AUSTRALIAN BANKERS' ASSOCIATION INC.
Strong banks – strong Australia

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Consultation - AUSTRAC Industry Contribution
Strategic Intelligence and Policy Branch
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Dear Sir/Madam

AUSTRAC Industry Contribution: Stakeholder consultation paper

The Australian Bankers' Association (**ABA**) welcomes the opportunity to provide feedback on the AUSTRAC Industry Contribution: Stakeholder consultation paper (**the paper**) – Financial year: 2015-16.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

The ABA has made submissions to AUSTRAC regarding the previous discussion papers dealing with AUSTRAC's cost recovery, dated:

- 23 July 2014
- 24 October 2014; and
- 17 December 2014.

While not the topic of this AUSTRAC paper, the ABA continues to express strong concerns regarding the basis and the administration of the recovery of AUSTRAC costs. The primary concerns are:

- That the AUSTRAC Industry Contribution does not adhere to the government's cost recovery guidelines.
- While the number of affected reporting entities may be smaller, the costs imposed on only a small segment of industry are significantly higher and growing exponentially, unchecked and without adequate explanation. The impact of such costs being borne by industry should be assessed through a Regulatory Impact Statement (**RIS**) process.
- The lack of a formal and transparent RIS in respect of the enabling legislation, coupled with a lack of consultation on such legislation.

The government's Cost Recovery Guidelines impose the appropriate discipline to ensure that the amount paid by industry is referable to the provision of government goods or services. That is, there should be no circumstances where recoupment of regulator costs from industry is undertaken outside the guidelines. The rationale for abandoning the guidelines in the AUSTRAC Industry Contribution has never been clearly articulated.

In relation to the RIS, ABA's concern is that a specific exemption from a RIS was granted in respect of a Bill which, in ABA's view, has a large regulatory impact. While the number of affected reporting entities may be smaller, the costs imposed on these few reporting entities is extraordinarily high. The impact of such costs being borne by only a segment of the industry should be assessed through a RIS process and ABA maintains that the exemption was inappropriate in this instance.

AUSTRAC industry contribution 2015–16: Stakeholder consultation paper

In addition to feedback provided in the ABA submissions to the first three consultations on AUSTRAC Cost Recovery, the ABA provides the following comments on the paper.

Equitable Model

The levy is unequitable and excessive. Only a small section of AUSTRAC's regulated population, and arguably the most compliant sector (major reporters), are paying almost all of AUSTRAC's cost whilst reporting entities that pose a much higher risk of being used for money laundering and terrorism financing, are exempt from contributing to the cost of monitoring for illegal activity.

The ABA notes that ASIC applies a quarterly minimum fee of $1,905 to each market participant of ASX and Chi-X as ASIC's cash equity market participant supervision costs are not wholly variable. Market participants subject to the ASIC market integrity rules have a dedicated pool of ASIC resources allocated to their supervision, regardless of their trading and messaging activity and a quarterly fee per market participant reflects this. The ABA requests that AUSTRAC addresses the inequity in their cost recovery model in a similar fashion to ASIC.

Earnings threshold

The ABA would like to propose that the earnings threshold of $100 million also be reduced to a level that is consistent with the minimum charge in order to address inequality in the model.

The $100 million earnings threshold results in a minimum earnings component of $30,000, however, the minimum charge is only $1,000 meaning that those companies earning between $3.34 million (which would equate to an earnings component of $1000) and $100 million, will escape the earnings component. The ABA recognises government's desire to limit the cost of regulation to small businesses, however, the threshold of $100 million seems excessively high given both the purpose of AUSTRAC and the high risk some of these sectors pose.

Transparency

Any change to the methodology needs a detailed explanation in advance. ASIC in recovering their costs for market supervision goes to great lengths to explain who is paying and exactly what it is they are paying for. This level of detail should be a minimum benchmark for AUSTRAC going forward.

Lack of certainty

As shown by the significant increase in the 2015-16 cost recovery levies, the model makes it difficult for banks to forecast future costs. AML/CTF compliance is a significant cost centre in banks. It is standard business practice that budgets are prepared annually. The ABA requests that the notice period for each annual levy be extended by 12 months, falling due on the same date each year. This will allow those subject to cost recovery to adequately plan and budget for the charge. The ABA again, seeks commitment that this will be an annual charge.

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Growing regulatory cost burden

With AUSTRAC's heightened focus on financial crime intelligence, there is now, more than ever before, an increasing obligation on banks to provide even more information about their customers and transactions. AUSTRAC has signalled this level of obligation will further increase in the coming years.

Effectively this means that the banks are being required to fund both increased internal resources to assist with AUSTRAC's increasing demands, alongside paying for AUSTRAC's own operations. There are grave concerns across industry about the lack of transparency and the ability for AUSTRAC's costs to grow exponentially and unchecked, and without adequate oversight or explanation. All cost recovery mechanisms should adhere to the government's Cost Recovery Guidelines and must be appropriately assessed in terms of regulatory impact through a proper consultation process.

Yours faithfully

Aidan O'Shaughnessy
Policy Director, Industry Policy