MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

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10 March 2017

Ms Meghan Quinn
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The Treasury
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Dear Ms Quinn

MFAA Response to the Exposure Draft of the ASIC Supervisory Cost Recovery Levy Bill 2017 and related Bills

On behalf of the Mortgage & Finance Association of Australia (MFAA), we welcome the opportunity to respond to the proposed industry funding model for the Australian Securities and Investments Commission (ASIC) as outlined in the Exposure Draft of the ASIC Supervisory Cost Recovery Levy Bill 2017 and related Bills.

The MFAA would like to commend the Federal Government for the approach it has taken to the development of this funding model, and for genuinely working with the industry to develop a robust and effective proposal.

The MFAA believes that the current proposal satisfactorily addresses many concerns made by the mortgage and finance industry outlined in the MFAA's submission of 14 January 2017, and looks forward to continuing to work with the Government on the development of the regulations which will hopefully implement the principle outlined in the draft legislation.

As such, we have no specific comments to make on the draft legislation, and limit our response to issues which may arise from the model itself.

The MFAA welcomes the fact that the Government's revised funding model separates out the ASIC costs relating to 'intermediary' style conduct (such as credit assistance) engaged in by lenders, and will now seek to recover this under credit provider levies. We believe that under this proposal, the amount which will be recovered from credit licensees – other than credit providers – better reflects the regulatory effort involved in supervising the credit intermediary segment of the market.

In our submission of 14 January, we outlined the principles which we believed the draft funding model failed to adequately address, as well as providing a number of alternative models which we believed would better meet these principles. The MFAA believes that the current proposal builds on our second alternative model – a scalable flat fee on ACLs based on settled volume – and as such will be much more acceptable to the wider industry. We also believe that it addresses the stated design principles, as well as the additional principles the MFAA recommended the Government take into account.

The MFAA's assessment of the current proposal against these principles is as follows:

Simple	Being a single levy flat levy per licence holder, combined with an additional levy for each credit representative authorised to engage in credit activities on behalf of that licensee, it will be both easy to calculate and collect. It is significantly less complex than the previous model, and is in-line with current fee arrangements for licensees. The only area where confusion may arise is for members who currently hold dual licenses – credit provider and credit intermediary – and for commercial reasons are not able to give one of them up.
Certain	This model will deliver more certainty with all ACL holders being able to predict the amount of levy they owe and remit the levy applicable to them. We assume that the fee per licensee of $1000 and per credit representative of $170 will not vary that much year to year, and the only real variation will occur if more credit representatives are appointed.
Proportional	This model meets the strict definition of proportionality, as supervision costs will be applied in rough correlation with ASIC's regulatory effort. We also agree that the metric used in the model still includes a broad proxy for volume of business.
Commercially-based	This model also meets the commercial criteria as ACL holders and Credit Representatives reflect the existing segments of the value chain.
Efficient processing	While more efficient than the ASIC proposed industry funding model, it falls well short of Model 1 as contained in our submission dated 14 January. Electronic processing and database connectivity would be possible, but the number of remitting entities would be vastly more than under model 1 – adding to administration, reporting and collection complexity.
Equity*	The model is more equitable than the previous ASIC model, as participants will no longer have to pay multiple levies for activities throughout the value chain. However, we believe that some inequity could creep in where brokers have dual licenses (credit provider and credit representative), and where a broker operates as a rep of an inactive company. We believe that a simple 'primary purpose' test and only charging the additional $170 levy at an individual level could resolve these problems (discussed in greater detail later).
Achievability*	This model will be both easy and cheap to administer and collect data. It will also be an extremely reliable way to collect the revenue required.
Neutrality*	While the tiering inherent in this model may reduce some of the cost to small licensed brokers over the previous ASIC funding model, it may still lead to a cost differential between credit intermediaries who have a large number of 'representatives' (i.e. employees or directors) as distinct from 'Credit Representatives' (i.e. external contractors appointed as such and recorded by ASIC).

MFAA members have raised some minor concerns with the above model. These concerns are not to do with the overall principles of the model, but more to how, if implemented in a blunt manner, the model could lead to some unintended consequences. The MFAA also understands that no proposal will impact all business models equally, it believes that these issues could be adequately addressed through the regulations, making the impact of the proposal more equitable.

1. Credit provider or credit intermediary?

The business models of some brokers, mortgage managers, and aggregators require them to hold licences as both credit provider and credit intermediaries. In our discussions with Government to date, it is assumed that under the current proposal many dual licence holders will simply hand back one of their licences. While this may be possible for some, many will be unable to do so, and could potentially end up paying two separate licence fees. By way of example, some members have obtained both authorisations (credit provider and credit representative) so that they are able to buy back problem loans (some origination agreements require them to do this), and also so they can occasionally make loans to customers (e.g. short bridging loan or a small second/personal loan). Most, while required to hold both authorisations, have rarely if ever used the credit provider authorisation.

The MFAA believes that this issue could easily be overcome by implementing a 'primary purpose' test. It is envisaged that this test would only be applied to those licence holders who can prove that the vast majority of their activities relate to credit intermediation. This solution would be in line with ASIC's principles for lenders, which states that lenders won't be charged twice in respect of loans which they make and originate. The MFAA simply believes that it should also be provided that credit intermediaries will not be charged twice on loans they arrange and make.

2. Individuals vs Corporations

MFAA members are also concerned that the current proposal appears to be targeting the additional $170 levy at both corporations and individuals. This could lead to double levies being paid by brokers who work through an (inactive) company. The MFAA believes that this could be fixed by targeting the additional $170 levy at individuals and not corporates, thus avoiding the potential for industry structural changes.

3. Transitional arrangements

Some MFAA members remain concerned about the arrangements for transitioning from the current ACL fee to the new levy. While we understand that these arrangements will be fleshed out in the regulations, we believe that all licence holders should be rebated for the component of their licence fee that relates to activities after the implementation date for the levy.

The MFAA would like to thank you again for the opportunity to comment on the proposed industry funding model for the Australian Securities and Investments Commission (ASIC) as outlined in the Exposure Draft of the ASIC Supervisory Cost Recovery Levy Bill 2017 and related Bills, and should you have any questions regarding this submission, please do not hesitate to contact us.

Yours sincerely

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