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**Cost Recovery Impact Statement - Exposure Draft**  
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**COST RECOVERY IMPACT STATEMENT - EXPOSURE DRAFT  
ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING REGULATORY ACTIVITIES**

The Association of Superannuation Funds of Australia (ASFA) would like to provide the comments below in relation to the exposure draft on the proposed Australian Transaction Reports and Analysis Centre (AUSTRAC) supervisory levy. The contents of this submission should be read in conjunction with ASFA's previous submission to AUSTRAC dated 10 December 2010 following the release of its discussion paper. As with our earlier submission on this matter, this submission is split into two parts: comments on the proposal to impose a supervisory levy, and comments on the proposed levy arrangements.

**About ASFA**

The Association of Superannuation Funds of Australia (ASFA) is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

**1. Comments on the proposal to impose a supervisory levy**

Consistent with our 10 December 2010 submission, ASFA reiterates its strong opposition to the Government's proposal to recover AUSTRAC's regulatory costs from reporting entities.

Without restating in detail the arguments raised in our previous submission supporting ASFA's position, we feel it is nevertheless important to briefly list the reasons for our objection to the proposed levy being imposed on reporting entities within this submission, as they still apply following the release the exposure draft. Our objections to the proposed AUSTRAC levy can summarised as follows:

- ASFA is not aware of other jurisdictions which impose a similar cost recovery regime on regulated entities in relation to AML.
- The Department of Finance and Deregulation's Australian Government Cost Recovery Guidelines require that the individual groups that have created the need for regulation should bear the cost of that regulation. We disagree with the assertion that the reporting entities themselves have created the need for the regulation by AUSTRAC. Australia's AML/CTF system was established as part of the implementation of revised international standards issued by the Financial Action Task Force (FATF) on money laundering based on a perceived need to meet international obligations.

- There is no evidence that AUSTRAC provides reporting entities with government goods and limited evidence that it provides reporting entities with services. Also, the supposed benefits that reporting entities obtain by being regulated by AUSTRAC (i.e. reduction in risk faced and operating in a jurisdiction that complies with the FATF requirements) are at best questionable. ASFA contends that by far the biggest beneficiary of AUSTRAC's regulatory oversight activities is the Government and its various agencies, not the industry. In a presentation in December last year<sup>1</sup> AUSTRAC advised that in the 2009-10 year it had:
  - contributed to 1,841 ATO investigations (leading to tax assessments of \$272.5 million); and
  - contributed to 1,238 cases and \$7.2 million of annualised savings for Centrelink.

That is, in 2009/2010, based on information provided by reporting entities, AUSTRAC was able to recover for the Government the equivalent of 10 years' worth of AUSTRAC operating costs.

In ASFA's view, given that the Government benefits the most from AUSTRAC's regulatory oversight activities, the Government should be funding AUSTRAC's ongoing regulatory costs.

- Through their active and diligent participation in developing and maintaining AML/CTF compliance programs (at significant cost, over and above those associated with their normal business operations), reporting entities are assisting in the fight against crime. From a superannuation perspective, funds have already incurred significant costs in implementing AML/CTF compliance programs. The figure provided by one entity is \$3 million.
- We do not believe it is equitable for reporting entities to also fund AUSTRAC's costs for regulating the AML/CTF regime. ASFA considers that the proposal for cost recovery of AUSTRAC's regulatory function is akin to the ATO charging taxpayers a fee for lodging their tax return.
- The work of AUSTRAC provides a benefit for the whole of the Australian community, yet it is reporting entities, who are already bearing a significant proportion of the total cost of Australia's AML/CTF program for little to no discernible benefit, that are being asked to fund AUSTRAC's ongoing costs.
- As well, the Australian Government's cost recovery guidelines require agencies providing goods and services to the private and other non-government sectors of the economy to set charges to recover the costs of such products or services where it is efficient to do so. The annual cost of administering the AUSTRAC levy is stated to be \$1.7 million. With the levy to be imposed on 10,454 'leviable entities', this equates to approximately \$160 per leviable entity. For those 8,512 non-large entities that will only be liable for the base component, the cost of collecting the levy represents 56% of the levy amount imposed. ASFA contends that this is not efficient cost recovery.

Overall, the introduction of the levy will add more than 6% to AUSTRAC's ongoing administration costs. This also does not appear to be very efficient. On this basis (as with the previous bullet point), the imposition of the AUSTRAC levy appears to be somewhat inefficient and contrary to the notion that Government agencies should only recover costs where it is efficient to do so.

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<sup>1</sup> Presentation by Lionel Radom, Manager, Typologies and Feedback, AUSTRAC entitled "AUSTRAC Intelligence Overview and Superannuation" to the ASFA Financial Crime Discussion Group on 9 December 2010.

## 2. Comments on the proposed levy arrangements

In terms of the modified cost recovery model in the exposure draft (with the levy consisting of a base component, large entity component and transaction reporting component), we believe the structure that is being proposed is extremely inequitable as it relates to the superannuation industry.

It is anticipated that, of the 315 superannuation entities expected to be caught by the levy, 48 of them will qualify as large entities. Based on the estimated base and large entity components of \$284 and \$9,120 respectively for the 2011-12 year, it is estimated that the levy will raise just over \$527,000 from superannuation funds, yet there are only expected to be 64 reportable transactions from the entire sector. In the absence of the base and large entity components, this equates to over \$8,200 per transaction report.

ASFA's view is that the way in which the cost recovery model has been structured is fundamentally flawed and biased against low transaction reporting entities (such as superannuation funds) in favour of high transaction reporting entities (such as banks). This means that low transaction reporting entities will have to bear more than their fair share of the total AUSTRAC levy. If the levy is indeed to be implemented, ASFA's view is that high transaction reporting entities should be made to bear a greater share of the cost. That is, greater weighting should be given to the report volume and report value components of the levy, so that those entities that will generate greater deployment of AUSTRAC's resources will bear their equitable share of the total cost.

As well, we note that the definition of a large entity has been amended to reporting entities with 200 or more full-time equivalent (FTE) employees (increased from 150 FTE) and that, in circumstances where a large corporate group has a number of reporting entities, all entities within the group will be classified as large and be subject to the large entity component of the levy. We recognise that this revised definition would remove the potentially anomalous result whereby two designated business groups with the same number of overall employees would pay significantly different levy amounts depending on how they are structured. However, despite the increase in the large entity threshold to 200 FTE, the method of levying the fee based on FTE will still generate some peculiar outcomes in a superannuation context.

As stated in our 10 December 2010 submission, ASFA recommends that the opportunity be taken to replace the term 'provider' in Items 40 and 41 (Section 6, Table 1) with 'trustee'. This will result in consistency with Items 42 and 43 and ensure that trustees of superannuation funds are indemnified from the assets of the trust for the costs incurred in carrying out their trustee duties. Amending the definition in Items 40 and 41 as outlined above will ensure the AUSTRAC levy is payable out of the assets of the superannuation fund (i.e. by members of the fund) not by the trustee.

In summary, ASFA is concerned with both the proposal to impose a levy to recover AUSTRAC's regulatory costs as well as the method of calculation of the levy:

- The AML/CTF legislation imposes a huge cost impact on, but delivers no direct tangible benefits to, reporting entities. ASFA contends that reporting entities already have to bear significant compliance costs associated with the AML/CTF regime, and therefore they should not also be made to fund AUSTRAC's regulatory costs. As the biggest beneficiary of AUSTRAC's regulatory oversight activities, the Government should be funding its ongoing regulatory costs.
- The proposed cost recovery model is extremely inequitable as it relates to the superannuation industry. It favours high transaction reporting entities (such as banks) at the expense of low transaction reporting entities (such as superannuation funds). Greater weight should be given to the report volume and report value components in the calculation of the AUSTRAC levy in order to ensure a more equitable sharing of the cost across industry sectors.

- The cost associated with recovering the AUSTRAC levy (stated to be \$1.7 million annually) will add more than 6% to AUSTRAC's administration costs. ASFA considers this to be an unacceptable increase in operating costs and indicative that imposing the levy will be inefficient and therefore contradictory of the Government's cost recovery guidelines which require agencies to recover costs only where it is efficient to do so.
- Australia's AML/CTF regime adopts a risk based approach and yet, in determining the proposed levy, there is no consideration given to which industry sectors are high risk and which are low risk. The AUSTRAC regulated part of the superannuation industry is a low risk sector for AML/CTF activity given the long-term nature of superannuation and the fact that these assets are required to be 'preserved' within the system until fund members retire from the workforce. If implemented, ASFA contends that the calculation of the AUSTRAC levy to be imposed on the superannuation sector should reflect its lower risk nature.

If you have any questions or comments on this matter, please feel free to contact Robert Hodge, Principal Policy Adviser on 02 8079 0806 or by email [rhodge@superannuation.asn.au](mailto:rhodge@superannuation.asn.au).

Yours sincerely,



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