



Law Council  
OF AUSTRALIA

*Business Law Section*

The Treasury  
100 Market Street  
Sydney NSW 2000  
By email: [asicfunding@treasury.com.au](mailto:asicfunding@treasury.com.au)

16 December 2016

Dear Sir or Madam,

### **ASIC Industry Funding**

This is a submission by the Corporations Committee of the Business Law Section of the Law Council of Australia ('Committee') on the Consultation Paper "Proposed Industry Funding Model of the Australian Securities and Investments Commission" Proposals Paper November 2016.

The Committee continues to hold the general views expressed in its submission dated 21 October 2015, copy attached.

While the Committee supports the development of a user pays funding model, it does not believe that the inclusion of enforcement costs in that model is appropriate from a policy perspective. Enforcement activities are a public good and should not be imposed on industry generally.

To the extent the Committee's views on this issue are not accepted, it makes the following supplementary submissions:

- that the user pays funding model primarily impose those enforcement costs on entities that are subject to enforcement action as part of the enforcement action process;
- in calculating and allocating annual enforcement costs to be imposed through levies, amounts paid to consolidated revenue through enforcement action be credited against those enforcement costs.

Subject to the general comment made above, the Committee has no particular concerns or feedback in relation to the 13 Questions raised in the Proposals Paper (the Committee's comments therefore largely relate to Question 1). The

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Committee supports the approach of the Model Design Objectives (Question 2) and the Model Description (page 9).

If you have any questions in relation to this submission, in the first instance please contact the Committee Chair, Rebecca Maslen-Stannage, on 02-9225 5000 or via email: [rebecca.maslen-stannage@hsf.com](mailto:rebecca.maslen-stannage@hsf.com)

Yours faithfully,

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

**Teresa Dyson, Chair**  
Business Law Section

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Law Council  
OF AUSTRALIA

*Business Law Section*

Corporations and Scheme Unit (SCR)  
Financial Systems and Services Division  
The Treasury  
100 Market Street  
Sydney NSW 2000  
**Via email: [asicfunding@treasury.gov.au](mailto:asicfunding@treasury.gov.au)**

21 October 2015

Attention: Percy Bell

Dear Mr Bell,

This is a late submission by the Business Law Section of the Law Council of Australia on the consultation paper "Proposed Industry Funding Model for the Australian Securities and Investments Commission" dated 28 August 2015.

As general principle we support the application of the Australian Governments Charging Framework to activities undertaken by ASIC. In addition we support the proposed breakdown of industry sectors as set out in the consultation paper.

There is, however, one aspect of the consultation paper where we have a serious policy concern. That is the inclusion of enforcement costs in calculating fees for service levies. We strongly believe that it is not appropriate to calculate levies on the basis of ASIC enforcement costs for the following reasons:

1. As the consultation paper notes, the Australian Government's Charging Framework recognises that it is generally inappropriate to cost recover general policy development, ministerial support and law enforcement costs. We agree with that proposition from a policy perspective.
2. Enforcement activities are a public good in that they are for the benefit of the community as a whole rather than referable to the identifiable groups that receive regulatory activity or the need created for it. Public goods of this nature should be funded by the taxpayer or recovered from the relevant wrong doer, not passed on to industry generally through cost recovery.

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3. Penalties levied through enforcement activities undertaken by ASIC are paid to consolidated revenue, not to ASIC. As such the cost to Government of ASIC's enforcement activities are not fully reflected in ASIC's budget. Calculation of cost recovery in relation to enforcement activity is therefore not properly calculated if referenced solely to ASIC's budget.
  
4. Where a contravention of law is established against a person arising from an investigation undertaken by ASIC, the ASIC Act provides that ASIC may order reimbursement by that person of the whole or part of ASIC's investigation costs (section 91, ASIC Act). We believe potential individual responsibility for enforcement outcomes, rather than industry responsibility, is more appropriate from a policy perspective.

If you have any questions in relation to this submission, please contact either the Chair of the BLS' Corporations Committee, Bruce Cowley, on 07-3119 6213, email: [bruce.cowley@minterellison.com](mailto:bruce.cowley@minterellison.com) or Committee member, Greg Golding, on 02 9296 2164, email: [greg.golding@au.kwm.com](mailto:greg.golding@au.kwm.com)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Keeves', with a long horizontal stroke extending to the right.

**John Keeves, Chairman**  
Business Law Section