



31 January 2022

Consultation – AUSTRAC Industry Contribution
Policy and Guidance Section
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By email: Policy_Consultation@austrac.gov.au

Dear Sir/Madam

AUSTRAC Industry Contribution 2021-22 - Stakeholder Consultation Paper

The Australian Financial Markets Association (AFMA) represents the interests of over 120 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.

Concerns with Industry Contribution Model

As AUSTRAC is aware, AFMA has been heavily involved in consultation surrounding both the policy and design of the AUSTRAC Industry Contribution. We have objected, and continue to object, to Government regarding the form of the Industry Contribution, particularly given the abandonment of the Government's own cost recovery guidelines in framing the Industry Contribution. These objections have been set out in a considerable number of previous submissions to AUSTRAC. In addition, AFMA made a detailed submission to the Independent Review of the Industry Contribution model in December 2018.

AFMA has consistently expressed concern regarding the non-applicability of the Government's own cost recovery guidelines to the AUSTRAC Industry Contribution. We note the Industry Contribution measure is clearly one of cost recovery and the amount recovered from industry represents 100% of AUSTRAC's expenses, less AUSTRAC's own source income. The non-applicability of the cost recovery guidelines drives the inherent inequities in the Industry Contribution model, the primary one being

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that only 649 (out of circa 14,000) reporting entities that bear the entire burden of paying the AUSTRAC Industry Contribution. The fact that less than 5% 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 AUSTRAC model may be contrasted with the model for the industry funding of ASIC, which is more closely aligned to those that create the need for regulation by requiring that all regulated entities pay at least a small levy with additional components based on the nature of the entity's business activities.

Further, AFMA has consistently expressed concern with the particular metrics which drive the Industry Contribution model, which relies on the uncertain logic that the volume and value of business activity is the best proxy indicator of AML/CTF risk. Our view is that the current inequity that is embedded in the Industry Contribution model may be remedied both through requiring most, if not all, reporting entities to contribute to cost recovery and that additional cost recovery be imposed on a segmented basis depending on where AUSTRAC expends its regulatory and enforcement resources.

It is clear from a review of the proposed charging mechanism for the 2021-22 charging model that our previously expressed concerns have materialised in a proposed charging model which is not fit-for-purpose and needs considerable refinement in order to be fair, equitable and defensible. In addition, feedback from AFMA members is that the application of the charging model and the rationale underpinning the model are difficult to understand from the consultation paper, which in turn makes it difficult to attribute the costs across members of a designated business group on an equitable basis. Future consultation papers should ideally include examples of how the calculations are applied to leviable entities.

The specific concerns with respect to the 2021-22 model are set out below.

Specific Changes for 2021-22 Industry Contribution

The proposed changes for the 2021-22 model relative to that adopted for 2020-21 may be relevantly summarised as follows:

- Increase of the maximum earnings charge from \$2,000,000 to \$5,000,000 such that the maximum applies to those entities with earnings equal to or higher than \$10.412 billion;
- Keeping the transaction report volume to \$0.014 per report;
- Reducing the transaction report value component from \$0.0000089975 to \$0.0000069890 for leviable entities/groups with total report value of \$15 billion or less;
- Reducing the transaction report value component from \$0.0000109183 to \$0.0000091770 for leviable entities/groups with total report value exceeding \$15 billion;
- Implementing a maximum transaction reporting charge of \$14 million;
- Reducing the maximum amount payable for those leviable entities/groups with earnings of \$5 billion or more from \$13,765,107 to \$11,368,737.

AFMA is aware that the application of the proposed charging model will significantly impact certain members, with the amount payable across leviable entities/groups increasing in some cases by more

than 100% relative to the amount paid with respect to the 2020-21 year. In AFMA's view, such volatility is inappropriate and suggests that the charging model is not fit-for-purpose.

Our understanding as to the drivers of the extreme volatility of the Industry Contribution amount for certain members and comments in respect of these drivers are as follows:

AUSTRAC Expectations Regarding Reportability

There has been significant recent engagement between AFMA and its members and AUSTRAC to confirm AUSTRAC's expectations regarding the IFTI reportability of certain transaction types. The catalyst for this engagement was the removal of guidance material from the AUSTRAC website and the explicit statement from AUSTRAC that guidance that was no longer publicly available could not be relied upon by reporting entities. This led to a number of AFMA members changing their approach to reporting certain transaction types, including those which were covered by SWIFT message type MT202, which covers inter-bank transfers. Transactions covered by MT202 are generally significant both in terms of the volume and value and hence a change of view as to the reportability of transactions of this type may considerably skew the amount payable under the Industry Contribution model.

It is a perverse outcome that a reporting entity undertaking best endeavours to comply with AUSTRAC's expectations in the absence of clearly articulated guidance is significantly financially impacted through a large increase in the Industry Contribution amount. As noted above, and in contrast to the statements in the consultation paper, this outcome highlights the uncertainty of the logic that the volume and value of activity reported to AUSTRAC is the best proxy for AML/CTF risk.

Our recommendation in this regard is where AUSTRAC is aware that there is a significant shift in the approach by reporting entities in terms of reporting particular transaction types, as occurred in the 2020 calendar year, then the impact on the Industry Contribution amount be determined and the model updated to ensure that volatility is mitigated. This is particularly the case where the transactions being reported are high-value but do not give rise to materially increased AML/CTF risk, such as those reported as MT202s. We note that as more reporting entities look to achieve compliance with AUSTRAC's expectations on reporting, then the frequency of anomalous outcomes relating to the Industry Contribution will increase.

Consistency Regardless of Corporate Structure

Certain AFMA members that are reporting entities adopt different structures to conduct their commercial operations and may have multiple reporting entities within the same economic group, potentially to adhere to regulatory requirements. For the purposes of determining the Industry Contribution, it is AFMA's strong view that the outcomes should be determined on an economic group basis and be the same regardless as to the number of reporting entities within the economic group, i.e. the Industry Contribution model should be agnostic to the corporate structure. As such, any application of maximum caps should apply to billable groups as opposed to leviable entities on a standalone basis.

Application of Maximum Amount to All Billable Groups

The volatility in the Industry Contribution amount for certain AFMA members highlights a further anomaly in the contribution model, namely that the maximum amount payable only applies to leviable entities with annual earnings of \$5 billion or more. The policy intent behind the maximum amount is to ensure that no single leviable entity/group bears a disproportionate amount of the cost of AUSTRAC's operation and, on that basis, there is no policy basis for excluding leviable entities from the maximum amount payable merely because they have earnings below \$5 billion. Indeed, given such entities are relatively smaller in terms of earnings, then having such entities pay an amount in excess of the maximum amount is even more disproportionate.

On this basis we submit that AUSTRAC amend the model to ensure that the maximum amount payable applies on an economic group basis and to all leviable groups as opposed to those with earnings in excess of \$5 billion.

Potential expansion of regulated population

AFMA notes the ongoing work being undertaken by both the Attorney-General's Department and AUSTRAC to bring Tranche II entities (including lawyers, conveyancers, accountants, high-value dealers, real estate agents and company service providers) within the regulatory regime. We reiterate the position previously expressed that 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.

Timing of Consultation Invoices

AFMA notes that the consultation in relation to the 2021-22 Industry Contribution is occurring half way through the financial year to which the consultation relates and that invoices are proposed to be issued in March 2022. From a budgeting perspective, and noting the necessity for commercial entities to be able to forecast long-term costs, AFMA would support the consultation occurring in advance of the commencement of the financial year, particularly in circumstances where there is volatility in relation to the Industry Contribution amounts relative to the prior year.

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Please contact me on (02) 9776 7996 or rcolquhoun@afma.com.au if you have any queries about this submission.

Yours sincerely,



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