



22 December 2016

By email: asicfunding@treasury.gov.au

Corporations and Schemes Unit (CSU)
Financial System Division
The Treasury
100 Market Street
Sydney NSW 2000

Dear Sir or Madam,

Proposed Industry Funding Model for the Australian Securities and Investments Commission - Proposals Paper.

Consumer Action Law Centre (**Consumer Action**) and CHOICE welcome the opportunity to comment on the Proposed Industry Funding Model for the Australian Securities and Investments Commission (**ASIC**).

We support ASIC moving to an industry funding model. Having those businesses that cause the need for regulatory action be responsible for directly funding the regulator can act as a powerful incentive to comply with laws and regulations.

There is strong public support for an industry funding model for ASIC. In March 2016, CHOICE's nationally representative Consumer Pulse survey found that 74% of people agreed that banks, investment firms, insurers and financial advisers should have to pay to cover the costs of regulating their industries.¹ This public support relies on the assumption that industry funding will not challenge ASIC's independence and will lead to better outcomes for consumers. To achieve these goals, we recommend that:

- ASIC's funding is immediately increased through industry funding model.
- Funding for financial counselling and consumer credit community legal services is provided through the industry levy.
- New model design objectives are added to capture the outcomes required to ensure ASIC can be an effective regulator. Additional outcomes should cover the need for ASIC to have

¹ CHOICE Consumer Pulse – March 2016, total sample in wave 8 of the Consumer Pulse is n=1062. Fieldwork was conducted between 11 and 24 March 2016 by GMI/Lightspeed Research Australia.

an adequate amount of stable funding, to have the flexibility to respond to changes within industry, to attract appropriately skilled staff and to remain independent.

- Annual consultation processes on the industry funding model are open to the public, with a summary of discussions and findings of the consultation made publicly available soon after consultation is complete.
- Industry-only consultation forums with Federal Government are rebalanced to include consumer representatives.
- A statutory requirement is included in establishing legislation for the funding model to be independently and formally reviewed three to five years following implementation.

Additional funding is required for ASIC to be an effective regulator

Our primary concern with the proposed model is that it offers no increase in the amount of funding available to ASIC.

In 2014-15 ASIC's budget was reduced by \$120 million over four years, in addition to an efficiency dividend of \$47 million over the same period.² In April 2016, the Federal Government announced that it would provide an additional \$121.3 million to ASIC as stand-alone payment.³ Overall, ASIC's funding has still been reduced. This has a clear impact on the monitoring and enforcement resources available and, ultimately, on the outcomes that can be delivered for consumers.

The industry funding model will require ASIC to set aside significant additional resources to conduct consultations and to create the Cost Recovery Implementation Statements. Practically, this reduces the resources available to ASIC for enforcement activities.

ASIC's funding needs to be dramatically increased. At minimum, we recommend that funding reductions applied through efficiency dividends be restored and that additional funds are made available to resource the assessment process for the industry funding model.

Recommendation

ASIC's funding is immediately increased through industry funding model.

Model scope

Question

1. **Do you agree with the proposal that all of ASIC's regulatory costs should be included in the industry funding model, excluding ASIC's registry costs and criminal prosecutions incurred by the DPP? If not, please describe your preferred**

² ASIC, Annual Report 2014-15, p.4.

³ <http://sjm.ministers.treasury.gov.au/media-release/042-2016/>

approach and reasons for it.

The Proposals Paper clearly and convincingly explains the reasons for excluding ASIC's registry costs and criminal prosecutions incurred by the DPP from the proposed industry funding model. We do not believe the funding model should be expanded to provide funding for those activities.

However, we do believe that the industry funding model could be expanded to include funding of financial counselling and the funding of specialist community legal services.

Presumably, these activities are excluded from the proposed industry funding model on the basis that they do not meet the Australian Government Cost Recovery Guidelines (CRGs), or the requirements of the Australian Government Charging Framework (Charging Framework). As the Proposals Paper notes, the Charging Framework requires an alignment between the expenses of the regulatory activity and the revenue generated through charges for it—and the model encompasses ASIC's education activities, including financial literacy programmes.

In our view there is a sufficient nexus between the activities of credit providers, and the need for financial counselling and consumer credit community legal services for these also to be provided for by the funding model. Beyond the consumer detriment that those services seek to redress, (generally resulting from poor business conduct), funding for these services is also justifiable on the basis that they promote positive financial inclusion, to the direct benefit of credit providers, the economy and the community at large. This is particularly true of effective financial counselling services.

The United Kingdom (UK) provides a credible international precedent for the funding of financial literacy and counselling services through a levy on financial service providers.

In 2015-16, the UK Money Advice Service (MAS) allocated 40.7 million pounds to community-based debt advice services across the UK.⁴ These funds were derived from an industry levy collected by the Financial Conduct Authority, the UK's primary financial services regulator. This model draws a direct link between the funding source of services (the financial services industry) and the use of that funding (customers of the financial services industry, who are in financial difficulty). The ASIC industry funding model represents an opportunity to apply this model in Australia, and extend it to include funding provision for financial counselling and consumer credit community legal services. Such an extension would acknowledge the interconnection between industry and the consumer support services that exist to ameliorate the consumer harm that industry occasionally causes; and would also assist consumers to manage their finances so as to maximise financial inclusion—to the benefit of financial service providers.

⁴ The Money Advice Service *Annual Report and Accounts for the year ended 31 March 2016* p. 45. Available at: <https://www.moneyadviceservice.org.uk/en/corporate/publications#corporate-publications>

Under the Charging Framework, regulatory charges are required to be:

- Clear and easy to understand
- Closely linked to the specific activity
- Set to recover the full efficient costs of the specific activity
- Efficient to determine, collect and enforce
- Set to avoid volatility, while still being flexible enough to allow for changes based on fluctuations in demand or costs.

While funding for financial counselling and community legal services may require a broader interpretation of the phrase “*closely linked to a specific activity*” than has so far been applied, it would not be illegitimate. For the purposes of the proposed funding model, these costs could be categorised as ongoing regulatory activities and would be reviewed annually.

Recommendation

Expand the industry funding model to provide funding for financial counselling and consumer credit community legal services through the industry levy. This proposal has a useful precedent in the UK, which should be examined.

Model objectives

Question

2. Will the proposed model design objectives ensure consistency of approach to setting levies and fees across ASIC’s regulated population? Are there other objectives that should be considered? If so, why?

We support the proposed objectives. However, the model design objectives are strongly focused on the needs of industry groups. It should also consider the outcomes required for ASIC to be a powerful and trusted regulator.

We believe any funding model should ensure that ASIC:

1. has enough funding to undertake proactive and reactive work;
2. remains independent and sets its own agenda, in consultation with Parliament and with inputs from industry and consumers;
3. has the flexibility to keep up with the rapid changes in the industries it regulates;
4. is able to attract skilled and qualified staff; and,
5. has stable funding, allowing it to plan future initiatives, and increases to deal with need.

Recommendation

Add model design objectives to capture the outcomes required to ensure ASIC can be an effective regulator. Additional outcomes should cover the need for ASIC to have an adequate amount of stable funding, to have the flexibility to respond to changes within industry, to attract appropriately skilled staff and to remain independent.

Transparency and independence measures

Question

6. Do you agree with the proposed engagement and accountability measures? Are there additional measures you would prefer? If so, please explain why.

We welcome the decision to ensure that ASIC's statutory independence is maintained. We agree that ASIC must be, and be seen to be, independent in order to maintain public faith in this important institution. We strongly support the decision to not give any industry groups an oversight function over ASIC.

We are broadly supportive of the engagement and accountability measures outlined in the Proposals Paper. If used well, Cost Recovery Implementation Statements (CRIS), the annual industry funding dashboard report and a process of annual consultation will facilitate a positive dialogue between ASIC and industry, helping to facilitate a well-functioning, well-regulated financial services sector that serves both industry and consumers. It is important that ASIC be clear in its intent and accountable for its activity and expenditure, and independently assessed on its performance. We believe that the measures outlined in the Proposals Paper will clearly meet those objectives.

That being said, we are wary of the potential for industry lobbying through the annual consultation process. We are pleased that the Proposals Paper clearly asserts the need for ASIC to remain independent in its decision making. While dialogue is important, ASIC must have the ability to independently assess risks across the sectors it regulates and to set its own agenda. This need for independence should be acknowledged and regularly re-asserted.

Industry consultation, unless tightly controlled, is a risk to ASIC's independence. An effective financial regulator will be criticised by some of the entities it regulates. This is a sign of effective monitoring and enforcement work. Industry assessment will inevitably lead to calls for reduced funding. Funding levels, particularly for crucial consumer protection work, should be determined by consumer need or similar strategic goals, not industry whim.

The Proposals Paper says that, in determining ASIC's annual funding as part of the annual budget process, the Federal Government will take into account feedback from stakeholders on funding amounts, the fee and levy mechanisms and whether ASIC is undertaking its activities efficiently.

It is reasonable for industry to be consulted on technical matters regarding the levies—for example, which proxies are appropriate and how payment of the levies should be spread across the sector. However, we believe any consultation process will quickly turn into a much broader lobbying exercise where businesses will argue that they are a lower risk than ASIC believes, or that levies are too high based on the identified risk. Any consultation allowing these kinds of discussions is a risk to ASIC's independence as it allows business to influence ASIC's overall funding and where ASIC spends its resources. Consumers will rightly lose faith in the independence of their regulator if business is permitted to lobby for less attention from ASIC.

To reduce this risk, the Federal Government should ensure that discussions about the amount and nature of ASIC's funding is conducted transparently. The annual consultation process should be run as an open, public consultation process. A summary of discussion and the findings of the process should be made publicly available soon after consultation is complete. In addition, industry-only government-run consultation forums pose a particular risk to independence. For example, the Financial Sector Advisory Council provides the Federal Government advice on matters related to the financial sector. It is currently only comprised of industry representatives, including representatives from AMP, Westpac and Goldman Sachs.⁵ At minimum, bodies such as these should be rebalanced so that they include both industry and consumer representatives.

Recommendation

Annual consultation processes on the industry funding model are open to the public, with a summary of discussions and findings of the consultation made publicly available soon after consultation is complete.

Industry-only consultation forums with Federal Government are rebalanced to include consumer representatives.

Review of the funding model

Finally, we are conscious that the model outlined in the Proposals Paper represents a significant shift in the funding model for ASIC, and in some ways, in the relationship between industry and the corporate regulator. We believe it is important for the funding model be independently and formally reviewed three to five years following implementation, to ensure that it is operating effectively and enabling ASIC to achieve best practice regulation. The review should consider any impact of the funding model on ASIC's independence or the public's perception of ASIC's independence. While this is an exciting new stage for ASIC, it does remain to be tested and will require review.

⁵ See <http://kmo.ministers.treasury.gov.au/media-release/067-2016/>

Recommendation

A statutory requirement is included in establishing legislation for the funding model to be independently and formally reviewed three to five years following implementation.

Please do not hesitate to contact Erin Turner, Acting Director of Campaigns and Communications, CHOICE on (02) 9577 3344 or eturner@choice.com.au, or Zac Gillam, Senior Policy Officer, Consumer Action on (03) 8554 6912 or zac@consumeraction.org.au if you have any queries regarding this submission.

Kind Regards,



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