

# Proposed Industry Funding Model for ASIC

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## Submission to the Treasury December 2016

### Introduction

The Australian Chamber of Commerce and Industry appreciates the opportunity to comment on the discussion paper issued by the Treasury on the proposed funding model for ASIC. We believe ASIC should be appropriately resourced to ensure proper regulatory oversight. Given the importance of budget repair, partially recovering the Government's costs to fund ASIC is a reasonable approach. However, user charges must be affordable, reasonable, not distort industry practices and be administered in a simple and efficient manner.

### Government Charging Framework and self-funding

The Australian Chamber broadly supports the elements of the Australian Government Charging Framework as summarised in the proposals paper. In particular, it is appropriate that there is a link between the demand by an individual or organisation for a government activity and that individual or organisation paying a charge, unless the Government has made a policy decision to fund that activity. However, this support is subject to the charges being reasonable (proportional) and affordable taking into account the context of the charge.

In addition to the three principles identified to guide user charging (efficiency and effectiveness; transparency and accountability; stakeholder engagement), we contend there should be a fourth principle: charges bring reasonable and affordable. These principles should guide the levy methodology for ASIC. The Australian Government should continue to fund ASIC through its regular appropriation and offset some of these costs through the collection of industry levies.

However, the leap from the charging framework to an industry (or self) funding model, particularly one based on an inflexible levy formula, should not be automatic or assumed. There are significant concerns about self-funded regulators. For example, the Australian Chamber successfully argued that the Vocational Education and Training regulator, Australian Skills and Quality Authority (ASQA) should not be self-funded because it significantly impeded ASQA's opportunity to shift regulatory priorities based on risk. This was because each additional investment required changes to charges both in quantum and mix.

In the ASIC proposal, although it is proposed that not all (88%) regulatory costs would be recovered through levies, there is concern that this level of recovery will become the minimum or at least the targeted recovery proportion. Having any fixed view, either perceived or actual, of

the amount to be recovered, and having this flow through to the various regulatory components, will significantly constrain ASIC's ability to adjust its priorities and allocate resources efficiently and effectively. Although some calculations according to categories of users can help to inform the level of charges made, there should be no application of an inflexible levy formula. Universally applied formulas can have consequences, and the Australian Chamber has identified some of the concerns that would be associated with the proposed approach:

- in some of the thinner markets, the levy itself could influence activity, which in turn could increase the burden on those firms active in that market;
- a shift in compliance or regulatory priorities could see a rapid change in levies charged; and
- regulatory costs are not just proportionate to the level of activity but also risk factors.

Given these concerns, ASIC should proceed on the basis of the Government Charging Framework without the constraint of a self-funded model. Charges can be determined according to the three principles of efficiency and effectiveness, transparency and accountability and improved stakeholder engagement, together with a need to keep charges reasonable and affordable.

## Affordable and Reasonable Fees

Levies must be reasonable and efficiently implemented. The levies proposed for large businesses in the model are significant, and if incurred regardless of profitability or existing business model, could have a large impact for some businesses.

A formulaic approach to calculating levies is likely to lead to the proposed levies in some categories being perceived as a significant and disproportionate burden. While not taking a view about each category as the case will be more appropriately argued by the stakeholders affected, we recommend that the approach to levy-setting based on the government charging framework should be reasonable having regard to the impact of the fee on the categories on which it is imposed.

## Efficiency and Effectiveness

The proposed levy structure is complex, with multiple categories. Again, while not taking a view about each category as the case will be more appropriately argued by the stakeholders affected, the overall view is that the levy structure needs to be simplified.

It is acknowledged that the ASIC proposal has been revised to address the major concern regarding the adverse impact a substantial financial impost may have on a business, particularly a small business, to compete and innovate. While the proposed \$5 annual levy for small proprietary companies is relatively small, the compliance costs borne by small businesses to remit this every year would be relatively large. It is envisaged that this fee would be remitted at the time of the annual return (where no charge applies at present for submission). However, it would be reasonable to argue that the cost of submitting the annual fee could be five or ten times the actual fee which is neither efficient nor effective. Small businesses should have options to pay every few years to reduce the administrative burden (e.g. pay \$20 after 4 years).

The proposals document does not identify the approach that ASIC will take to ensure compliance with the correct levy paid. There will be significant administrative costs reflecting the proposed

complex range of fees, and the likely changes in those fees. It would not be appropriate that a model that is complex to administer, and ensure compliance with, has a built in mechanism to impose extra fees in order to cover the costs of administering this complexity.

## Transparency and accountability

The Australian Chamber supports the additional reporting that ASIC has outlined in the proposals paper, subject to the recommendations concerning the funding model. It is recommended that a consultation group be established that receives reports on regulatory measures and the impact of any change in fee structure. It is important that the performance reports issued to stakeholders also provide a report on these matters.

It is questionable that transparency is enhanced by a complex array of levies which will be constantly changing due to the pegging of levies to a specific funding recovery metric.

## Stakeholder Engagement

The Australian Chamber supports the plans for more frequent stakeholder engagement which has been outlined in the proposals paper.

## Conclusion

The Australian Chamber supports the application of the Government Charging Framework to the imposition of levies by ASIC, but does not support the proposed industry model with the prescribed application of costs to categories. ASIC's regulatory activities should be based on risk assessment and need, and should not be influenced or affected by charging frameworks that are pegged to size and activity in certain categories of stakeholders. Fees should be reasonable in the context of the needs and capacity of each levy category, and the overall schedule of fees should not be complex. Arrangements for the collection of small annual fees should take into account the administrative cost and include the flexibility to pay accumulated levies in one transaction.

The Australian Chamber recommends that a revised proposed schedule of levies be open for further consultation based on the principles of the government charging framework with the addition of a principle around reasonableness and affordability. These fees can be informed by the costs of regulation and level of activity but no formulaic approach should be adopted. ASIC's regulatory activity should not be inhibited by a connection to fees, so that resources can be best directed to areas of risk and need.