

28 May 2024

Australian Transaction Reports and Analysis Centre  
Level 2, 4 National Circuit  
BARTON ACT 2600

By email: [industry\\_levy@austrac.gov.au](mailto:industry_levy@austrac.gov.au)

Dear Sir or Madam

### **AUSTRAC Industry Contribution 2023–2024**

1. This submission concerning the stakeholder consultation paper titled “AUSTRAC Industry Contribution 2023–2024” (the **Consultation Paper**), which was issued by the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) in April 2024, is made by the Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committee**).
2. The Consultation Paper does not pose specific questions for consultation, but invites stakeholders to make submissions on the proposed arrangements for the calculation and imposition of the industry contribution levy (the **Levy**), which will be used to inform possible areas for review or changes to the Levy components and variables for future industry contributions.

### **Key Points**

3. The key matters the Committee wishes to bring to AUSTRAC’s attention are as follows:
  - (a) the current methodology for calculating the Levy is not completely fit for purpose, because there are leviable entities that are currently required to make a contribution to the funding of AUSTRAC’s operations (which is significant), yet may be disproportionate to the designated services they provide (which may be limited in their scope and nature); and
  - (b) the Committee submits that, if the Levy were calculated based upon earnings associated with the provision of designated services (rather than on overall earnings), this would produce a fairer outcome among leviable entities.

### **Submissions**

#### *Overview*

4. The purpose of the Levy is to recover the costs of the performance of AUSTRAC’s regulatory functions. See, for example, the Explanatory Statement to the draft *Australian Transaction Reports and Analysis Centre Industry Contribution Determination 2024 (No. 1)* (the **Draft Determination**).

5. The Committee considers, however, that the way the Levy is currently calculated under the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011 (Cth)* (the **Industry Contribution Act**) does not sufficiently reflect the extent to which a leviable entity engages in the provision of designated services.
6. The Committee considers that minor changes could readily be made to the Draft Determination to better:
  - (a) deliver on the policy intention of the Industry Contribution Act; and
  - (b) target the burden of funding AUSTRAC's operations at the revenue generated by the actual provision of designated services.
7. The Committee recognises that this is not a new issue. The Explanatory Statement to the Draft Determination confirms that the underlying structure for the charging model is unchanged in a decade. This does not reduce the need, however, to address the unintended obligation imposed on entities with significant revenue, but only passing or incidental involvement in the provision of designated services, to contribute disproportionately to AUSTRAC's costs.

#### *Method for calculating the Levy*

8. The Industry Contribution Act (section 7) defines a "leviable entity" as, in effect, a reporting entity that is not exempt. The definition of the Levy in the Draft Determination consists of an earnings and a transaction reporting component.
9. The earnings component is, in the case of non-banks, calculated on EBITDA (earnings before interest, taxes, depreciation, and amortization) at a flat rate, and is subject to both a minimum reporting threshold and a cap.
10. The transaction reporting component:
  - (a) is calculated on:
    - (i) the number of threshold transaction reports and international funds transfer instructions submitted by the entity; and
    - (ii) the size of those reported transactions (calculated at a two-tiered rate), and
  - (b) is also subject to a cap.
11. It may be that the relatively high minimum threshold for the earnings component of \$100 million is an acknowledgement at a policy level that smaller reporting entities should not be subject to this aspect of the Levy. If that is the case, the Committee considers that the effect of the current broad definition of "leviable entity" is contrary to this intent, because it captures reporting entities that engaged only incidentally in the provision of designated services but which, for unrelated commercial or governance reasons, generate revenue that exceeds the minimum threshold but may be largely derived from sources that are unrelated to their provision of designated services.

12. The Committee considers, therefore that, while the Levy is explicitly not a tax, it does in some instances operate as one, as the costs of AUSTRAC's oversight of the regulated population recovered from a particular leviable entity does not necessarily reflect the scope or scale of the designated services engaged in by that entity relative to other members of that regulated population.

*Examples of unintended outcomes—Investment management businesses and trade credit*

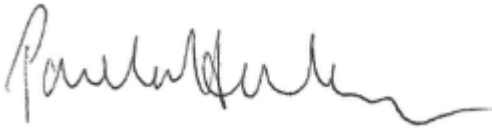
13. This may be seen in the case of investment management businesses which typically may operate one or a more registered managed investment schemes, by which the relevant responsible entity issues units to investors and as a result is a reporting entity (providing the item 35 designated service). Equally typically, a responsible entity of a registered scheme may rely on another related entity acting as a centralised service provider for related services such as fund administration and investment advice, some aspects of which could also be considered designated services (e.g. the acquisition or sale of securities as agent of another (providing the item 33 designated service)).
14. These service provider entities may be substantial businesses in their own right, and may therefore generate substantial revenue from sources unrelated to the provision of any designated service. In these circumstances, to the extent the Levy is calculated on these revenues, the Committee considers it to be a somewhat arbitrary and inequitable impost.
15. This scenario is not restricted to the investment management industry. The same considerations apply to any business that provides a small number of designated services in an incidental fashion. While there is enough of a link for the designated services to be a "business" for the purposes of the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth) (the **AML/CTF Act**), the designated services are trivial in the wider context of the activities of the reporting entity.
16. For example, members of the Committee are aware of many businesses that are engaged in retail and supply chain activities, which make loans or provide financial accommodation or credit that is not carved out of the definition of the term "loan" in section 5 of the AML/CTF Act by paragraphs (e) and (f) of that definition, and so involve providing the designated services specified in items 6 and 7 of Table 1 in section 6(2) of that Act. These loans typically account for only a small fraction of the revenue of the relevant businesses.

**Conclusion and further contact**

17. In conclusion, the Committee respectfully submits that the current methodology should be revised to narrow the definition of 'earnings' in the Draft Determination, to only cover earnings derived from the provision designated services. The Committee further notes that, if this change were to be made, some reallocation of the funding burden within the regulated population would be necessary in order to preserve full recovery of AUSTRAC's operating costs.
18. The Committee would be pleased to discuss any aspect of this submission.
19. Please contact the co-chair of the Committee Ms Pip Bell ([committeechairfsc@gmail.com](mailto:committeechairfsc@gmail.com)) if you would like to do so.

20. More broadly, the Law Council notes that the Attorney-General is currently consulting on proposed reforms to Australia's anti-money laundering legislation framework which, if implemented, would add a number of additional categories of reporting entities to the existing regime, including legal practitioners who provide certain kinds of proposed designated services. The Law Council's AML/CTF Working Group would be pleased to consult with AUSTRAC about the impact of the industry contribution levy on potential reporting entities that are legal service providers, at the appropriate juncture.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Pamela Hanrahan', with a long horizontal flourish extending to the right.

**Dr Pamela Hanrahan**  
**Chair**  
**Business Law Section**