



Australian Government

AUSTRAC

# AUSTRAC Industry Contribution 2016–17

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STAKEHOLDER CONSULTATION PAPER

“ A FINANCIAL SYSTEM **FREE**  
FROM CRIMINAL ABUSE ”

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# Purpose of this paper

The purpose of this paper is to outline the proposed arrangements for the AUSTRAC Industry Contribution for the 2016–17 financial year.

As part of the May 2014 Federal Budget, the Australian Government announced that the AUSTRAC Supervisory Levy would be replaced with the AUSTRAC Industry Contribution, from the 2014–15 financial year onwards. The industry contribution is a levy on AUSTRAC reporting entities to recover the costs of AUSTRAC's regulatory and financial intelligence functions.

The 2016–17 financial year is the third year of the industry contribution. As in previous years AUSTRAC is committed to consulting extensively on the industry contribution model prior to requesting the Minister for Justice to make a final levy determination.

As detailed in the Mid-Year Economic and Fiscal Outlook (MYEFO) dated 15 December 2015, the Government announced its decision to bring forward by one year the scheduled increase to the levy to enable the recovery of 100 per cent of AUSTRAC's operating costs<sup>1</sup> – the increase in the levy to recover 100 per cent of operating costs was originally planned for the 2017–18 financial year.

Accordingly, as from 2016–17, AUSTRAC's activities as Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regulator and financial intelligence unit will be funded in full through the collection of the AUSTRAC industry contribution.

In response to the extensive consultation processes in 2015, AUSTRAC remains committed to enhancing the transparency of the industry contribution processes and to communicating effectively with leviable entities about:

- the anticipated amount entities will be levied for the 2016–17 financial year
- a projected estimate of the amount entities will be levied for the 2017–18 financial year
- how AUSTRAC's annual budget allocation is to be expended for the 2016–17 financial year.

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<sup>1</sup> See Appendix A ('Policy decisions taken since the 2015–16 Budget', page 106) of the 2015–16 MYEFO: <http://www.budget.gov.au/2015-16/content/myefo/html/index.htm>

# Consultation process

AUSTRAC invites stakeholders to make submissions on the proposed arrangements for the 2016–17 industry contribution levy.

By email to: [Policy\\_Consultation@austrac.gov.au](mailto:Policy_Consultation@austrac.gov.au)

By mail to: Consultation – AUSTRAC Industry Contribution  
Strategic Intelligence and Policy Branch  
PO Box 13173, Law Courts  
MELBOURNE VIC 8010

Submissions should include the name of your organisation (or your name if the submission is made as an individual); contact details for the submission, including an email address and contact telephone number where available.

The closing date for submissions is **Friday 3 June 2016**

All submissions, and the names of persons or organisations which make a submission, will be treated as public and may be published on AUSTRAC's website, unless the author clearly marks the submission as 'confidential'. A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

# Introduction

The industry contribution funds AUSTRAC's activities as Australia's AML/CTF regulator and financial intelligence unit.

The industry contribution is calculated to recover AUSTRAC's operating costs, including amortisation and annual depreciation costs of assets used by AUSTRAC in undertaking its regulatory and intelligence activities.

Further background and other relevant information concerning about the industry contribution, including the calculation model, can be found on the [AUSTRAC industry contribution page](#) of the AUSTRAC website.

**Part 1** of this paper provides an overview of AUSTRAC's strategic direction and details on how AUSTRAC's annual budget allocation is to be expended for the 2016–17 financial year.

**Part 2** of this paper outlines the proposed arrangements for the AUSTRAC Industry Contribution for the 2016–17 financial year.

# Part 1 – Strategic direction and budget allocation

## AUSTRAC's core functions

AUSTRAC's vision: A financial system free from criminal abuse

AUSTRAC is Australia's financial intelligence unit with regulatory responsibility for AML/CTF regulation. AUSTRAC strives to be a global leader in AML/CTF and the primary source for financial intelligence in Australia.

AUSTRAC collects and transforms financial information into actionable intelligence which is used to assist in the investigation and prosecution of serious criminal activity, including money laundering, terrorism financing, organised crime and tax evasion.

AUSTRAC oversees the compliance of more than 14,000 regulated entities with their obligations under the *Anti-Money Laundering and Terrorism Financing Act 2006* (AML/CTF Act) and the *Financial Transaction Reports Act 1988* (FTR Act). AUSTRAC's regulated population spans a diverse range of industry sectors including financial services providers, the gambling industry, bullion dealers and remittance service providers.

Over the past year AUSTRAC has implemented a new vision and strategic direction, supported by a change program and new leadership and governance frameworks. This transformation recognises that AUSTRAC needs to continuously evolve to meet future demands and to keep pace with technology and rapidly changing consumer needs and business models.

AUSTRAC has embedded a new structure which strengthens the alignment of the agency's intelligence, compliance and policy functions. AUSTRAC is implementing an intelligence-led approach to compliance and monitoring and is using its extensive intelligence holdings and analytical capabilities to identify the intersection between criminal threats and industry in order to supervise on a risk basis.

The [AUSTRAC Corporate Plan 2015–19](#) describes how AUSTRAC intends to meet the expectations of Government, industry partners and the broader Australian community in protecting the economy and Australians from the adverse impacts of money laundering and terrorism financing.

## AUSTRAC's strategic direction

Throughout 2016–17, AUSTRAC will continue to disseminate actionable intelligence on entities and networks of interest to its partners. AUSTRAC's outputs will continue to have an emphasis on money laundering and terrorism financing as part of regional and global efforts to combat these threats. In collaboration with partners, AUSTRAC will build upon the system enhancements made in recent years to further exploit the increasing information and data holdings available.

AUSTRAC's engagement with the private sector during 2016–17 will be underpinned by a strong innovation agenda and collaborative approach to countering terrorism financing and money laundering. AUSTRAC will pursue greater recognition of those private sector businesses that support and are conforming with AML/CTF regulation in this country, and foster better regulation.

AUSTRAC will closely engage with stakeholders including financial technology start-ups that are involved in the digital transformation of the financial services and payments sectors in Australia. In

2016–17, AUSTRAC will explore opportunities for the application of regulatory safeguards in the development cycle of various transformation technologies, ultimately reducing the regulatory burden on current and future regulated businesses. AUSTRAC will work with stakeholders to understand and realise the potential of new technologies.

In relation to regulatory responsibilities, AUSTRAC will undertake a number of initiatives in 2016–17 that are centred on continuous improvement in its approach to supervision of regulated entities. This work will also respond to areas of improvement suggested by the Financial Action Task Force (FATF) in its mutual evaluation of Australia's AML/CTF regime that was undertaken during 2014–15.

AUSTRAC is in the process of enhancing its supervisory risk model. This will advance AUSTRAC's capability to identify issues, prioritise activities, craft responses to issues and evaluate whether it is achieving the desired impact.

By continuing to engage with industry and refining its supervisory risk model, AUSTRAC will continue to minimise compliance costs and the impact of regulatory changes.

In relation to serious non-compliance in 2016–17, AUSTRAC will focus efforts on responding to serious breaches, ranging from single entities to widespread risks or threats within industry and significant breakdowns in reporting.

In 2016–17, AUSTRAC will work closely with the Attorney-General's Department to implement the reforms arising from the statutory review of the AML/CTF Act. This will deliver an AML/CTF regime that meets the needs of modern Australian businesses operating in the face of disruptive new technologies and rapidly changing consumer needs and business models.

AUSTRAC will also expand its international footprint, which forms a key part of the agency's strategic direction. This expansion will enable AUSTRAC to build and enhance international relationships, increase influence with partners through active collaboration, improve cooperation and coordination with international partners, and improve access and exchange of information, intelligence and capabilities.

Australia and AUSTRAC have an extensive history of proactivity in the international AML/CTF environment. In 2016–17, AUSTRAC will continue its strong international involvement by chairing the Information Exchange Working Group of the Egmont Group of Financial Intelligence Units (now 155 countries strong) and co-chairing the FATF Risk, Trends and Methods Group.

AUSTRAC and its Indonesian counterpart PPATK will work with regional counterparts to produce a regional risk assessment on terrorism financing in 2016–17, which will be an important contribution to the global efforts to combat terrorism financing. This assessment acknowledges that terrorism is a transnational problem, requiring transnational collaboration and responses. This regional cooperation will strengthen existing relationships and forge new and closer relationships in the future.

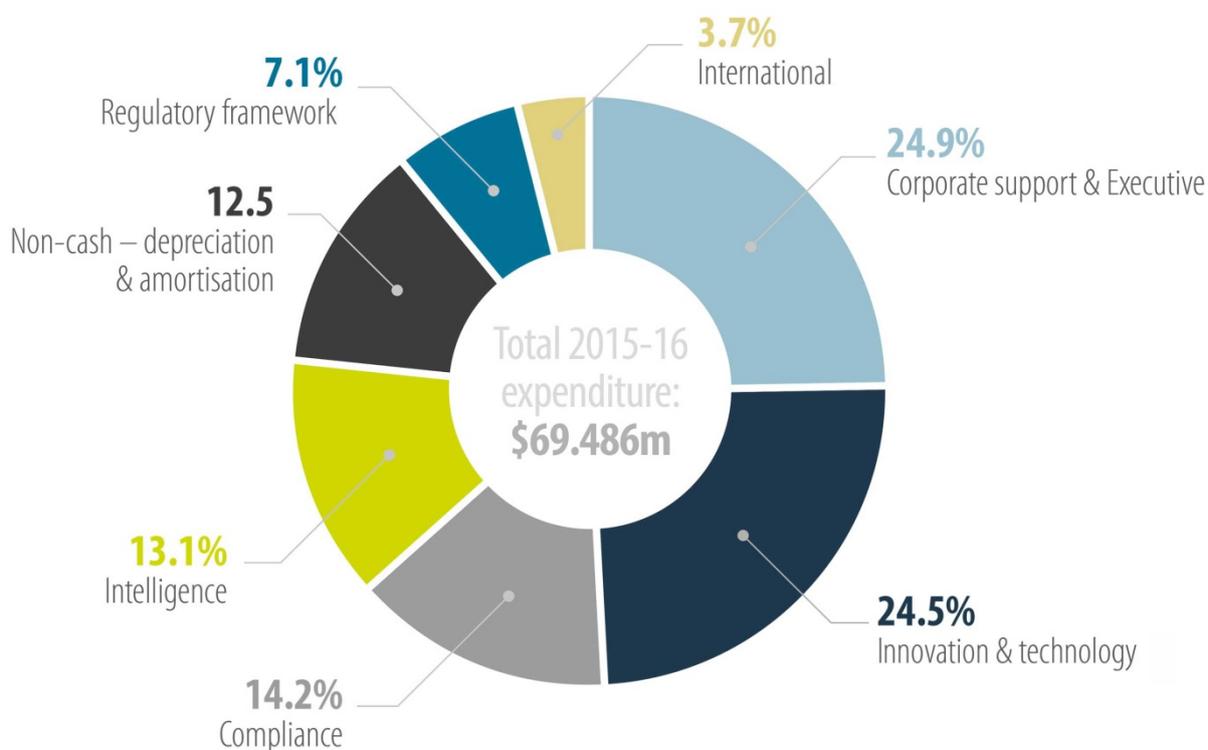
AUSTRAC will continue to provide technical assistance and training to a range of overseas financial intelligence units and other agencies in the region.

## AUSTRAC's operational budget

The charts below show AUSTRAC's estimated operational expenditure for 2015–16, by key capabilities. As described below, the charts do not include expenditure that is covered by funding from external parties, as these expenses are not subject to the industry contribution.

### AUSTRAC's estimated 2015–16 operational expenditure by key capabilities

Capability	2015–16	
	\$m	%
Compliance	\$9,848	14.2%
Intelligence	\$9,101	13.1%
Regulatory framework	\$4,915	7.1%
International	\$2,559	3.7%
Innovation and technology	\$17,017	24.5%
Corporate support and Executive	\$17,328	24.9%
Non-cash – depreciation and amortisation	\$8,718	12.5%
<b>Total expenses</b>	<b>\$69,486</b>	<b>100%</b>



The allocation of AUSTRAC's internal budgets for 2016–17 will be undertaken during May and June 2016, following the release of the 2016 Budget. Funding will be allocated based on AUSTRAC's strategic direction and priorities.

AUSTRAC expects that operational expenditure by key capabilities during 2016–17 will be different to the above profile for 2015–16 due to the agency's evolving priorities. This is most likely to impact the areas of Compliance, Intelligence and International, resulting in an increased proportion of funding allocated to those capabilities in 2016–17.

## Financial estimates

AUSTRAC's operations comprise the following broad expenditure categories:

- expenses covered by appropriations from Government
- expenses covered by funding from external parties
- non-cash expenses in the nature of depreciation and amortisation.

All expenses that are incurred in the course of delivering programs funded by external parties are fully excluded from the industry contribution levy. Such programs include, for example, those funded by the Department of Foreign Affairs and Trade (DFAT) to deliver technical assistance and training to counterpart regulators and FIUs in neighbouring or regional countries. These programs are identified separately in AUSTRAC's finances to ensure they are excluded from the industry contribution calculations.

Table 1, below, provides forward estimates of the industry contribution amounts to be recovered in the years 2016–17 to 2019–20, as per the agency's 2016–17 Portfolio Budget Statements.

The recovery of AUSTRAC's capital costs is based on the annual depreciation charge rather than on annual capital expenditure. This allows for a more predictable and steady levy amount. AUSTRAC considers this methodology preferable to the alternative of recovering actual capital expenditure in the year it is incurred.

**Table 1: Forward estimates as per 2016–17 Portfolio Budget Statements (PBS)**

(\$000)	2016–17	2017–18	2018–19	2019-20
<b>Total expenses = X</b>	68,351	69,536	69,414	65,757
<b>Total own source income = Y</b>	2,395	1,853	1,163	160
<b>Net cost of services = Y – X</b>	65,956	67,683	68,251	65,597
<b>Revenue from Government – base appropriation</b>	57,574	60,720	61,589	59,184
<b>Depreciation and amortisation</b>	8,382	6,963	6,662	6,413
<b>Total industry contribution amount to be recovered</b>	<b>65,956</b>	<b>67,683</b>	<b>68,251</b>	<b>65,597</b>

# Part 2 – AUSTRAC Industry Contribution for 2016–17

## Increase to the industry contribution for 2016–17

In its original announcement in May 2014, the Government specified that the proportion of AUSTRAC's costs to be collected through the industry contribution would increase to 100 per cent incrementally over a period of four years – that is: from 70 per cent in 2014–15, to 90 per cent in 2015–16 and 2016–17, before increasing to 100 per cent in 2017–18.

As part of the 2015–16 MYEFO, the Government decided that AUSTRAC will bring forward by one year the scheduled increase to the levy to recover 100 per cent of AUSTRAC's operating costs.

From 2016–17, AUSTRAC's activities as AML/CTF regulator and financial intelligence unit will be funded in full through the AUSTRAC industry contribution.

The rationale behind this decision by the Government is outlined at page 106 of the MYEFO as follows:

'This measure will continue the efficiency and deregulatory benefits for business, with only the largest reporting entities required to contribute towards AUSTRAC's expenses.

This builds on the 2014–15 Budget measure titled Australian Transaction Reports and Analysis Centre — industry contribution.

The increased revenue from this measure will be redirected by the Government to repair the Budget and fund policy priorities.'<sup>2</sup>

## Industry contribution charging model

The charging model for the 2015–16 contribution levy comprised two components:

- an earnings component, and
- a component for transaction reporting activities.

AUSTRAC is proposing that these two components continue to be used for the charging model for the 2016–17 levy year.

### Response to stakeholder feedback

Responses from stakeholders during external consultation on the 2014–15 and 2015–16 industry contributions suggested the earnings component be adjusted to more equitably distribute the levy across all leviable entities. Of AUSTRAC's total reporting population of approximately 14,000 entities, about 600 entities will be required to pay the levy in 2016–17. In this context, it should be noted that the government's objective is that small businesses should be exempt from the industry contribution to minimise their regulatory burden.

One proposal suggested by stakeholders was a reduction in the minimum annual earnings threshold of \$100 million. Stakeholders proposed that a reduction to the earnings threshold would mean more entities would be subject to the levy and that the total amount to be collected would be shared across a larger number of leviable entities. The stakeholders submitted that this change would distribute the

<sup>2</sup> Op.cit. [www.budget.gov.au/2015-16/content/myefo/html/index.htm](http://www.budget.gov.au/2015-16/content/myefo/html/index.htm)

levy in a manner that was commensurate with the risks associated with the broader regulated population.

AUSTRAC has undertaken modelling of this proposal in order to quantify the impacts of any reduction in the earnings threshold. It is AUSTRAC's assessment that a change to the earnings component is unlikely to result in any significant change to the distribution of the levy among leviable entities.

## Earnings component

The earnings component applies to leviable entities with annual earnings of \$100 million or more.

The calculation of earnings is based on the most recently published annual results of an entity on the census day. If an entity is part of a group and is related to other leviable entities, the earnings component is based on the total earnings of the group, divided among the individual group members.

AUSTRAC needs to collect information about reporting entities' earnings so it can determine:

- which entities are required to pay the earnings component of the industry contribution; and
- the amount of the earnings component those entities are required to pay.

If you are a reporting entity that is required to pay the levy (a leviable entity) you are required to provide your earnings information when you enrol with AUSTRAC. Each year you are required to update this earnings figure within 14 days of finalising and publishing your annual financial reports or statements.

Refer to the '[Calculating earnings fact sheet](#)' for further information. The definition of 'earnings' used for 2016–17 is unchanged from the previous year.

**Table 2: Earnings component, indicative amounts for the 2016–17 financial year**

Earnings component	Actual 2014–15	Actual 2015–16	Indicative 2016–17
<b>Factor</b>	Fixed – 0.03%	Fixed – 0.03%	Fixed – 0.043%
<b>Earnings threshold</b>	\$100 million Minimum earnings component: \$30,000	\$100 million Minimum earnings component: \$30,000	\$100 million Minimum earnings component: \$43,000
<b>Maximum earnings charge</b>	\$1,000,000 Applies to earnings equal to or higher than \$2 billion	\$1,000,000 Applies to earnings equal to or higher than \$2 billion	\$1,000,000 Applies to earnings equal to or higher than \$2 billion
<b>Definition of earnings</b>	Australian entities: Total earnings Foreign entities: Based on domestic earnings from operations in Australia	Australian entities: Total earnings Foreign entities: Based on domestic earnings from operations in Australia	Australian entities: Total earnings Foreign entities: Based on domestic earnings from operations in Australia

## Transaction reporting component

The transaction reporting component applies to leviable entities that lodge transaction reports. This includes threshold transaction reports (TTRs) and international funds transfer instruction (IFTI) reports submitted by an entity during the previous calendar year (not financial year).

The total transaction reporting component payable by an entity consists of the following two elements:

- **volume element**, comprising: a set unit cost per report, multiplied by the number of reports submitted by the entity during the January to December period in the previous calendar year, and
- **value element**, comprising: a set unit cost multiplied by the value of the reports submitted during the January to December period in the previous calendar year.

The transaction reporting component for the 2016–17 levy year will be based on transaction reports lodged during the 2015 calendar year – that is, from 1 January to 31 December 2015.

**Table 3: Transaction reporting component indicative amounts for 2016–17 financial year**

Transaction Report Component	Actual 2014–15	Actual 2015–16	Indicative 2016–17
Transaction report volume	\$0.01 per report	\$0.01 per report	\$0.012 per report
Transaction report value	\$0.000008968	\$0.000010934	\$0.0000103074
Maximum transaction reporting charge	None	None	None

## Minimum charge and maximum amount payable

**Table 4: Indicative minimum charge and maximum amount payable for 2016–17 financial year**

Charging model component	Actual 2014–15	Actual 2015–16	Indicative 2016–17
Minimum charge	\$1,000	\$1,000	\$1,000
Maximum amount payable	\$6,430,600.32	\$9,361,237.15	\$9,735,648.90
Test for applying maximum amount	Reporting entity or billable group has earnings of \$5 billion or more	Reporting entity or billable group has earnings of \$5 billion or more	Reporting entity or billable group has earnings of \$5 billion or more

**Important note:** The final contribution amount payable per entity will depend on the information submitted to AUSTRAC on the census day for the 2016–17 financial year, which is **1 July 2016**.

## Who is required to pay the industry contribution?

A leviable entity is a reporting entity that is required to be enrolled with AUSTRAC and that is not an exempt entity on the census day for a financial year. A full definition of leviable entity can be found in the [Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011](#) (Industry Contribution Act).

If an entity's enrolment information as recorded in AUSTRAC Online (that is, in the AUSTRAC Business Profile Form, or ABPF) indicates that an entity is not an 'exempt entity' on census day, the industry contribution levy will be payable.

Exempt entities include the following classes of entity:

- An entity that is an affiliate of a registered remittance network and did not provide a designated service in any other capacity (i.e. where the affiliate does not provide any designated services under the AML/CTF Act except as a remittance affiliate). Affiliates are excluded on the basis that AUSTRAC's primary regulatory relationship is with the registered remittance network provider rather than with individual affiliates.
- An entity that has been exempted from Part 7 of the AML/CTF Act.
- An entity that, on the census day for the financial year 2016–17 (1 July 2016), is a 'Market Generator' within the meaning of the National Electricity Rules.
- An entity that is a body corporate established for a public purpose by an Act passed by the Parliament of the Commonwealth of Australia.

# Ministerial Determination

Subsection 9(1) of the Industry Contribution Act provides for the Minister of Justice, by legislative instrument, to determine the amount of levy payable by a leviable entity for a financial year.

Subsection 9(3) of the Industry Contribution Act provides that a Ministerial Determination made for the purposes of subsection 9(1) may do one or more of the following:

- specify an amount or a method for determining an amount
- specify different amounts or methods for different classes of leviable entities
- specify a nil amount or a method resulting in a nil amount.

The draft Ministerial Determination at **Attachment 1** determines the amount of instalment of the industry contribution for 2016–17.

The draft Explanatory Statement for the Ministerial Determination is at **Attachment 2**.

# Invoicing for the 2016–17 financial year

Subject to finalising this consultation process, AUSTRAC expects invoices for the industry contribution for 2016–17 will be issued during the first quarter of the 2016–17 financial year.

A reporting entity that will be liable to pay the levy for 2016–17 is an entity that is required to be enrolled with AUSTRAC on the census day, 1 July 2016.

Each entity is responsible for ensuring its enrolment information is correct at the census day.

# Attachment 1: Draft Ministerial Determination



## Australian Transaction Reports and Analysis Centre Industry Contribution Determination 2016 (No. 1)<sup>3</sup>

*Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011*

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I, MICHAEL KEENAN, Minister for Justice, make this Determination under subsection 9(1) of the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011*.

[Signed]

MICHAEL KEENAN  
Minister for Justice

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<sup>3</sup> All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.comlaw.gov.au](http://www.comlaw.gov.au).

## 1 Name of Determination

This Determination is the *Australian Transaction Reports and Analysis Centre Industry Contribution Determination 2016 (No. 1)*.

## 2 Commencement

This Determination commences on the day after it is registered.

## 3 Definitions

(1) In this Determination:

**the Act** means the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011*.

**ADI** (short for authorised deposit-taking institution) has the same meaning as in the AML/CTF Act.

**AML/CTF Act** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

**acquired** refers to the acquisition of the business of an entity.

**AUSTRAC** has the same meaning as in the AML/CTF Act.

**AUSTRAC CEO** has the same meaning as in the AML/CTF Act.

**census day**, in relation to the financial year, has the same meaning as in the Act.

**earnings**, in relation to a leviable entity, means:

- (a) if the leviable entity is an ADI or a registered financial corporation – the total profit before tax, depreciation and amortisation (PBTDA), not adjusted for significant items; or
- (b) if the leviable entity is a member of a group of leviable entities and any member of that group is an ADI or a registered financial corporation – the total profit before tax, depreciation and amortisation (PBTDA) not adjusted for significant items; or
- (c) in any other case – the total earnings before tax, interest, depreciation and amortisation (EBITDA) not adjusted for significant items;

of the leviable entity, for a year ending in the previous financial year, the details of which have been recorded in accordance with the requirements for the roll maintained by the AUSTRAC CEO under section 51C of the AML/CTF Act.

Note 1: The above definition recognises that leviable entities may have annual accounting periods that end on other than 30 June in any year.

Note 2: The operation of the above definition in relation to leviable entities that are foreign companies or subsidiaries of foreign companies is affected by subitem (2) of this item 3.

**financial year** means the financial year beginning on 1 July 2016.

**foreign company** has the same meaning as in the *Corporations Act 2001*.

**group of leviable entities** means all leviable entities that are related bodies corporate.

**leviable entity**, in relation to the financial year, has the same meaning as in the Act.

**leviable report**, in relation to a leviable entity, means one of the following reports given to the AUSTRAC CEO during the calendar year beginning on 1 January 2015:

- (a) a report given by the leviable entity under subsections 43(2) or 45(2) of the AML/CTF Act (including a report given by the leviable entity in the form required for subsections 43(2) or 45(2), whether or not such a report was required to be given under either of those subsections); or
- (b) a report of the type referred to in paragraph (a) that was given by another leviable entity that, as at the time the report was given, was a remittance affiliate of the leviable entity; or
- (c) a report of the type referred to in paragraph (a) that was given by another leviable entity that, prior to the census day, was acquired by the leviable entity.

**National Electricity Rules** means the Rules made under the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996 (SA)*.

**previous financial year** means the financial year beginning on 1 July 2015.

**registered financial corporation** has the same meaning as *registered entity* in the *Financial Sector (Collection of Data) Act 2001*.

**related bodies corporate** has the same meaning as in the *Corporations Act 2001*.

**remittance affiliate** means a leviable entity that:

- (a) provides a designated service covered by item 31 or 32 of table 1 in section 6 of the AML/CTF Act; and
- (b) provides that service as part of a network of persons of a kind referred to in item 32A of that table operated by another leviable entity.

**subsidiary** has the same meaning as in the *Corporations Act 2001*.

- (2) A reference in this Determination to the total profit or total earnings of a leviable entity that is a foreign company or a subsidiary of a foreign company is a reference to the total profit or total earnings of the leviable entity which are derived from operations in Australia.

#### 4 Amount of instalment of levy

- (1) Subitem (2) has effect subject to subitems (3), (4), (5), (6) and (7).
- (2) For subsection 9(1) of the Act, the amount of the instalment of levy payable by a leviable entity for the financial year is to be calculated in accordance with the following formula:

earnings component            +            transaction reporting component

*Payment threshold*

- (3) If the amount calculated in relation to a leviable entity under subitem (2) is less than \$1,000, then, for subsection 9(1) of the Act, the amount of the instalment of levy payable by the leviable entity for the financial year is nil.

#### *Maximum payment amount*

- (4) For subsection 9(1) of the Act, the amount of the instalment of levy payable by a liable entity for the financial year is:
  - (a) for a liable entity that is not a part of a group of liable entities and has earnings of greater than \$5,000,000,000 – \$9,735,648.90; or
  - (b) for a liable entity that is part of a group of liable entities the total earnings for which are greater than \$5,000,000,000 – \$9,735,648.90 divided by the number of liable entities in the group.

#### *Other*

- (5) For subsection 9(1) of the Act, the amount of the instalment of levy payable for the financial year by a liable entity that, in the previous financial year:
  - (a) provided a designated service or services only in the capacity of a remittance affiliate; and
  - (b) did not provide a designated service in any other capacity;is nil.
- (6) For subsection 9(1) of the Act, the amount of the instalment of levy payable for the financial year by a liable entity that, on the census day for the financial year, was a 'Market Generator' within the meaning of the National Electricity Rules, is nil.
- (7) For subsection 9(1) of the Act, the amount of the instalment of levy payable for the financial year by a liable entity that is a body corporate established for a public purpose by an Act passed by the Parliament of the Commonwealth is nil.

## **5 Earnings component**

- (1) Subitem (2) has effect subject to subitems (3) and (4).
- (2) The earnings component for a liable entity is:
  - (a) for a liable entity that is not part of a group of liable entities – 0.043 per cent of the earnings for the liable entity; or
  - (b) for a liable entity that is part of a group of liable entities – 0.043 per cent of the total earnings for the group of liable entities, divided by the number of liable entities in the group.

#### *Earnings component threshold*

- (3) The earnings component for a liable entity:
  - (a) that is not part of a group of liable entities and has earnings of less than \$100,000,000; or
  - (b) that is part of a group of liable entities the total earnings for which are less than \$100,000,000;is nil.

#### *Earnings component cap*

- (4) If the earnings component calculated for a liable entity under subitem (2) is greater than \$1,000,000, then:

- (a) for a leviable entity that is not part of a group of leviable entities – the earnings component for the leviable entity is \$1,000,000; or
- (b) for a leviable entity that is part of a group of leviable entities – the earnings component for the leviable entity is \$1,000,000, divided by the number of leviable entities in the group.

**6 Transaction reporting component**

- (1) Subitem (2) has effect subject to subitem (3).
- (2) The transaction reporting component for a leviable entity is to be calculated in accordance with the following formula:

$$\begin{array}{rcc} 1.2 \text{ cents for each} & & 0.00103074 \text{ per cent of the value of} \\ \text{leviable report} & + & \text{the leviable report} \end{array}$$

- (3) If a leviable report of the type referred to in paragraph (b) or (c) of the definition of *leviable report* is used in the calculation of a leviable entity's transaction reporting component, the same report cannot be used in the calculation of any other leviable entity's transaction reporting component.
- (4) In this item, a reference to the *value of a leviable report* is a reference to the transaction to which the leviable report relates.

# Attachment 2: Draft Explanatory Statement to the Ministerial Determination

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Justice

*Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011*  
*Australian Transaction Reports and Analysis Centre Industry Contribution Determination 2016 (No. 1)*

### OUTLINE

The Determination is made by the Minister for Justice under subsection 9(1) of the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011* (Industry Contribution Act) for the financial year 1 July 2016 to 30 June 2017 (2016–17).

Section 8 of the Industry Contribution Act imposes a levy on certain entities ('leviable entities') regulated and supervised by the Australian Transaction Reports and Analysis Centre (AUSTRAC). The purpose of the levy is to recover the costs of the performance of AUSTRAC's regulatory and intelligence functions. It is intended that the levy will recover 100% of those costs (including depreciation) in 2016–17.

Section 7 of the *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011* provides that the levy is payable in instalments. The amount of each instalment is dealt with in section 9 of the Industry Contribution Act. The purpose of making the levy payable in instalments is to enable more than one instalment to be made payable in a single financial year, if this is necessary to recover AUSTRAC's costs. For the 2016–17 financial year, only one instalment of levy will be payable.

Subsection 9(1) of the Industry Contribution Act provides for the Minister, by legislative instrument, to determine the amount of an instalment of levy payable by a leviable entity for a financial year. Paragraph 9(2)(a) requires the Minister to make at least one determination under subsection (1) for each financial year. Paragraph 9(2)(b) puts a cap, called the 'statutory limit', on the sum of all amounts of all instalments of levy payable by all leviable entities for a financial year. The term 'statutory limit' is defined by subsection 7(1) of the Industry Contribution Act to mean, in relation to a financial year, 'the amount that is 2 times the sum of all amounts appropriated by the Parliament for the purposes of AUSTRAC for the financial year'.

The Determination determines the amount of the instalment of levy for 2016–17.

Subsection 9(3) of the Industry Contribution Act provides that a determination made for the purposes of subsection 9(1) may do one or more of the following:

- specify an amount or a method for determining an amount;
- specify different amounts or methods for different classes of leviable entities;
- specify a nil amount or a method resulting in a nil amount;

- despite subsection 12(2) of the *Legislative Instruments Act 2003*, specify methods that refer to acts done or circumstances existing before either the commencement of the determination or the commencement of the Industry Contribution Act, or both.

Subsection 9(4) of the Industry Contribution Act provides that a determination made for the purposes of subsection 9(1) for a financial year may, despite subsection 12(2) of the *Legislative Instruments Act 2003*, be made after the beginning of that financial year.

Details of the Determination are set out below. The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **CONSULTATION**

The development and refinement of the structure of the industry contribution charging model was undertaken during the 2014–15 financial year, following the Government's budget announcement on 13 May 2014 that it was replacing the cost recovery arrangements administered by AUSTRAC (known as the AUSTRAC supervisory levy) with an industry contribution levy to fund AUSTRAC's regulatory and financial intelligence functions.

Three separate rounds of stakeholder consultation were undertaken, during which AUSTRAC released three stakeholder consultation papers:

- 26 June 2014
- 25 September 2014, and
- 3 December 2014.

Following this extensive consultation process, the structure of the charging model for the 2014–15 financial year was finalised. Details of the model were published on the AUSTRAC website on 28 January 2015, and leviable entities were invoiced by AUSTRAC on 27 April 2015.

The underlying structure of the charging model for the 2016–17 financial year is unchanged from the model that was used for 2014–15 and 2015-16. There have been some changes to the factors for individual components, in order to reflect the increase in the amount to be recovered from 90 to 100 per cent of AUSTRAC's operating costs.

## **REGULATORY IMPACT STATEMENT**

AUSTRAC has been advised that a Regulatory Impact Statement (RIS) is not required. The industry contribution arrangements are a revenue measure, and as such fall outside the requirement to prepare a RIS.

## **DETAILS OF THE DETERMINATION**

### ***Item 1 – Name of Determination***

This item sets out the name of the Determination as the *Australian Transaction Reports and Analysis Centre Industry Contribution Determination 2016 (No. 1)*.

### ***Item 2 – Commencement***

This item provides that the Determination will commence the day after it is registered as a legislative instrument.

### ***Item 3 – Definitions***

Subitem 3(1) defines terms used in the Determination, the more significant of which are:

- 'census day'. This term is defined, in relation to 2016–17, to have the same meaning as in the Industry Contribution Act. The census day for the 2016–17 financial year is 1 July 2016.
- 'earnings'. The amount of a liable entity's 'earnings', as defined, is used in the Determination to identify liable entities that are liable to pay the maximum amount of the instalment of levy for 2016–17, under subitem 4(4) of the Determination, and, for other liable entities, in calculating the earnings component of the instalment of levy, under item 5 of the Determination. For a liable entity that is an authorised deposit-taking institution or a registered financial corporation, or is part of a group of liable entities that includes such an entity, 'earnings' means total profit before tax, depreciation and amortisation (PBTDA). For all other entities the measure is total earnings before interest, tax, depreciation and amortisation (EBITDA). Neither PBTDA nor EBITDA is to be adjusted for significant items.
- 'liable entity'. This term is defined, in relation to 2016–17, to have the same meaning as in the Industry Contribution Act.
- 'liable report'. This means, in relation to a liable entity, a report given to the AUSTRAC CEO in the 2014 calendar year under subsection 43(2) or 45(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) (or in the form required for subsection 43(2) or 45(2), whether or not such a report was required to be given under either subsection), being:
  - a report given by the liable entity; or
  - a report given by a remittance affiliate of the liable entity; or
  - a report given by another liable entity that was acquired by the liable entity prior to the census day.

Sections 43 and 45 of the AML/CTF Act respectively deal with threshold transaction reports (TTRs) and international funds transfer instructions reports (IFTIs).

- 'National Electricity Rules'. This means the Rules made under the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA).
- 'remittance affiliate'. This means a liable entity that provides a designated service covered by item 31 or 32 of table 1 in section 6 of the AML/CTF Act as part of a network of persons of a kind referred to in item 32A of that table operated by another liable entity.
- 'registered financial corporation'. This term is defined to have the same meaning as the term 'registered entity' in the *Financial Sector (Collection of Data) Act 2001*.

Subitem 3(2) limits references in the Determination to the total profit or total earnings of a liable entity that is a foreign corporation or a subsidiary of a foreign corporation to the total profit or total earnings of the liable entity which are derived from operations in Australia. This affects the operation of the definition of the term 'earnings' in subitem 3(1) of the Determination.

#### **Item 4 – Amount of instalment of levy**

Item 4 sets out a general method for determining the amount of the instalment of levy payable by a liable entity for 2016–17, which is subject to five exceptions.

The general method is specified in subitem 4(2). It involves adding together the 'earnings component' for the liable entity, dealt with in item 5 of the Determination, and the 'transaction reporting component' for the liable entity, dealt with in item 6 of the Determination.

The exceptions to the general method are specified in subitems 4(3), (4), (5), (6) and (7).

Subitem 4(3) provides a payment threshold of \$1,000 for the levy instalment. If the amount calculated in relation to a liable entity under subitem (2) is less than \$1,000, then the amount payable by that entity is nil.

Subitem 4(4) provides a maximum payment amount for the levy instalment, applicable to those liable entities with earnings greater than \$5,000,000,000. The amount payable by a liable entity that is not part of a group of liable entities and has earnings of greater than \$5,000,000,000 is \$9,735,648.90. The amount payable by a liable entity that is part of a group of liable entities the total earnings for which are greater than \$5,000,000,000 is \$9,735,648.90 divided by the number of liable entities in the group.

Subitem 4(5) sets the levy instalment at nil for a liable entity that, in the financial year 1 July 2015 to 30 June 2016 (2015-16), provided designated services only in the capacity of a remittance affiliate. Entities to which subitem 4(5) applies have no amount payable on the basis that AUSTRAC's primary regulatory relationship will be with remittance network providers rather than remittance affiliates.

Subitem 4(6) sets the levy instalment at nil for a liable entity that, on the census day, was a 'Market Generator' within the meaning of the National Electricity Rules.

Subitem 4(7) sets the levy instalment at nil for a liable entity that is a body corporate established for a public purpose by an Act passed by the Commonwealth Parliament.

#### ***Item 5 – Earnings component***

Item 5 sets out a general method for determining the earnings component for a liable entity, which is subject to two exceptions.

The general method is specified in subitem 5(2). For a liable entity that is not part of a group of liable entities, the general method involves multiplying the earnings for the liable entity by 0.043%. For a liable entity that is part of a group of liable entities, the general method involves multiplying the total earnings for the group by 0.043% and dividing the result by the number of liable entities in the group.

The exceptions to the general method are specified in subitems 5(3) and (4).

Subitem 5(3) provides a payment threshold for the earnings component. It does so by setting the earnings component at nil for a liable entity that is not part of a group of liable entities and has earnings of less than \$100,000,000, or a liable entity that is part of a group of liable entities the total earnings for which are less than \$100,000,000.

Subitem 5(4) provides a payment cap for the earnings component for a liable entity if the amount calculated for that entity under subitem (2) is greater than \$1,000,000. For a liable entity to which subitem 5(4) applies that is not part of a group of liable entities, the earnings component is set at \$1,000,000. For a liable entity to which subitem 5(4) applies that is part of a group of liable entities, the earnings component is set at \$1,000,000 divided by the number of liable entities in the group.

#### ***Item 6 – Transaction reporting component***

The transaction reporting component is calculated by reference to the TTRs and IFTIs that were lodged with AUSTRAC during the 2015 calendar year.

Subitem 6(2) contains a formula for working out a liable entity's transaction reporting component. The formula is made up of two components:

- 1.2 cents for each leviable report made by a leviable entity to the AUSTRAC CEO in the 2015 calendar year; and
- 0.00103074 per cent of the value of the transaction to which the leviable report relates.

Subitem 6(3) prevents 'double-counting' of leviable reports in the application of the formula in subitem (2) to different leviable entities.

Subitem 6(4) is included to avoid doubt as to what is meant by the 'value of a leviable report' in subitem (2).

DRAFT

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the  
Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Australian Transaction Reports and Analysis Centre Industry Contribution Determination 2016 (No. 1)***

This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

The *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011* (Industry Contribution Act) imposes a levy on certain entities ('leviable entities') which are regulated under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and supervised by the Australian Transaction Reports and Analysis Centre. Subsection 9(1) of the Industry Contribution Act provides for the Minister, by legislative instrument, to determine the amount of an instalment of levy payable by a leviable entity for a financial year.

This Determination is made by the Minister for Justice under subsection 9(1) of the Industry Contribution Act for the financial year 1 July 2016 to 30 June 2017. It specifies the amount, or the method for determining the amount, of the first instalment of levy payable by each leviable entity for the financial year. Different amounts and methods are specified for different classes of leviable entities.

#### **Human rights implications**

This Determination does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Determination is compatible with human rights as it does not raise any human rights issues.

MICHAEL KEENAN  
Minister for Justice