



25 July 2014

Discussion Paper – 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
Discussion 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. Many of AFMA's members are reporting entities for the purposes of the *Anti Money Laundering/Counter Terrorism Financing Act 2006* (**the AML/CTF Act**) and are obliged to pay the current Supervisory Levy. Accordingly, we welcome the opportunity to make a submission to the AUSTRAC Industry Contribution – Discussion Paper (**the Discussion Paper**).

We acknowledge that our comments below address both policy and implementation issues and accordingly we shall be raising these issues directly with the Government. We also reiterate our previous statements that cost recovery is a Government policy and AFMA members are willing to pay their fair share of the costs of AUSTRAC regulation, provided that the charges are connected to the level of money laundering risk posed and the consequential supervision costs.

Issues arising from the 2014/15 Federal Budget

Extension of the industry contribution to include entire AUSTRAC expenditure

AFMA would like to express its considerable concern in respect of the policy underpinning the announcement in the 2014/15 Federal Budget, whereby industry will be fully funding the all of AUSTRAC's expenses by 2017-18, particularly the costs of the AUSTRAC financial intelligence unit as well as the regulatory function.

In AFMA's view, this announcement is starkly in contrast to both the Government's Cost Recovery Guidelines and also the Independent Review into the AUSTRAC Supervisory Levy, conducted in 2013 ("**the Independent Review**").

The Cost Recovery Guidelines, as they apply in the AUSTRAC context, sets out that cost recovery should occur, where efficient, in relation to "the provision of government goods and services (including regulation)." That is, in order for recovery to be consistent with the guidelines, it is necessary that "costs that are not directly related or integral to the provision of products or services...should not be recovered."

The conclusion of the Independent Review was that AUSTRAC needed to delineate between the costs of the regulatory arm and the financial intelligence unit, on the basis that only the former ought to be recovered from industry, with the inference being that the financial intelligence unit costs do not relate to the provision of a government good or service. As such, the inclusion of the AUSTRAC expenses in their entirety, including the financial intelligence unit, is in contrast to the Government's own Cost Recovery Guidelines.

AFMA submits that the primary beneficiaries of the financial intelligence unit are Government agencies, principally the Australian Taxation Office (**ATO**) and the Australian Federal Police. In terms of the ATO, the information provided by the financial intelligence unit resulted in assessments being raised of \$572 million in 2012-13 alone. It is incongruous to AFMA that the Government can be such a large beneficiary of the work of the financial intelligence unit without providing any contribution to the costs of running the unit, especially given that it is reporting entities that report the transactions that give rise to the additional taxation for free. Even to the extent that the business community benefits from the activities of the financial intelligence unit in terms stability of the business environment, the beneficiaries are a significantly broader population than the entities subject to the proposed Industry Contribution.

AFMA notes that the Discussion Paper refers to the replacement of the Supervisory Levy with the Industry Contribution and that, merely due to this change in description, "(t)he AUSTRAC Industry Contribution is not subject to the Government's Cost Recovery Guidelines." AFMA would submit that notwithstanding the change in title, the Government's own Cost Recovery Guidelines should continue to apply and it is inappropriate from a policy perspective to purport that a change of description can have a substantive effect in respect of adherence. That is, it is incumbent upon the

Government and its agencies to demonstrate the rationale for imposing additional cost recovery charges on industry in a manner inconsistent with its own Cost Recovery Guidelines.

Removal of the base component fee

AFMA also notes its objection to the announcement in the 2014/15 Federal Budget as to the removal of the \$300 base component fee. Given the effect of this proposal is to relieve approximately 3,600 reporting entities from the requirement to contribute to an increasing levy (both in terms of proportion and also AUSTRAC's expenses), the only possible effect is to increase the burden on larger reporting entities. This was noted by the Independent Review, which stated that "(t)o the extent that a fixed amount of cost must be recovered for regulatory purposes, another group must fund the reduction in levy by one entity or group of levy payers; it is a zero-sum game. The issue is one of balance, perceived equity, reliability and ease of application."

In previous submissions in respect of the Supervisory Levy, AFMA has expressed the view that there is limited/no correlation between the size or complexity of an organisation and a heightened risk of money laundering or terrorism financing activities. Indeed, given that the bulk of the clients that larger institutions deal with are wholesale clients that are themselves regulated and subject to the AML/CTF regime, then the risk of such clients engaging in money laundering and terrorism financing activities is reduced. This is particularly the case where the activities undertaken are heavily regulated through banking, securities and financial services laws. Accordingly, the removal of the base component fee exacerbates the inequity already present in the existing cost recovery mechanism.

In contrast to the Budget announcement, the Independent Review made the observation that "(s)mall business is treated very favourably under the AUSTRAC cost recovery arrangements," which infers that an increase to the base component fee would be justified. The Independent Review made this observation on the basis that the base levy is designed to recover the costs associated with the basic expenses incurred on behalf of all entities, such as a Help Desk and publication of guidance materials.

In AFMA's view, it is therefore both contrary to an equitable cost recovery mechanism and the Independent Review to remove the base component fee; indeed AFMA would submit that this should be raised in accordance with the observations of the Independent Review.

Issues arising from the Discussion Paper

Imposition of a minimum payment floor of \$1,000

In addition to the comments noted above in relation to the removal of the base component fee, AFMA notes that AUSTRAC has unilaterally sought to exclude even more current payers of the Supervisory Levy from the requirement to pay an Industry

Contribution through the extension of the minimum payment floor to \$1,000 (currently \$103.22, as per the Independent Review). We note that the Independent Review made a recommendation that “the minimum levy should be lowered to capture some small to medium sized entities that currently escape the large entity component, thereby broadening the base.”

For the reasons articulated above, AFMA objects to the raising of the minimum payment floor in such a way where the only possible outcome is to increase the burden on larger enterprises, thereby exacerbating the inequity present under the current system and indeed the proposal to remove the base component fee in the 2014-15 Budget.

The Discussion Paper notes that the rationale for excluding such entities from the Industry Contribution is that, in aggregate, such entities would only provide 0.2% of the total amount recoverable and that the cost of recovering from these entities is not proportionate to the amount recovered. This does not, in AFMA’s view, justify the imposition of this amount on larger enterprises, particularly where the total amount recovered from industry is set to increase in coming years, as the proportion of AUSTRAC’s expenses that are funded by industry increases.

Removal of the Transaction Reporting Cap

One particular difference between the existing Supervisory Levy and the proposed Industry Contribution is the removal of the cap that applies in respect of transaction report volume and value, currently set at \$1,568,000. AFMA has previously expressed the view that, particularly with respect to the transaction value component, that there is no correlation between the size of the transactions reported and the money-laundering/terrorism financing risk, particularly in relation to large custody components that represent a very low money-laundering risk given the profile of customer and the nature of the payment.

We acknowledge the continuation of the maximum payment ceiling in respect of the total contribution, indicatively set at \$4,144,000, but would posit that the removal of the particular cap for transaction reporting will cause more enterprises to hit the maximum payment ceiling without a proper policy rationale. This is particularly the case given the more than 20% increase in the Transaction Report value component from 0.0006130% to 0.0007512% (indicatively). AFMA members have advised that the removal of the Transaction Reporting cap coupled with the increase in the Transaction Report value component will result in a material (estimated at 30%) increase in their Industry Contribution relative to the existing Supervisory Levy. This may be disproportionate, both with reference to the money laundering/terrorism financing risks posed by such entities and also that the largest entities that are subject to the existing caps in the Supervisory Levy will have a far less significant increase due to the proposed indicative cap of \$4,144,000.

AFMA recommends that there continue to be a cap on the Transaction Report component to mitigate the extent to which the contribution based on high value reports are out of

proportion to the money-laundering risks such reports incur. As previously stated by AFMA, a cap on the amount payable in relation to the transaction value element will make the levy more akin to cost recovery and less like a tax on each high value payment.

Due process and transparency for further increases to the levy

The Industry Contribution mechanism needs to be developed with an eye on the additional funding that AUSTRAC will require from industry in the future, given the announcement in the 2014/15 Budget. In particular, AFMA would like to understand which components AUSTRAC believes will increase (and how) between now and the 2017-18 year, when AUSTRAC will effectively be fully funded by industry. AFMA would suggest that the calculation of the industry contribution be put out for public consultation annually to ensure that there remains sufficient accountability and transparency.

In addition, to promote transparency in the calculation of the Industry Contribution vis-à-vis the Supervisory Levy, AUSTRAC should make publicly available its modelling as to the increases across industry segments and sizes of entities, given that the data for each reporting entity is commercially-in confidence. This will allow for an assessment as to the equitability of the proposed Industry Contribution across different entity types.

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AFMA is keen to work with AUSTRAC and the Government to ensure that the Industry Contribution is equitable and appropriate, with reference to the money laundering/terrorism financing risks posed by reporting entities.

We also note that AUSTRAC has provided guidance to some AFMA members that it does not expect to issue invoices in respect of the Industry Contribution until February 2015. This is a significant delay vis-à-vis the existing arrangements and AFMA would urge that the calculation and issuance of invoices occur more expeditiously so as to reduce uncertainty for reporting entities.

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

Yours sincerely,



Rob Colquhoun
Director, Policy