



27 May 2024

Consultation – AUSTRAC Industry Contribution
Policy and Guidance Section
PO Box 13173
Law Courts
MELBOURNE VIC 8010

By email: Industry_levy@austrac.gov.au

Dear Sir/Madam

**AUSTRAC Industry Contribution 2023-24
Stakeholder Consultation Paper**

The Australian Financial Markets Association (AFMA) represents the interests of over 130 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. A significant proportion of AFMA's members are reporting entities for the purposes of the AML/CTF Act.

Executive Summary:

AFMA notes the following, by way of executive summary:

- The significant change to the charging model for the 2022/23 year, namely the contribution of the earnings component to 50% of the recoverable amount, was without basis and resulted in some significantly inequitable outcomes for AFMA members. This change should be reconsidered;
- There is no basis for a further 25% increase in the earnings component for the 2023/24 financial year and such an increase will exacerbate the inequitable outcomes that arose in the 2022/23 financial year;
- The increased proportion of the earning component is particularly inequitable considering that such earnings may be generated from activities that are not designated services and have no nexus to AUSTRAC regulation;

- AUSTRAC should ensure that all reporting entities contribute to the funding of AUSTRAC's operations by removing the minimum charge, as per the ASIC Supervisory Cost Recovery Levy;
- AUSTRAC should provide a breakdown of the amounts to be recovered by different classes of reporting entity, to ensure that there is transparency around the amounts being recovered being aligned to the reporting entities that create the need for regulation;
- AFMA is supportive of the retention of the existence and proposed amount of the Maximum Transaction Reporting Charge for 2023/24; and
- To the extent that the reporting entity population increases significantly with the extension of regulatory scope to Tranche 2 entities, this should be the catalyst for a fundamental re-evaluation of how AUSTRAC's operating costs are recovered.

Changes to Earnings Component in 2022/23

AFMA was deeply disappointed that the model for AUSTRAC Industry Contribution in 2022/23 was not subject to public consultation, with the Stakeholder Consultation Paper only being made available to reporting entities and not industry bodies such as AFMA. Further, the Consultation Paper was not available on the AUSTRAC website.

This disappointment was exacerbated by the fundamental change to the proportion of the overall funding amount to be recovered from the earning component, which increased from approximately 20% to 50%, through increasing the earnings component from 0.048% to 0.12%. This change resulted in significantly inequitable outcomes for many AFMA members and was entirely arbitrary in nature, with no articulation in the Consultation Paper as to the policy rationale for the change, with the Consultation Paper merely saying:

“This proposed change is based on a review of the levy structure which in prior years has seen the proportion of levy collected from the earnings component representing approximately 20% of the total levy collected. This review took into consideration concerns from reporting entities that the burden of increases in the total amount of levy to be collected falls onto the transaction report component of the levy, with little contribution coming from the earnings component. This increase to the earnings component factor will see the earnings proportion rising this year to 49.7%. AUSTRAC considers this a more equitable split between the earnings and transaction components of the levy.”

AFMA is not aware of any reporting entities within its membership that provided that feedback to any review and disagrees that this is a more equitable split. Indeed, this change was contrary to the Government's own Cost Recovery Guidelines, which articulates that efficient cost recovery requires the cost of regulation to be allocated proportionately to those that create the need for regulation. The amount that a reporting entity earns is not a legitimate proxy for regulatory burden but rather is a crude proxy for capacity to pay.

It is particularly concerning to AFMA that the “earnings” which are included in the calculation of the industry contribution amounts may not actually be designated services for the purposes of the AML/CTF Act. Many reporting entities within the AFMA membership operate diversified businesses, including the undertaking of activities that are outside the scope of being designated services. From

AFMA's perspective, it cannot be equitable that earnings that arise from services that have no nexus to AUSTRAC regulation are included in the calculation of the industry contribution amount.

The changes to the charging arrangements for 2022/23 gave rise to a large number of highly inequitable outcomes, especially for those reporting entities that predominantly engage in institutional business with large, wholesale clients (who themselves are subject to regulatory oversight) and accordingly have proportionately less interaction with AUSTRAC in terms of lodging reports or being subject to AUSTRAC oversight. In our view, it cannot be the case that an increase in the recoverable amount of more than three times from one year to the next can be considered "equitable."

AFMA's view is that the changes to the 2022/23 charging methodology and the increase to the earnings component should be reversed, given that the change was not subject to proper consultation and has resulted in significantly inequitable outcomes for a significant proportion of AFMA's members.

Proposed Change to Charging Methodology – 2023/24

The significant inequity highlighted above regarding the increase of the proportionate contribution of the earnings component is exacerbated by the proposed charging methodology for 2023/24 through the proposed 25% increase to the earnings component, from 0.12% to 0.15%. The Consultation Paper states that this increase is to ensure that the amount collected from the earnings component relative to the transaction component should be as close to 50:50 as possible. As noted above, AFMA strongly disagrees that a 50:50 collection methodology is equitable and notes that there is no modelling provided in the paper as to why a 25% increase is required to retain this principle. Indeed, given that the transaction report value component is reducing for all reporting entities (including those with total annual report value of \$15 billion or more), then this would imply that the proportion of the recoverable amount that is referable to the transaction component is falling in relative terms.

Longstanding Concerns with Industry Contribution

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 the fact that a very small proportion of reporting entities, around 5%, actually contributes to AUSTRAC's operating expenses.

In AFMA's view, smaller reporting entities consume a disproportionate amount of AUSTRAC's resources, as these reporting entities require considerable guidance and oversight in order to properly discharge their obligations under the AML/CTF Act and Rules. A strong case could therefore be made that such reporting entities pay a higher proportion towards AUSTRAC's operating expenses relative to their size; however the current charging model actually does the opposite, by not requiring such reporting entities to make any contribution. Our view is that the AUSTRAC model should be aligned to that adopted for ASIC, which is more closely aligned to those that create the need for regulation by requiring that all regulated entities pay at least a small levy.

Lack of Distributional Information Across Reporting Entity Type

The Consultation Paper is silent on the proportion of the recoverable amount that is referable to different reporting entity types. Noting that the fundamental principle underpinning cost recovery methodologies is that those entities that generate the need for regulation ought to be those that contribute to the cost of that regulation, the higher burden for AUSTRAC industry contribution should fall on those reporting entity types that consume AUSTRAC resources. Given AUSTRAC's current enforcement priorities, it would be appropriate for AUSTRAC to provide information regarding the distribution of the industry contribution across the different reporting entity types.

Maximum Transaction Reporting Charge

AFMA acknowledges and supports the existence of the Maximum Transaction Reporting Charge, which has been reduced from \$14 million in 2021/22 to proposed \$7.6 million for 2023/24.

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. This is particularly the case given the significant amount of funding that was allocated to AUSTRAC in the 2024/25 Federal Budget in both the 2024/25 and 2025/26 financial years.

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AFMA looks forward to working with AUSTRAC to ensure that the Industry Contribution model is equitable through the alignment of contribution amounts to those reporting entities that create the need for regulation. Please contact me on (02) 9776 7996 or rcolquhoun@afma.com.au if you have any queries about this submission.

Yours sincerely,



Rob Colquhoun
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Head of AML