21 December 2018

Dr Darryn Abraham
Director
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By email: Levy_Review@Acacia-CRE.com.au

Dear Dr Abraham

Review of the AUSTRAC Industry Contribution Levy Arrangements – Issues Paper

The Australian Financial Markets Association (AFMA) represents the interests of over 100 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.

AFMA has been closely involved in consultation surrounding both the policy and design of the AUSTRAC industry contribution. We have made submissions on the 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.

The comments set out below in response to the questions in the Issues Paper should be read in light of those submissions. Our submissions should be available to you from AUSTRAC or AFMA is happy to provide them directly to you if so desired.

Overall, AFMA's view is that the current industry contribution levy is inequitable and imposes a significantly disproportionate burden on a very small proportion of the total population of regulated reporting entities. The current model does not take account of the level of AML/CTF risks posed by all reporting entities or the measures that entities take to mitigate those risks. There is a substantial cost to reporting entities to be compliant with the Australian AML/CTF regime and more broadly, the FATF regime and other home jurisdiction requirements where the entity is part of a global conglomerate.

Furthermore, AUSTRAC and other agencies such as the ATO benefit considerably from the investment that entities who are part of the Fintel Alliance make into their AML/CTF programs, and from co-operation and assistance more generally from other reporting entities who provide financial transaction data and other information.

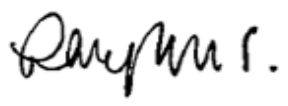
Finally, the "industry contribution levy" is a misnomer, as the model is clearly full cost recovery. Consequently, the Australian Government Charging Framework should apply. AFMA has raised this in previous submissions, and the failure of the Government to acknowledge this position is disappointing. Whatever the outcome of this review, AFMA urges the Government to properly describe the model as cost recovery going forward.

The model for industry funding of ASIC, which commenced in financial year 2017/18 along with fees for service for certain applications and document lodgement activities, is in our view a better (but not perfect) model for cost recovery. We recommend examination of this model as part of this review. Under the ASIC industry funding model, all regulated entities (with a small number of exceptions such as charitable organisations) pay at least a small flat levy, with additional components charged depending on the nature of the entity's business activities. Under this model, ASIC's regulatory costs in relation to particular activities are recovered from the entities that undertake those activities. This is more consistent with the concept in the Australian Government Charging Framework that those who create the need for regulation should pay for it.

The current AUSTRAC industry contribution model does not impose regulatory costs on those who create the need for regulation. Instead, it relies on uncertain logic that the volume and value of business activity is the best proxy indicator of AML/CTF risk and that this is the appropriate basis for determining the amount a reporting entity should contribute to cost recovery. In AFMA's view, the model should be recalibrated so that most, if not all, reporting entities contribute to cost recovery, and additional cost recovery is imposed on a segmented basis depending on where AUSTRAC expends its regulatory and enforcement resources.

Please contact me on 02 9776 7997 or tlyons@afma.com.au if you have any queries.

Yours sincerely



Tracey Lyons
Head of Policy

Issue and questions	AFMA comments
2.1 REVIEW OF THE METHODOLOGY USED TO INTRODUCE THE LEVY AND TRANSITION	
2.1.1 Did the adoption of the new structure reduce the compliance burden on smaller reporting entities? If so, how or by how much?	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. AFMA members range from the smaller to the largest reporting entities and are part of the population of 570 (out of approximately 14,000) reporting entities[1] that bear the entire burden of paying the AUSTRAC industry contribution. 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. The existing administrative structure for the levy where an invoice is issued to each DBG member is time-consuming and costly.
2.1.2 Did the adoption of the new structure increase the compliance burden on larger reporting entities? If so, how or by how much?	AFMA members that bear the largest responsibility for paying the industry contribution have also committed to assisting AUSTRAC through participation in the Fintel Alliance. The existing administrative structure for the levy where an invoice is issued to each DBG member is time-consuming and costly.

[1] AUSTRAC Industry Contribution 2018-19 Stakeholder Consultation Paper, page 16

2.1.3 Could AUSTRAC have transitioned differently from the old levy arrangements? If so, how and why?	At the moment the industry contribution is only charged to approximately 4% of the reporting entity population. In our view, this is not equitable given the breadth of the reporting entity population. Under the current model, the industry contribution is collected from those with the perceived capacity to pay. The basis on which the 570 or so entities out of approximately 14,000 reporting entities were selected to pay the industry contribution has not been properly explained. There have been proposals put forward that the agency budget could be funded from the proceeds of asset confiscation. It is not clear whether this proposal is being actively considered as an alternative to the existing levy arrangements.
2.1.4 Did AUSTRAC's consultation processes leading to the transition allow reporting entities to influence or improve the new levy arrangements? If so, how? If not, why not?	AFMA has made a number of submissions in relation to the AUSTRAC industry contribution model from July 2014. In each submission we have made what we believed to be credible suggestions regarding potential ways in which the contribution model could be changed so as to ensure that the cost burden fell on those that created the need for regulation. Notwithstanding these suggestions, the charging model remains largely consistent with the initial version, with the only real change being the amount being recovered from industry in total. As such, our view is that the consultation processes undertaken by the Government and AUSTRAC did not allow any meaningful opportunity for reporting entities to influence or improve the levy arrangements. From a large reporting entity perspective the changes in the levy arrangements were not improvements and in fact only increased the cost burden to those who are also actively engaged via the Fintel Alliance. For example, changes were suggested with regards to the charging model (to exclude off shore operations for domestic reporting entities) which were not addressed or incorporated.

	Additionally, changes were suggested to promote efficiency through the issuing of one invoice for the DBG as opposed to an invoice per DBG member, but again these were not considered. A legislative change was necessary but it was unclear why this change could not be incorporated in the 2014 amendments.
2.1.5 If significant changes to the levy structure need to be made in the future, what lessons can be drawn from the experience of the transition after the 2014 amendments?	Recognition must be given to entities that contribute FTEs and other resources to the Fintel Alliance. A number of these entities are also currently subject to the maximum cap. The levy arrangements should more appropriately reflect the level of regulatory and compliance resources applied to particular sectors or areas of business activity by AUSTRAC. Those who create the need for regulation should pay for that regulation, rather than being subsidised by other reporting entities who have a perceived capacity to pay. AFMA notes the ongoing work being undertaken by the Government and the relevant agencies to bring so-called Tranche II entities including lawyers, conveyancers, accountants, high-value dealers, real estate agents and company service providers within the regulatory regime. 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.
2.2 REVIEW OF THE LEVY CALCULATION METHODOLOGY	
2.2.1 Did any problems arise from the discrepancies between the indicative rates proposed in consultation papers and the final rates set in determinations, once census data became available?	Yes. Budgeting within a reporting entity often occurs well before the date of the CRIS/consultation paper so when a ministerial determination is released the amount can differ and can impact the budgeting process.

2.2.2 What form and level of compliance costs (initial and ongoing) are imposed on reporting entities by the IC levy?	For more complex businesses, updating financial information for all reporting entities in the DBG is an ongoing burden. Some AFMA members report having to process more than 50 different invoices. Depending on the amount of the invoice, approval may be required from executive management.
2.2.3 What form and level of efficiency costs (such as relative cost distortions) are created by the IC levy arrangements?	AFMA members have not been able to identify any efficiency gains from the 2014 changes to the industry contribution levy arrangements.
2.2.4 What, if any, information is available that would help substantiate comparisons between the compliance costs of the current IC levy and alternatives (such as the original 2012 levy structure and/or direct financing from consolidated revenue, for example)?	Industry is not privy to the cost/benefit analysis that the Government and/or AUSTRAC may have conducted in relation to alternative models. It is suggested that the reviewer should obtain information from AUSTRAC on the cumulative amount of the levy/contribution since its introduction, and the proportion of that cumulative amount contributed by different categories of reporting entity. In this regard, the review has an important role to play in creating transparency about the operation of the levy and where the burden of cost recovery has been imposed. Under alternative models such as direct financing from consolidated revenue, there would obviously be significant cost savings for reporting entities. However, it is not clear why the review is posing this question as it is assumed the Government has no intention to revert to this funding model.
2.2.5 What are the strengths and weaknesses of the current IC levy structure and arrangements as a means of recovering AUSTRAC's operating costs?	There is limited strength in the current arrangement beyond the fact that the agency is funded by parties outside of the government. AFMA maintains a strong view that the levy is inequitable in its current form. The levy not spread across all reporting entities who are subject to regulation.

2.2.6 What, if any, evidence exists that would allow an empirical assessment of the likely impact of broadening the effective contribution base to include smaller entities (that is, provides an empirical basis for assessing any associated changes in the compliance and efficiency costs of the levy).	We suggest that the review should examine the operation of the ASIC industry funding model. Under the ASIC model, all regulated entities including smaller entities (with a small number of exceptions such as charitable organisations) pay at least a small flat fee, with additional components charged depending on the nature of the entity's business activities. Under this model, ASIC's regulatory costs in relation to particular activities are recovered from the entities that undertake those activities. This is more consistent with the concept in the Government charging framework that those who create the need for regulation should pay for it. In AFMA's view, all reporting entities that are subject to AML/CTF regulation should be required to contribute to the AUSTRAC levy on a more equitable basis.
2.3 REVIEW OF THE EXTENT TO WHICH THE LEVY ARRANGEMENTS REMAIN APPROPRIATE	
2.3.1 What changes in circumstances might potentially necessitate a major change in the structure of the IC levy?	Agency size, growth, projects etc. A significant change in the operation of the AML/CTF regime. The inclusion of Tranche II entities.
2.3.2 If changed circumstances increased the revenue target, responding by simply increasing existing rates and thresholds would represent an obvious additional financial burden on large reporting entities. However, would that response also necessarily impose substantially higher efficiency or additional compliance costs?	A response that involves simply increasing existing rates and thresholds in relation to existing contributors is not tenable.
2.3.3 Could the structure of the levy be retained and the rates and thresholds adjusted to the new target contribution, or would a new structure be appropriate? If so, what changes might be required and could they be implemented within the framework of the current Levy and Collection Acts, or would a new round of amendments be required?	This question is difficult to answer in the absence of reasons why the "target contribution" needed to be increased. This question is more relevant for government as we understand that any change to the arrangements must be dealt with via legislative reforms.

2.4 WHETHER THE PROVISIONS OF THE LEVY ACT REMAIN APPROPRIATE	
2.4.1 If the IC levy arrangements need to change to adapt to present or likely future circumstances, can those changes be accomplished within the current provisions of the Levy and Collection Acts? If not, why not and how would the Levy and/or Collection Acts need to be amended?	This question is more relevant for government as we understand that any change to the arrangements must be dealt with via legislative reforms.
2.4.2 Are there circumstances in which other financing arrangements might need to be considered as an alternative to continuation or amendment of the Levy and/or Collection Acts? If so, what are those circumstances, and what alternatives might be considered?	No comments.