concern to AFMA members.

The ability of AUSTRAC to issue subsequent invoices for industry contribution directly impacts the ability of reporting entities to forecast and manage costs. Accordingly, AFMA requests that where there is a subsequent appropriation throughout a particular financial year, the contribution in respect of that appropriation occur in the subsequent financial year.

Imposition of penalty – exemption for first year

We note the effect of the amendments to Section 9(1) of the and *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Amendment Act*, which confirms the ability for a late payment penalty to be applied and calculated for instalments under the Industry Contribution model.

AFMA members have advised that, based on the Industry Contribution model set out in the Consultation Paper, they expect significantly large increases in the amounts they will be obliged to pay to AUSTRAC compared to prior years. These increases, in some instances, may exceed 100% of the previous amount paid. This is problematic for these members given that approvals on budgets for the financial year will generally be approved, based roughly on the previous amount.

Accordingly, we submit that AUSTRAC remit any late payment penalty for the 2014/15 year where the reporting entity is able to demonstrate that any delay in payment is referable to the requirement to obtain further internal budgetary approvals and that such a delay is reasonable.

Regulatory Impact Statement

AFMA notes the comment in the Draft Explanatory Statement to the Ministerial Determination to the effect that “an exemption has been granted from the requirement to make a regulatory impact statement.”

Given the significant (and increasing) regulatory burden that is imposed on reporting entities by virtue of the Industry Contribution, and the Government’s own stated deregulation agenda, can AUSTRAC please explain the basis for the exemption being granted and provide particulars of the exemption (i.e. who provided the exemption). We believe that this information should be available to the reporting entities required to pay the Industry Contribution.

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Please contact me on _____ if you have any queries or comments.

Yours sincerely,

Director, Policy