



28 June 2017

Consultation – AUSTRAC Industry Contribution
Policy & International Branch
PO Box 13173
Law Courts
MELBOURNE VIC 8010

By email: Policy_Consultation@austrac.gov.au

Dear Sir/Madam

AUSTRAC Financial Year 2017/18 Industry Contribution

The Australian Financial Markets Association (AFMA) represents the interests of over 100 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets. The majority of AFMA's members are reporting entities for the purposes of the AML/CTF Act.

As AUSTRAC is aware, AFMA has been heavily involved in consultation surrounding both the policy and design of the AUSTRAC Industry Contribution. We have objected, and continue to object, to Government regarding the form of the Industry Contribution, particularly in relation to the abandonment of the Government's own Cost Recovery Guidelines in framing the Industry Contribution.

Further, we have made submissions with AUSTRAC regarding each of the preceding Discussion Papers dealing with the AUSTRAC Industry Contribution, namely submissions dated:

- 25 July 2014;
- 24 October 2014;
- 19 December 2014;
- 26 August 2015; and
- 10 June 2016

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The comments set out below should be read in light of the comments contained in those submissions.

Increasing Burden of Cost Recovery

As noted above, AFMA has consistently expressed concern regarding the non-applicability of the Government's own Cost Recovery Guidelines to the AUSTRAC Industry Contribution, particularly given the Industry Contribution measure is now clearly one of cost recovery, given the Government's decision in the 2015-16 MYEFO to bring forward the amount recovered to 100% of AUSTRAC's expenses, less AUSTRAC's own source income.

In the intervening period from the commencement of the Industry Contribution, our members that are part of the population of 620 (out of 14,200) reporting entities that bear the entire burden of paying the AUSTRAC Industry Contribution were subjected to further cost recovery measures, most relevantly the ASIC Industry Funding Model that will commence in the second half of 2017. In addition, the 2017/18 Federal Budget saw a number of agencies have their budget allocations increased, such as APRA and ASIC, with the incremental amounts also to be recovered from industry participants. The burden of these announcement will largely sit with those entities that are also the largest contributors to the AUSTRAC Industry Contribution.

In our view, the number of cost recovery initiatives that the Government is pursuing need to be considered holistically to ensure that the overall impact is assessed, as opposed to merely considering each initiative in isolation. This further strengthens our view that the Industry Contribution fall within the Government's Cost Recovery guidelines.

We expect to again make this point strongly in the review of the Industry Contribution mechanism that will be conducted during the 2018 year. In the interim, we believe that it is appropriate that the Cost Recovery Guidelines be specifically referenced by AUSTRAC in its formulation of the 2017/18 Industry Contribution.

Aligning Industry Contribution with Need for Regulation

One of the key elements of the Government's Cost Recovery Guidelines is that the costs of regulation are borne by those that create the need for the regulation. The Cost Recovery Guidelines acknowledge that in relation to an activity provided to a group of people, it is appropriate that the amount recovered be calibrated to those to whom the activity is provided.

In the AUSTRAC Consultation Paper regarding the 2017/18 Industry Contribution, it is noted that AUSTRAC is in the process of implementing a 'smarter regulation' business program. As part of this business program, AUSTRAC is committed to "moving away from a 'one-size-fits-all' approach to regulation and is realigning its resources around the ML/TF risks and threats impacting its population to ensure that regulatory activity is more responsive." Given that the regulatory resources within AUSTRAC are to be re-calibrated in terms of deployment more towards those that create the need for regulation, this necessitates a wholesale review of the charging model for the Industry Contribution. Otherwise, the inherent inequity already in existence under the current model will be exacerbated. We request, therefore, that the 2017/18 Industry Contribution model be reconsidered in light of the allocation of AUSTRAC's compliance resources for the year.

It is relevant in this context that the AFMA members that bear the largest responsibility for paying the Industry Contribution are those members that have committed to assisting AUSTRAC through participation in the Fintel Alliance.

The Proposed Charging Model

In summary, the proposed charging model for 2017-18, acknowledging the thresholds and definitions in the Stakeholder Consultation Paper, is as follows:

- Earnings component: 0.043% of earnings
- Transaction report volume component: \$0.012 per report
- Transaction report value component: \$0.0000105415

This results in the maximum fee payable decreasing from \$9,926,801 to \$9,417,302. This is a decrease of 5.2% from the 2016-17, but remains an increase of 46% relative the 2014/15 maximum amount.

We acknowledge the overall reduction to the amount being recovered for the 2017/18 year and the continued reduction in the expected recovered amount through to 2020-21.

Our comments in relation to these components are set out below:

Earnings component

As noted in our submission to the 2016/17 Industry Contribution, we objected to the reduction in the earnings component from 0.05% of earnings to 0.03%, which was a late adjustment to the 2014-15 model and retained in the 2015-16 model and resulted in an increase to the transaction value component. Given that the basis for the reduction from 0.05% to 0.03% increases the overall burden on the AFMA membership and has not been adequately explained, we request this again be revisited in finalising the 2017/18 charging model.

Transaction report volume component

Again, we reiterate that the increase to the transaction report volume component in 2016/17 should have been from \$0.01 to \$0.0143, being the proportionate increase in the amount recovered in 2016/17 relative to 2015/16. AFMA's position on this component is that it should be \$0.0143 in the 2017/18 final charging model.

Transaction report value component

It is noted that the transaction report value component acts as a balancing item and, to the extent that our submission points in relation to the earnings component and the transaction value component are implemented, we would expect a corresponding reduction in the transaction report value component.

Proposed reduction to earnings threshold

Our submissions of 26 August 2015 and 10 June 2016 noted that, under the earnings threshold of \$100 million, the minimum earnings component is \$30,000 (based on a fixed percentage of 0.03%). This threshold is set significantly higher than the minimum charge of \$1000, and so there are a significant number of leviable entities that do not pay any earnings component. On this basis, we suggested a reduction to the earnings threshold to spread the burden of the increase in a manner more commensurate to the risks posed. A reduction to, say, \$10 million would ensure an earnings component payment for entities that may still be considered to be large.

We note that AUSTRAC has undertaken some preliminary modelling on this suggestion and concluded that such a reduction would add an immaterial amount to the earnings component, and hence an insignificant reduction for reporting entities. This preliminary conclusion was based on

data released in December 2015 by the Australian Taxation Office, which disclosed, amongst other things, total income for certain entities which AUSTRAC has used as a proxy for earnings. We note that this data is, by definition, both incomplete and out of date, and hence is not sufficiently reliable to ground conclusions on the appropriate charging model. We are also not aware that AUSTRAC has again conducted this modelling based on the most recent release of ATO transparency data in December 2016.

We continue to support the reduction of the earnings threshold to \$10 million. There is no basis in policy to relieve entities which are not “small” (based on the metric adopted by the Government in the 2016/17 Federal Budget) from making a proportionate contribution to the amount recovered. Any relief for the larger reporting entities is welcome, given the disproportionate amount of the funding burden they are currently bearing.

At a minimum, in the absence of an amendment to the earnings threshold we request that AUSTRAC collects earnings information from all reporting entities through the census process, to provide AUSTRAC with meaningful data on which to base modelling assumptions.

Potential expansion of regulated population

AFMA notes the ongoing work being undertaken by both the Attorney-General’s Department and AUSTRAC to bring “Tranche II” entities (lawyers, conveyancers, accountants, high-value dealers, real estate agents and company service providers) within the regulatory net. To the extent that this is ultimately implemented, it will considerably expand the regulated population. We believe that such an expansion should be a trigger-point for a wholesale re-evaluation of the Industry Contribution model, so as to not exacerbate the inequities that already exist in the model, and that this be included in the Ministerial Determination.

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Thank you for the opportunity to provide a submission in relation to the Consultation Paper. Please contact me with any queries on _____ or _____.

Yours sincerely

Rob Colquhoun
Director, Policy