9th October 2015

Corporations and Schemes Unit
Financial System and Services Division
The Treasury

By email: asicfunding@treasury.gov.au

Dear Sir/Madam

Re: Proposed Industry Funding Model for the Australian Securities and Investments Commission Consultation Paper

Thank you for the opportunity to provide comment on the proposal to review funding arrangements for the Australian Securities and Investments Commission (ASIC).

Financial Counselling Australia (FCA) is also party to a joint consumer group submission facilitated by the Consumer Action Law Centre that canvasses a range of issues relevant to the proposed model. FCA is making this additional submission to draw attention to one aspect of a "user pays" model relevant to financial counselling, that has not been adequately considered in the policy development process to date.

Our key recommendation is that Australia adopt a similar "user pays" model to that in place in the United Kingdom. In the UK, a "user pays" levy funds the corporate regulator (the Financial Conduct Authority) as well as financial counselling services (called debt advice in the UK) and the provision of the Money Advice Service (financial literacy initiatives).

Our recommendation reflects the fact that a large proportion of financial counselling clients seek assistance from a financial counsellor because they have debts with financial service providers (FSPs) they are struggling to pay. Financial counsellors help their clients overcome financial difficulties and get back on track. FSPs therefore benefit substantially from the involvement of financial counsellors. FSPs however do not contribute to the cost of service provision. Instead these costs are borne by State and Federal Governments, which are the main funders of the financial counselling sector, or by the agencies themselves.

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SUMMARY OF RECOMMENDATIONS

Main recommendation:

- **That a user pays/levy model is used to fund both ASIC and financial counselling services**

Other recommendations:

- **Funding for ASIC – as distinct from how much can be cost-recovered – be reviewed with a view toward ensuring it is at a suitable level**
- **Increase amounts earmarked for education in the regulatory activities forecasts**
- **ASIC should be funded appropriately to undertake financial literacy education, including the continuation of the MoneySmart website**
- **Levies and priorities should be determined in consultation with financial counsellors and other consumer stakeholders (not just industry stakeholders)**
- **Reconsider the frequency of levy-setting so as to avoid endless efforts to minimise the levy amount payable by industry**
- **Consider allowing ASIC to use some amount of over-collected monies as an emergency funding pool for surveillance and enforcement of emerging problem industries rather than refunding overpaid levies as fee reductions**

About FCA

FCA is the peak body for financial counsellors in Australia. FCA's member groups are the eight State and Territory financial counselling associations. We support financial counsellors and provide a voice on national issues. Financial counsellors assist individuals and families with credit and debt issues. Working in community, not-for-profit agencies, financial counselling services are free, independent and confidential.

OUR MAIN RECOMMENDATION

Q 10. Are there any activities proposed to be recovered through fees that you believe should be collected through annual levies? If so, which activity or activities and why?

As part of the user pays model, financial service providers should pay an annual levy to help fund financial counselling services.

Demand for financial counselling services is continuing to increase. The large majority of clients have debts with FSPs. Across Australia, funding for financial counselling continues to be ad hoc, inconsistent and uncertain. Governments increase, decrease or in some cases defund services almost at a whim. Responsibility for funding however should not simply to be shared responsibility between the Federal and State Governments. It is time for the industries that benefit from financial counselling and refer their clients to financial counselling, to also fund financial counselling.[1]

[1] We note that there is a similar case to be made for industry funding via a levy for the other industries that refer their clients to financial counsellors or benefit from it, including telcos and utilities.

In the United Kingdom, a levy on financial institutions funds the financial services regulator (the Financial Conduct Authority) as well as debt advice services (what we call financial counselling) and the Money Advice Service (financial literacy initiatives). The UK levy raises 34 million pounds per annum for debt advice services. This is significantly more than financial counselling is funded in Australia.[2]

We estimate that financial counsellors assisted around 140,000 clients last year with face-to-face advice. There are presently around 850 face-to-face financial counsellors in Australia. Around 45% of financial counsellors work part-time, equating to around 510 full time equivalent roles.

A face-to-face financial counsellor can see about three to four clients per day. Often there is a significant amount of follow up work with creditors and so on after a visit. Some clients only have one appointment but others have three or more. Calls to the 1800 National Financial Counselling Helpline, which provides phone based advice across Australia, are steadily increasing. During the 2014-15, 138,337 calls were made to the Helpline by Australians in need.[3] As shown in Figure 1 below, call volumes have been increasing since the national helpline was set up a few years ago – for example there was a 40% increase between 2012-13 and 2013-14. All indications are that the service is now at capacity.

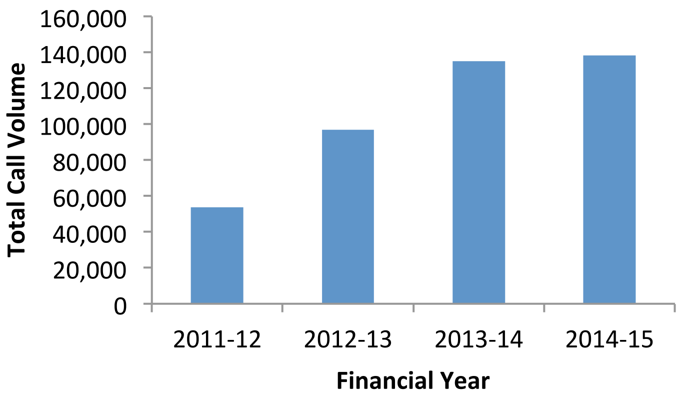

Figure 1 – Number of calls to the national phone financial counselling helpline by year

Financial counselling has positive benefits for clients, and FSPs with a relationship with those clients would certainly have benefited too. In 2012, Swinburne University surveyed 225 clients who had accessed the Salvation Army's MoneyCare service.[4] Survey respondents indicated that as a result of financial counselling:

- 66% said their financial difficulties had been resolved

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[2] It is difficult to state with certainty the amount of funding for financial counselling overall as some funding goes to specialist services such as gambling, or only applies in areas where compulsory income management is in place. The federal government provides $15m in general funding, and $6m for a national phone based financial counselling service. States and territories provide different levels of funding, which we estimate to total around $20 million.

[3] There will be some duplication of clients between the face to face and telephone services; around one third of clients contacting the telephone services are referred for to face appointments but not all will take up the referral.

[4] Dr Nicola Brackertz, *"I Wish I'd Known Sooner" The Impact of Financial Counselling on Debt Resolution and Personal Wellbeing,* Swinburne University, 2012

• 75% said they were better able to prioritise debt
• 74% said the advice had helped them avoid legal action
• 53% had avoided bankruptcy
• 74% were better able to budget
• 73% were able to access creditors' hardship programs

As people are assisted to resolve their issues by managing their debts and avoid insolvency, FSPs and other creditors avoid writing off bad debts and losing clients. Funding for financial counselling will help more clients who are at risk of defaulting on their obligations to FSPs.

We know that FSPs are a big driver of financial problems for which clients seek help from a financial counsellor. FCA's December 2013 workforce survey (see Figure 2 below) indicated that the large majority of clients have unsecured debts, either personal loans or credit cards. In our experience, the large majority of clients have multiple debts; it is extremely rare to see someone who just had one credit card, for example.

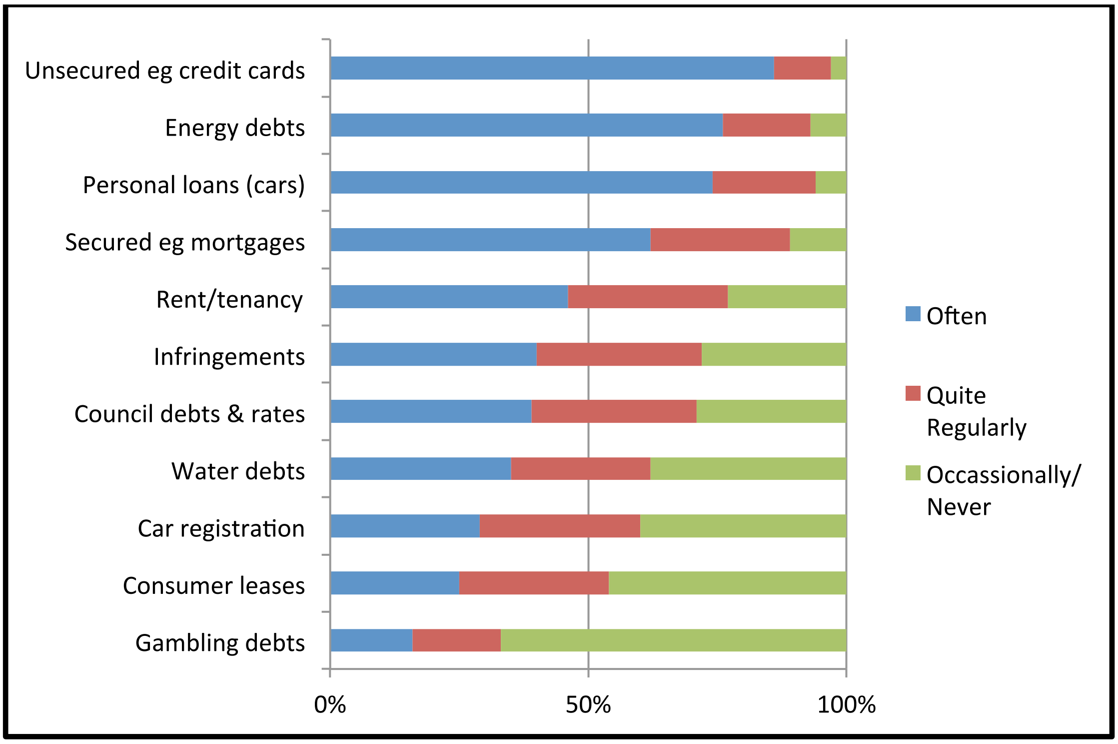

Figure 2 – Which client debts are financial counsellors commonly seeing in their casework?

A research report "*Paying it Forward*", undertaken by the Australian Workplace Innovation and Social Research Centre at Adelaide University, found that every $1 invested in financial counselling provides a $5 return. 82% of clients had experienced at least one financial crisis leading to them seeking financial counselling services. This was most commonly related to credit card or store card debts (42%) and/or utility debts (40%).

The researchers noted that the cost-benefit analysis did not include other benefits that are more difficult to quantify, such as improvements in financial literacy, stabilised housing or avoidance of legal action. In other words, the $1:$5 cost benefit is an understated and conservative measure of the benefit of financial counselling.[5]

Demand for financial counselling services exceeds supply, and this is why funding needs to be provided by the businesses that are driving demand. Face-to-face services commonly have long waiting lists of between two and four weeks - and often waiting lists themselves are full[6]. Around one third of calls to the national 1800 phone service are from non-unique numbers, which suggests the caller has not got through the first time they tried or they need more assistance. The Australian Social Inclusion Board estimated that 2.5 million people - 13% of the population - live in households of high financial stress, and yet there is just one financial counsellor for every 2,600 people in these circumstances. The demand for more counsellors exists, and nearly a third of financial counsellors have indicated they would like to work more hours if they were available. What's missing from the equation is funding to supply additional financial counselling services to the community.

The case for FSPs funding financial counselling is analogous to the involvement of FSPs in the funding of industry ombudsman schemes, through the payment of a contribution (operating fees or levy). In the same way that FSP customers benefit from independent complaint handling and the finance industry benefits when consumers have confidence in financial products, financial counsellors provide independent advice to FSP customers that helps them to get back on track. We think that the precedent in the UK provides a sensible and straightforward approach to funding a key community service. Consultation with the financial services industry on the specifics of a levy is appropriate, and we will work with government and industry to ensure the levy is proportionate and fair.

Recommendation: Levy financial service providers to fund financial counselling services

OTHER COMMENTS ON THE PAPER

ASIC funding is the critical issue that hasn't been addressed

The proposal currently being considered is that some of ASIC's income would continue to be funded from the Commonwealth budget, but a larger share would be recovered from on a cost recovery basis. It is reasonable that the businesses that create the most amount of work for ASIC contribute to the overall cost of regulation, and where a set fee can be charged for a routine service, that cost recovery occurs.

The pertinent issue not being addressed, however, is the amount ASIC needs to do its job adequately. This is particularly important given that some of the key consumer-facing work, such as financial literacy, appears to be carved out from the cost recovery model.

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[5] *Paying it forward: Cost benefit analysis of The Wyatt Trust funded financial counselling services,* Adelaide: Australian Workplace Innovation and Social Research Centre, The University of Adelaide, 2014.

[6] Waiting lists vary by agency. Services will triage appointments, for example prioritising clients who are at risk of losing assets or becoming homeless. However there is a limit on how long people are able to wait. For this reason, agencies tend to close their books at a defined cut off point, say two or three weeks.

ASIC's 2013-2014 Annual Report reported a funding cut of $120m over four years. The 2014-15 budget forecast a reduction of around 12%, and this has had a detrimental impact on staffing levels and resulted in a reduction in the amount of proactive surveillance being undertaken.[7]

The adequacy of funding for ASIC has been of concern for some time. We note that in ASIC's Stakeholder Survey 2013, funding and responsiveness were considered to have a negative impact on ASIC's overall performance. When asked to indicate their perception about the limitations of ASIC's work, stakeholders gave the least positive ratings on:

- Acting quickly to investigate breaches of the law
- Reducing the red tape associated with compliance
- Being sufficiently resourced to do its job
- Clearly communicating what it is doing[8]

Two of those ratings relate specifically to ASIC's ability to be a responsive regulator that has the capacity to act swiftly and effectively when needed. While funding alone does not solve all performance problems, we expect more funding would allow ASIC to address some of these perceived weaknesses.

Broadly speaking, the approach being proposed risks ASIC becoming focussed only on areas where it can recover costs, and for the resources ASIC dedicates to other critical activities – financial literacy, policy work, research and so on – to be whittled away because they have a broader marketplace impact. Funding for consumer consultation and participation could be at risk if this cost-recovery approach is taken further, a move we would not support. As well, ASIC, unlike the ACCC, does not have a dedicated Commissioner to address consumer issues as a requirement in its legislation. ASIC has a strong obligation to consult and listen to, advocates for the most vulnerable in society.

We would like to see the total amount of funding given to ASIC reviewed in consultation with ASIC, industry, and consumer groups, to ensure funding levels for all the work ASIC does (and should do) is appropriate – rather than simply focussing on cost recovery of some work.

Recommendation: Funding for ASIC – as distinct from how much can be cost-recovered – be reviewed with a view toward ensuring it is at a suitable and sustainable level

Education expenditure

The amount being proposed for expenditure on education across the regulated areas is low. For example, ASIC proposes to recover $24million from credit licensees in 2016-2017, with only 2% is earmarked for expenditure on education (around $480,000). Similarly, Australian Financial Services licensees will contribute $91m to ASIC, yet under $1m is earmarked for education. Financial counsellors see people day in day out who have been given inappropriate amounts of credit. The amount suggested seems inadequate, given the proposed carve out of financial literacy from industry funding. Ultimately, consumers and

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[7] *ASIC 2013-2014 Annual Report*, p4
[8] ASIC *Stakeholder Engagement Survey* 2013, p9

credit providers will both benefit if consumers are better equipped to safely use credit products – and this requires investment in education and financial literacy.

Recommendation: Increase amounts earmarked for education in the regulatory activities forecasts

<u>Responses to specific questions</u>

Q 1. Do you agree that the exclusion of these activities from cost recovery is appropriate? If not, why not?

Financial literacy programs are included in the Consultation Paper as both a regulatory activity not to be funded by industry, and a regulatory activity currently funded by industry (mostly cost recovered by APRA). The Consultation Paper considers financial literacy programs, including the operation of MoneySmart to be funded by industry already (via cost recovery by APRA).

The proposed model does not look at how ASIC activities that will not be subject to cost recovery, such as policy work and financial literacy education, will be funded appropriately. Because the Paper is primarily about how future cost recovery will work, it does not consider the adequacy of funding available for those activities. It is unclear how much ASIC presently spends on financial literacy.

It is our strong view that ASIC should be adequately funded to run financial literacy programs and provide trusted information to all Australians. Improving financial literacy requires sustained commitment over the long term, to effect generational change. ASIC's commitment to financial literacy can be seen in the participation of both the Chair and Deputy Chair of ASIC on Australia's Financial Literacy Board. ASIC's role in providing independent, high quality financial literacy programs cannot be overstated – consumers need to have an independent source of quality information that is not advertorial or effectively a promotional activity for a financial service.

Poor financial literacy skills can have serious consequences. Statistics from the Australian Financial Security Authority show that excessive use of credit is the second most common cause of personal insolvency, behind unemployment and loss of income.[9] Increasing financial literacy across the community is an important complementary mechanism that will help people make good decisions in their own best interests and avoid financial over commitment. ASIC will always have a role to regulate financial services and enforce laws and regulations where businesses ignore the rules that cause consumer harm, but prevention is of course better than cure.

We note that question 5 states that the costs of operating the MoneySmart website are funded through APRA's supervisory levies and asks whether funding for this website should continue to be borne by industry. The MoneySmart website is an important community resource that needs to remain up to date and relevant to Australians across all age groups. It seems reasonable that FSPs help to fund the education of consumers who in turn use their services. FSPs benefit when consumers are financially literate.

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[9] See https://www.afsa.gov.au/resources/statistics/socio-economic-statistics/causes-1/causes-non-business-related It should be noted that ASFA asks petitioners to best describe the cause of their insolvency – we expect that unemployment or loss of income in many cases results in people being unable to fulfil obligations to pay financial service providers.

Recommendation: ASIC should be funded appropriately to undertake financial literacy education, including the continuation of the MoneySmart website

Q9. Is the proposed methodology for determining the levy mechanisms appropriate? If not, why not?

ASIC's intention to consult on the proposed levy calculation mechanisms is necessary, but we recommend that this consultation needs to be with a broader range of stakeholders including consumer groups. Because they are client based services, financial counsellors, community legal services, and dispute resolution agencies will also have insights into what problematic new business models are appearing and sometimes before this becomes apparent to regulators. These groups can provide advice and recommendations to ASIC about businesses that may need ASIC's attention and further investigation.

Getting ASIC's annual priorities right in the annual Strategic Outlook is crucial to ensure problem financial service areas receive the regulatory attention they deserve, and that ASIC will have resources to dedicate to investigating where red flags are raised. Because we work at the grass roots level with Australians in financial distress, financial counselling organisations and community legal centres have a good idea of what kinds of businesses are causing problems for vulnerable consumers. In the past, ASIC's willingness to listen and act on this information has resulted in investigations that shed light on problem businesses – a recent example being consumer lease providers.

Recommendation: Levies and priorities should be determined in consultation with financial counsellors and other consumer stakeholders, as well as industry stakeholders

We would also caution against too frequent consultation, which may simply serve to make ASIC's job setting levies unnecessarily difficult. It can be anticipated that consulting the industry about fees on an ongoing basis will ultimately result in ongoing lobbying for a reduction in levies by those organisations that pay them. A cycle where businesses pay consultants and lobbyists to minimise their levies, instead of that funding going to ASIC instead, should be avoided. It is worth considering whether reviews could be triggered only where a threshold has been met, for example if ASIC over-collects by a certain percentage, or where industry can demonstrate a significant relevant market change. If ASIC consults with a broad range of stakeholders to ensure it better identifies problematic businesses and sets the levies accordingly, a longer period between levy considerations may be appropriate.

Recommendation: Reconsider the frequency of levy-setting so as to avoid endless efforts to minimise the levy amount payable by industry

The proposed levy collection will always be reflective of the activities of the year past, rather than the year ahead. It may be worth creating a contingency fund with any over-collected monies, so that money is available should problematic business practices arise, as opposed to offsetting the levy reduction the next year. Having access to a pool of funds could be helpful, given that the overall adequacy of ASIC funding hasn't yet been addressed.

Recommendation: Consider allowing ASIC to use some amount of over-collected monies as an emergency funding pool for surveillance and enforcement of emerging problem industries rather than refunding overpaid levies as fee reductions

Conclusion

We urge Treasury to take this opportunity to look at the broader issue of how to fund ASIC sufficiently. Financial literacy needs to be undertaken by an impartial and trusted player like ASIC, and needs to be funded appropriately.

The costs of providing financial counselling services should be borne by those driving the need for our services. We strongly recommend extending the user pays approach for the funding of ASIC to also include funding for financial counselling.

Yours sincerely

Fiona Guthrie

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