FINANCIAL SERVICES COUNCIL

24 July 2014

Discussion Paper – AUSTRAC Industry Contribution
Legal and Policy Branch
AUSTRAC

By Email Only: Policy_Consultation@austrac.gov.au

FSC Submission on AUSTRAC Industry Contribution discussion paper

The Financial Services Council (**FSC**) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than $2.2 trillion on behalf of 11 million Australians.

We welcome the opportunity to comment on the *AUSTRAC Industry Contribution discussion paper* (the **Discussion Paper**), released for consultation on 26 June 2014. We value our relationship with AUSTRAC and acknowledge AUSTRAC is open, communicative and consultative.

We preface our more detailed comments on the Discussion Paper below by noting that (by 2017-18) the leviable reporting entities are to fund *all* of AUSTRAC's operational expenditure (including an allowance for depreciation), yet the Australian community generally, Australian taxpayers, the Australian Government, the business community broadly (which dwarfs the leviable reporting entities), the Australian Taxation Office and Australian crime and policing authorities and agencies, also share in the benefit of regulation by AUSTRAC and Australia's laws relating to anti-money laundering. It is in our view obviously *not* the case that the *only* and *sole* beneficiaries of AUSTRAC regulation and AML laws are those leviable reporting entities to be invoiced the Industry Contribution. A 100% contribution by leviable reporting entities with no commensurate contribution via Government consolidated revenue is not consistent, in an equity sense, with a regime which benefits (as well as levied reporting entities) non-levied reporting entities, non-reporting entities, ATO, enforcement authorities and the other beneficiaries above. To the extent that instead the matter is driven by a Government policy decision to assist in the Budget repair, rather than a decision as to how to allocate funding of AUSTRAC to *all* beneficiaries of AUSTRAC regulation (which would need a combination of AUSTRAC levies and funding via Government consolidated revenue), then that is a policy matter for Government.

1. By 2017-18 the Industry Contribution will recover 100% AUSTRAC's budgeted operating expenditure (including depreciation). To the extent that the amount and extent of the (100%) Industry Contribution is based on an argument (set out by AUSTRAC in the Discussion Paper) that industry obtains a benefit by being regulated by AUSTRAC, *we note that there are many other beneficiaries of AUSTRAC regulation* in addition to the benefits to leviable reporting entities set out on page 5 of the discussion paper. Other beneficiaries of AUSTRAC regulation include:

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

(a) The Australian Taxation Office (we note that AUSTRAC regulation assists in ascertaining potential tax avoidance, and the ATO has had significant success in this regard);

(b) the Australian Government, in terms of international liaison and credibility at international bodies (such as FATF);

(c) the business community broadly (including entities which are not reporting entities under the AML regime); and

(d) Australian crime and policing authorities and agencies, who benefit from the financial intelligence function of AUSTRAC particularly.

2. Superannuation trustees and investment managers (who are agents for superannuation funds and other collective investment schemes) do not represent a significant AML risk to support/justify a significant increase in the contribution to funding AUSTRAC. Many of these entities will incur a significantly increased contribution under the Industry Contribution proposals. There is not an increase in AML risk in this sector (for example) to support an increased funding to AUSTRAC (this is aside from the fact that there is under the Industry Contribution proposal many other (non-contributing) beneficiaries of AUSTRAC regulation and Australia's AML laws – see paragraph 1 above).

3. To the extent that many reporting entities currently subject to the AUSTRAC Supervisory Levy will not be subject to the AUSTRAC Industry Contribution, the result is that leviable reporting entities under the AUSTRAC Industry Contribution are subsidising the non-leviable reporting entities (in addition to the points above that it is not solely the leviable reporting entities under the Industry Contribution which take the benefit of AUSTRAC regulation and Australia's AML laws – see paragraph 1 above).

4. We think it is very difficult to argue that the primary or sole or pre-dominant beneficiaries of the financial intelligence function (which is to be funded by leviable reporting entities under the Industry Contribution model) are leviable reporting entities rather than criminal law enforcement agencies and the Australian Taxation Office. That is, in our view, there is a strong case in particular for a commensurate (and pre-dominant) contribution of the financial intelligence function of AUSTRAC out of Government consolidated revenue. This is not to suggest that it is only criminal enforcement agencies and the Australian Taxation Office which benefit from financial intelligence in a broad sense; as others benefit including (collectively) the (non-levied) groups mentioned in paragraph 1 above and leviable and non-leviable reporting entities. However, leviable reporting entities are to fund 100% of AUSTRAC's functions, including the financial intelligence functions. This is not an equitable contribution arrangement.

5. Given the Industry Contribution model is an industry funded model it is therefore particularly essential that the AUSTRAC budget/contribution each year (to be funded by the Industry Contribution) be subject to independent consideration from AUSTRAC. We think if this is part

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ABN 82 080 744 163

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T. +61 2 9299 3022
F. +61 2 9299 3198

E. info@fsc.org.au
W. fsc.org.au

of the annual Government Budget process, then provided there is annual consultation with industry on any proposed industry contribution, this should be acceptable provided that also (as for other public sector bodies) there remains sufficient accountability and transparency on use of AUSTRAC resources.

6. Page 10 of the Discussion Paper states:

> *It is expected that the existing mechanism whereby the levy is set each year by Ministerial Determination will continue for the industry contribution*.

To ensure transparency and accountability (in the setting and use of AUSTRAC resources funded by leviable reporting entities) it is essential that AUSTRAC's budget be approved by Government as part of the Budget process, and that the annual industry contribution be subject to consultation with industry (i.e. the leviable reporting entities) prior to the Ministerial Determination being made.

If you have any questions on our submission, please contact Stephen Judge on (02) 9299 3022.

Yours sincerely

STEPHEN JUDGE
General Counsel

YOUR
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FIRST

Financial Services Council Ltd
ABN 82 080 744 163

Level 24, 44 Market St
Sydney NSW 2000

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F. +61 2 9299 3198

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W. fsc.org.au