

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Justice

Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011
Australian Transaction Reports and Analysis Centre Industry Contribution
Determination 2016 (No. 1)

OUTLINE

The Determination is made by the Minister for Justice under subsection 9(1) of the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011* (Industry Contribution Act) for the financial year 1 July 2016 to 30 June 2017 (2016-17).

Section 8 of the Industry Contribution Act imposes a levy on certain entities ('leviable entities') regulated and supervised by the Australian Transaction Reports and Analysis Centre (AUSTRAC). The purpose of the levy is to recover the costs of the performance of AUSTRAC's regulatory and intelligence functions. It is intended that the levy will recover 100% of those costs (including depreciation) in 2016-17.

Section 7 of the *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011* provides that the levy is payable in instalments. The amount of each instalment is dealt with in section 9 of the Industry Contribution Act. The purpose of making the levy payable in instalments is to enable more than one instalment to be made payable in a single financial year, if this is necessary to recover AUSTRAC's costs. For the 2016-17 financial year, only one instalment of levy will be payable.

Subsection 9(1) of the Industry Contribution Act provides for the Minister, by legislative instrument, to determine the amount of an instalment of levy payable by a leviable entity for a financial year. Paragraph 9(2)(a) requires the Minister to make at least one determination under subsection (1) for each financial year. Paragraph 9(2)(b) puts a cap, called the 'statutory limit', on the sum of all amounts of all instalments of levy payable by all leviable entities for a financial year. The term 'statutory limit' is defined by subsection 7(1) of the Industry Contribution Act to mean, in relation to a financial year, 'the amount that is 2 times the sum of all amounts appropriated by the Parliament for the purposes of AUSTRAC for the financial year'.

The Determination determines the amount of the instalment of levy for 2016-17.

Subsection 9(3) of the Industry Contribution Act provides that a determination made for the purposes of subsection 9(1) may do one or more of the following:

- specify an amount or a method for determining an amount;

- specify different amounts or methods for different classes of leviable entities;
- specify a nil amount or a method resulting in a nil amount;
- 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 Industry Contribution Act, or both.

Subsection 9(4) of the Industry Contribution Act provides that a determination made for the purposes of subsection 9(1) for a financial year may, despite subsection 12(2) of the *Legislative Instruments Act 2003*, be made after the beginning of that financial year.

Details of the Determination are set out below.

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

CONSULTATION

Stakeholder consideration of the charging model was undertaken through the release of a discussion paper and draft Ministerial Determination. The discussion paper and draft Determination were released for comment on 6 May 2016 and closed on 6 June 2016.

The structure of the charging model is unchanged from the model that was used for the 2014-15 and 2015-16 levy years. This model was developed through extensive industry consultation undertaken in three rounds between June and December 2014. Based on that consultation, the final charging model of the AUSTRAC industry contribution for leviable entities was published on AUSTRAC's website on 28 January 2015 (www.austrac.gov.au).

In response to the consultation for the 2016-17 levy year, a total of seven submissions were received. The responses were consistent with feedback received during previous consultation rounds. These submissions, and AUSTRAC's response, will be published shortly on AUSTRAC's website.

Whilst the structure of the charging model is unchanged from 2015-16, some of the charging factors have been changed in order to recover a higher amount from industry. The percentage of AUSTRAC's costs to be recovered from industry has increased from 70% in 2014-15 to 90% in 2015-16 to 100% in 2016-17.

REGULATION IMPACT STATEMENT

AUSTRAC has been advised that a Regulation Impact Statement (RIS) is not required. The industry contribution arrangements are a revenue measure, and as such fall outside the requirement to prepare a RIS.

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 Industry Contribution Determination 2016 (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

Subitem 3(1) defines terms used in the Determination, the more significant of which are:

- ‘census day’. This term has the same meaning as in the Industry Contribution Act. The census day for 2016-17 is 1 July 2016.
- ‘earnings’. The amount of a liable entity’s ‘earnings’, as defined, is used in the Determination to identify liable entities that are liable to pay the maximum amount of the instalment of levy for 2016-17, under subitem 4(4) of the Determination, and, for other liable entities, in calculating the earnings component of the instalment of levy, under item 5 of the Determination. For a liable entity that is an authorised deposit-taking institution or a registered financial corporation, or is part of a group of liable entities that includes such an entity, ‘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.
- ‘liable entity’. This term is defined, in relation to 2016-17, to have the same meaning as in the Industry Contribution Act.
- ‘liable report’. This means, in relation to a liable entity, a report given to the AUSTRAC CEO in the 2015 calendar year under subsection 43(2) or 45(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) (or in the form required for subsection 43(2) or 45(2), whether or not such a report was required to be given under either subsection), being:
 - a report given by the liable entity; or
 - a report given by a remittance affiliate of the liable entity; or
 - a report given by another liable entity that was acquired by the liable entity prior to the census day.

Sections 43 and 45 of the AML/CTF Act respectively deal with threshold transaction reports (TTRs) and international funds transfer instructions reports (IFTIs).

- 'National Electricity Rules'. This means the Rules made under the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA).
- 'remittance affiliate'. This means a leviable entity that provides a designated service covered by item 31 or 32 of table 1 in section 6 of the AML/CTF Act as part of a network of persons of a kind referred to in item 32A of that table operated by another leviable entity.
- 'registered financial corporation'. This term is defined to have the same meaning as the term 'registered entity' in the *Financial Sector (Collection of Data) Act 2001*.

Subitem 3(2) limits references in the Determination to the total profit or total earnings of a leviable entity that is a foreign corporation or a subsidiary of a foreign corporation to the total profit or total earnings of the leviable entity which are derived from operations in Australia. This affects the operation of the definition of the term 'earnings' in subitem 3(1) of the Determination.

Item 4 – Amount of instalment of levy

Item 4 sets out a general method for determining the amount of the instalment of levy payable by a leviable entity for 2016-17, which is subject to five exceptions.

The general method is specified in subitem 4(2). It involves adding together the 'earnings component' for the leviable entity, dealt with in item 5 of the Determination, and the 'transaction reporting component' for the leviable entity, dealt with in item 6 of the Determination.

The exceptions to the general method are specified in subitems 4(3), (4), (5), (6) and (7).

Subitem 4(3) provides a payment threshold of \$1,000 for the levy instalment. If the amount calculated in relation to a leviable entity under subitem (2) is less than \$1,000, then the amount payable by that entity is nil.

Subitem 4(4) provides a maximum payment amount for the levy instalment, applicable to those leviable entities with earnings greater than \$5,000,000,000. The amount payable by a leviable entity that is not part of a group of leviable entities and has earnings of greater than \$5,000,000,000 is \$9,926,801.15. The amount payable by a leviable entity that is part of a group of leviable entities the total earnings for which are greater than \$5,000,000,000 is \$9,926,801.15 divided by the number of leviable entities in the group.

Subitem 4(5) sets the levy instalment at nil for a leviable entity that, in the financial year 1 July 2015 to 30 June 2016 (2015-16), provided designated services only in the capacity of a remittance affiliate. Entities to which subitem 4(5) applies have no

amount payable on the basis that AUSTRAC's primary regulatory relationship will be with remittance network providers rather than remittance affiliates.

Subitem 4(6) sets the levy instalment at nil for a liable entity that, on the census day, was a 'Market Generator' within the meaning of the National Electricity Rules.

Subitem 4(7) sets the levy instalment at nil for a liable entity that is a body corporate established for a public purpose by an Act passed by the Commonwealth Parliament.

Item 5 – Earnings component

Item 5 sets out a general method for determining the earnings component for a liable entity, which is subject to two exceptions.

The general method is specified in subitem 5(2). For a liable entity that is not part of a group of liable entities, the general method involves multiplying the earnings for the liable entity by 0.043%. For a liable entity that is part of a group of liable entities, the general method involves multiplying the total earnings for the group by 0.043% and dividing the result by the number of liable entities in the group.

The exceptions to the general method are specified in subitems 5(3) and (4).

Subitem 5(3) provides a payment threshold for the earnings component. It does so by setting the earnings component at nil for a liable entity that is not part of a group of liable entities and has earnings of less than \$100,000,000, or a liable entity that is part of a group of liable entities the total earnings for which are less than \$100,000,000.

Subitem 5(4) provides a payment cap for the earnings component for a liable entity if the amount calculated for that entity under subitem (2) is greater than \$1,000,000. For a liable entity to which subitem 5(4) applies that is not part of a group of liable entities, the earnings component is set at \$1,000,000. For a liable entity to which subitem 5(4) applies that is part of a group of liable entities, the earnings component is set at \$1,000,000 divided by the number of liable entities in the group.

Item 6 – Transaction reporting component

The transaction reporting component is calculated by reference to the TTRs and IFTIs that were lodged with AUSTRAC during the 2015 calendar year.

Subitem 6(2) contains a formula for working out a liable entity's transaction reporting component. The formula is made up of two components:

- 1.2 cents for each liable report made by a liable entity to the AUSTRAC CEO in the 2015 calendar year; and

- 0.00105436 per cent of the value of the transaction to which the leviable report relates.

Subitem 6(3) prevents 'double-counting' of leviable reports in the application of the formula in subitem (2) to different leviable entities.

Subitem 6(4) is included to avoid doubt as to what is meant by the 'value of a leviable report' in subitem (2).

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 Industry Contribution Determination 2016 (No. 1)* is included in this Explanatory Statement at page 7. The 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 Industry Contribution Determination 2016 (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 Industry Contribution Act 2011* (Industry Contribution 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 the Australian Transaction Reports and Analysis Centre. Subsection 9(1) of the Industry Contribution Act provides for the Minister, by legislative instrument, to determine the amount of an instalment of levy payable by a leviable entity for a financial year.

This Determination is made by the Minister for Justice under subsection 9(1) of the Industry Contribution Act for the financial year 1 July 2016 to 30 June 2017. It specifies the amount, or the method for determining the amount, of the instalment of levy payable by each leviable entity for the financial year. Different amounts and methods are specified for different classes of leviable entities.

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.

MICHAEL KEENAN
Minister for Justice