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Dear Sir

Review of the AUSTRAC Industry Contribution Levy Arrangements

The Australian Banking Association (ABA) appreciates the opportunity to provide a submission in response to this review.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Some of the issues to be considered in this review have arisen in the past in the context of submissions in response to consultations on AUSTRAC's annual cost recovery process. In its submissions to those processes, the ABA has expressed strong concern regarding the inequitable basis of the recovery of AUSTRAC's costs. This is due primarily to the fact, as acknowledged in the Issues Paper, that the levy is currently paid by around only 570 of the 14,000 entities reporting to AUSTRAC. This has the result that the major reporters bear the burden of the levy while around 96% of reporting entities are exempt from contributing.

In addition, in our view the AUSTRAC Industry Contribution Levy arrangements do not comply with the [Australian Government Cost Recovery Guidelines](#). The Guidelines impose the appropriate discipline to ensure that the amount paid by industry is referable to the provision of government goods or services. That is, there should be no circumstances where recoupment of regulator costs from industry is undertaken outside the guidelines. The rationale for abandoning the Cost Recovery Guidelines in the AUSTRAC Industry Contribution has never been clearly articulated.

In our view, this review presents the opportunity to recommend that a more equitable model, that is consistent with the Cost Recovery Guidelines, be used for the calculation of the levy. As an example of a more equitable cost recovery framework, we suggest that the review look to the ASIC Supervisory Cost Recovery Levy. Since 1 July 2017, ASIC's regulatory costs have been recovered from all industry sectors they regulate through this levy.

Under the new ASIC arrangements, those who create the need for, and benefit from regulation, will bear the cost. This introduces an economic incentive to drive the desired regulatory outcomes for the financial system. The equitable nature of this model is an approach that should be adopted for the AUSTRAC Industry Contribution Levy.

Based on information and input from members, the ABA has compiled answers to the particular questions posed in the Issues Paper and both the questions and answers are set out below.

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?



This is less relevant for larger organisations however the existing structure for the levy (invoice to each Designated Business Group (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?

No changes were made to the existing arrangements insofar as they involve invoicing each Reporting Entity within a DBG. This remains time-consuming and costly.

2.1.3 Could AUSTRAC have transitioned differently from the old levy arrangements? If so, how and why?

As noted above, at present the industry contribution is charged to only around 4% of the reporting entity (RE) population and this is not equitable. Additionally, industry has put forward that the agency budget should be contributed to by the proceeds of asset confiscation. Many of the larger reporting entities are also member of the Fintel Alliance and supports this alliance with employees. Whilst member banks are absolutely supportive of this alliance – this also adds the overall cost.

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?

From a large RE perspective the changes in the levy arrangement were not improved and in fact only increased the cost burden to those who are also actively engaged via the Fintel Alliance. Changes were suggested with regards to the charging model (to exclude off shore operations for domestic RE's) and were not addressed nor incorporated. Additionally, changes were suggested to promote efficiency and the issuing of one invoice for the DBG as opposed to an invoice per DBG member but again these were not considered.

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 those entities that contribute FTE via the Fintel Alliance – Some of these entities are also subject to the maximum cap. There is no current 'discount' offered for the RE's that contribute further assistance/intelligence.

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 occurs well before the date of the 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?

Updating financial information for all REs in the DBG, and processing multiple invoices (one member noted in excess of 50 invoices). Depending on the amount of the invoice, approval may be up to the CRO or even, in some cases, the CEO.

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

There are no efficiency gains from the IC levy arrangement 2014 changes.

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)?

There would be a significant cost savings to REs – currently \$10m per year for larger RE. Information regarding the cumulative amount of the levy/contribution since its introduction should be available from AUSTRAC.



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 are few strengths in the current arrangement. The strong view of ABA members is that it is inequitable in its current form. The levy/contribution is not spread across all RE's despite all RE's being 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).

The ABA recommends the adoption of a similar approach to the ASIC model where register companies pay an annual fee and then the balance of the agency is funded via consolidated revenue which benefits from proceeds of crime and asset confiscation. All RE's are subject to regulation and therefore should all be captured in terms of the levy/industry contribution.

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. As per 2.1.3 only approx. 4% of the RE population is subject to the levy.

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?

The levy/contribution must be spread across the RE population.

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?

As the framework under the Levy and Collection Acts is flexible, a more equitable model could be achieved within that framework. However, in order to ensure that such a model is adopted, it would be preferable to amend the Acts accordingly.

The current threshold of \$100 million is excessively high and should be reduced. An assessment of risk should feature in the model for calculating who should pay the industry contribution and how much they should pay.

In the past the ABA has expressed support for a position put by the Australian Financial Markets Association (AFMA) which advocates for a reduction of the earnings threshold to \$10 million. The figure of \$10 million aligns with the government's view of a 'small business'¹. The ATO also defines a small business as having an income of between \$2 million and \$10 million per annum.

The ABA recommends that entities above that small business threshold of \$10 million should therefore contribute to the cost of monitoring for illegal activity, this would sit alongside a base annual fee for each entity in AUSTRAC's growing regulated population.

¹ The Hon Scott Morrison MP, Treasurer of the Commonwealth of Australia, (May 2016).



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?

As the framework under the Levy and Collection Acts is flexible, a more equitable model could be achieved within that framework. However, in order to ensure that such a model is put in place, it would be preferable to amend the Acts accordingly.

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?

As mentioned earlier, given that reporting information provided by REs leads to asset confiscation and proceeds of crime, consolidated revenue should continue to contribute to AUSTRAC's funding.

Thank you once again for the opportunity to make submissions to the review. Should you wish to discuss any of these issues we would be happy to meet with you.

Yours faithfully

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