



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:PWlb1423960

15 December 2017

Manager, Corporations and Schemes Unit
Financial Systems Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ASICFunding@treasury.gov.au

Dear Sir/Madam,

Introduction of Australian Securities and Investments Commission's ("ASIC") Fees-for-Service Under the Industry Funding Model

The Law Society of NSW welcomes the opportunity to comment on the proposals in Treasury's Consultation Paper for ASIC to introduce fees-for-service under the Industry Funding Model. We support this funding method which will allow entities regulated by ASIC to understand and take responsibility for the cost of ASIC's regulation activities.

The Law Society's responses to the questions in the Consultation Paper are set out below.

1. Do you have any comments on whether the *Corporations (Fees) Regulations 2001* should continue to specify all ASIC fees regardless of whether they are determined on a cost-recovery basis or whether the cost-recovery fees should be specified in a separate instrument so they can be more clearly differentiated from non-cost recovery fees?

The Law Society is of the view that it would be preferable to separately specify fees to be charged on a cost-recovery basis so that there is no confusion by regulated entities as to whether a set fee or cost-recovery fee applies to the regulatory transaction the entity is undertaking with ASIC.

We agree with the list of forms for which no fees will be required in future.

We also agree with the list of proposed fees-for-service regulatory items that are completed by ASIC at the request of, or for the benefit of, a specific entity.

2. Do you have any feedback regarding the model objectives?

The Law Society agrees with the model objective of looking to charge impacted entities a fee-for-service that reflects the costs to ASIC of providing the relevant regulatory item.

While the Law Society appreciates that ASIC is looking to accurately recover its costs from impacted entities for cost-recovery regulatory items, we note that it is proposed that ASIC

will do so on an estimated basis through applying a methodology that seeks to assess ASIC's costs as equitably as possible. It is then proposed that every three years, once such costs have been actually calculated, ASIC will seek to adjust the fees to reflect the actual costs incurred by ASIC in past years in accordance with a more accurate application of the methodology.

The Law Society supports the proposal for billing and business activity collection to be done through a web portal that users find simple, clear and fast to use, and that is seamlessly connected to the ASIC database.

3. Is the proposed methodology for calculating fees-for-service appropriate? If not, why not?

The Law Society agrees that recovery by ASIC of the actual costs of providing regulatory items for impacted entities is appropriate.

We agree with the proposed methodology to be used by ASIC to calculate fees-for-services. The fee for each form will be calculated using a weighted average hourly rate (calculated for each team associated with the form, and includes indirect costs) multiplied by the regulatory effort (that is, the average number of hours) required to assess and process each form type. We consider this process appropriate.

The Law Society also agrees with the proposal for ASIC to apply tiered fees for regulatory items where there is considerable variance in the actual process or assessment so as to better reflect the associated effort by ASIC for undertaking each of these regulatory activities.

4. Are there any other sectors where a tiered approach to setting fees would be appropriate?

The Law Society considers that applications for an Australian Registered Scheme Number should be added to the list of forms/activities that will have tiered fee-for-service items, as listed on page 10 of the Consultation Paper.

5. Do you have any suggestions for how the proposed methodology could be modified? If so, please provide details.

The Law Society appreciates that the proposed system applies a fees-for-service cost recovery methodology that has as far as possible taken granular cost details into account for relevant regulatory items and applied them equitably for impacted entities.

6. Are the proposed accountability measures for ASIC appropriate in a fee-for-service model? If not, please provide details.

The Law Society supports the proposed accountability measures in principle. We note that ASIC will implement a program of assessment to ensure that the fees imposed remain appropriate. However, it is not clear to the Law Society that ASIC's costs will be audited against a set of key performance indicators to ensure that its costs are appropriate and efficient. For instance, an increase in the fee for an Australian financial services licence application based on increased overall average costs would not be appropriate if those increased overall average costs are the result of operational inefficiencies - such as licensing team staffing issues or non-compliance with application processing timelines.

We propose that ASIC's program for assessment includes an audit function to ensure the fees-for-service are only uplifted (and may be downgraded) based on average costs where

key performance indicators have been satisfied. To ensure a robust audit function, we propose that an independent body could determine the applicable and publicly available key performance indicators. An independent auditor could then report on ASIC's service delivery in the applicable three year period based on key performance indicators and the finding of the independent auditor should inform the review process.

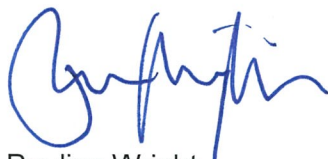
We do not consider a self-assessment process alone appropriate.

7. Will the proposed fees-for-service model have an effect on competition and innovation? If so, please provide details, including possible ways to mitigate the effect.

The Law Society recognises that impacted entities that take out new licences and registrations once the proposed fees-for-service model is introduced will in many cases find they have to pay considerably more than their competitors who completed applications and registrations prior to the model being introduced. This is a consequence of any new approach to regulation and cannot be mitigated.

Please do not hesitate to contact Liza Booth, Principal Policy Lawyer on 02 99260202 or liza.booth@lawsociety.com.au if you would like to discuss this in more detail.

Yours faithfully,



Pauline Wright
President