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### **ASIC Supervisory Cost Recovery Levy Bill ('the Bill') – Consultation Draft**

The Australian Finance Conference ('AFC') made representations to Treasury on 16 January on proposals for ASIC to be funded by a levy on the businesses within its regulatory scope. AFC's concerns remain relevant to Treasury's finalisation of the Bill and legislative policy, but our response now focusses on the scope of the extension to unregulated businesses.

Specifically, the consultation draft of the Bill proposes the levy will be imposed on all 'leviable entities', which include a 'credit services entity'. Section 7(1) of the *ASIC Supervisory Cost Recovery Levy Act 2017* defines that as:

***credit services entity*** means:

- (a) a licensee within the meaning of the *National Consumer Credit Protection Act 2009*; or
- (b) a person who is exempt under section 109 or 110 of the *National Consumer Credit Protection Act 2009* from the operation of section 29 of that Act (which is about the requirement to hold a credit licence); or
- (c) a person regulated by ASIC who is in a class of persons prescribed by the regulations.

The AFC is writing because of paragraph (b) of the definition. This means businesses exempt from licensing would be paying the levy, unless they are exempted from doing so by regulations made under the *ASIC Supervisory Cost Recovery Levy Act 2017*.

As a result, the types of exempt business/services paying the ASIC levy would include –

- Linked suppliers, such as motor dealers and retailers – NCCP Reg 23, 23A
- Debt collectors – NCCP Reg 21
- Those involved in repossession functions, e.g. tow truck drivers, storage facilities, auctioneers – NCCP Reg 22

- Employment agencies – NCCP Reg 23D
- Various service providers under NCCP Reg 20, such as non-core government agencies, bankruptcy trustees, related corporations which provide human resources to licensees etc.

In particular, this will amount to tens of thousands of businesses paying levies, ranging from small to multi-outlet retailers, as well as motor, equipment and machinery dealers, a significant number of which have the benefit of the linked supplier exemptions under NCCP Regulations 23 and 23A. This exemption is generally referred to as the Point of Sale Exemption which enables vendors to transact without the regulatory burden of NCCP compliance.

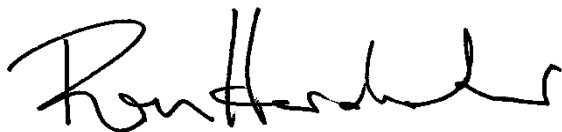
While AFC has drawn attention to this exemption, the others instanced above are nonetheless of broad commercial relevance and impact. For ASIC to now identify and levy all these businesses (whether sole traders, partnerships, companies, trusts, not-for-profits, etc) seems inappropriate when there has been no engagement with the exempt businesses and their NCCP licensing exemptions remain in place.

If, however, it is Treasury's intention to apply the levy to businesses which do not hold an Australian Credit Licence, but which have been appointed an authorised credit representative by a licence holder, then AFC recommends the Bill specifically identifies and applies the levy to those appointed under NCCP Act ss 64 and 65 as 'credit representatives'. Credit representatives are not exempt from holding an ACL under NCCP Act s 29, rather their status provides them with a defence under s 29(3) to prosecution for engaging in unlicensed credit activities.

AFC recommends Treasury does not extend the ASIC levy to unregulated (or exempt) businesses, but instead apply the levy to credit representatives who, but for that status, would be required to be licensed their own right.

Please contact me on 02 9231 5877 or [ron@afc.asn.au](mailto:ron@afc.asn.au) if you wish to discuss.

Yours truly,

A handwritten signature in black ink, appearing to read 'Ron Hardaker', written in a cursive style.

Ron Hardaker  
Executive Director