

03 June 2016

Consultation - AUSTRAC Industry Contribution
Strategic Intelligence 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 2016-17: Stakeholder Consultation Paper

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide comments on AUSTRAC's, *AUSTRAC Industry Contribution 2016-17: Stakeholder Consultation Paper (Consultation Paper)*.

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 lodged submissions with AUSTRAC regarding the previous discussion papers dealing with cost recovery, dated:

- 23 July 2014
- 24 October 2014
- 17 December 2014; and
- 26 August 2015.

These further comments should be read in conjunction with our earlier submissions. The ABA continues to express strong concern regarding the basis and administration of the recovery of AUSTRAC's costs. Our concerns remain:

- That the AUSTRAC Industry Contribution does not adhere to the government's Cost Recovery Guidelines.
- Of AUSTRAC's total reporting population of approximately 14,000 entities, only 600 entities will be required to pay the levy in 2016-17. These costs, imposed on a small segment of the population have grown exponentially, unchecked and without adequate oversight. The impact of 100% of costs being borne by just 4% of AUSTRAC's regulated population should be assessed through a Regulatory Impact Statement (**RIS**) process.
- The lack of a formal and transparent RIS in respect of the original enabling legislation, coupled with a lack of genuine 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 Cost Recovery Guidelines in the AUSTRAC Industry Contribution has never been clearly articulated.

In relation to the absence of a RIS, the ABA's concern is that the specific exemption from a RIS was granted in respect of the original cost recovery legislation which, in ABA's view, has a significant perverse regulatory impact. The percentage of affected reporting entities is small and the costs imposed on those few is extraordinarily high. The impact of such costs being borne by only 4% of AUSTRAC's regulated population should have been assessed through a RIS process and ABA maintains that the exemption was inappropriate in this instance.

The ABA would argue the most compliant sector (major reporters), are paying all of AUSTRAC's costs while 96% of 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.

Inequitable model

The AUSTRAC cost recovery model remains inequitable.

Just 4% of AUSTRAC's regulated population are paying 100% of AUSTRAC's costs. A review of the enforcement actions¹ of AUSTRAC shows that smaller reporting entities have been proven to pose a much higher risk of being used for money laundering and terrorism financing, yet are exempt from contributing to the cost of monitoring. Those who participate in Australian markets should incur a fee commensurate to the cost of AUSTRAC's oversight, to incentivise them to meet both their legal obligations and the community's expectations for their sector.

The Consultation Paper notes that the government's objective is that small businesses should be exempt from the industry contribution to minimise their regulatory burden. If AUSTRAC has an objective of "a financial system free from abuse", then it is only logical that those who cause the need for regulation should bear some of that cost, regardless of their size.

Costs growing unchecked and without adequate oversight

In the December 2015 Mid-Year Economic and Fiscal Outlook (**MYEFO**), the government announced² its decision to bring forward by one year the scheduled increase to the levy to enable the recovery of 100% of AUSTRAC's operating costs: the increase in the levy to recover 100% of operating costs was originally planned for the 2017-18 financial year. Accordingly, as from 2016-17, AUSTRAC's activities regulator and financial intelligence unit will be funded, in full, through the collection of the AUSTRAC industry contribution.

The above is validation of the concerns of the ABA members. The government, in abandoning their own Cost Recovery Guidelines for the AUSTRAC Industry Contribution, has shown that the costs levied on 4% of AUSTRAC's regulated population will continue to grow exponentially, unchecked and without adequate oversight, consultation or justification.

To give context, this is the 3rd year of the industry contribution model, and since its introduction in 2014-15, the 'maximum amount payable' has increased by over 50% to \$9,735,649³.

The ABA recommends the impact of such costs borne by just 4% of AUSTRAC's regulated population be appropriately assessed in terms of regulatory impact.

¹ <http://www.austrac.gov.au/enforcement-action>

² 2015-16 MYEFO, <http://www.budget.gov.au/2015-16/content/myefo/html/index.htm>, p. 106

³ AUSTRAC industry contribution 2016-17: Stakeholder Consultation Paper, Table 4: Indicative minimum charge and maximum amount payable for 2016-17 financial year, <http://www.austrac.gov.au/sites/default/files/aic-consultation-paper-16-17.pdf>



Strong banks – strong Australia

Existing models with equitable outcomes

In the ABA's view, all high risk reporters must be captured and contribute to the funding of AUSTRAC.

Independent and adequately funded regulators create trust and confidence in the market. As an example, ASIC is pursuing a user-pays funding model so those who participate in Australian markets pay a fee commensurate to the cost of ASIC oversight.

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.

ASIC also maintains a register of 2.28 million registered corporations. Every company has an annual review date, usually the anniversary of its registration date. Soon after its annual review date, ASIC issues each registered company with an annual statement and an invoice for the company's annual review fee which ranges from \$46 - \$1,161 per annum. The ABA recommends that each of the 14,000 reporting entities contribute to the annual cost of AUSTRAC using a similar approach.

Growing regulatory 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 600 reporting entities are being required to fund both increased internal resources to assist with AUSTRAC's increasing requirements, alongside paying for AUSTRAC's own growing operations.

Report of the statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)

The ABA welcomed the report of the statutory review of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and supports all the Attorney-General's Department's (**AGD**) findings to strengthen AML and CTF legislation.

Australia's banks have a key role in preventing the serious crimes of money laundering and terrorism financing. The industry will continue, as always, to work closely with AUSTRAC and the AGD to implement these reforms for the benefit of all Australians.

A key finding of the report is the recognition that non-financial businesses pose significant money laundering and terrorism financing risks and need to be brought within the AML/CTF framework. In expanding the AML/CTF framework to include non-financial businesses, AUSTRAC and the AGD must implement these long overdue 'Tranche 2' reforms in a cost-effective and efficient manner that will not impose any additional burden on the 4% of reporting entities who currently bear 100% of AUSTRAC's costs.

AUSTRAC Industry Contribution 2016–17: Stakeholder Consultation Paper

The ABA provides the following comments on the paper.

Earnings threshold

The ABA recognises the government's desire to limit the cost of regulation to small businesses, however, the threshold of \$100 million is excessively high given both the purpose of AUSTRAC and the high risk some of these sectors pose. An assessment of risk should feature in the model for calculating who should pay the industry contribution and how much they should pay.



Strong banks – strong Australia

The ABA strongly supports the AFMA position which advocates for a reduction of the earnings threshold to \$10 million. The figure of \$10 million aligns with the government's view of a 'small business'⁴. The ATO⁵ also defines a small business as having an income of between \$2 million and \$10 million per annum.

The ABA recommends that entities above that small business threshold of \$10 million should therefore contribute to the cost of monitoring for illegal activity, this would sit alongside a base annual fee for each entity in AUSTRAC's growing regulated population.

Conclusion

Despite the strong objections in this letter, the ABA and our members remain committed to the integrity of the Australian financial system. Australia's banks take seriously their role in preventing the serious crimes of money laundering and terrorism financing.

The ABA and members will continue to work closely with AUSTRAC and the AGD for the benefit of all Australians.

Thank you for taking our comments into consideration and we would be pleased to discuss them further at your convenience.

Yours faithfully

A handwritten signature in black ink, reading 'Aidan O'Shaughnessy'. The signature is written in a cursive, flowing style.

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⁴ The Hon Scott Morrison MP, Treasurer of the Commonwealth of Australia, (May 2016), <http://budget.gov.au/2016-17/content/speech/html/speech.htm>

⁵ http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Quick_Guides/Data