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Ms Diane Brown
Division Head
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: *asicfunding@treasury.gov.au*

10 March 2017

Dear Ms Brown,

AFA Submission – ASIC Supervisory Cost Recovery Levy Bill 2017 and Related Bills

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for 70 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are required to be practising financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

The AFA's position

As noted in our submission dated 15 December 2016, the AFA supports the Treasury's proposals for the ASIC funding model in the future to be more certain and reflective of costs – provided the model is reflective of where the costs are expended at the adviser level and the model is not assessed in a vacuum that ignores other cost inflows to advice practices. Changing the system by which ASIC is funded comes at a time when professional standards costs are increasing, changes to the dispute resolution system are on the horizon and the advice profession is adapting to changes in the competitive forces affecting their business models.

The AFA supports a measured and holistic approach to the establishment of the framework to better fund ASIC in future. The AFA is accordingly concerned about the lack of a Regulatory Impact Statement in the Explanatory Materials of the draft Bills released by Treasury to give effect to the ASIC Industry Funding Model that was updated in 2016. Chapter 5 of the November 2016 Proposals Paper sought information about the costs of implementation of the Model. Treasury also sought information about the direct financial impact of the proposed costs.

The AFA accordingly expected to see a Regulatory Impact Statement be issued in accordance with Regulatory Best Practice. The Government website for publishing Regulatory Impact Statements[1] has yet to confirm whether a Regulatory Impact Statement – either Standard Form or Long Form – has been completed and submitted to the Office of Best Practice Regulation (OBPR). *The Australian Government Guide to Regulation* (2014) says that a Regulatory Impact Statement must be developed early in the Department's policy making process.[2]

The AFA would appreciate the Treasury confirming when a Regulatory Impact Statement about the ASIC Industry Funding Model proposals will be submitted to the OBPR.

Supporting growth of the advice profession and small business practices

The reason that the AFA considers a Regulatory Impact Statement necessary for this reform is that there must be consideration of the quantum and impact of the levies upon small business practices, and those businesses and licensees whom support new advisers should be a factor in the model's development. Small business practices must not be unfairly burdened by being required to carry the same averaged load as larger or institutional licensees. The AFA considers that the model should apportion costs across licensees proportionate to the risks each licensee type carries.

As noted in our December 2016 submission, it would also be unfair for a licensee who supervises several provisional financial advisers to pay the same annual levy as other equivalently-sized

[1] http://ris.pmc.gov.au

[2] Commonwealth of Australia, Department of the Prime Minister and Cabinet, *The Australian Government Guide to Regulation* (2014), page 6.

licensees if the licensee and its provisional advisers contribution to ASIC's regulatory activities is not the same as other licensees. The AFA queries why the draft Bills do not recognise this difference. As the advice profession regenerates over the coming decade, the profession needs to remain attractive to new entrants and to support experienced advisers who impart their craft on the next generation.

The AFA recommends Treasury reconsider the levy system with variable costs that recognise the differences in size of licensees being supervised.

Recognising the desired behaviours that lead to lower costs

As professional standards for financial advisers increase, it is important to recognise and reward Advisers' good compliance (i.e. less burden and cost on ASIC) through levy discounts. The AFA considers that if cost recovery is the primary aim of the model, the levy system should reflect where the costs are being expended with a behaviour-based system to reward good behaviour (with discounts on annual levies rather than penalise poor behaviour with loadings).

The draft Bills do not reflect such a system. The Bills appear to indicate that the yet-to-be-released draft Regulations will outline the finer details of the cost recovery levy system. The AFA recommends Treasury include a levy discounting system in the Regulations to recognise good compliance, thus achieving a sound policy objective of facilitating behavioural change with the Model.

Recognition of accessibility of quality financial advice in the framework

The AFA supports a user pays framework to recover ASIC's supervisory costs. We have long called for ASIC to have more certainty in its future funding to ensure that ASIC can be effective in its role. Whilst we initially disagreed with the methodology of the cost apportionment in the first iteration of Treasury's proposed Industry Funding Model, we supported the structure, framework and principles behind the model. The AFA called for the model to direct costs where the risks and supervision activities were directed.

The AFA supported the updated iteration in November 2016 and sought for clarification of how the model would direct costs for each sector where the costs in that sector were expended. The AFA recommended introducing additional variability or discounting in the pricing at the licensee level to reflect risks and behaviour. The draft Bills do not reflect our recommendations.

Further, our recommendation for the financial impacts of this reform upon the end-payers – the clients of the advice firms will ultimately bear the cost of the levies imposed through the Model – has not been heeded. The AFA considers that all stakeholders (e.g. government, regulators, licensees, advice practices and advisers) must remain cognisant of all costs affecting the provision of advice when reviewing the contributions that advice practices make to regulatory systems. The profession is facing undoubted increases in the cost of providing financial advisory services to the community.

Managing these costs will be important to ensure that the supply of quality financial advisers does not substantially reduce over time (or not increase in line with increases in demand). Increasing the cost of providing advice will have a proportionate effect on increasing the risk of reducing access to quality financial advice for those who are most in need of advice. Financial advice should not just be for the wealthy and this model should not unintentionally facilitate that outcome.

It is for this reason the AFA seeks for Treasury to outline the Regulatory Impact Statement of the draft Bills and the associated Australian Government Charging Framework and Cost Recovery Guidelines sought to also be implemented by the Treasury.

Concluding comments

For continued accessibility to quality financial advice and to accurately reflect the cost of regulation, it is important the levy system reflect where the costs are being expended. The system should recognise desired behaviour with discounts on levies rather than loadings or penalties. This would enable fair recognition of where ASIC's regulatory costs are being expended within a sub-sector, and therefore encourage the moves toward greater co-regulation of the advice profession.

These changes are not an isolated reform to the advice profession and this must be recognised if financial advice is to remain accessible to all Australians – especially for those who need financial advice most. It is also important to foster growth of quality small business advice practices that embrace the higher professional standards and good compliance, and so the structure and application of cost recovery should not unduly burden that group of practitioners.

The AFA seeks the Treasury's confirmation when a Regulatory Impact Statement will be issued for the ASIC Industry Funding Model.

If you require clarification of anything in this submission, please contact us on 02 9267 4003.

Yours sincerely,

Brad Fox
Chief Executive Officer
Association of Financial Advisers Ltd