

# **REVIEW OF THE AUSTRAC INDUSTRY CONTRIBUTION LEVY ARRANGEMENTS**

## **ISSUES PAPER**



**Acacia CRE Pty Ltd**  
Competition and Regulatory Economics

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## SUMMARY

A significant part of the activities of the Australian Transaction Reports and Analysis Centre (AUSTRAC) is financed through an industry contribution levy authorised and administered by the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011* (Levy Act) and the *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011* (Collection Act). As amended in 2014, the Collection Act contains a provision for an independent review of the operation of the levy after four years, and the preparation of a report to the Minister.

AUSTRAC has commissioned me through my company Acacia CRE Pty Ltd (Acacia CRE) to undertake the review and prepare the report.

The purpose of this paper is to outline:

- the background to and scope of the review, as specified by the Collection Act and in the tasks required by AUSTRAC of Acacia CRE;
- some of the topics and issues that will be covered; and
- details of the proposed industry consultation.

The first two of these points are set out in Sections 1 and 2.

Industry consultation initially will be via assessment of written submissions from stakeholders currently or potentially impacted by the levy and from other interested parties. Further consultation may be arranged if it appears warranted after the receipt and review of submissions.

Written submissions in PDF format and addressing the issues discussed in this paper, and any other issues that may be directly relevant to the objectives of the review, should be sent by midnight on Friday 21 December 2018 to:

[Levy\\_Review@Acacia-CRE.com.au](mailto:Levy_Review@Acacia-CRE.com.au)

More details of the proposed consultation and the requested content of submissions are set out in Section 3.

Darryn Abraham  
19 November 2018

## 1. BACKGROUND

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regulator and specialist financial intelligence unit (FIU). The agency was initially established in 1989 as a statutory authority. It was continued in existence by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) as an agency within the Attorney-General's portfolio. Today, AUSTRAC sits within the Home Affairs portfolio, with the AUSTRAC CEO reporting to the Minister of Home Affairs.

A significant part of the activities of AUSTRAC is financed through an industry contribution (IC) levy authorised and administered by the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011* (Levy Act) and the *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011* (Collection Act). The levy was first collected in 2012 to recover the cost of its regulatory activities, based on a structure that determined the liabilities of reporting entities based on factors including earnings and transaction values and volumes.

After an independent review of the operation of the levy in 2013 and amendments to both the Levy and Collection Acts in 2014, a new levy structure was first applied to industry contributions in 2015 and continued in subsequent financial years. Compared with the original levy legislation, the 2014 amendments provided greater flexibility to change the levy structure by allowing more of the details (such as limits and thresholds) to be set in the annual Ministerial Determination required by the Levy Act. In its present form, the Levy Act does not proscribe any particular structure of or basis for the levy.

Another effect of the new structure was to shift most of the financial burden of the levy onto the largest reporting entities. As a consequence, the levy is currently paid by around only 570 of the 14,000 entities reporting to AUSTRAC. The change in levy structure was also accompanied by an increase in the range of AUSTRAC's operating costs to be recovered, adding the cost of the financial intelligence functions. This latter change was not applied immediately. The recovery target started at 70 per cent of AUSTRAC's budgeted operating expenditure (including depreciation and amortisation) in 2014-15 and transitioned to full recovery from 2016-17 onwards.

Following consultation between AUSTRAC and industry stakeholders, the structure and details of the levy are currently defined each year by a Ministerial Determination. AUSTRAC publishes a stakeholder consultation paper that contains draft rates and thresholds within the levy structure that are expected to raise sufficient revenue to match the agency's cost recovery target and the appropriation set in the Commonwealth Budget. These rates and thresholds are refined in light of details received from reporting entities at the time of the annual census day and then form the basis of the Ministerial Determination.

As amended in 2014, the Collection Act includes a provision (s.17) for an independent review of the levy arrangements four years after commencement of the amendments, and the preparation of a report to the Minister. Specifically:

*(1) The Minister must cause an independent review of the operation of the levy to be undertaken as soon as possible after the fourth anniversary of the commencement of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Amendment Act 2014.*

*(2) The person who undertakes the review must:*

*(a) consult with industry participants about the impact of the levy and the costs of complying with the Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011; and*

*(b) give the Minister a written report of the review within 6 months after the fourth anniversary of the commencement of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Amendment Act 2014.*



*(3) The Minister must cause a copy of the report of the review to be tabled in each House of Parliament within 15 sitting days of receiving it.*

*(4) A report prepared under subsection (2) must include (but is not limited to):*

- (a) a review of the methodology used to calculate instalments of levy; and*
- (b) a summary of the consultations undertaken under paragraph (2)(a).*

The fourth anniversary of the commencement of the Collection Act amendments was 22 October 2018, so the review must be completed and a report presented to the Minister by no later than 22 April 2019.

AUSTRAC has commissioned Dr Darryn Abraham, through his consulting company Acacia CRE Pty Ltd (Acacia CRE), to undertake the review and prepare the report.

The statutory review requirements in s.17(2) and s.17(4)(a) of the Collection Act are very general. In commissioning the review AUSTRAC has specified several tasks that encompass and expand on those legislative requirements. In particular, Acacia CRE is required to provide:

- A review of the methodology used to introduce the IC levy and to transition away from the previous Cost Recovery arrangements, and the extent to which the levy arrangements remain appropriate;
- A review of the levy calculation methodology (which will cover the earnings component, the transaction reporting component, exemptions and the external transparency of the methodology), having regard to the impact of the levy on reporting entities, including small businesses, and the costs of complying with the Levy Act; and
- Recommendations to improve the levy regime, including whether the provisions of the Levy Act remain appropriate to meet the objectives of the AUSTRAC industry contribution levy.

## 2. TOPICS TO BE ADDRESSED

Submissions to the review are invited from stakeholders currently or potentially impacted by the IC levy and from other interested parties. The information sought from stakeholders primarily relates to the experience of reporting entities in adapting to and complying with the current levy arrangements. In addition, submissions should attempt to address the issues discussed and questions posed in this Section, as well as any other issues that stakeholders consider may be directly relevant to the objectives of the review.

The assessment of the current levy structure is expected to necessarily be qualitative, not quantitative. For instance, it is likely that there is insufficient data to allow empirical estimates of either the compliance costs or the excess burden of the current levy structure. Consequently, a formal comparison of those costs against alternative levy structures or sources of funds will not be possible. Stakeholders are therefore welcome to include anecdotal and/or quantitative evidence in their submissions.

Please note that the review will not address the activities of AUSTRAC or the quantum of its budget, both of which are set and supervised by the government and will be taken as a given. Consequently, in responding to this Issues Paper, it is important for stakeholders to focus on the compliance and other costs directly associated with the IC levy and, to the extent possible, to distinguish them from the costs arising from compliance with the reporting requirements of the AML/CTF Act. There may be some cases, such as the compliance costs of mandatory enrolment and keeping enrolment details up to date, for instance, which are not easily attributed solely to the IC levy. Where stakeholders are able to provide information about these costs, but cannot make a direct attribution to compliance with the levy regime, it would be better to include the information and note that difficulty than to omit it.

The topics to be addressed divide naturally across the tasks specified by AUSTRAC:

- review of the methodology used to introduce the IC levy and to transition away from the previous Cost Recovery arrangements;
- review of the levy calculation methodology;
- review of the extent to which the levy arrangements remain appropriate; and
- assessment of whether the provisions of the Levy Act remain appropriate to meet the objectives of the AUSTRAC industry contribution levy.

It is expected that recommendations to improve the industry contribution regime will emerge from the conclusions drawn from these tasks. Stakeholders are welcome to suggest draft recommendations for changes to the current IC levy supported by arguments outlining how they will better meet the objectives of the AUSTRAC industry contribution levy.

### 2.1 REVIEW OF THE METHODOLOGY USED TO INTRODUCE THE LEVY AND TRANSITION

As noted above, the 2014 amendments to the Levy and Collection Acts provided greater flexibility to change the levy structure by allowing more of the details (such as limits and thresholds) to be set in the annual Ministerial Determination. The new IC levy was similar in structure to the original cost recovery levy (both include a minimum payment above an earnings threshold; a component related to earnings; and components based on the number and value of reported transactions), although the rates and thresholds adopted in the new levy arrangements shifted most of the financial burden of contributions onto the largest reporting entities.

The rationale for the 2014 amendments to the Levy and Collection Acts and explanation for the changes to the levy structure were provided in contemporary Ministerial Explanatory Memoranda and Statements and the stakeholder consultation papers issued by AUSTRAC.

The levy set for 2018-19 adds another component, a higher transaction report value for reporting entities with total annual report value of \$15 billion or more. This component is intended specifically to recover the cost of the new Strengthening Australia's Defences Against Money Laundering and Terrorism Financing program.

Acacia CRE will consult with AUSTRAC regarding the processes and methodology that led to the final rates and thresholds applied in the IC levy since 2014 and its approach to the transition away from the previous arrangements.

Stakeholders are invited in their submissions to address the impact of the changes in the levy structure, rates and thresholds since 2014 and the approach taken by AUSTRAC to the transition to the new arrangements. Questions that submissions might address include:

- Did the adoption of the new structure reduce the compliance burden on smaller reporting entities? If so, how or by how much?
- Did the adoption of the new structure increase the compliance burden on larger reporting entities? If so, how or by how much?
- Could AUSTRAC have transitioned differently from the old levy arrangements? If so, how and why?
- 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?
- 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?

## 2.2 REVIEW OF THE LEVY CALCULATION METHODOLOGY

There are two elements to the levy calculation methodology that will require assessment:

- The processes used by AUSTRAC to set the rate and threshold parameters within the levy structure first introduced after the 2014 amendments to the Levy and Collection Acts; and
- The design of the levy structure itself (including the earnings component, the transaction reporting components, exemptions, limits and definitions), compared with alternative structures and bases.

AUSTRAC releases draft versions of the rate and threshold parameters expected to achieve each year's target revenue in its stakeholder discussion papers prior to finalizing the Ministerial Determination. Nevertheless, it does not detail the internal modeling or outline the principles that guide its draft proposals. For instance, the revenue targets could have been met through different combinations of increases in per transaction charges and the percentage rate of the earnings component, changing the incidence of the levy across reporting entities.

In order to review the first of the two elements above, Acacia CRE intends to consult with AUSTRAC regarding its internal processes and the methodology that led to the final rates and thresholds applied in the IC levy since 2014.

Given that the processes used by AUSTRAC to set the IC levy rate and threshold parameters are not public, stakeholders are not expected to be able to comment directly on this topic. However, submissions might address the question:

- 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?

The design of the levy structure can be assessed against the same principles that would apply to cost recovery fees and levies set out in Part II of the Australian Government Cost Recovery Guidelines issued by the Department of Finance:



- Efficiency and effectiveness
- Transparency and accountability
- Stakeholder engagement

Efficiency and effectiveness can be approached both as an economic concept and as minimising the administrative costs of invoice issuance, correction and revision. Economic efficiency is usually assessed by comparing the excess burden or “efficiency cost” of recovering AUSTRAC’s operating costs through the IC levy in its current form, compared with alternative forms of levy or financing from general taxation. It would also include consideration of the administration costs incurred by AUSTRAC and compliance costs borne by reporting entities. Acacia CRE will consult with AUSTRAC regarding the costs of administering the IC levy, including trends in invoice correction and revision.

Questions that submissions might address include:

- What form and level of compliance costs (initial and ongoing) are imposed on reporting entities by the IC levy?
- What form and level of efficiency costs (such as relative cost distortions) are created by the IC levy arrangements?
- 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)?
- What are the strengths and weaknesses of the current IC levy structure and arrangements as a means of recovering AUSTRAC’s operating costs?
- 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).

Measures of transparency, accountability and stakeholder engagement are necessarily subjective. AUSTRAC has endeavoured to engage with stakeholders through stakeholder consultation papers for each new IC levy Ministerial Determination and its on-going Industry Consultative Forums.

Questions that submissions might address include:

- What, if any, elements of the levy calculation methodology could be more transparent? Why?

## **2.3 REVIEW OF THE EXTENT TO WHICH THE LEVY ARRANGEMENTS REMAIN APPROPRIATE**

This task follows as a corollary to the review of the levy calculation methodology. Past problems with or weakness in the structure or administration of the IC levy should be apparent from that assessment.

However, an assessment of the extent to which the levy arrangements remain appropriate will necessarily be forward-looking. That is, ongoing appropriateness can only be judged in the context of expected future circumstances.

If there are no significant changes to industry circumstances or the scope of AUSTRAC’s operations (maintaining the status quo), then whether the levy arrangements remain appropriate only depends on the nature and extent of the problems or weakness identified in the review of the levy calculation methodology.

Alternatively, even if there have been no major problems with the levy in the past, new circumstances may require more substantial changes in the IC levy arrangements.

Subsequent questions that stakeholders might address include:



- What changes in circumstances might potentially necessitate a major change in the structure of the IC levy?
- 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?
- 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?

## **2.4 WHETHER THE PROVISIONS OF THE LEVY ACT REMAIN APPROPRIATE**

This task follows as a corollary to the review of the extent to which the levy arrangements remain appropriate. As noted above, in its present form, the Levy Act does not proscribe any particular structure of or basis for the levy. This gives considerable flexibility for changes to the structure and basis for the IC levy without amending the provisions of either the Collection or Levy Acts.

Stakeholders are invited in their submissions to address whether, in light of any identified problems with the current IC levy arrangements, those problems require changes that cannot be achieved within the framework of the Levy Act and associated legislation. Questions that might be addressed include:

- 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?
- 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?

### 3. CONSULTATION AND SUBMISSIONS

Industry consultation initially will be via assessment of written submissions from stakeholders currently or potentially impacted by the levy and other interested parties. Further consultation may be arranged if it appears warranted after the receipt and review of submissions, and will take the form of either written requests for clarification or more information; and/or via telephone or teleconference discussions with specific stakeholders.

Completion of the report is required by the statutory deadline for delivery to the Minister (22 April 2019). Key dates are set out in the following timeline:

- 19 November 2018 Publication of this Issues Paper and a call for written submissions
- 21 December 2018 Deadline for written submissions
- Late January 2019 Arrange further consultation (if required)
- Early February 2019 Possible further consultation
- Mid-March 2019 Submission of the Final Report

Written submissions in PDF format and addressing the issues discussed in this paper, and any other issues that may be directly relevant to the objectives of the review, should be sent by midnight on Friday 21 December 2018 to:

[Levy\\_Review@Acacia-CRE.com.au](mailto:Levy_Review@Acacia-CRE.com.au)

Submissions received after that time may still be taken into consideration, but it may not be possible to take fully into account the information they contain nor to follow up the issues raised in any further consultation.

Submissions will be published on the Acacia CRE website ([www.Acacia-CRE.com.au/review.html](http://www.Acacia-CRE.com.au/review.html)) soon after receipt unless marked and noted as containing confidential information. If a submission is confidential in part, a redacted version suitable for publication should also be submitted.

Inquiries regarding the consultation process or the content of submissions should be made in the first instance via e-mail to: [Levy\\_Review@Acacia-CRE.com.au](mailto:Levy_Review@Acacia-CRE.com.au).