



27 June 2019

Consultation – AUSTRAC Industry Contribution

Policy and Guidance Section

PO Box 13173

Law Courts

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By email: Policy_Consultation@austrac.gov.au

Dear Sir/Madam

AUSTRAC Industry Contribution 2019-20 - Stakeholder Consultation Paper

The Australian Financial Markets Association (AFMA) represents the interests of over 120 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 and consultation papers dealing with the AUSTRAC industry contribution, namely submissions dated:

- 25 July 2014;
- 24 October 2014;
- 19 December 2014;
- 26 August 2015;
- 10 June 2016;
- 28 June 2017; and
- 22 June 2018.

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AFMA also lodged a detailed submission to the independent review of the operation of the industry contribution levy in December 2018.

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 as the industry contribution measure is now clearly one of cost recovery, given the Government's decision fully recover 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 570 (out of circa 14,000) reporting entities¹ 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 commenced in this current financial year. The fact that only 4% of the regulated population of reporting entities pays 100% of the industry contribution is inequitable and unfair, and remains of acute concern to us.

We continue to note 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 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. We maintain our view that the industry contribution should fall within the Government's cost recovery guidelines.

Independent Review

As noted on page 19 of the consultation paper, an independent review of the operation of the industry contribution was conducted in 2018, commencing in November 2018. AFMA lodged a detailed submission to the questions posed by the independent review, reiterating a number of the points expressed above. Specifically, our submission noted that the model for the industry funding of ASIC, while not perfect, was more closely aligned to those that create the need for regulation by requiring that all regulated entities pay at least a small levy with additional components based on the nature of the entity's business activities.

This model was contrasted with the industry contribution, which relies on the uncertain logic that the volume and value of business activity is the best proxy indicator of AML/CTF risk. Our view is that the current inequity that is embedded in the industry contribution model may be remedied both through requiring most, if not all, reporting entities to contribute to cost recovery and that additional cost recovery be imposed on a segmented basis depending on where AUSTRAC expends its regulatory and enforcement resources.

¹ Stakeholder consultation paper, page 20

AFMA acknowledges that, due to the Federal Election in May 2019 and the commencement of the caretaker period from 11 April 2019, there have been issues with the public release of the report of the independent review, given that the report was delivered to the Minister on 18 April 2019 and that the report needs to be tabled in both houses of Parliament within 15 sitting days of it being received. The lack of sitting days means that, at this stage, the report has not been made publicly available.

At the most recent AFMA/ABA/AUSTRAC/Home Affairs Quarterly Meeting on 25 March 2019, AUSTRAC advised that, notwithstanding the issues around the commencement of the caretaker period, it was AUSTRAC's intention to defer consultation on the industry contribution model for 2019/20 to incorporate any findings coming from the independent review. While this may mean that invoices for the 2019/20 year would be issued significantly later (i.e. potentially as late as November), such an approach would allow for the recommendations of the independent review to be incorporated into the 2019/20 model.

In contrast, in the consultation paper AUSTRAC has taken the opposite view for the 2019/20 model by expressly not including any of the recommendations of the independent review in the 2019/20 model. This is disappointing, as it perpetuates the inherent inequity in the current charging model for a further financial year. AFMA will only be able to assess the extent of this inequity once the recommendations of the review are known.

Specific Changes for 2019/20 Industry Contribution

The proposed changes for the 2019/20 model relative to that adopted for 2018/19 are set out in pages 22-26 of the consultation paper and may be relevantly summarised as follows:

- Increase of the maximum earnings charge from \$1,500,000 to \$2,000,000;
- Increase of the transaction report volume to \$0.013 per report;
- Minor changes to the transaction report value for all entities, including those with annual report value of \$15 billion or more;
- Increase of the minimum charge from \$1,000 to \$1,100; and
- Increase of the maximum amount payable from \$10,205,095 to \$11,686,522.

Our comments in relation to some of these proposed changes are set out below:

Increase of the Maximum Earnings Charge

We note the increase of the maximum earnings charge and the comments from AUSTRAC that this was done to ensure that there was no unreasonable distortion of the levy factors for the remainder of the leviable population. AUSTRAC further states that, because the increase in the maximum earnings charge allows for a reduction in the transaction report value impact, the net effect of the change to the cap is "minimal." These two observations appear inconsistent, as does the fact that the increase in the maximum amount payable has increased by approximately 14.5%. As such, we would like to better understand the average increase in the total amount payable for those entities that hit the maximum earnings charge cap.

Increase of the minimum charge from \$1,000 to \$1,100

Consistent with our general concerns regarding the embedded inequities, we object to the increase of the minimum charge. To the extent that operationally reporting entities have been paying the industry contribution where the minimum charge is \$1,000, then our view is that this threshold should continue pending the outcome of the independent review.

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 (including lawyers, conveyancers, accountants, high-value dealers, real estate agents and company service providers) within the regulatory regime. We reiterate the position previously expressed that 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.

Please contact me on 02 9776 7996 or rcolquhoun@afma.com.au if you have any queries about this submission.

Yours sincerely,



Rob Colquhoun
Director, Policy