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Mr Darryn Abraham
Director
Acacia CRE Pty Ltd

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By email: Levy_Review@Acacia-CRE.com.au

Dear Mr Abraham

Review of the AUSTRAC Industry Contribution Levy Arrangements Issues Paper

The Australian Finance Industry Association [AFIA] welcomes the opportunity to comment on the review of the AUSTRAC industry contribution (IC) levy arrangements issues paper.

AFIA is well placed to advocate for the finance sector given our broad and diverse membership of over 100 financiers operating in the consumer and commercial markets through the range of distribution channels (including digital access). Many of these members are regulated entities under the AML/CTF Act and are levy payers. Further background on AFIA is available through: www.afia.asn.au.

AFIA appreciates AUSTRAC's engagement with industry regarding IC levy arrangements. AFIA provides the following feedback to the questions raised in the issues paper.

2.1 Review of the methodology used to introduce the levy and transition

Did the adoption of the new structure reduce the compliance burden on smaller reporting entities? If so, how or by how much?

AFIA considers the new structure provides a more equitable approach to the IC levy for reporting entities that fall on either side of the earning and transaction reporting thresholds. Under the previous structure, these entities may have been disproportionately advantaged or disadvantaged compared to those entities with a clear IC levy obligation.

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?

Through a combination of written submissions and direct stakeholder engagement, AFIA believes AUSTRAC's consultation processes have adequately enabled industry to communicate its key concerns to the agency. In the context that the Commonwealth Parliament has sought to introduce the IC levy, we welcome future opportunities to engage with AUSTRAC on this and other issues.

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?

AFIA believes any future significant changes to the levy structure must be preceded by thorough consultation and implementation processes.

All reporting entities and their industry associations should be informed of the consultation process through direct contact by AUSTRAC. In the past, roundtable sessions have proven valuable for industry to better understand AUSTRAC's intentions, and for industry to seek clarification of issues, prior to the lodgement of written submissions. We support such an approach as it benefits to all stakeholders.

Following direct consultation with AUSTRAC, we believe the process must provide adequate time for industry associations to consult their members and develop written submissions that reflect common positions. This also applies similarly to members making their own submissions that represent member specific views.

We note given the recent large volume of Government consultations and changes (including the future outcomes of the Royal Commission), AFIA recommends that at least three months is required to achieve an adequate level of consultation.

In terms of implementing new obligations, reporting entities require no less than 12 months from when the complete suite of changes have been finalised and released publicly. This may include, but is not limited to, amendments to legislation, accompanying regulations, changes to, or introduction of new, Rules, guidelines and advices.

As part of the implementation process, a clear and thorough communications campaign is required by AUSTRAC to inform reporting entities of the changes and the corresponding implementation deadlines, together with census and invoicing dates.

Depending on the nature of future changes, reporting entities might be required to, among other things, implement system changes, undertake additional staff training or recruitment. Until the final changes are known, planning and budgeting for these reforms is difficult, and may require Board approval for funding. That is why an implementation period of no less than 12 months is, we believe, commensurate to the challenges reporting entities faces in complying with new obligations.

Finally, based on member feedback, we would ask AUSTRAC not to move the census date forward, in the future, given systems have now been established for reporting entities to release earnings figures only after being approved by the Board.

2.2 Review of the levy calculation methodology

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?

Based on member feedback, AFIA understands there has been at least one occasion where the final determine has varied materially from the draft version that was subject to consultation, causing a significant budgetary issue.

Generally, where the consultation papers have been released in advance of the census date, and there is not material change between the indicative and final rates set in the determinations, we understand reporting entities are able to accurately estimate their obligations and plan accordingly.

What form and level of compliance costs (initial and ongoing) are imposed on reporting entities by the IC levy?

AFIA understands additional accounting costs contribute a significantly to the overall compliance costs imposed by the IC levy.

Accounting resources are required to assess every draft determination of its expected financial impact on the reporting entity. This work includes liaising with finance teams to understand exactly how earning are calculated for each reporting entity, consistent with AUSTRAC guidance. Of course, when the final determination is releases, further analysis and action is required to ensure an appropriate budget allocation is in place to cover the levy obligation. Finally, and to a lesser extent, business resources are required to affect the levy payment.

The entire assessment, budgeting and payment process needed for a reporting entity to fulfil its levy obligations requires specialist staff with a thorough understanding of the levy's legislative basis and how AUSTRAC's Rules must be applied. Such expertise comes at significant and ongoing costs to reporting entities.

What form and level of efficiency costs (such as relative cost distortions) are created by the IC levy arrangements?

We recommend that in determining the levy structure and the levy amount each year AUSTRAC pays careful attention to ensuring that all the levy metric is fair and equitable for all levy payers.

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)?

AFIA is not aware of substantive comparisons between the compliance costs of the current IC levy and alternatives. Given the huge cost the levy imposes on industry, and our long and ongoing opposition to the premise of the supervisory levy on legitimate and already heavily regulated businesses, we believe such a comparison is warranted.

We believe it is a reasonable and measured request that AUSTRAC should commission and fund an independent comparison of the compliance costs of the current IC levy and alternatives. Such work could be a useful reference point for deliberations about the size and scope of future changes to the current levy structure.

What are the strengths and weaknesses of the current IC levy structure and arrangements as a means of recovering AUSTRAC's operating costs?

AFIA would argue that the current structure can be unstable given it relies on AUSTRAC to undertake a thorough consultation with industry about proposed changes to the IC levy, in a timely manner. Any delay in the release of the proposed determination will have an inevitably knock-on delay in the release of the final determination. In such a scenario, reporting entities could reasonably expect to struggle to make the specific budget allocation to meet the new levy obligation. AFIA encourages AUSTRAC to ensure timely consultation and that the levy instrument is made in a timely fashion.

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).

If in the future the Government decides to extend the levy base to smaller entities AFIA recommends a process of consultation.

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

AFIA maintains that the levy should only be used to fund compliance and supervisory aspects relates to AUSTRAC's activities. We remain opposed to AUSTRAC's financial intelligence unit activities being funded by the IC levy.

2.3 Review of the extent of which the levy arrangements remain appropriate

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

We would expect material differences in the size or capability of AUSTRAC could impact the structure of the IC levy. As capability improves, processes become simplified and less staffing is required through technological advances, we expect the levy could be reduced. Further, changes in regulated markets and products, and technology might potentially see a need to review the structure of the current 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?

Any changes to existing rates and thresholds would require detailed analysis. Depending on the size of the increase in rates and thresholds, potentially, some, particularly smaller reporting entities subject to the IC levy, might determine it is more cost effective to depart a market or product as a means of no longer being subject to a costly IC levy.

2.4 Whether the provisions of the levy Act remain appropriate

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?

AFIA submits that AUSTRAC's supervisory activities of industry should be funded through the government's consolidated revenue, given that reporting entities are already subject to Australian taxation obligations.

Next steps

Should you wish to discuss our feedback further, or require additional information, please contact me at helen@afia.asn.au or Alex Thrift, Associate Director – Policy & Technology, at alex@afia.asn.au or both via 02 9231 5877.

Kind regards

A handwritten signature in black ink, appearing to read 'Helen M. Gordon', with a long horizontal flourish underneath.

Helen Gordon

Chief Executive Officer