**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs, Minister for Justice

*Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Act 2011
Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Determination 2013 (No. 1)*

# OUTLINE

The Determination is made by the Minister for Home Affairs, Minister for Justice under subsection 9(1) of the *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Act 2011* (the Act) for the financial year
1 July 2013 to 30 June 2014.

Section 8 of the Act imposes a levy on certain entities ('leviable entities') regulated and supervised by the Australian Transaction Reports and Analysis Centre (AUSTRAC). Subsection 9(1) of the Act states that the Minister must, by legislative instrument, determine the amount of levy payable by a leviable entity for a financial year. Subsection 9(3) states that a determination may:

* + specify an amount or a method for determining the amount; and
	+ specify different amounts or methods for different classes of leviable entities; and
	+ specify a nil amount or a method resulting in a nil amount; and
	+ despite subsection 12(2) of the *Legislative Instruments Act 2003*, specify methods that refer to acts done or circumstances existing before either the commencement of the determination or the commencement of the Act, or both.

Details of the Determination are set out below.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

# Consultation

The Determination is made after consultation with stakeholders, including by the release of an exposure draft of the Cost Recovery Impact Statement for the 2013-14 levy year. This exposure draft was released for public consultation on
23 April 2013.

Details of previous consultations for prior levy periods (including the previous years’ impact statements) are available under the 'Supervisory levy' section of the AUSTRAC website at www.austrac.gov.au.

# REGULATORY IMPACT STATEMENT

An exemption has been granted from the requirement to make a regulatory impact statement in light of the consultation process and details set out in each Cost Recovery Impact Statement.

# DETAILS OF THE DETERMINATION

### Item 1 – Name of Determination

This item sets out the name of the Determination as the *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Determination 2013 (No. 1)*.

### Item 2 – Commencement

This item provides that the Determination will commence the day after it is registered as a legislative instrument.

### Item 3 – Definitions

This item defines terms used in the Determination, the more significant of which are:

* + 'Act'. This refers to the *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Act 2011*.
	+ 'ADI'. This stands for 'authorised deposit-taking institution' and has the same meaning as in the AML/CTF Act. It includes banks, building societies and credit unions.
	+ 'AML/CTF Act'. This refers to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.
	+ 'AUSTRAC'. This means the Australian Transaction Reports and Analysis Centre.
	+ 'AUSTRAC CEO'. This means the Chief Executive Officer of AUSTRAC.
	+ 'census day'. This term is defined by reference to section 7 of the Act and, in relation to the 2013-14 financial year covered by the Determination, this is
	1 July 2013.
	+ 'earnings'. This term is used in calculating some components of the levy. If an entity is an ADI or a registered financial corporation (or is a member of a group of entities that includes such an entity), then 'earnings' means total profit before tax, depreciation and amortisation (PBTDA). For all other entities the measure is total earnings before interest, tax, depreciation and amortisation (EBITDA). Neither PBTDA nor EBITDA is to be adjusted for significant items.
	+ 'leviable entity'. This term is defined by section 7 of the Act to mean, in relation to a financial year, a person who:
		- is a 'reporting entity' (within the meaning of section 5 of the AML/CTF Act) at any time in the previous financial year; and
		- on the census day for that financial year is entered on the Reporting Entities Roll under Part 3A of the AML/CTF Act or is required under section 51B of the AML/CTF Act to apply to be entered on the Reporting Entities Roll; and
		- is not an 'exempt entity' (within the meaning of subsection 7(1) of the Act) for that financial year (also see item 4).
	+ 'leviable report'. This means a report given to the AUSTRAC CEO in the 2012 calendar year under subsections 43(2) or 45(2) of the AML/CTF Act, being a report of a threshold transaction or an international funds transfer instruction respectively, and includes:
		- a report given by the leviable entity in the form required for subsections 43(2) or 45(2), whether or not such a report was required to be given under either of those subsections; and
		- a report given by a remittance affiliate of the leviable entity; or
		- a report given by another leviable entity acquired by the leviable entity prior to the census day.
	+ 'remittance affiliate'. This means a leviable entity that provides certain 'designated services' under the AML/CTF Act and does so as part of a remittance network registered under that Act.
	+ 'registered financial corporation'. This has the same meaning as in the *Financial Sector (Collection of Data) Act 2001*.

### Item 4 – Amount of levy

Item 4 sets out a formula to work out the levy payable under subsection 9(1) of the Act by a leviable entity for the financial year 1 July 2013 to 30 June 2014.

Subitem (1) provides that the amount of levy payable by each leviable entity for the financial year is to be calculated by adding together three components:

* + the base component (set by item 5);
	+ the large entity component (set by item 6); and
	+ the transaction reporting component (set by item 7).

The exclusion of an 'exempt entity' from the definition of 'leviable entity' in subsection 7(1) of the Act effectively means that no levy will be payable by a leviable entity who, on the census day, was exempt from Part 7 of the AML/CTF Act by operation of the AML/CTF Rules made under section 229 of the AML/CTF Act[[1]](#footnote-1), or by an instrument made under section 248 of that Act. These entities are excluded on the basis that AUSTRAC’s regulatory costs with respect to them are minimal.

Subitem 4(2) also excludes certain designated services provided by a leviable entity only in its capacity of a remittance affiliate of a remittance network operated by another leviable entity (the remittance network provider). Such entities are excluded on the basis that AUSTRAC’s primary regulatory relationship will be with remittance network providers rather than remittance affiliates.

The note to subitem 4(1) refers to subsection 9(5) of the Act, which provides that if the amount of levy payable by a leviable entity under the Determination would be less than the statutory minimum, the amount of levy payable by the entity is nil. For the 2013-14 financial year, the statutory minimum is $103.22. The minimum threshold applies to leviable entities liable to pay only the transaction reporting component.

### Item 5 – Base component

The base component is designed to recover costs associated with the base line expenses that AUSTRAC incurs in regulating all reporting entities.

Subitem 5(1) sets the base component, one of the three components of the levy set by item 4, at $300. However, subitem 5(2) sets the base component at nil for a leviable entity that, on the census day:

* + had fewer than 5 employees; and
	+ has a large entity component of nil for the financial year (that is, earnings of less than $100 million in the previous financial year – see the table in subitem 6(1)).

This is intended to reduce the regulatory burden for small businesses, non-employing sole proprietors and partnerships and micro-businesses with fewer than 5 employees. Such entities may still be liable to pay a levy under item 4, but the amount will generally be limited to the transaction reporting component (set by
item 7). If that component is less than $103.22, no levy is payable (see subsection 9(5) of the Act).

### Item 6 – Large entity component

The large entity component relates to additional expenses incurred by AUSTRAC in regulating larger entities. Larger entities have relatively more customers and typically provide products that are more complex over multiple distribution channels and multiple jurisdictions. In addition, large reporting entities are relatively more important to the overall integrity of Australia's financial system. Accordingly, AUSTRAC applies relatively more supervisory resources towards regulating large entities compared to small entities.

The large entity component will apply to a leviable entity or a group of leviable entities. Subject to the rules for foreign corporations, the amount of the large entity component will be determined by reference to earnings in the previous financial year.

Earnings for a leviable entity that is an ADI or a registered financial corporation (or for a group of leviable entities that includes such an entity) is defined as the PBDTA for the previous financial year. Earnings for all other leviable entities or groups of leviable entities is defined as the EBITDA for the previous financial year (see the definition of ‘earnings’ in subitem 3(1)).

A leviable entity that is not a member of a group of leviable entities is liable for the relevant amount set out in the table. Each member of a group of leviable entities is liable for an equal share of the relevant amount set out in the table.

Where a leviable entity is a foreign company, only the earnings derived from operations in Australia are to be included in determining the earnings of that entity or for determining the total earnings of the group of leviable entities of which that entity is a member (subitem 6(2)).

Where a leviable entity is a foreign company or a subsidiary of a foreign company and the large entity component for that company would otherwise be nil but the total earnings of that leviable entity and its related bodies corporate equal or exceed $100 million, then:

* + if the leviable entity is not part of a group of leviable entities – the large entity component is $20,000; or
	+ if the leviable entity is part of a group of leviable entities – the large entity component is $20,000 divided by the number of members of the group
	(subitem 6(3)).

### Item 7 – Transaction reporting component

The transaction reporting component relates to the additional direct expenses incurred by AUSTRAC in regulating reporting entities that lodge high volumes of transaction reports and/or transaction reports relating to higher value transactions.

Subitem 7(1) contains a formula for working out a leviable entity’s transaction reporting component (unless subitem 7(2) applies). The formula is made up of two components:

* + 1 cent for each leviable report made by a leviable entity to the AUSTRAC CEO in the calendar year 1 January 2012 to 31 December 2012; and
	+ 0.0006130 per cent of the value of the transaction to which the leviable report relates.

Subitem 7(2) deals with leviable entities that have the highest volumes and/or values of transaction reports. It recognises that AUSTRAC's costs of regulation do not increase indefinitely but become fixed at a certain point. Therefore, the amount of the transaction reporting component for a leviable entity with a total value of leviable reports of $250 billion or more will be $1.568 million. For a leviable entity that is a member of a group of leviable entities with a total value of leviable reports of $250 billion or more, the component will be $1.568 million divided by the number of leviable entities in the group.

Subitem 7(3) prevents 'double-counting' of leviable reports.

Subitem 7(4) is included to avoid doubt as to what is meant by the value of a leviable report or by the total value of leviable reports respectively.

Subitem 7(5) makes it clear that only leviable entities that submit leviable reports relating to transactions in the 2012 calendar year will be liable for the transaction reporting component.

# Statement of Compatibility with the *Human Rights (Parliamentary Scrutiny) Act 2011*

The Statement of Compatibility with Human Rights for the *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Determination 2013 (No. 1)* is included in this Explanatory Statement at page 8. The Minister for Home Affairs, Minister for Justice as the rule-maker of this Determination, has stated that the Determination is compatible with human rights in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*.

# Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

***Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Determination 2013 (No 1)***

This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the legislative instrument**

The *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Act 2011* (the Act) imposes a levy on certain entities ('leviable entities') which are regulated under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and supervised by AUSTRAC. Subsection 9(1) of the Act specifies that the Minister must, by legislative instrument, determine the amount of levy payable by a leviable entity for a financial year.

This Determination is made by the Minister for Home Affairs, Minister for Justice under subsection 9(1) of the Act for the financial year 1 July 2013 to 30 June 2014. It specifies that the amount of levy payable by leviable entities for the financial year 1 July 2013 to 30 June 2014 is to be calculated in accordance with the formula set out in the Determination.

**Human rights implications**

This Determination does not engage any of the applicable rights or freedoms.

**Conclusion**

This Determination is compatible with human rights as it does not raise any human rights issues.

JASON CLARE

Minister for Home Affairs, Minister for Justice

1. Currently, the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (as amended). [↑](#footnote-ref-1)