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Manager, Corporations and Schemes Unit

Financial Systems Division

The Treasury

Langton Crescent

PARKES ACT 2600

Email: ASICFunding@treasury.gov.au

Dear Sir/Madam

**Response to the Treasury consultation paper: *Introduction of ASIC's Fees-for-Service Under the Industry Funding Model***

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Treasury consultation paper *Introduction of ASIC's Fees-for-Service Under the Industry Funding Model*, released on 16 November 2017.

**About ASFA**

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.5 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 14.8 million Australians with superannuation.

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If you have any queries or comments in relation to the content of our submission, please contact Andrew Craston, Senior Research Advisor, on (02) 8079 0817 or by email [acraston@superannuation.asn.au](mailto:acraston@superannuation.asn.au).

Yours sincerely

Glen McCrea  
Chief Policy Officer

## Introduction of ASIC's Fees-for-Service Under the Industry Funding Model

### Executive Summary

ASFA supports, in principle, the adequate and appropriate funding of ASIC. Further, ASFA considers that all regulated industries should contribute to that funding. That outcome is, in ASFA's view, far more equitable and appropriate than funding a regulator solely from consolidated revenue.

ASIC's broader industry funding model has the potential to significantly change the character of ASIC's dealings with its regulated industries. Importantly, it also represents an opportunity for ASIC to provide industry with greater insight into the activities it conducts, and to provide genuine transparency and accountability regarding the manner in which it utilises its funding. Both are necessary in order for industry to have confidence that ASIC is functioning well as a regulator. ASFA has discussed these issues in detail in previous submissions on ASIC's broader funding model.<sup>1</sup>

With respect to the proposed fees-for-service model, ASFA supports, in principle, the recovery of certain costs via fees – specifically where costs are directly attributable to a single, identifiable, entity.

The fees-for-service model proposed in the Treasury consultation paper *Introduction of ASIC's Fees-For-Service Under the Industry Funding Model* (the Paper) is an improvement on the model proposed in the previous fees-for-service consultation. However, the Paper does not provide sufficient detail for industry to properly assess the proposed fees.

Transparency and accountability are, in ASFA's view, critical features of any industry funding model. With respect to ASIC's fees-for-service model, a robust accountability and transparency framework is required in order to provide ASIC's regulated population with confidence that fees appropriately reflect regulatory effort. This should include disclosure of more detailed data on how fees are derived, both as part of the current consultation process and on an ongoing basis (such as in ASIC's annual Cost Recovery Implementation Statement).

The superannuation industry is currently facing increased scrutiny, including as a result of the Productivity Commission's review of efficiency and competitiveness of the superannuation system, and the enhanced disclosure requirements in relation to fees and costs. ASFA therefore considers it appropriate that ASIC, and other regulators for the superannuation industry, should be subject to a high-degree of scrutiny regarding the levies and fees imposed on the superannuation industry and their utilisation.

In addition, to minimise compliance costs for industry regarding ASIC services, ASIC needs to provide clear and detailed guidance on the proper completion and lodgement of all applications, registrations and documents for review for each fee-for-service category.

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<sup>1</sup> For example, see ASFA submissions regarding the *Draft ASIC Supervisory Cost Recovery Levy Regulations 2017* ([https://www.superannuation.asn.au/ArticleDocuments/427/201713\\_ASIC\\_industry\\_funding.pdf.aspx?Embed=Y](https://www.superannuation.asn.au/ArticleDocuments/427/201713_ASIC_industry_funding.pdf.aspx?Embed=Y)) and the *Proposed Industry Funding Model for the ASIC* ([https://www.superannuation.asn.au/ArticleDocuments/278/ASIC\\_industry\\_funding\\_model-ASFA\\_submission.pdf.aspx?Embed=Y](https://www.superannuation.asn.au/ArticleDocuments/278/ASIC_industry_funding_model-ASFA_submission.pdf.aspx?Embed=Y)).

## Detailed comments

### 1. *The methodology for the fees-for-service model lacks detail*

The fees-for-service model proposed in the Paper is an improvement on that proposed in the previous consultation process on fees-for-service in 2015 (in the consultation paper *Proposed Industry Funding Model for the Australian Securities and Investments Commission*). However, the Paper does not provide sufficient detail on how fees are derived.

#### The general fee methodology

The Paper briefly describes the methodology that ASIC has adopted to calculate fees. The Paper notes that the specific hourly rate for each service reflects the weighted average of charge rates for the different regulatory teams involved in each service (where members of regulatory teams may vary in terms of seniority and salary bands). This is multiplied by the average number of hours required to undertake each service. The Paper notes that hourly rates and average times have been determined from “time recording”. This methodology appears appropriate.

However, the Paper does not provide sufficient detail for industry to properly assess the proposed fees. In particular, the Paper does not provide data for the estimated hourly rates and average times with respect to each service, notwithstanding the fact that ASIC would have this information on hand.

Given this, it is unclear how stakeholders are expected to form a view as to the appropriateness, or otherwise, of the proposed fees. Rather, it appears that stakeholders are, in effect, simply being asked to ‘take it on trust’ that the proposed fee amounts fairly reflect the costs involved. For industry, scrutiny of the proposed fees is important given that the fees are, in some cases, significantly higher than current equivalent fees.

#### Tiered fees

ASFA agrees that a ‘tiered’ fee structure would be appropriate with respect to some services. This would allow ASIC to charge fees that more closely align with the regulatory effort involved, provided the fee structures appropriately reflect variations in complexity and required resources.

With respect to the superannuation industry, the most relevant tiered fees are for an Australian Financial Services Licence application and for a variation of authorisation conditions. ASFA notes that the proposed fee for an Australian Financial Services Licence application (body corporate, retail) is:

- \$3,721 for a low-complexity application
- \$7,537 for a high-complexity application

The current fee for a full license for a body corporate is \$1,643.

The proposed fee structure for license applications (and variations) are an improvement on those in the 2015 Consultation Paper, which proposed flat fees that were considerably higher (\$11,000 for an application for a body corporate).

However, as is the case for the broader fee schedule, the Paper does not provide adequate data for stakeholders to assess the appropriateness of the proposed fees. This is important given the proposed fee amounts are considerably higher than the current fees.

### Fees for relief applications

ASFA agrees that it is appropriate for ASIC to charge fees for the lodgement and processing of applications for relief from regulatory requirements, provided the fees appropriately reflect regulatory effort and if the fee regime allows for fee refunds under certain circumstances (discussed in the next section).

ASFA notes that the proposed fees for relief application are higher than current fees (although the increase is smaller than was proposed in the 2015 Consultation Paper).

- \$3,487 for a 'standard' application, up from \$0 to \$1,169.
- \$3,487 for a 'novel' application, up from 0 to \$1,107.

As is the case with other fees, no data has been provided to enable stakeholders to genuinely assess the appropriateness of the proposed fees for relief applications.

ASFA supports the proposed fee structure that comprises 'standard' and 'novel' relief categories. There is little justification for distinguishing between 'standard' relief and 'minor/technical' relief (as was proposed in the 2015 Consultation Paper), particularly given that in many cases there might be a fine distinction between the two types of relief applications.

ASFA agrees that the fee for 'novel' relief applications in the 2015 Consultation Paper was too high (\$21,000). It would have imposed a significant cost on applicants and limited innovation – for example, where first movers bring new products to market.

However, ASFA does not support fixed fees for relief applications (for each of the two relief categories). As is the case for tiered fees for complex matters such as licence applications, flexible relief fees (with the proposed fee cap) would allow ASIC to charge fees that more closely align with the regulatory effort involved with relief applications.

A fee structure that more closely reflects regulatory effort is important given the additional costs that applicants generally incur with respect to relief applications. Prior to lodging any relief application a regulated entity will generally incur significant compliance costs, including with respect to analysing its circumstances against the relevant regulatory requirements, forming a view whether relief is required (which would typically involve obtaining legal, actuarial or other professional advice) and preparing the application itself. Indeed, some entities may consider that the total costs of a relief application outweigh the potential benefit of proceeding with the application.

### **2. Fees for relief applications should be re-funded under certain circumstances**

ASFA considers that where ASIC provides general relief from regulatory requirements via a class order after it has provided relief from those requirements to licensees in response to specific applications for relief, the fees paid by those licensees should be refunded.

The experience of some fund trustees during the implementation of the Stronger Super reforms highlights the need for such an arrangement.

A number of trustees enquired of ASIC about the likelihood of class order relief being provided – to ameliorate particular impacts or to defer certain commencement dates. We understand that in many of these cases the trustees concerned were informed that no general class order relief would be forthcoming and that they would need to make a specific application for relief. However, in

several instances, ASIC ultimately issued class order relief with general application to all affected trustees. The positions adopted in those class orders were informed by the work undertaken by ASIC to respond to the earlier specific relief applications. Those trustees that did not make specific relief applications effectively received a benefit that was funded by the trustees that did make such applications.

In effect, the current model penalises licensees that take early, proactive action. In ASFA's view, this is inequitable and should be remedied, via the refund of any fee paid for a specific relief application which falls within the terms of any subsequent general class order relief. The cost attributable to developing the class order should then be recouped as part of the levy imposed on the industry sectors or sub-sectors to which it applies.

### ***3. The fees-for-service regime should be accompanied with clear guidance for regulated entities***

To minimise compliance costs for industry, ASIC needs to provide clear and detailed guidance regarding the proper completion and lodgement of all applications, registrations and documents for review.

ASFA is of the view that the overwhelming majority of participants in the financial services industry exhibit a strong commitment to complying with the regulatory requirements imposed upon them, including the need to obtain professional registration or a licence before undertaking particular activities, or to lodge documents with ASIC for review where prescribed. ASFA does not consider it likely that the proposed fee amounts would act as a disincentive for entities to comply with their obligations.

However, we note that many of the proposed fees are significantly higher than those currently charged by ASIC for the same service, and repeated incurrence of such fees may have a significant financial impact on some regulated entities. This is particularly the case given that the preparation of many of the applications/documents in question would already involve a potentially significant compliance cost to the entity in terms of the time invested and, frequently, a material outlay for legal or other professional advisory services.

To ameliorate this, ASFA considers it important that ASIC provide clear and detailed guidance regarding the manner in which the various applications, registrations and documents for review are to be completed and submitted to ASIC. This would help reduce compliance costs with respect to particular applications, registrations and review documents, and minimise the likelihood that they will be rejected.

### ***4. Accountability and transparency needs to improve***

Transparency and accountability are, in ASFA's view, critical features of any industry funding model. With respect to ASIC's fees-for-service model, a robust accountability and transparency framework will be required in order to provide ASIC's regulated population with confidence that fees appropriately reflect regulatory effort.

The superannuation industry is currently facing increased scrutiny, including as a result of the Productivity Commission's review of efficiency and competitiveness of the superannuation system, and the enhanced disclosure requirements in relation to fees and costs. ASFA therefore considers it appropriate that ASIC, and other regulators for the superannuation industry, should be subject to a high-degree of scrutiny regarding the levies and fees imposed on the superannuation industry and their utilisation.

### Greater transparency of fees data

For ASIC's regulated population, determining whether the industry funding model allocates regulatory effort (and the associated costs) appropriately depends on the type and quality of the data that ASIC publishes regarding the funding model.

With respect to the fees-for-service model, Section 1 of this submission noted that the Paper does not provide sufficient detail for industry to properly assess the proposed fees. In particular, the Paper does not provide figures on the estimated hourly rates and average times with respect to each service, notwithstanding the fact that ASIC would have this information on hand.

ASFA considers that this data should be made publically available as part of the current consultation process and on an ongoing basis. With regard to the latter, this information could be included in ASIC's annual Cost Recovery Implementation Statement (discussed below).

### Review of fees-for-service

ASFA supports the proposal in the Paper that each of ASIC's fees should be reviewed every three years. ASFA considers it appropriate that ASIC's fees for service are reviewed regularly, to ensure they reflect the required regulatory effort and provide effective 'price signals' to regulated entities. In this regard, ASFA agrees that ASIC should release details of its formal assessment process (when finalised).

In principle, ASFA also supports the proposal that reviews of specific fees should be undertaken if there is an "unforeseen change to the work required to provide a particular fee-for-service". However, it is important that ASIC avoids making significant, irregular increases in fees, as this will likely undermine industry's confidence in the funding model.

### More detail in the Cost Recovery Implementation Statement

ASFA understands that ASIC will be required to publish a Cost Recovery Implementation Statement (CRIS) annually, as per the government's Cost Recovery Guidelines.

ASFA has long held concerns with the lack of transparency in regulators' CRISs (and similar documents). For example, with respect to APRA's CRIS, ASFA has highlighted on a number of occasions that the published information is not sufficiently detailed for industry to adequately understand how funding levels are determined and how funding is allocated.

ASIC's CRIS should include detailed information on ASIC's fees-for-service schedule. As the Paper notes, ASIC's fees-for-service schedule has been derived from data on the average hourly rate for each service and the average number of hours required to undertake each service (derived from "time recording"). Given that ASIC has this data on hand, ASIC should publish it in the annual CRIS.

ASIC's CRIS should also include details of any changes to ASIC's formal assessment process for reviewing fees.