Perpetual

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Dr Darryn Abraham
Acacia CRE Pty Ltd
PO Box 175
Jamison Centre
ACT 2614

Dear Dr Abraham,

Review of the AUSTRAC Industry Contribution Levy Arrangements

Perpetual appreciates the opportunity to provide feedback on the 'Review of the AUSTRAC Industry Contribution Levy Arrangements' issues paper prepared by Acacia CRE Pty Ltd.

The Perpetual Group

The Perpetual group of companies is one of Australia's most experienced financial services groups, providing a diverse range of investment and trustee services to individuals and organisation clients. Our three businesses are: Perpetual Investments, Perpetual Private and Perpetual Corporate Trust.

Perpetual Investments is a highly regarded and awarded investment manager, providing a broad range of investment strategies and products to individuals, advisers and institutions. Perpetual Investments manages money across a range of asset classes.

Perpetual Private provides financial advice for high net worth individuals, families and community-based organisations. Fordham, which is part of Perpetual Private, acts exclusively for private business owners and their families to manage their businesses and build and protect their wealth.

Perpetual Corporate Trust is the leading provider of corporate trustee services to the funds management sector and debt capital markets in Australia.

General Comments on AUSTRAC Industry Contribution Levy ("The AUSTRAC Levy")

The AUSTRAC Levy is positioned as a levy on reporting entities to recover the costs of AUSTRAC's two complementary functions: as Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regulator and financial intelligence unit. The AUSTRAC Levy funding model consists of an earnings component (applicable to entities with annual earnings of greater than $100 million) and a transaction reporting component.

In its role as Australia's financial intelligence unit, AUSTRAC provides government bodies with information to investigate and prosecute offences of money laundering and terrorism financing (ML/TF) and other serious financial crimes. This is enabled by collecting and analysing information from reports on financial transactions and suspicious matters submitted by reporting entities.

The financial intelligence collected from reporting entities results in significant financial benefits to government. As noted in AUSTRAC's annual report 2017-18, AUSTRAC has worked closely with the Australian Taxation Office, the Department of Human Services and the Serious Financial Crime Task Force and provided valuable assistance to help them achieve operational objectives. In 2017-2018, AUSTRAC's financial intelligence protected Australian Government revenue by contributing to $208.8 million in income tax assessments and $26.67 million in savings from the detection of welfare fraud (AUSTRAC's annual report 2017-18).

While these benefits and savings are recognised in AUSTRAC's annual report, they are not considered when determining the extent to which reporting entities are required to fund AUSTRAC's operating costs. These financial benefits are well in excess of AUSTRAC's 2018 operating costs ($67.8 million), raising the question as to why reporting entities are required to fund AUSTRAC's operating costs when the financial benefits of the intelligence provided by these reporting entities exceed AUSTRAC's operating costs.

The primary beneficiaries of Australia's AML/CTF regulatory environment and related controls is the broader community, due to the disruption of predicate crimes and the financial benefits to government derived from the intelligence collected from reporting entities. The AUSTRAC Levy places the financial burden of funding AUSTRAC's operating expenses exclusively on large reporting entities and their shareholders, rather than the broader community.

AUSTRAC's annual report 2017-2018 discloses a large financial surplus, largely due to penalties applied in 2017 and 2018. It is not clear how this surplus will be considered in assessing the amounts to be raised under the AUSTRAC Levy in future years. While AUSTRAC should not be required to apply penalties to fund operating costs, where penalties are applied, there should be consideration of whether AUSTRAC's surplus mitigates the need to collect a levy from reporting entities in future calendar years.

In relation to the above penalties and related enforcement action, it is not clear whether AUSTRAC's annual operating costs include the costs associated with prosecution of civil penalties. If so, these costs should be recovered from the penalties raised, which may consider the awarding of costs, rather than the AUSTRAC Levy.

Further comments are provided below in relation to the topics raised in the issues paper.

Review of the methodology used to introduce the IC levy (in 2014) and to transition away from the previous Cost Recovery arrangements

Perpetual has limited feedback on the 2014 transitional process as this did not have a material impact on Perpetual's AUSTRAC Levy arrangements.

Review of the levy calculation methodology

In terms of the levy calculation methodology, the current approach primarily takes into consideration the size and financial means of reporting entities with the largest reporting entities contributing the bulk of the levy. This, however, also results in the levy currently being paid by around only 570 or approximately 4.1 per cent of the 14,000 entities reporting to AUSTRAC (as per the Acacia CRE Industry levy issues paper).

With this in mind, the current structure increases the compliance burden on larger entities and reduces burden on smaller entities. A key question for consideration would be whether the $100 million earnings threshold is appropriate, or whether a lower threshold would result in a more equitable spread of the earnings component of the levy.

The current levy (particularly the earnings component) predominantly focuses on reporting entities means to pay rather than reflecting the financial crime risk emanating from products and services provided by reporting entities.

It is however noted the transaction reporting levy component arguably does effectively incorporate some risk weighting, through Threshold Transaction Reports (cash transactions) and International Funds Transfer Reports (overseas transfers). While a broader industry risk weighting could ensure a more equitable spread of cost based on risk, it is acknowledged that determining such as risk weighting would likely be contentious.

The current transaction reporting component is therefore considered to achieve the desired outcome of attributing funding obligations to higher risk reporting entities. It is also effective as these reporting obligations are based on clear requirements and are not subject to discretion. Any application of this component to Suspicious Matter Reports would be considered to be inappropriate as this could potentially discourage this reporting.

In terms of the transparency of the levy calculation methodology, the methodology is relatively clear, however understanding of the spread of the burden across reporting entities could be improved through publishing of additional information in AUSTRAC's annual report (the contribution made by reporting entities in various tranches such as the top 10, top 100, etc.)

Greater transparency of how AUSTRAC's operating expenses are incurred would also improve reporting entities understanding of how their levy contribution is being spent (for example, the split between maintaining the AUSTRAC help desk, Rules unit, compliance, enforcement and the prosecution of civil penalties).

Review of the extent to which the levy arrangements remain appropriate

Any changes to the levy structure should be based on the need to minimise disruption caused by these changes. Changes should be balanced with a need to reconsider the approach, such as a material change to AUSTRAC's operating model or the broadening of the reporting entity population (such as the implementation Tranche 2).

Assessment of whether the provisions of the Levy Act remain appropriate to meet the objectives of the AUSTRAC industry contribution levy

As previously outlined, the recovery of AUSTRAC operating expenses should consider the benefits to government realised through the intelligence collected from reporting entities.

Summary

Perpetual requests Acacia CRE Pty Ltd proposes a review of the underlying principles associated with the levy, specifically whether the financial benefits achieved from the intelligence collected from reporting entities should be considered when determining the amount to be raised in the AUSTRAC Levy.

The approach to financial penalties applied by AUSTRAC and costs associated with prosecuting these penalties, in terms of the AUSTRAC Levy should also be considered and clarified.

Should amendments to the levy methodology be proposed, a suggested consideration would be reducing the threshold associated with the earnings component to include smaller reporting entities.

If you have any questions regarding this submission, please contact Perpetual's AML/CTF Compliance Officer, Alan Lewitton on (02) 9229 3052 or by email at alan.lewitton@perpetual.com.au.

Yours sincerely

Michael Vainauskas

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