



Boutique Financial Planning Principals Group Inc.

Submission to Treasury
regarding the
Proposed Industry Funding Model
for ASIC

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The Boutique Financial Planning Principals Group

The BFP is a national, not-for-profit association of like-minded, small Australian Financial Services Licensees (AFSLs) that are independently owned and not aligned to financial institutions. The BFP was incorporated on 26th April 2002, formalising a monthly study meeting of boutique financial planners going back to 1996. The BFP now has around 85 members employing over 200 financial advisers and 250 support staff, looking after approximately 14,000 client groups with over \$14 billion invested, with members in every state. Almost half of our members also hold Australian Credit Licences as intermediaries.

Members of the BFP must:

- Have their own AFSL to provide financial advice;
- Be providing ethical and professional financial planning advice which puts the client's interests first;
- Be independent and independently-owned, as defined in the BFP Constitution;
- Be practitioner members of the Financial Planning Association of Australia (FPA); and
- Have 20 or less Authorised Representatives.

The Mission of the BFPPG is to use our collective strength to improve financial planning for clients and financial planners by:

1. Sharing ideas and information between members — helping members in all areas of financial planning with emphasis on the particular vulnerabilities of small businesses in an industry where the majority are large businesses.
2. Fostering friendship between members and providing support to financial planning representatives seeking their own AFSL.
3. Communicating with the FPA — providing a united and strong boutique voice to the FPA and working with the FPA to promote the specific interests of boutique financial planners.
4. Communicating with regulators and government — providing a united and strong voice to regulators and government about matters that are consistent with the provision of client-focused as distinct from product-focused financial planning advice to the Australian public.
5. Promoting awareness and recognition — promoting the significant differences between boutique financial planners and institutionally aligned financial planners and the differences between “advice businesses” and “product sales businesses” to regulators, politicians and to the public.



Summary

The BFP supports steps to improve ASIC's transparency and accountability and understands that a move to an industry funding model is one of these steps.

In this submission we have only commented on those aspects of the proposal which impact on our membership.

The proposed levies and fees result in a disproportionate share of ASIC's costs being borne by small businesses with the likely result being a reduction in competition and in consumer access to appropriate financial advice.

Chapter 2: ASIC's Activities

We do not support cost recovery for enforcement activities through general industry wide levies as this.

Given part of ASIC's role is to educate, inform & protect the rights of consumers. The costs incurred in doing so such as those identified above should be borne by consumers ie the taxpayers.

Chapter 4: The Proposed Industry Funding Model

We are opposed to the privatisation of ASIC's Registry business. Financial media reports of a business valuation of between \$3 and \$6 billion suggests a very large amount of maintainable profits. ASIC's annual report for 2014 suggests this profit is more than ASIC's current operational costs and questions the need to pursue other areas of industry funding.

ASIC must use data that is demonstrably correlated to the risks that ASIC is measuring to price the charging model. This principle must be superior to administrative ease.

Chapter 5: Determining ASIC's annual funding and levies

The proposed future consultation arrangements should be adopted immediately and the proposed accountability structure should be introduced in this financial year as soon as a decision is made on the funding model to enable industry participants to make informed comments regarding the proposed levies and fees for the 2016/17 year.

Chapter 6: Phase-in arrangements and levy administration

A 1 July 2016 start date is inappropriate given the intended transparency of activities and costs has not yet occurred.



Attachment B – Funding Model for Australian Credit Licensees

The funding model for credit licenses has the potential to be graduated for both size of the business and the risk represented by the business (as measured by economic loss to consumers and loss of confidence in the financial system). There is a potential issue where a consumer successfully obtains a loan through a credit intermediary. In this case, the volume of credit is counted twice for levy purposes (for both the intermediary and the provider)

Attachment C – Funding Model for AFS Licensees

The BFP does not support the proposed arrangements for AFS Licensee levies as we do not believe they properly reflect the differences in ASIC's current, and likely future, activities in relation to large financial advice providers compared to those in relation to small financial advice providers.

We believe there is significantly more work when ASIC engages in a program with a Financial Advice Provider that has advisers in multiple locations than when undertaking the same activity with a Financial Advice Provider operating in only one location with only a few advisers. This extra work should be reflected in both the fixed Tier 1 provider levy and the fixed levy per financial adviser.

Using "authorisations" as a measure of regulatory activity is not appropriate. There is no evidence to suggest that there is a relationship between number of authorisations and the risk of economic loss for consumers or a loss of confidence in the financial system. Using authorisations to apportion the budget is more akin to a tax on competence than a proxy for risk. In most other areas of activity, the proposed funding model uses a measure of size or volume to impose a graduated levy to apportion costs.

For example, a BFP member holding an Australian Credit Licence and advising as an intermediary on \$200 million in new loans in a year pays a levy for that licence of \$890. If the member writes more than \$200 million in new loans it increases \$26,000.

The average BFP member business with an AFSL as an advice provider has two advisers looking after around 225 clients with approximately \$200 million invested. The estimated levy for that business is between \$7000 to \$11,000pa depending on the range of financial products on which the business provides advice and deals. The amount of levy doesn't change if the value of investments held by clients is much less or much more.

We believe fairness and natural justice to be more important than administrative efficiency when apportioning costs to industry.

We propose Financial Adviser Providers be divided between "large" and "small" and the Provider Levy determined according to costs and entity numbers, and/or the manifest difference in ASIC costs be reflected in a higher financial adviser levy.

We do not believe the proposed levy arrangements will support the growth of AFS licensees, nor will they support innovation, small business or access to financial services in regional Australia.



Attachment G – Proposed Fee Schedule

Without the information that would be made available in ASIC’s Cost Recovery Implementation Statement, it is indeterminable whether the proposed fee amounts are appropriate.

Attachment I – Definitions of Industry Sectors & Sub-Sectors

We propose Financial Advice Providers be divided between “large” and “small”.

We don’t believe a separate subsector of Securities Dealer is warranted.



Chapter 2: ASIC's Activities

2. *Are there any other specific regulatory activities undertaken by ASIC, such as those that support innovation, that should not be cost recovered from industry? If so, please provide examples.*

We do not support cost recovery for enforcement activities through general industry wide levies such as this. It requires those operating within the law to pay for the misdemeanours of those breaking the law.

In the context of enforcement activities against AFSL holders such as prosecution, banning, disqualification or enforceable undertakings, ASIC's costs should be recovered from the AFSL holder to the extent possible or otherwise funded by government, in the same manner that other police activities are funded by the government.

Part of ASIC's role is to educate, inform & protect the rights of consumers. The costs incurred in doing so should be borne by consumers ie the taxpayers.

5. *The Government currently recovers most of the costs of operating the MoneySmart website through APRA's supervisory levies. Should these costs no longer be recovered from industry? Why or why not?*

Page 6 of the consultation paper outlines the regulatory activities not to be funded by industry and specifically states that

"The levies and fees-for-service proposed in this consultation paper do not recover the costs of:

- financial literacy programmes to educate investors and consumers on financial matters;"

The MoneySmart website is clearly a tool used by ASIC to inform and educate consumers and as such falls within that exclusion.

6. *Do you support the SCT continuing to be funded through APRA's levies on APRA-regulated superannuation funds? Why or why not?*

Yes. Access to the SCT is only available to members of APRA-regulated superannuation funds so a levy on these funds (and therefore members) is appropriate. Collection by APRA has proven to be an efficient method of collection.



Chapter 4: The proposed industry funding model

9. *Is the proposed methodology for determining the levy mechanisms appropriate? If not, why not?*

At a "big picture" level, the methodology appears robust. But to propose a levy for "certain activities in relation to educating consumers and investors" (on page 15) is not consistent with the exclusions listed on page 6 of the paper. It does not appear to be consistent with the Government Cost Recovery Guidelines (Resource Management Guide No 304) and the Government Charging Framework (Resource Management Guide No 302).

Improved efficiency is necessary and is a worthy objective. But to state that charging for authorisations will drive efficiency lacks coherence (page 4). Charging for authorisations is a tax on competency and has little to do with risk or efficiency. ASICs data would support the claim that significant economic loss has occurred in cases where there was only a single pair of authorisations (advise/deal). An example of this occurred when Great Southern authorised a large number of accountants to "advise/deal" in its products. Some authorisations may contain higher levels of risk than others when measured by economic loss and damage to consumer confidence in the system.

Some of the selected proxies for risk are unfair and/or do not adequately capture a measure of the risk of bad advice outcomes for consumers or loss of confidence. Whilst levies are capped at the top end, they have not been adjusted at the lower end for percentage of revenue or profit. The resulting levies are regressive and send a pricing signal to the market that the Government does not want to encourage small AFS Licensees.

ASIC must use data that is demonstrably correlated to the risks that ASIC is measuring to price the charging model. This principle must be superior to administrative ease.

Given the timeframe provided for consultation is less than half that indicated in Chart 4 on page 24 of the paper and that we do not have access to any level of detail on ASIC activities or the related costs, we are firmly of the opinion that the BFP is not in a position to advise ASIC on how they should comply with the various statutory and natural justice obligations to which they are subject. We are only really able to inform ASIC when they have failed to meet these obligations.

Notwithstanding the reality of the preceding statements, we suggest applying similar size and geographic tests to those used for credit and company related charges will produce fairer results.



Chapter 5: Determining ASIC's annual funding and levies

15. Are the proposed consultation arrangements on the levy mechanisms and funding appropriate?

The proposed future consultation arrangements should be adopted immediately. Chart 4, page 24, indicates a 2 month consultation period on levy mechanisms and ASIC's funding in 2016-17 for the following year but Treasury has provided a much shorter period this year (30 working days) for consultations in the form of submissions on both the funding model and the level of levies/fees.

Once a decision has been made on the Funding Model then further consultation should be undertaken in relation to the levy mechanisms, supported by the release of additional information from ASIC as envisaged in future years.

17. Do you have any further suggestions for enhancements to be made to ASIC's accountability structure or industry funding model? If so, please provide details.

The proposed accountability structure should be introduced in this financial year as soon as a decision is made on the funding model, requiring ASIC to produce a draft Cost Recovery Implementation Statement to enable industry participants to make informed comments regarding the proposed levies and fees for the 2016/17 year.

ASIC's accountability structure should include clear evidence of the pro-active steps ASIC is taking to address areas of concern which may lead to potential consumer losses and the costs expected to be incurred, to enable participants to evaluate regulatory performance as opposed to enforcement performance.

18. How should the Cost Recovery Stakeholder Panel operate? How should the membership be determined?

Membership should be representative of expanded industry sub-sectors, which we have commented on below in regard to Appendix I.



Chapter 6: Phase-in arrangements and levy administration

19. Is it appropriate to set fees to recover ASIC's costs from 1 July 2016? Why or why not?

In relation to both of these questions, as noted above the proposed future consultation process has not occurred at this point so a 1 July 2016 start date is inappropriate given the intended transparency of activities and costs has not yet occurred.

22. Is it appropriate not to levy entities entering the market part way through the year? If not, how do you propose that these entities be treated?

No. We believe new entities should be subject to proportionate levies from the commencement of business. In relation to new Financial Advice Provider AFSL applications we believe the proposed fees are too high and will act as a barrier to entry to new participants, while the proposed levy structure is also competitively negative towards small business. New entrants, must operate under the same ongoing levy structure as existing participants to ensure competitive neutrality.



Attachment B – Funding Model for Australian Credit Licensees

30. Do you support the proposed arrangements for Australian Credit Licensees' levies? Why or why not?

There is a recognition of size and the scale of potential economic loss that could result from that scale. The proxy chosen for risk is the amount of credit arranged/provided which seems appropriate. But an application for credit arranged by a credit intermediary that is accepted by a credit provider will have the total credit provided taxed twice. Perhaps credit providers should only be taxed on credit that is older than one year ?

31. Will the proposed levy arrangements for Credit Licensees be competitively neutral? If not, why not?

We consider the levy arrangements to be competitively neutral in that they do not appear to favour incumbents over new entrants (or vice versa)

32. Will the proposed tiering arrangements support the growth of Credit Licensees? Why or why not?

We do not see how introducing more costs to obtain and keep a licence will encourage growth. The best we can say is that the pricing signals would not actively discourage growth of credit licences

33. Will the proposed levy arrangements for Credit Licensees support innovation? If not, why not?

There is no aspect of the proposed levy that will support innovation.

34. Will the proposed levy arrangements for Credit Licensees support small business? If not, why not?

Increasing costs to small business does not support small business. The best we can say is that the size of the impost on small business is unlikely to actively discourage small business from participating in the credit sector

35. Do you believe that a graduated approach to determining the levy payable by credit licensees would be preferable to the proposed levy arrangements? Why or why not?

The graduated method has more equity and fairness than the tiered method, but quality of data is an acknowledged problem. Surely reliable data on volume of credit can be obtained from credit providers? Credit intermediaries may have trouble obtaining reliable data on volume of credit provided - but perhaps there is a reporting role here for credit aggregators? Volume of credit provided through aggregators is how commissions are calculated and paid to credit intermediaries

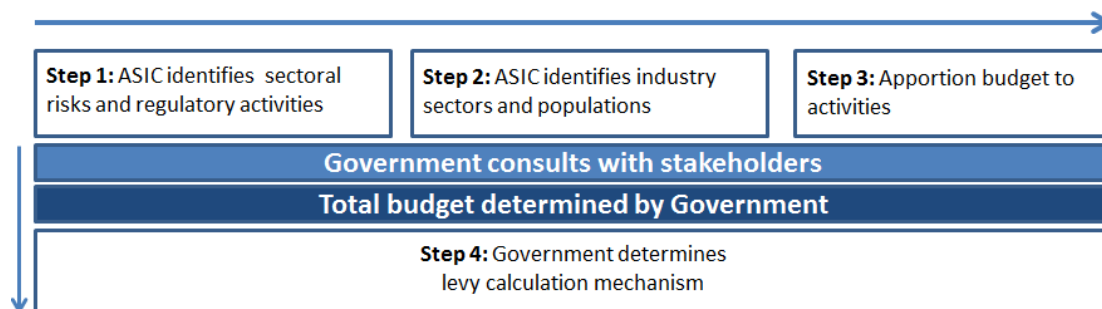
Attachment C – Funding Model for AFS Licensees

36. Do you support the proposed arrangements for AFS Licensees’ levies? Why or why not?

The BFP does not support the proposed arrangements for AFS Licensee levies as we do not believe they properly reflect the differences in ASIC’s current, and likely future, activities in relation to large financial adviser providers compared to those in relation to small financial advice providers. Nor do we believe using “authorisations” as a measurement of regulatory activity is appropriate.

Step 3 of the process (shown below from page 18 of the CP) requires use of "the best proxy for supervisory intensity".

Figure 1: Determining annual levies under an industry funding model



The scale of ASIC’s supervision of AFS licensees is not driven by the number of authorisations that each licensee holds. Using authorisations to apportion the budget is more akin to a tax on competence than a proxy for risk. In most other areas of activity, the proposed funding model uses a measure of size or volume to impose a graduated levy to apportion costs. We believe fairness and natural justice to be more important than administrative efficiency when apportioning costs to industry. The resulting fees are regressive and create significant barriers to entry.

The ASIC example for a small advisory business (example 5 page) is reproduced below for reference:

The levy for small proprietary companies:	\$5
A levy for holding an AFS licence and two authorisations:	\$750 (3 x \$250)
A levy for providing Tier 1 Financial Advice Provider (Tier1):	\$1350
A levy for each Financial Adviser on the FAR:	\$2,350 (5 x \$470)
A levy for being a Securities Dealer	\$1, 600
Total levy payable by Company E:	<u>\$6,055</u>



In contrast to this example, most of our members have authorisations for advising and dealing in relation to the normal range of financial products such as bank accounts, life insurance, managed funds, shares, government bonds, superannuation, retirement savings accounts and margin lending and are facing levies on somewhere between 8 – 20 authorisations, adding between \$1250pa to \$4250pa to this example.

The average BFP member business holding an AFSL as an advice provider has two advisers looking after around 225 clients with approximately \$200 million invested. The estimated levy for that business is between \$7000 to \$11,000pa depending on the range of financial products on which the business provides advice and deals. The amount of levy doesn't change if the value of investments held by clients is much less or much more.

This compares to a BFP member holding an Australian Credit Licence and advising as an intermediary on \$200 million in new loans in a year pays a levy for that licence of \$890. If the member writes more than \$200 million in new loans it increases \$26,000.

We believe there is significantly more work when ASIC engages in a program with a Financial Advice Provider with advisers located in multiple locations than when undertaking the same activity with a Financial Advice Provider operating in only one location with only a few advisers (typically less than 5), and this extra work should be reflected in both the fixed Tier 1 provider levy and the fixed levy per financial adviser.

We believe that there is ample evidence that consumer outcomes have been poor for those dealing with large Financial Advice Providers resulting in economic loss and a loss of confidence in the "advice" part of the financial services industry.

Recent years have seen very significant levels of ASIC surveillance and enforcement activity in regard to the supervision of large AFSL licensees with a number of enforceable undertakings and long term remediation programs being applied to large licensees, many of which were owned or controlled by product issuers. ASIC's Strategic Outlook published in October 2014 highlighted ASIC's concern in relation to "Gatekeeper conduct in financial services" and included in its examples of 2014 -15 Areas of Focus on page 9 that it would target the six largest financial advice institutions to test how they comply with high-risk areas of the law.

We are also aware that in recent years ASIC have conducted specific surveillance and review programs covering the top 20 largest AFSL advice providers, and subsequently those numbering 20-50.

We propose Financial Advice Providers be divided between "large" and "small" and the Provider Levy determined according to costs and entity numbers, and/or the manifest difference in ASIC costs be reflected in a higher financial adviser levy.

37. Will the proposed levy arrangements for AFS licensees be competitively neutral? If not, why not?

No, the proposed levy arrangements are not competitively neutral. A large proportion of ASIC costs relate to large advice providers but this is not adequately reflected in the levy calculations.



Our members have provided estimates that the proposed levies (although difficult to calculate accurately given the vague definition of “authorisations”) will equal between 0.5% and 3% of revenue, with a significantly higher impact on profitability (we estimate that pre-tax profit in some cases would be cut by between 10% and 50%).

Such an impost threatens the viability of some practices while lower profits results in lower reinvestment in the business and therefore lower growth.

In contrast, using the figures available from the Annual Report of a large listed wealth management and life product provider, the proposed levy arrangement would result in annual levies of only 0.5% of **profit**.

In addition, our members deal with an average of between 200-250 clients, and to the extent these costs could be passed on to those clients, the increase in fees per client would obviously be much higher than for large financial advice providers with hundreds of thousands of clients, who are much more likely and able to absorb the costs.

Large Financial Advice Providers have much larger client bases in aggregate, and much larger disengaged or “orphan” client bases, from which grandfather commissions continue to be earned, providing in effect “cost free” revenue. In addition, many of the large financial advice providers are owned or controlled by product issuers, which are able to use margins in product fees to subsidise operating costs in the “advice provider” sections of their overall businesses. As such small financial advice providers are already at a competitive disadvantage and the proposed levy arrangements exacerbate this.

38. Will the proposed tiering arrangements support the growth of AFS Licensees? Why or why not?

The proposed tiering arrangements will support the growth of large licensees compared to small licensees as the larger entities are more able to absorb those costs, exacerbating the issues relating to competitive neutrality discussed above.

Tiering should be based on size, as it is in other sectors in this proposal, and if required, additional data should be collected to enable the required calculations.

39. Will the proposed levy arrangements for AFS Licensees support innovation? If not, why not?

To support innovation within financial services would require lower financial barriers and higher qualification barriers for individual licensing. Indeed, ASIC themselves will require innovative solutions to deal with an innovative industry. We can see nothing in these proposed arrangements that would support innovation.

40. Will the proposed levy arrangements for AFS Licensees support small business? If not, why not?

The proposed levy arrangements are anti-small business for all of the reasons referred to above.



41. Will the proposed levy arrangements for AFS Licensees support access to financial services in regional Australia? If not, why not?

The proposed levies (and just as importantly the proposed fees referred to below) will severely impact small businesses, reducing their ability to provide financial services in regional Australia and discouraging them from doing so. We can see no reasons which would support the proposition that the proposed levy arrangements would support access to financial services in regional Australia.

42. Do you believe that a graduated approach to determining the levy payable by AFS licensees, such as responsible entities and superannuation trustees, would be preferable to the proposed levy arrangements? Why or why not?

Yes, we support an approach which reflects the differences in ASIC activities in relation to large financial advice providers compared to small financial advice providers for all of the reasons outlined above.

Large Financial Advice Providers have much larger client bases in aggregate, and much larger disengaged, “orphan” and sporadically serviced client bases holding a significant amount of investment assets and/or risk products on which little or no advice is being provided, which could lead to poor consumer outcomes. By not applying some form of graduated approach which takes into account the relative number of clients and/or funds under “advice” the proposed levy arrangements do not properly reflect ASIC’s activities and the risks of poor consumer outcomes.



Attachment G – Proposed Fee Schedule

58. Are the proposed fee amounts for professional registration, licensing and document compliance review forms appropriate? If not, why not?

Without the information that would be made available in ASIC's Cost Recovery Implementation Statement it is indeterminable whether the proposed fee amounts are appropriate.

In addition, accountability should be extended as to an explanation as to why ASIC was gathering the information and the level of resources it uses in processing that information.

As an example it appears on the surface to be completely unreasonable to be charged \$4400 to notify a change of control in a small business such as a one or two adviser AFSL holder. In contrast a Registered Tax Agent business is required to notify the Tax Practitioners Board the same information, via email, at no cost.

59. Do you think that the proposed fee amounts may act as a disincentive for some entities from submitting a professional registration or licence application, or a document for compliance review, with ASIC? If so, why?

In relation to AFSL applications the 600% increase in application fee is a significant disincentive which is likely to deter applicants and result in less competition.

The Financial System Inquiry and ASIC, in its 2014-15 Strategic Outlook, identified concerns where larger licensees are subsidiaries of product issuers, leading to vertical integration which may lead to consumers being directed to in-house products. Professional advisers, seeking to act in their clients' best interests, may choose to move to an un-conflicted business model such as obtaining their own AFSL, however imposing such a high fee would be a deterrent to a start-up business.

63. Would you support the Government only imposing partial cost recovery for applications for limited AFS licences? (See Form P-FS01A and P-FS01B).

We refer to our answer to Question 39 and note that while a Limited Licence does not allow specific product advice in regard to investment and insurance products, in all other aspects of its operation it is almost identical to a full AFSL, and as such will be subject to the same regulatory activity.



Attachment I – Definitions of industry sectors and subsectors

64. *Do you agree with the proposed definitions for industry sectors and sub-sectors? If not, why not?*

(a) Financial Advice Provider

We note that in the Companies sector there are separate sub-sectors covering large and small proprietary companies, and that the proposed levies for each are different, as the nominated ASIC costs, divided by the number of entities in the subsector, produces different results.

For the reasons outlined above in our answer to Question 31 we believe the same approach should be applied in the AFS Licensees sector to distinguish between “large” financial advice providers and “small” financial advice providers.

We propose Financial Adviser Providers be divided between “large” and “small” and the Provider Levy determined according to costs and entity numbers, and/or the manifest difference in ASIC costs be reflected in a high financial adviser levy.

(b) Securities Dealer

The majority of our members would be authorised to advise on and deal in securities. They would not be ASX market participants so they would either refer their clients directly to a stockbroking firm or have an arrangement with such a firm to enter transactions into the firm’s trading system on behalf of the clients.

It is unclear to us what extra ASIC regulatory activities are undertaken with respect to these authorisations that would warrant a separate sub-sector, which in turn leads to a separate levy, and note we will already be paying levies for these authorisations as AFS Licensees, as will the market participants we deal through.

We don’t believe a separate subsector of Securities Dealer is warranted.



The Author

This submission was prepared by the Executive of the BFP with input from, and on behalf of, the members and represents the collective view of the BFP.

Contact Details

Boutique Financial Planning Principals Group

The President
Dacian Moses

president@bfp.asn.au

PO Box 80, GRANGE QLD 4051

Phone: (02) 6650 0522

Fax: (02) 6650 0255