



15 December 2017

Manager Corporations and Schemes Unit
Financial Systems Division
The Treasury
Langton Crescent
PARKES ACT 2600
Via email: ASICFunding@treasury.gov.au

Dear Sir/Madam

Introduction of ASIC's Fee-for-Service under the Industry Funding Model

In brief:

AIST strongly supports Fee-for-Service and its move towards transparency and accountability. AIST's areas of concerns centre around a lack of full compliance with the Cost Recovery Guidelines and the need for ASIC to commence collecting and reporting on the level of regulator activities based on a superannuation sector (profit-to-member; retail) basis. The level of regulator focus should be tied to the quantum of levies raised from superannuation sectors. AIST seeks an industry roundtable to help aid consultation and clarity.

Thank you for providing the opportunity to respond to Treasury's *Introduction of Australian Securities and Investments Commission's Fee-for-Service under the Industry Funding Model Consultation Paper* ('Consultation Paper').

AIST confirms its ongoing support for the introduction of the Industry Funding Model. The Model will deliver transparency and accountability - which previously was minimal. In this submission, we will address those specific questions within the Consultation Paper only as they affect superannuation funds. AIST strongly supports adequately funded Regulators. Regulator funding needs to take into account how to most fairly apply funding in such a way as to best protect consumers.

Before we turn to the specific questions, we wish to highlight concerns arising from the ASIC Supervisory Cost Recovery Levy Act 2017 ('the Act'). We raised these concerns during the consultation phase. The Act is the foundation upon which the Industry Funding Model (including Fee-for-Service) is built.

- **Carveouts from the Government's Cost Recovery Guidelines should not be enabled.**
The Act has enabled carveouts from the Government's Cost Recovery Guidelines (CRG). The Statutory Levy amount outlined in the Federal Budget is not cost-recoverable under the CRG and yet will form part of the levy. We had advocated that compliance with the CRG should have formed part of the objectives under section 9(2) of the Act.

- **ASIC should be accountable for how much time it spends examining particular ‘sectors’.** We had advocated that the volume of ASIC’s regulatory activities on various entities and sectors should be linked to the levy. We maintain this position. This approach could have been achieved through reflecting in the Act the sector definitions which APRA uses – retail, profit-to-member, etc. Instead, a combination of the Act and Regulations defines ‘sub-sector’ as ‘superannuation trustees’. There is no breakdown of which sectors within a superannuation system worth over \$2trillion are causing greater regulatory focus.

The collection of data regarding how ASIC spends its regulatory focus is important to both protecting members and ensuring ASIC accountability and efficiency. Such data should be used to drive the Fee-for-Service Model. Indeed, in the earlier consultations, the objectives of ‘proportional’ and ‘accountability’ had been included. We are concerned that these have been removed from the proposed objectives in the Consultation Paper.

Frequently, queries are raised regarding the outcomes of organisational behaviour upon member outcomes. ASIC has commented on how organisational cultures drive outcomes, and that remuneration structures and conflicts of interest underpin this¹. The recently announced Royal Commission into banks and financial services is yet another example of this. We strongly contend that the definition of ‘sub-sector’ should therefore be amended so that the level of regulator focus on different cultural structures (profit-to-member; retail) is transparent and aides ongoing inquiries.

We accordingly believe that the above matters must be addressed first so that the Fee-for-Service under the Industry Funding Model can work effectively. We now turn to the questions raised within the Consultation Paper.

PURPOSE

Questions

1. **Do you have any comments on whether the Corporations (Fees) Regulations 2001 should continue to specify all ASIC fees regardless of whether they are determined on a cost-recovery basis or whether the cost-recovery fees should be specified in a separate instrument so they can be more clearly differentiated from non-cost recovery fees?**

AIST strongly believes that the ASIC fees should be specified within the Corporations (Fees) Regulations 2001. The fees (or any levies) which superannuation trustees pay to ASIC ultimately is deducted from members’ retirement moneys. It is therefore important that superannuation trustees are placed in a position of being able to query the level of fees – this is best achieved through the Regulation amendment process. This is particularly relevant given that section 11(2) of the Act has reduced the time for disallowance from 15 to 5 sitting days.

¹ An example: Price, J. (2017). *Outline of ASIC's approach to corporate behaviour*. Available at: <https://tinyurl.com/ycwrx2ff>

2. Do you have any feedback regarding the model objectives?

AIST supports the objectives as drafted in the Consultation Paper, but believes that they do not go far enough. We recommend additional objectives:

- **Accountable.** All components should be in accordance with the Government's Cost Recovery Guidelines. AIST notes with concern the removal of the concept of 'accountability' from the objectives. This objective was in previous consultations.
- **Proportional.** Levies raised should be proportional to the volume of work ASIC undertakes. Organisational culture does drive outcomes and this therefore drives ASIC's work volume. This proposed objective would also aid the overarching objective of 'transparency'.

AIST notes that previously, the objective of 'proportional' had been included, but related to Funds Under Management. Clearly, FUM alone is insufficient to reflect the volume of work which ASIC may undertake. A stronger and more accountable method of raising levies against work undertaken would be, for example, the number of breaches, data from external dispute resolution processes, ASIC's time spent on particular entities, and the number of internal complaints.

AIST strongly advocates that ASIC should commence examining what initial steps might be taken to commence collecting data which might help form a risk-related metrics approach.

AIST strongly supports the OECD comments that 'Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.'²

In practical terms, the OECD notes that this means resources are effectively planned on the risk level and resources are rationally allocated. Risk-focus and proportionality requires that inspections and enforcement actions are not to fall below a 'threshold' level.

- **Commercially based.** AIST notes that this objective from previous consultations has also been removed. Previously, it grouped all sectors that are providing similar services. AIST advocates that the focus should be instead on sectors which have different cultural models. Sector definitions should also include sub-sectors for the superannuation industry using the APRA categories (not-for-profit and for-profit). AIST strongly recommends that such sub-

² OECD (2014) OECD Regulatory Policy Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy, OECD Publishing [online] Available at <http://www.oecd.org/gov/regulatory-policy/enforcement-inspections.htm>

sectors be included. This is important because the different sub-sectors reflect different organisational cultural values. As Greg Medcraft recently said, ‘culture matters to ASIC because poor culture can be a driver of poor conduct – and we regulate conduct.’³ Collection of data at these sub-sector levels is important in focussing ASIC activity and also in helping to assess how risk-related metrics might be formed.

ISSUES FOR DISCUSSION

Questions

3. Is the proposed methodology for calculating fees-for-service appropriate? If not, why not?

AIST overall supports the proposed methodology – in particular, that ASIC will determine the various costs associated with eg. applications.

However, we do strongly advocate that that any form which relates to a particular entity should form be charged as a fee rather than included within levies. Schedule B of the Consultation Paper sets out those current fees which it is proposed will form part of levies. AIST believes that these are mainly related to individual entities, and should not form part of levies. This proposal is also contrary to the two types of regulatory charges outlined on page 7 of the Consultation Paper. We would appreciate having an industry roundtable with Treasury and ASIC to discuss

4. Are there any other sectors where a tiered approach to setting fees would be appropriate?

AIST has no comment.

5. Do you have any suggestions for how the proposed methodology could be modified? If so, please provide details.

AIST reiterates its earlier comments that it is essential that levy calculations must include transparency around which cultural sectors generate the most regulator activity. We appreciate that currently, a risk-based approach has not been adopted in levy calculations. We have suggested what elements of data could be a starting point. Additionally, in the interests of protecting consumers, it is important that ASIC hours of work be documented by superannuation sector (profit-to-member; retail, etc). This would also be in line with how APRA generates superannuation statistics.

We also note that a fee will be charged for relief applications. At times, AIST along with other superannuation peak bodies makes joint applications. We are assuming that this would be treated as a single relief application – AIST would appreciate confirmation.

³ Medcraft, G. The importance of corporate culture. (2016) [online] Available at: <http://download.asic.gov.au/media/4108464/greg-medcraft-speech-to-ausclub-published-13-december-2016.pdf>

At times, when AIST as a peak body has reached agreement regarding applications for relief, our individual member funds then apply each in turn for the same thing. AIST would appreciate discussing how the fees would be applied in these situations.

6. Are the proposed accountability measures for ASIC appropriate? If not, please provide details.

AIST confirms its ongoing support for a three yearly assessment of fee amounts. This will provide greater certainty to the industry. We have long called for a Cost Recovery Implementation Statement each year, and are very pleased that this will occur each October.

AIST strongly recommends that additions to the proposed accountability measures be made through additions to ASIC's Annual Report:

- ASIC to include its volume of work based on 'superannuation industry sectors' using APRA's classifications (eg. profit-to-member; retail).
- ASIC to outline in its performance outcomes how its estimated time of work compares actual time spent by "superannuation industry sectors."
- ASIC outline its ongoing steps towards including risk-based metrics.

7. Will the proposed fee-for-service model have an effect on competition and innovation? If so, please provide details, including possible

AIST has no comment.

AIST would greatly appreciate an industry roundtable to settle our queries arising from the Consultation Paper. If you have any further questions or wish to arrange a meeting, please contact Karen Volpato, Senior Policy Advisor AIST (0419 127 496 or at kvolpato@aist.asn.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'EVA SCHEERLINCK', with a stylized flourish.

EVA SCHEERLINCK
Chief Executive Officer
AIST