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Financial System Division

The Treasury

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NIBA Submission: ASIC Industry Funding Model Review

Introduction

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide feedback to Treasury's review of the ASIC Industry Funding Model. The financial services industry has experienced a period of significant change following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. These reforms created a significant demand for ASIC's services.

With the Royal Commission reforms now well and truly implemented it is important to ensure that the ASIC Industry Funding Model remains appropriate in the longer term and does not create any unintended consequences for financial services providers who have already experienced significant increases in compliance costs.

One of the key issues for NIBA is the need for greater transparency of ASIC's regulatory activities and the costs apportioned to the same, including the results of any investigative and reform activity, where the reporting of such results is appropriate. In NIBA's view greater transparency would increase confidence in and appreciation for ASIC's role as the financial services regulator.

About NIBA

NIBA is the peak representative body for the intermediated general insurance industry. NIBA represents approximately 450 member firms and 15,000 individual brokers including large, multinational insurance brokers, Australian broker networks, and small to medium-sized businesses located in cities and regional areas right around Australia.

NIBA aims to promote the role of insurance brokers and the role they play in supporting and advising their clients on risk and insurance matters. NIBA provides this knowledge and expertise to governments and government agencies to promote understanding of the operation of general insurance markets.

Insurance brokers represent the interests of the purchasers of insurance, the policyholders, and not those of insurance companies. Consequently, comments made by NIBA are made on behalf of its members and the public that purchases general insurance, not on behalf of insurers.

Response to Consultation Questions

1. If the status quo remains are any changes required to ensure the existing industry sub-sectors, levy formulas and entity metrics remain fit for purpose in the longer term and/or can respond to changes within industry sub-sectors?

In NIBA's view, there are no changes required to the current industry sub-sector definitions, levy formulas or entity metrics as they apply to the general intermediated insurance industry.

2. Do stakeholders understand ASIC's methodology for allocating costs of activities that impact multiple sub-sectors? Is the current level of transparency relating to this approach appropriate?

In NIBA's view the methodology for allocating costs of activities that impact multiple sub-sectors is poorly understood within the financial services industry. NIBA would encourage ASIC to increase transparency relating to this approach and the reporting of these costs to avoid any confusion over cross-subsidisation.

3. Is it more important to have a simpler model that can be more readily understood by entities and administered by ASIC which may result in increased cross-subsidisation or a more equitable model (similar to the status quo) that closely links the recovery of costs to the groups of entities causing the need for those costs?

NIBA's preference is to retain a funding model that closely links the recovery of costs to the sectors from which the need for funding arises instead of a simplified model which may result in increased cross-subsidisation across sectors and lower incentives for effective industry self-regulation.

4. Is cross-subsidising costs for entities within a sub-sector or sector more appropriate than cross-subsidising costs across all of ASIC's regulated population? If so, why?

Cross-subsidising costs across all of ASIC's regulated population would create a moral hazard whereby industry sectors are no longer responsible for the regulatory activities they generate. This would also decrease the incentive for industry sectors to self-regulate as they would no longer be solely responsible for the cost.

In NIBA's view, such a model is not appropriate as it negatively impacts industry sub-sectors who have undertaken significant steps to self-regulate and reduce the need for regulatory intervention.

7. How can costs associated with enforcement activity be recovered most equitably? What changes could be made to the current approach, and what benefits would they provide?

In NIBA's view, the most equitable way to recover costs associated with enforcement activity is to recover the costs directly from the entity involved. While there will likely be instances where this is not possible, recovery of costs directly from the entity should be prioritised with the recovery of costs from the relevant industry sub-sector considered as a last-resort rather than the default option.

Section 91 of the *Australian Securities and Investments Commission Act 2001* grants ASIC the power to make an order to recover investigation expenses and costs recover enforcement costs directly from an entity found by a court to have contravened the law. NIBA notes that prior to 2015 ASIC “rarely recovered its investigation expenses and costs.”¹

After reviewing this approach, ASIC now “considers making an order for the recovery of investigation expenses and costs in each case where the legislative requirements are met.” When considering whether or not to make an order ASIC considers several factors including the ability of the person to pay, and the likely effect on the victims.

While NIBA believes it is right that these factors should be considered, where ASIC decides to reduce or not make an order due to other factors such as the degree of cooperation, NIBA does not believe it is appropriate that the industry sub-sector should be liable for ASIC’s enforcement costs. While cooperating with an ASIC investigation often reduces the length and therefore the cost of an investigation, the individual already benefits from this reduction in cost and further reductions at the expense of individuals who have complied with their obligations is not equitable.

NIBA does not support any proposal to allocate ASIC’s total enforcement costs across all of ASIC’s regulated population for the reasons stated above.

9. Is the approach of attributing costs of illegal unlicensed conduct to the most ‘relevant’ sub-sector the most appropriate recovery method? Alternatively, how should these costs be recovered, and why?

See NIBA’s response to question 7 above.

12. How can costs associated with education and policy advice be recovered most equitably and transparently? What changes could be made to the current approach, and what benefits would they provide?

NIBA supports the view that ASIC’s education and policy advice activities should be considered business as usual for an Australian Government body. While policy may be made in response to regulatory issues within markets, this is not always the case. For example, while the Royal Commission reforms were introduced in response to misconduct within parts of the financial services sector, many of these reforms were also applied to the intermediated general insurance industry despite no evidence of misconduct within the industry.

17.1. Are any changes required to ensure it remains fit for purpose in the longer term and/or can respond to changes in the industry?

To ensure the ASIC IFM fee-for-service model remains fit for purpose in the long term it is important that the fees charged accurately reflect the cost of providing these services. To achieve this NIBA supports Option 1 and would encourage regular reviews of the prescribed fees to ensure they reflect the true cost of the services being provided.

¹ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/recovery-of-investigation-expenses-and-costs/>

19. If fee amounts are to be changed, should this be amended via a one-off increase or staged to spread the impact over multiple years?

Given the significant impact this would have on businesses, any increase to the prescribed fees should be staged over a number of years to lessen the impact on smaller financial services providers.

21. Is it appropriate for ASIC to have the power to set fee amounts, or should this power remain with the Government?

NIBA does not believe it would be appropriate for ASIC to set fee amounts, however NIBA does support greater consultation between ASIC and Government to ensure that the fee-for-service model remains economically viable.

25. Is it appropriate for ASIC's work on individual relief applications to be recovered via fees, with the costs associated with ASIC's work on relief provided to a class of entities to be recovered through industry levies?

In NIBA's view, it is appropriate for ASIC to recover costs associated with individual relief applications via a fee for service paid by the individual entity. Where relief is provided to a class of entities, the costs associated with this work should be recovered through industry levies.

Should you have any queries or wish to discuss any aspect of this submission please don't hesitate to contact me or my office.

Yours sincerely,



Philip Kewin
Chief Executive Officer
National Insurance Brokers Association