

# **FINANCE INDUSTRY DELEGATION**

**Submission  
In response to  
THE CONSULTATION PAPER  
regarding the**

## **Proposed Industry Funding Model for the Australian Securities and Investments Commission**

To: The Senior Advisor  
Financial System and Services Division  
The Treasury  
100 Market Street  
Sydney NSW 2000

Email: [asicfunding@treasury.gov.au](mailto:asicfunding@treasury.gov.au)

Submission prepared by:

Phillip Smiles LL.B., B.Ec., M.B.A., Dip.Ed.  
Lyn Turner M.A., Dip.Drama  
Co-ordinators  
Finance Industry Delegation  
Tel: 02 9975 4244  
Email: [lyn@financeindustrydelegation.com.au](mailto:lyn@financeindustrydelegation.com.au)

## **ASIC FUNDING REVIEW**

### **PART ONE: INTRODUCTION**

After researching, preparing and presenting 37 submissions to Government since May 2011, the Finance Industry Delegation (the Delegation) would like to commence their submission with a message of congratulations and deep appreciation to the Treasury officers who compiled the Consultation Paper.

Concise but detailed explanation of concepts, easy to read charts and, above all, consecutive numbering of always meaningful and appropriate questions, made the Consultation Paper a stand out.

In an effort to match this clarity, Part Two of this submission provides the context for the Delegation's answers and Part Three includes some abbreviation to the Consultation Paper questions that are relevant to Delegation supporters and the Delegation's answers.

#### **About the Finance Industry Delegation**

The Delegation is a consortium representing and/or reporting to the owners and management of 189 bricks and mortar and internet lending sites and 6 significant suppliers of services, including loan management software, marketing advice and compliance advice to the small amount/short term lending industry sector.

Approximately 80% of supporters are self-funded small and medium enterprises, including franchisees from 4 franchise groups. The balance includes 4 of the 8 largest companies - none of which are public companies. Supporters are located in every State and the ACT and customers are located all over Australia, New Zealand and Papua New Guinea.

This submission was prepared following in-depth discussion with 12 Delegation supporters associated with various size lenders, 6 of whom have considerable industry representative experience, 2 industry suppliers, the distribution of a 17 question survey, to which senior representatives associated with 94 lending outlets responded and with policy and editorial review from 9 leading supporters of the Delegation. One of the Delegation Co-ordinators who facilitated this preparation process has substantial parliamentary experience in government authority funding and budgeting and in assessing efficiency, effectiveness and accountability of such authorities. This person was a member of the NSW Parliament's powerful Public Accounts Committee for 4 years and Chairman for 4 years, overseeing 42 Inquiries with the powers of a Royal Commissioner. Thereafter, he was Assistant Treasurer in NSW and had ministerial responsibility for introducing substantial funding changes in one government department and one government authority.

#### **The context of this submission**

We invite Treasury and the Assistant Treasurer to note:

1. The comments included in this submission relate only to small amount/short term lending and to that section of ASIC called the Deposit Takers, Credit and Insurance Stakeholders Team (hereafter referred to as the ASIC Stakeholders Team), which facilitates the small amount/short term lending industry sector's compliance regulation under the National Consumer Credit Protection Act 2009.
2. Ideally, as all respondents to the Delegation survey indicated, the industry funding model applicable to small amount/short term lenders should have unique elements that recognise this ASIC Stakeholders Team, its interface with the lenders and their particular lending activities.

3. In ASIC Report 444, “*ASIC enforcement outcomes: January to June 2015*”, dated August 2015, at page 5, ASIC stated, “...*there needs to be a fundamental shift in the culture of the financial industry - to one that focuses on achieving and rewarding good conduct and good outcomes for consumers*”.

A similar fundamental shift is now required in the relevant ASIC Stakeholders Team culture, to support the forthcoming ASIC Industry Funding model with more efficient and appropriate regulatory activity.

4. Any assessment of ASIC’s costs and compliance activities must be made in the context of a possible fifth major internal upheaval for ASIC in 6 years following the ASIC Capability Review (unless departmental collusion effectively buries this review), many external indications of inadequate staff training, and issues of IT systems requiring major upgrades.

### **Accepting the inevitable**

This submission is predicated on the basis that the issue of suitability for ASIC to move from a primarily taxpayer funding model, to a primarily industry funding model, realistically is beyond further discussion and should be considered a “done deal”.

The Delegation notes that the concept has support from the Murray Financial System Inquiry, Government and, not surprisingly, ASIC itself. It is noted that these supporters all identify that, with industry paying, ASIC will enjoy greater levels of funding. These circumstances require greater attention from ASIC in regard to transparency, efficiency and the selection of appropriate regulatory activities. Obviously, Delegation supporters and all other lenders would not like to be faced with an ASIC created cost regime that is entirely controlled by ASIC.

The current culture does not promote genuine opportunities for ASIC and the small amount/short term lending sector to build a relationship of working together proactively and co-operatively, as many supporters of the Delegation would hope. The lack of such a relationship does not encourage optimism that the Government-promised opportunities of consultation and involvement in the budget, performance assessment, levy and fee setting associated with ASIC’s move to industry funding, will eventuate beyond a token acknowledgement.

This relationship and these opportunities are not an unrealistic goal, they were achieved with the Western Australian Department of Consumer Employment and Protection, the Victorian Department of Justice (with very effective industry-wide consultation) and the Queensland Office of Fair Trading (with a continuing OFT/lender liaison committee), all of whom regulated small amount/short term lending in their respective states before the Commonwealth/ASIC takeover of regulatory control of the sector.

Talk of an ASIC/Industry Stakeholders’ Panel, with multi-levels of consultation involving industry sector working parties, ASIC industry and consumer research, a transparent audit process and the processes outlined in Chapter 5 of the Consultation Paper, must evolve into real action to justify industry support for the new “user pays” model, or it will be more aptly described as the “abused pays” model. The opportunity for the Stakeholders’ Panel to report to the Assistant Treasurer, at least annually, would be particularly important as a protection from ASIC taking revenge on lender representatives’ companies who presented comment that ASIC did not like, during Panel meetings.

Unless the current and somewhat parallel ASIC Capability Review successfully encourages a change to the current ASIC culture associated with the ASIC Stakeholders Team, as it oversees the industry sector covering the supporters of the Delegation, the Delegation cannot join in this support.

## PART TWO: THE CONTEXT

### Implementing a new source of multiple costs

Consideration of the details associated with introducing and implementing ASIC industry funding for the small amount/short term lending industry sector, is a multi-faceted contemporary challenge.

Without an awareness of this multi-faceted challenge, the Assistant Treasurer and Treasury will not be able to come to an informed conclusion at the end of this Consultation process that would be relevant for the small amount/short term lending industry sector. The Delegation is compelled to provide the following before addressing the relevant questions in the Consultation Paper.

This multi-faceted contemporary challenge manifests itself in the following dynamics, which have a significant impact on the validity and timing of a Regulation Impact Assessment, as promised in the Consultation Paper:

1. The current Small Amount Credit Contract (SACC) Review is providing opportunity for non-industry stakeholders to seek to halve the gross income of credit providers. This would close down the industry.

Repeated calls are being made to have Section 32A of the National Credit Code amended, so that the mandated maximum fees for small amount credit contracts is reduced from 20% flat permitted (one off) establishment fee to 10% flat, and from 4% flat per month permitted monthly fee (for each month of the loan term) to 2% per month.

This agitation has been made without any indication of economic modelling or industry sector cost research and is based purely on the figures the then responsible government minister suggested in 2010. Again this was without any economic modelling or industry cost research. The 10%, 2% model was comprehensively rejected by two Commonwealth Parliamentary Committees in 2010/11.

Unfortunately for the industry sector, these stakeholders have a track record of strident, emotive, unquestioning and totally unanalytical media support.

2. Associated with the above stakeholders is at least one not for profit organisation that, for many years, had offered No Interest Loan Schemes (NILS) and Low Interest Loan Schemes (LILS). Despite this source of credit supply being supported by major banks from time to time, with below commercial wholesale rates funding, subsidised or cross subsidised premises, and considerable voluntary help, there is a view amongst its senior management that the organisation could effectively take over all small amount lending from the commercial lenders.

Given that this organisation currently has a share of the total market that is something well under 2% (under 1% up to 2012, new statistics about to be published by Smiles Turner), the Delegation does not believe such a takeover is feasible.

This assessment of lack of feasibility is also supported by:

- (a) the fact that the organisation does not have any experience in offering the most popular size of loans (up to \$600);
- (b) the market demanding same day assessment and loan provision, as against the up to 8 week approval cycles currently provided by the organisation;

- (c) a market that demonstrates far greater levels of bad debt than that experienced with the highly selective NILS and LILS lending;
- (d) no organisational experience in offering online lending, which is the sector of the market that has experienced the most growth over the last 7 years and is a very different market segment to that of the organisation's highly selective face to face borrower circumstances;
- (e) no clarity or certainty as to where the funding for the dramatically increased loan book amount will be sourced;
- (f) restrictive use of loan funds, e.g. only essential goods and services, some medical and dental expenses and educational essentials;
- (g) restrictive qualification for loans, particularly health care card/pension card and residing in current premises for more than 3 months; and
- (h) 92% of potential consumers being outside not-for-profit lending criteria (Smiles Turner consumer research 2006, 2007, 2011, 2012).

Apart from illegal bikie gangs such as the lawless Finks, who are active in providing small loans on the Gold Coast, and in Brisbane, Melbourne and sometimes Adelaide (Queensland Police evidence to Supreme and High Court 2011/12), these not-for-profit lenders will be the only legitimate alternative to the commercial lenders if costs force the latter out of the industry sector.

3. The mandated maximum fees have been adopted by all but one commercial lender in the market, out of economic necessity. There is simply no room for competition on price.

The one exception is a publicly listed company using small amount credit contracts to "feed" consumers to its other products and services, which are highly profitable. In short, offering the small amount credit contracts is a "loss leader" for that company.

4. Many in the industry sector will be seeking an increase in one or both of the mandated permitted fees, from the SACC Review Expert Panel.

Given any outcome associated with the SACC Review that does not include an increase in permitted fees will significantly increase the burden that the proposed ASIC industry funding fees and levies will have on small amount/short term lenders, the Delegation strongly encourages careful consideration of the following:

- (a) The maximum amounts that can be charged for small amount/short term loans were set in 2011, for introduction on 1 July 2013, and costs have gone up since then.
- (b) The 20%, 4% SACC model was presented for discussion without industry being appraised of the increased restrictions that would be introduced with it.
- (c) The economic modelling alone, provided by the Delegation to Treasury and the relevant Government Minister at the time, supported at least the 20% and 4% - but is now obsolete. New and higher costs have emerged over the last 4 years. The proposed ASIC fees and levies will have to be added to these.
- (d) The then Government Minister ignored industry sector calls for an in-built CPI increase, to avoid at least some of the cost creep impact.

- (e) The continuing preference of consumer advocates to encourage consumers to bypass internal dispute resolution and go straight to external dispute resolution, in an effort to generate punitive costs for the lender.
  - (f) Some costs, such as Google Ad Words, which is a specific industry advertising media opportunity relevant for the majority of consumers who search on line for lenders, have gone up dramatically since 2012. For example, Google's Ad Words was \$15 per click (visit) on 1 July 2013 and is now \$27. Other costs, such as office and retail rentals, have increased in excess of CPI increases.
  - (g) The impact on costs has resulted in lenders that are small businesses suffering a dramatic deterioration in profitability, medium size lenders suffering somewhat reduced profitability and the bigger lenders experiencing a plateau of profitability. In this context, it is significant to note that amongst the 4 biggest lenders, the publicly listed Cash Converters (the biggest), and the high profile Nimble, which has been exploring public listing, both reported to the ASX a failure to make a profit in 2014/2015 (CoreData research 2015, ASX website).
5. These cost circumstances create a conflict with the pro-small business policies of the current Federal Government. Approximately 80% of the lenders fall into the Government definitions of "small business". This is a highly relevant issue for consideration, in association with the Consultation Paper, as the Delegation repeatedly illustrates in response to the Paper's detailed questions.

While the current Government wants diversity of suppliers in all market places, on the basis that smaller numbers would be easier for ASIC to control, the former Government's responsible Minister hoped that lender numbers would fall to 12 or 14 from the then 680 total relevant lenders across Australia (now some 620).

6. The proposed relevant ASIC fees commencing 1 July 2016, as listed in the Consultation Paper, and how efficient ASIC will be post the Capability Review, create difficulty in accessing lender viability without an increase in the 20% and 4% permitted fees being recommended by the SACC Review Expert Panel and in assessing what increase is needed just to cover ASIC's industry funding charges and post-1 July 2016 compliance expectations. The 3 current reviews are highly interrelated.
7. Given the creation of marginal and less than marginal returns for many small business SACC lenders because of the static 20%, 4% permitted fee SACC regime (16 days to 1 year to a maximum of \$2,000), any significant ASIC fee and levy imposition - without an increase in the permitted fees - will drive hundreds of small businesses out of the industry sector first. Consumers will then face supply dominated by one public company and 2 multi-national foreign owned companies.
8. In addition to the position concerning SACCs listed above, it may be useful to note that many small amount/short term lenders also lend Medium Amount Credit Contracts (MACCs). These loans are for up to \$5,000, for up to 2 years. The maximum that can be charged for these loans is prescribed by Section 32B of the National Credit Code - a \$400 fee, which most refer to as an "establishment fee" and 48% annual cost rate. The annual cost rate is calculated according to a formula included in the National Credit Code, which is different to an interest rate formula.

There is no current review of MACCs and the same cost squeeze is being experienced by MACC lenders, but without any scheduled opportunity for review and consideration of any increase. These are highly relevant issues that have to be considered before the finalisation of ASIC fees and charges commencing 1 July 2016.

If the anti-commercial industry stakeholders get their way with the SACC Review Expert Panel and the Assistant Treasurer, or permitted fees remain without any increase, or an inadequate increase is approved - there will be major industry supply collapse. In the face of significant ASIC fees starting 1 July 2016, and with commercial small amount/short term lenders being the only companies that lend SACCs, many that also specialise in MACCs and most who lend both - will disappear from the market place. One of the 2 listed public companies, Money 3, has already vacated much of the small amount credit contract market place. The 100+ franchisees of the second publicly listed company will find it very difficult to meet both ASIC fees and franchise fees. As mentioned above, this listed company lost \$21 million last year while running both franchised and company outlets. The Federal Government could be facing demands for the funding of a \$1.2 billion loan book from the not-for-profit sector, in order to meet former commercial lender consumer demand.

9. If a worst case scenario is to apply, access to small amount/short term credit for 800,000 Australians (2012 Smiles Turner consumer research) will be denied and the Federal government will face a serious socio-economic disaster. Apart from a Government funded not-for-profit sector offering a very limited range of loans, with strict lending criteria excluding 92% of consumers and then over 90% of those applying being unsuccessful - for at least the last 12 years no one (legally) - including all the banks - has wanted to lend what are now called SACCs and MACCs, except the current commercial small amount lender.

### **The devil is now in the detail - ASIC's Corporate Plan**

It should not be overlooked that decisions on detail, including all elements associated with fee and levy setting, application and collection, will be made against the backdrop of the recently published "*ASIC's Corporate Plan 2015-16 to 2018-19*".

The Delegation is not convinced that this Plan reflects any appropriate consideration of the issues addressed in Chapters 3, 4 and 5 of the Consultation Paper. In fact, there may be conflict between the content of the Consultation Paper and ASIC's Corporate Plan.

Putting aside any concerns that the timing of this document may have been an attempt to pre-empt the possible work of the Expert Panel associated with the current ASIC Capability Review, and possibly even this ASIC Industry Funding Consultation process, we are left with some critical inclusions that should impact on the outcome of this Consultation. This insofar as the Consultation recognises the potential impact of this new policy on small amount/short term lenders and the ASIC Stakeholders Team.

The Delegation brings the following inclusions in the ASIC Corporate Plan to the attention of the Treasury and the Assistant Treasurer, because it is appreciated that ASIC will attempt a dominating role in the setting of its fees and levies. While that may be understandable, nevertheless some recognition of the bias that may emerge in association with this process is critical.

The Delegation is also concerned to see industry supported initiatives and involvement with ASIC, other than as an enemy, emerge to satisfy the ASIC

Corporate Plan and considerably improve the current unfortunate small amount/short term regulatory supervisory environment.

In particular, the Delegation is concerned to note the following:

1. There was no apparent acknowledgement in the Corporate Plan of the possible impact of either the Capability Review or the ASIC Industry Funding Review. These reviews are simply mentioned, without any attempt at integration.

This was disappointing, as the Capability Review's and this Consultation's outcomes may go to the heart of ASIC's future cost recovery requirements and establishment of expenditure priorities, which could seriously impact on Delegation supporters. Further, it would be most disappointing if either or both these reviews were simply "whitewashes", with no post-review substance.

2. There are a number of issues raised in the "*Chairman's message*" in the ASIC Corporate Plan that will have an impact on ASIC costs and cost calculations and that do not appear to be acknowledged in the Consultation Paper. These are:

- (a) "*...provide efficient and accessible registration*".

On the assumption that "*registration*" also includes licenses, the Delegation is concerned that the proposed dramatic increase in licence application fees will work against accessibility, particularly for the small business sector that the Government is trying to encourage. This matter is discussed in response to Consultation Paper questions later in this submission.

- (b) The introduction to the list of strategic priorities of "*gatekeeper responsibility*", as one of the "*3 cornerstones of the free market-based financial system*", will create an increase in direct and indirect compliance cost as special training is introduced to demonstrate awareness to ASIC, and the need for the recruitment of greater expertise will impact on lender costs.

- (c) The introduction of the ASIC requirement for "*Understanding the behaviour of... consumers and gatekeepers*", and with this requiring substantial research - always expensive for government authorities. The research will be essential if ASIC is going to be successful with "*embedding behavioural insights in the way we do our regulatory work to ensure that we regulate for real people*".

It is also going to be important if ASIC is to achieve its objective of "*detecting and understanding the risk drivers*" outlined on page 6.

The Delegation agrees with the statement on page 6 of the ASIC Corporate Plan - "*The behaviour of financial consumers is driven by their financial literacy - including their financial knowledge, skills and attitudes - and behavioural biases*". Meaningful ASIC recognition of this will require best practice consumer research and an end to the current practice of individual ASIC officers "guessing" what consumers might think or do, when assessing credit contract and associated documentation content, in the absence of any real ASIC understanding of the needs and lifestyles of small amount/short term borrowers.

With only one inadequate attempt at lender research to date and without any consumer research - ever - and with continuing demonstrations that ASIC has still to acquire an understanding of both consumers and gatekeepers, this research will have to be substantial. There is no recognition of this generator of cost recovery in the Consultation Paper.



Consequently, the Delegation is not confident that the costs of this necessary research have been included in the present ASIC calculations concerning fees and/or levies, listed in the Consultation Paper.

3. Part of dot point 2 in the list of “*Our strategic priorities*” (page 4) indicates a concern to “*ensure fair... markets*”.

Fairness has not been achieved under the past prosecution and serious administrative penalties ASIC regime. The choice of prosecution targets has tended to be biased towards small companies without the resources to mount a serious challenge, failed companies with business behaviours that are obsolete or long ceased, and sweetheart deals or action omission with larger companies.

In this area of ASIC endeavours, to date, the ASIC-declared aims of allocating resources efficiently and “*taking timely enforcement action*” (page 5) have not been achieved. The opportunity to adopt enforcement action, other than prosecution, could also assist ASIC to avoid breaching the Commonwealth Attorney General's “*Legal Services Directives*”.

A new approach to prosecution under the Plan could see ASIC spending considerably less on legal services, by not seemingly automatically assuming senior counsel, a second barrister and at least four ASIC solicitors are required for almost every prosecution, including airfares and accommodation for the entire team when in an interstate or regional court, and by actually collecting the imposed fines and costs as awarded.

In the alternative, the massive legal costs and risk of non-recovery could be avoided by the use of legitimate negotiation and fair administrative penalties. Both strategic changes could see a reduction in ASIC expenditure, with nothing to recoup from the industry sector in general.

It is unfortunate that this necessary new approach, and the cost savings involved would not have been included in ASIC's assessment of the fees and levies, listed in the Consultation Paper.

4. Little new long term challenge from a changing environment can be expected, except for the large impact of increasing consumer demand due to general structural economic and socio-economic conditions. In nine out of the last ten years demand has increased annually by between 12.5 and 28.9% nationwide.

Issues of “*misalignment of retail product design and distribution with consumer understanding*” and other long term challenges listed on page 9 of the ASIC Corporate Plan, will not be a problem in the small amount/short term lending industry sector. This is because of the delivery of the incredibly detailed and regulated products under the National Consumer Credit Protection Act and associated Regulations' regime.

The current small amount/short term compliance regime is a straightjacket, with very little room for compliance flexibility, almost identical products across the industry sector, plus price fixing. This uniformity is strongly encouraged by ASIC. Without an extremely politically unlikely major amendment to the Act and Regulations, there will not be a change in the compliance environment.

In a relatively unchanging and therefore unchallenging environment, a new approach to the selection of targets and investigation through to prosecution, or some other approach to encouraging compliance, is required if the strategy of fairness is to have resonance. There is no recognition of these alternative generators of cost recovery in the Consultation Paper. Any new approach could have a significant downward affect on the current 42% of budget allocated to

enforcement, listed on page 28 of ASIC's Corporate Plan, which would impact on the calculation of ASIC's levies.

5. The Delegation was delighted to note the inclusion of two dot points in the ASIC Corporate Plan under the subheading "*Respond*" (page 5), to "*the risk of wrongdoing*" -
- "*engaging with industry and stakeholders*"; and
  - "*providing guidance to those we regulate*".

This could expand ASIC's stated role as an educator (page 3), currently directed largely at consumers, to including lenders (as it once did in 2010, with the very successful ASIC "Roadshows"). However, this would require an abandonment of the current policy of almost automatically directing lender questions to the lender's solicitor or compliance adviser.

This expanded role could also make a major contribution to ASIC's declared approach in the Plan, of attempting to "*understand*" (page 3).

It would also make a major contribution to actually fulfilling the statement on page 5 - "*We leverage the knowledge of our stakeholders to better understand market issues*". The Delegation has been unable to discover any evidence of such "leveraging" ever taking place, in regard to small amount/short term lending.

Moving from the current occasional meeting with industry representatives and token appearances at an industry sector AGM or conference, will require an allocation of resources not previously deployed in the small amount lending sector.

The Delegation notes that this could be integrated with an expanded approach to ASIC's measurement of its own performance.

Increased constructive and non-adversarial contact between the industry sector and ASIC could involve small amount/short term lender participation in the provision of case studies, impact assessments and the meaningful design and implementation of stakeholder surveys, as listed on page 27 of ASIC's Corporate Plan. This participation could be via the industry sector Working Parties and Stakeholder Panels' mechanism, outlined in the Consultation Paper.

It could also assist in the development of real performance measurement criteria. This including the further development of current policy and objectives' statements into comprehensive and meaningful statements of expectations, as occurs in New Zealand. In addition, the avoidance of setting key performance indicators (however called) that are either meaningless, or too low, and are designed to be easily exceeded - in order to present them as "*tangible evidence*" that the organisation is performing well above expectations.

However much they would be welcomed by the small amount/short term lending sector, there is no recognition of these generators of cost recovery in the Consultation Paper.

### **Costs and cost control issues**

What will happen to ASIC costs, without a Government Minister having to justify cost to a Budget Review Committee and ASIC senior officers appearing before Senate Estimates Committees?

Will the "good guys" in the industry sector end up paying for the "bad guys"?

All this while consumers will not be making any contribution to their protection, because all the ASIC fees and charges imposed on the lenders under the National Consumer Credit Protection Act regime, will not be able to be passed on to the consumers, even partially, under the rigid price control regime imposed on lenders.

As indicated above, unlike industry sectors that have made adverse public comment about the introduction of the industry-pays model, the small amount/short term lending sector will have absolutely no opportunity to pass on to consumers the cost blow outs involved. That makes the following issues highly relevant.

1. Although not segmented to relate to specific industry sectors, ASIC has compliance enforcement responsibilities that consume 42% of its total operating expenditure, including enforcement for the small amount/short term lending sector.

To date, excessive expenditure on prosecution legal teams associated with small amount/short term lending sector cases, very poor selection of expert witnesses and poor auditing of the defendants' ability to pay ASIC court costs and fines, indicate that there may be substantial opportunities to reduce this 42%.

It would be most unsatisfactory if ASIC was to continue to squander prosecution resources and then expect the industry sector to pay from 1 July 2016.

2. The industry funding model proposed has little detail as to how cost blow outs by ASIC can be controlled, when it can simply pass on out of control expenditure to the industry sector. This in the absence of any future Federal Government incentive to control ASIC costs.

The Delegation notes that similar concerns have been publicly aired by the Australian Financial Markets Association, which represents 130 banks, brokers and fund managers. This will make for a very challenging environment for industry representatives and the Delegation fears it may encourage ASIC to bypass the Stakeholder Panel's mechanism.

3. The Delegation looks forward to much greater detail being available as to how ASIC intends to become much more transparent under the new funding regime.

If the industry is paying, industry should be provided with comprehensive detail as to how the funds have been allocated and then how the funds have been actually used. Later in this submission, in response to questions, the Delegation has listed the sources of information that must be available to the Stakeholder Panel.

A detailed revelation of the costs associated with the investigations and prosecutions in the Fast Action Finance, Teleloans, Action Cash Loans, Channic and The Cash Store cases and all future prosecutions in the small amount/short term lending industry sector, would be a most useful comparison to have available, and to avoid emulating in future under the new regime.

Members of the Sydney Bar attest that ASIC currently spends too much of its legal resources and legal budget on undefended cases and stacking the court with numerous and unnecessary ASIC solicitors, whose only purpose seems to be there for show. Further, inordinate time is spent on limited paragraphs in statements of fact and attempting to exploit the tortuous Federal Court Rules for the sake of one-up-man-ship, rather than the effective progress of the case.

All of this to attempt to create show trial results and the opportunity for inflammatory ASIC media statements, when pre-trial settlement would be more legally and cost effective. The comprehensive detail requested must be

considerably more detailed and easier to follow than the inadequate ASIC Budget Statements presented in the past.

The Delegation notes that Chartered Accountants Australia has made similar comments, with its concerns about future ASIC transparency and accountability.

4. The Delegation shares the Australian Bankers' Association concern that industry funding could provide a "*perverse incentive*" for ASIC to create greater regulatory burdens. This is a very real threat for the small amount/short term lending sector, where small businesses are very easy targets due to resource imbalance and information asymmetry. This also because of ASIC's continuing development, without any industry consultation, treatment of its published Regulatory Guides as if they were Parliamentary sanctioned Regulations and the ability of individual ASIC officers to proffer very general ASIC media statements as declarations of applicable law.
5. The Delegation does not believe that the Murray Financial System Inquiry sufficiently established why industry funding would create an ASIC that was more accountable, more efficient and with greater capabilities.

Unfortunately, as a result of the Murray Inquiry, the mantra of industry funding equalling accountability, efficiency and capability has been accepted by many as convenient "gospel", frequently chanted with emotive enthusiasm but never adequately and critically analysed or tested.

6. "Political speak" is not a substantive justification for moving \$196 million of the total forecast costs of \$263 million, in 2016-17, to a user pays position.

This concern is amplified when reading the then Minister Frydenberg figures and then noting that the "*ASIC's Corporate Plan 2015-2016 to 2018-19*", released about the same time as the former Minister was providing his figures, lists operating expenditure for 2016-17 as a projected \$305.588 million.

The then responsible Minister thought industry would pay \$198 million, or 75.52% of total costs. ASIC thinks those costs will be \$305.588 - or \$42.588 million more.

If the same percentage is to apply, industry will be paying \$230.78 million or \$34.78 million more than the Minister thought, when he made his pro-industry sector funding announcement. On that basis, the industry sector is already facing a 17.56% cost blow out.

However it could be worse for the industry, according to Murdoch Press reports that provide figures of \$31 million for fees for services and annual sector-based fees or levies of \$226 million (total \$257 million, or a 29.79% blow out on the Minister's figures).

Given the inconsistency of these various figures, the Delegation is concerned that there may have to be a "special levy" if ASIC's spending is over budget.

7. Last year it cost ASIC \$131 million to regulate the banks (with \$31 million collected in fees from the banks). The Delegation considers that every industry sector should be provided with their figures, to assist in informed input into the decision making process concerning fees. At time of writing the only tangible figure the Delegation had as a reference came from press reports that said \$24 million would be paid by "*lenders*".

A new culture of accountability must evolve within the ASIC Stakeholders Team, with mechanisms for effective industry liaison with ASIC, appropriate audit reports made available to industry representative bodies and a general concern

to reduce the current information asymmetry. The potential vacuum in which ASIC may be operating, before the Stakeholder Panel commences, will not encourage the emergence of the necessary new culture.

8. What extra costs will be passed on to the industry sector if ASIC achieves its objective of being divorced from the Public Service Act? The Delegation foresees this as the next big move by ASIC and is concerned that no mention of potential cost generation for the industry sector, by this change, has been detailed at a time when decisions on ASIC fees and charges are being considered and are within a few months of being finalised.
9. How will the issue of keeping administration and court imposed fines be managed? The Delegation and members of the Sydney Bar are most concerned that ASIC keeping fines will distort or warp prosecution decisions. The Delegation has not been able to discover any mention of this issue in the Consultation Paper.

### **What the Delegation does NOT want to see happen**

1. A lack of audit transparency, with no or limited accountability reporting to each relevant industry sector, via the Stakeholder Panel.
2. No opportunity for at least annual industry/ASIC reviews of fees and levies.
3. ASIC targeting of not only the regulated with deep pockets, but also the smaller and financially more vulnerable lenders.
4. A fee structure based on aggregate sizes that do not reflect the comparative sizes of the lenders in the small amount/short term lending sector.
5. A fee structure that, because of the price controls imposed by the National Consumer Credit Protection Act regime, forces small businesses out of the market leaving only a handful of big volume lenders, significantly foreign owned, to dominate.
6. The introduction of a US Securities Exchange Commission model that focuses on making large profits.
7. The introduction of a model that ignores the lessons from the New Zealand Commerce Commission and allows fictitious or vacuous setting of key performance indicators, at levels too low to be meaningful or impossible to measure.
8. Continuation of the current presumption that it is only the lenders that create the need for regulation, when other stakeholders have an agenda - such as ASIC, with its need to maintain and generate employment growth, consumer advocates with their need to justify their government funding and satisfy their constituency that they can successfully lobby for change within an un-researched philosophic context that more regulation is always good regulation, and politicians with their need to satisfy their constituency that they "are doing something".
9. Assuming establishing "price signals". If the new regime allows ASIC dominance in the fee/levy setting process for 2016-17, if not beyond, it will not drive economic efficiencies in the way ASIC allocates its resources as there will be no ASIC incentive and a more likely result will be increasing the fees to cover ASIC inefficiency.
10. Assuming that this consultation process will be enhanced by the promised consideration of "*the broad findings of the Capability Review of ASIC*", when the new cost recovery regime will vary from industry sector to industry sector and

the hopefully detailed findings of the Capability Review, as they relate to each industry sector, will have to be considered.

11. Ignoring the Commonwealth Government's Cost Recovery Guidelines because of ASIC's semi-autonomous status or culture, which is supported by:
  - (a) assignment to a non-Cabinet Minister portfolio (notwithstanding the Minister being highly regarded);
  - (b) statutory power to literally ignore Parliament with the issuing of ASIC's ASIC Class Orders;
  - (c) for all practical purposes, the ability to create or extend existing law or regulation by way of the ASIC Regulatory Guides; and
  - (d) allowing the External Dispute Resolution Schemes to adopt and enforce rules and processes with the effective power of a section in the National Consumer Credit Protection Act.

### PART THREE: CONSULTATION PAPER QUESTIONS

Please note:

All questions answered are answered from the perspective of the small amount/short term lending sector of the finance industry. Where the response “Not Applicable” has been indicated, this is provided following an assessment that the question is not one that is relevant for the small amount/short term industry sector as such and/or is outside the purview of the Finance Industry Delegation.

1. **Do you agree that the (current) exclusions of the Enforcement Special Account, administration of the Unclaimed Moneys Programme, financial literacy programs and the administration of the Assetless Administration fund from cost recovery, is appropriate?**

Answer: Yes.

2. **Are there any other specific regulatory activities undertaken by ASIC... that should not be cost recovered from industry?**

Answer: Yes.

Costs associated with the following activities:

- (a) development of Regulatory Guides;
- (b) the provision of the MoneySmart website;
- (c) any future ASIC research that is conducted without industry sector consultation, or “road testing” with a representative sample of appropriate lenders or consumers; and
- (d) costs associated with ASIC prosecutions, where there has not been any prior audit conducted as to the feasibility, or prospects of consumer compensation or fines being collected.

3. Answer: Not Applicable.

4. Answer: Not Applicable.

5. **Should the MoneySmart website cost no longer be recovered from industry?**

Answer: Yes.

The site is a consumer advocate platform, with limited relevant information for small amount/short term loan borrowers and has never reflected the information needs of a majority of the relevant borrowers.

6. Answer: Not Applicable.

7. **Would you support not proceeding with the planned review of ASIC’s market supervision and competition cost recovery arrangements?**

Answer: Not at this stage.

It may be that any decision would be premature, before the findings and information concerning both the Capability Review and this ASIC Industry Funding Consultation are considered, and the consequent opportunity to broaden any terms of reference is also considered.

8. **Are there any approaches to industry funding models adopted by other jurisdictions worth considering?**

- (a) Given the regulatory cost drivers that are not lenders - consumer advocates, ASIC itself, politicians and the media, plus the consumer

education function, a mixed government/industry funding model is the most equitable (various European jurisdictions).

- (b) FCA (UK) - annual cost consultation process allowing discrete financial year planning.
- (c) FMA (NZ) - levy on activity, but calculated in accordance with frequency of activity, i.e. tiered - not flat - as a flat levy disadvantages small and medium businesses.
- (d) SEDC (USA) - turnover volume, plus reserve fund.

**9. Is the proposed methodology for determining the levy mechanism appropriate?**

Answer: No.

The Delegation notes that Attachment A to Attachment F details the already decided levies for 2016-17. Given the following issues we raise, this is most unfortunate for the small amount/short term lending industry sector.

If the total lack of consultation for both the adoption of methodology and valid measurement associated with the funding assessment of the 2016-17 year detailed in the Consultation Paper, reflects a continuing ASIC culture, there is not only current conflict but the prospect of continuing conflict, particularly as the former Government Minister encouraged all to expect a consultation process, when supporting the introduction of industry funding.

The methodological concepts and the contributors to the methodology should be considered in the light of the following concerns. However, the definitive statement on page 18, in the third paragraph under the subheading "Step 4", is very disconcerting, with its implication that all has now been set in concrete and any suggestion of consultation or review is irrelevant.

We quote, "*Levies for 2017-18 and beyond would be calculated in line with the methodology detailed above*" (in the Consultation Paper and commented on below).

The Delegation is particularly concerned with regard to the following:

- (a) Elsewhere in the Consultation Paper, the suggested segmentation of the industry is generic, by way of allocating size criteria that puts all but one possible small amount/short term lender in the same category and is not applicable to the small amount/short term lending industry sector. There should be at least 5 subcategories relating to lender size recognised in this industry sector. The Delegation supporter survey revealed that a one-size-fits-all general industry funding model, that did not reflect specific industry sector conditions, was a universal concern.
- (b) Annual supervisory levies that reflect costs generated by the particular industry sector are appropriate (one sector to another), but the gross levy must then be allocated amongst all relevant lenders in an equitable manner. This recognising the relative size of the business, on the basis that the more consumers there are borrowing from that business, the more extensive the impact of ASIC's supervisory role.

The alternative - one standard fee for all lenders - effectively means the small lender would be subsidising the big lender. This issue also arises in response to a number of questions towards the end of the Consultation Paper.



- (c) Without detail concerning the calculation methodology being available, Delegation supporters cannot be confident that other industry sectors and their contribution to ASIC overheads have faced a comparative analysis, such as to avoid the small amount/short term industry sector cross-subsidising the regulation of other industry sectors. Effective specific industry funding models would allow the industry sector working parties and the Stakeholder Panel to identify and target expense areas requiring clarification and/or attention.
- (d) Enforcing the law should not be the subject of a general levy. This would mean the compliant lenders, who have paid the substantial costs to ensure they are compliant, would be subsidising the non-compliant.
- (e) Responses to the Delegation's survey revealed the following views:
  - i. The checking of compliance, including supervisory audits, should be considered a whole of industry sector expense, unless a history of infringement, or the generation of a substantial number of complaints relative to the size of the lender, clearly indicates systemic issues and determines more careful ASIC scrutiny.
  - ii. Targeting lenders with external audit costs, rather the employing ASIC officers to undertake this activity as part of their overall role - regardless of outcome - cannot be considered a valid user-pays option. Only where the outcome is a substantial compliance breach of a serious and real systemic nature, should the administrative fine mechanism include audit cost (user-pays) recovery. The subsequent audit to check change and the adoption of greater compliance, can be a user-pays issue.
- (f) The recently announced policy of charging lenders for any ASIC investigation (by ASIC officers) is viewed with concern. Particular issues with this approach are:
  - i. It could encourage vindictive investigations by ASIC officers. Independence and impartiality would be seriously compromised if ASIC was to administer a process where the targeted lender had to pay on all occasions.
  - ii. Similarly, consumer advocates could exploit this policy by vindictively encouraging lender-paid ASIC investigation.
  - iii. Objective and substantial reasons for the investigation would have to be presented. This in contrast to the current approach adopted by ASIC, which is to tell the lender very little as to why the investigation - for as long as possible.
  - iv. Any attempt to introduce this policy must depend on the substantial outcomes of the investigation. Minor compliance issues should not be a determinant that the lender pays, but major real systemic failures could justify an application for lender payment. Such an application could even be provided to the Stakeholder Panel for its consideration.
  - v. Just over half of the respondents to the Delegation's survey (55%) expressed concerns about compliant lenders having to pay for non-compliant lenders. While one respondent was prepared to pay a levy that included an amount for the prosecution of unlicensed lenders and/or those that cheated and/or were non-compliant, the majority favoured a fine structure to be imposed on the unlicensed and the cheats, which included recovery of ASIC's costs.

It is noted that this might mean an encouragement to resolve issues by administration processes rather than prosecution, in order to enable collection of ASIC investigation costs and appropriate compensation for consumers, rather than wasting expenditure on legal costs that leave nothing to cover them.

- (g) If strategic and emerging risks, as identified by ASIC, are going to be a criteria for levy assessment, on past experience the small amount/short term loan sector cannot be confident of the continuing processes of ASIC determination, unless there is a radical change in how ASIC approaches such identification. In the ASIC Corporate Plan, ASIC claims that “*ASIC track(s) the strategic and emerging risks in our industry sector on an ongoing basis*”. This was rejected by all respondents to the Delegation survey.

As a quarter of the respondents to the Delegation survey indicated, current “*tracking*” appears to be no more than cherry picking from issues brought to ASIC’s attention by third parties, particularly the consumer advocates, who work to a less than objective and an inadequately researched agenda. 20% of respondents indicated the recent inadequate ASIC SACC survey was a demonstration of the failure of ASIC to attempt tracking on any basis.

65% of the Delegation's survey respondents expressed a continuing concern that the ASIC tracking process appeared to be significantly influenced by elements such as company size and ASX listing.

15% of respondents to the survey expressed concerns that the apparent results of any tracking that was done by ASIC, in regard to the small amount/short term lending industry sector, was to release outdated reports that failed to impact on contemporary lender behaviour, because the gestation period was so long and to publish media releases about these reports, or media releases about investigation and prosecution outcomes, that were primarily inflammatory, not always truthful, and certainly not informative and educational for lenders.

One lender commented that this result meant an unfortunate failure to take positive advantage of an opportunity to assist the industry sector become more compliant, by offering more regulatory interpretation and training advice based on the tracking. Instead, a lender could see the result as nothing more than an excuse for feeding reporter frenzy, leading to another media “beat-up” of the small amount/short term lending industry sector.

Following the ASIC Capability Review, ASIC will have to introduce substantial changes. These changes will have to include the adoption of best practice research that is methodologically sound, and appropriate communications and fact gathering with at least the three industry sector representative bodies involved.

Obviously, the costs for this tracking have not been included in the assessment of the levies listed in the Consultation Paper.

- (h) The paragraph in the Consultation Paper at page 18, immediately under the sub-heading “*Step 3*”, highlights the Delegation concern that ASIC and a rubber stamp role for “Government” will dominate the proposed methodology for calculation. We quote - “*ASIC will calculate the levies to apply to regulated entities for the coming financial year. The potential levy mechanism for industry will be proposed to Government. The levy*

*mechanism will be determined with reference to ASIC's total budget to undertake regulatory activities".*

It is noted this paragraph implies that ASIC will determine according to its assessment of budget need. There is no built-in audit or assessment process involving the industry sector, or any other third party.

"Government" will not have been involved in the process and so won't have any comparative assessments to offer. The challenges for ASIC of having the Parliamentary processes of the Budget Review Committee and general government budget scrutiny, may be eliminated. The Stakeholder Panels considered later in the Consultation Paper, as currently proposed, will commence too late.

- (i) The proposed tiers in the levy mechanism may depend on an analysis of risk profile and/or the mix of supervisory activities. However, the Consultation Paper does not provide any confidence that anyone other than ASIC will determine these. This is far from satisfactory.

ASIC has yet to properly understand the small amount/short term lending sector and, as a consequence, the Delegation will not confidently welcome an ASIC risk profile analysis.

ASIC already charges for the provision and continuation of Australian Credit Licenses, does its best to subcontract out all compliance review and auditing functions - at the victim lender's full expense - and now declares that it will seek cost recovery for both the investigation and prosecution in court. Apart from:

- initiating investigation interest, largely following receipt of complaints and the occasional collection and reviewing of a sample of loan documents, from a range of lenders, as part of an overview study;
- sending largely broad spectrum notices to individual lenders, with many feeling harassed; and
- involvement in subsequent ASIC-created paperwork;

the current mix of supervisory activities, not already paid for by the small amount/short term loan sector, appears limited to enquiries that result in Enforceable Undertakings for consumer compensation only and the aforementioned occasional reviewing of a sample of loan documents.

- (j) ASIC's collection of data from the small amount/short term lending sector has, without exception, been poorly conceived, poorly and unprofessionally executed, profoundly unrepresentative and statistically irrelevant with its bias. This is not assisted by the publication of the ASIC analysis of this data always being substantially late, rendering many of the ASIC observations obsolete. Unfortunately, these factors are never noted by the media, which presents the reports as contemporary.

Any metrics that might evolve from any past data collection, or unfortunate continuation of this current data collection process for the small amount/short term lending sector, would be deeply flawed criteria. At present, there is no proxy for "supervisory intensity" associated with the small amount/short term lending industry sector.

The Delegation fears the application of the ratchet effect will afflict this element of ASIC budgeting. We fear ASIC will present a very poorly conceived set of proxies, without any opportunity for the industry sector to analyse, assess and seek change before the first year that the consultation

process is implemented. The proxies will attract assumed approval with their implementation in the first year, and then the industry sector will be playing catch up in all its continuing efforts to participate in the promised “methodology reviews”.

There is no current indication as to who will participate, how the excluded can present submissions and evidence, and what the structure of these reviews (including the assessors and decision makers) will be in the future.

- (k) It is a concern for supporters of the Delegation that the concept of “supervisory intensity” has already been identified for the model included in the Consultation Paper.

This concern will only evaporate if it becomes clear that “supervisory intensity” is to be considered for each industry sector supervised by ASIC, including the small amount/short term lending industry sector.

The evaporation will only occur if it is recognised that the spasmodic, not particularly well co-ordinated or appropriately interfaced supervision that ASIC has applied to the small amount/short term lending industry segment in the past 5 years, cannot be considered a valid platform for assessing the “supervisory intensity” to be applied to cost assessment for the small amount/short term industry sector in the future.

**10. Are there any activities proposed to be recovered through fees that should be collected via annual levies?**

Answer: No.

**11. Is the proposed approach for calculating fees appropriate?**

Answer: Yes.

This affirmative answer is provided with consideration of the fee for service plus general levy model, outlined in the Consultation Paper (Attachments B and G).

As the majority of respondents to the Delegation's survey indicated (78%), this approval is with one or more of the following provisos:

- (a) General compliance supervision functions, prior to systemic issue investigations and prosecution, could not be pure user-pays. Effectively, this would be imposing a fine on randomly selected lenders, regardless of outcome and would provide a continuing opportunity for “trumping up an investigation in order to cause financial damage”.
- (b) The Government's current Small Amount/Short Term Credit Contract Review must result in the opportunity to loosen the current price controls, to allow lenders to pass ASIC's new costs on to the ultimate beneficiaries of all of ASIC's work - the consumer.
- (c) There must be a review mechanism via the Administrative Appeals Tribunal or similar process, concerning audits that, in the lender's view, are undertaken with unreasonable harshness or include continual revisiting in an attempt to “dig something up”, or conclude with ASIC officers overriding the ASIC approved auditor, in order to effectively impose a penalty over and above the cost of the audit and in contradiction to the auditor's recommendations.
- (d) That, when there is an opportunity to review the mechanisms for determining levies, the following concepts should be closely examined:

- i. Establishing tiers for levy calculation that recognise segmentation, amongst the small amount/short term lenders, according to product type and size/turnover.
- ii. Any opportunity to calculate on the basis of loan numbers should not include a mechanism assisting ASIC to demand costly reports and the like, thereby increasing the user-pays burden.
- iii. Using loan numbers alone would be inequitable in terms of gross profit delivery, and recognition of loan size must be included into the equation.
- iv. ASIC's anticipated number of service deliveries.
- v. The opportunity to use lenders' gross revenue.
- vi. Establishing a base fee and then topping up with a calculation based on loans lent or turnover.
- vii. Consideration of the number, type and legitimacy of complaints received by external dispute resolution schemes.

**12. Do you have any suggestions for modifications?**

Answer: No.

The Delegation would be opposed to any opportunity for ASIC to randomly vary fees according to its assessment of its criteria.

**13. Do you support the proposed process for determining funding for ASIC's regulatory activities, under an industry funding model for ASIC?**

Answer: Yes, but with considerable reservation.

The Delegation has the following reservations about the determination model outlined in chapter 5 of the Consultation Paper:

- (a) AUSTRAC has been advanced as a successful example of an existing industry funding model. The small amount/short term lending industry sector has never been effectively consulted in regard to the funding of any AUSTRAC process or fee.
- (b) ASIC's current culture is to entertain only superficial engagement with small amount/short term lenders and their industry representative bodies, outside of investigation and prosecution. This culture would have to significantly change if the relevant industry sector "*Stakeholder engagement... central to the industry funding model for ASIC's regulatory activities*" (page 23, Consultation Paper) is to successfully take place under the forthcoming funding regime.

This change in culture is critical, because the promised creation of "*a more efficient and stable regulatory system*" is desperately required in regard to ASIC's compliance supervision of the small amount/short term lending industry sector.

- (c) If the Government is going to consult every 3 years - does this mean the first of this intended consultation won't be until the end of 2018-19?
- (d) The postponement of involvement for stakeholders, until the review process in September 2016, means that ASIC will have total control of every aspect of the process and the determinations for the first financial year. Unless there is an earlier opportunity provided for consultation with stakeholders, much of the impact of both the ASIC Capability Review and this Industry Funding Consultation - rushed to be finished by the end of 2015 - which are

cornerstones for reference by stakeholders and only effective if available for consideration in ASIC and Stakeholder Panel meetings, will not surface until 9 months later and after ASIC has determined all for the first year, in a vacuum.

As is presently envisaged, and consistent with the timetable on page 24 of the Consultation Paper:

- i. the Government will make its decision on the funding model in December 2015;
- ii. ASIC will complete its decisions as to the first year's fees, also in December;
- iii. the Minister will get to look at the reports from the two reviews, probably in February 2016, and then be immediately engrossed in a Federal election campaign;
- iv. the Capability Review Expert Panel will have disappeared back to their other professional duties in January 2016; and
- v. Treasury will be engrossed in preparing/finalising an election budget January - May 2016.

Again we emphasise, ASIC will have free reign for the first year, even though the Government has promoted industry funding as being integrated with meaningful stakeholder participation in the decision making processes.

The above means that the other elements of consultation, listed in the second and third dot points on page 23 of the Consultation Paper, will also only surface in September 2016 or after the Federal election.

- (e) In the long term, the opportunity for consultation with Government concerning fees, every 3 years, could be acceptable provided there is an opportunity for appropriate flexibility. The current Government Small Amount/Short Term Credit Contract (SACC) Review is a case in point.

One topic listed in the relevant terms of reference for this SACC Review is consideration of the current price fixing regime. If the Expert Panel was to recommend a reduction in price caps, which was accepted by the Government, this could have a dramatic impact on the small amount/short term lending industry sector's contribution to the discussion on ASIC fee levels. Aside from this contribution, ASIC could be confronted with a situation where any increase in its fees, no matter how valid ASIC's economic or performance justification, could lead to substantial numbers of lenders withdrawing from the market.

This would impact on ASIC's expected turnover volume and destroy the supporting analysis for the particular amounts of fees and levies being proposed. This also would ultimately leave a large hole in ASIC's industry funding receipts for compliance supervision of small amount/short term lenders.

- (f) If the opportunity for review is more frequent, some consideration as to appropriate lead times must be made. Annual financial year budgeting for small amount/short term lenders demands at least 4 months prior to the commencement of the particular financial year for notice of any increases.

#### **14. Will the process provide certainty for industry as to the fees and levies?**

Answer: Yes (on the face of it).

**15. Are the proposed consultation arrangements on the levy mechanisms and funding appropriate?**

Answer: No.

As indicated above, there are issues of exclusion from the process, because the small amount/short term lending sector is relatively small and may be squeezed out of representation on the proposed Stakeholder Panel, excluded at least from the first year of operation decision making and the resolution of the requirement for flexibility.

From previous experience, the Delegation notes that exclusion from the main forum is never adequately compensated by the opportunity to participate in some working party. This mechanism makes the person or body seeking Stakeholder Panel or equivalent involvement a “second class citizen”, cut off from effective dialogue and dependent on others from a different industry sector base, with their own agendas, to present a case at Stakeholder Panel meetings.

**16. Support for fee for service revision every 3 years?**

Answer: No.

On balance, the Delegation is concerned that a 3 year cycle will build in inflexibility, ignores the fact that ASIC and the small amount/short term lenders will continue working to an annual budget cycle, and could leave inappropriate rates being charged for a longer period than necessary.

66% of Delegation survey respondents want a review period of no more than one year.

It is noted that the proposed ASIC Cost Recovery Implementation Statement will be produced annually. This should be considered the final persuasive element in the review cycle being annual, rather than every 3 years.

In addition, the opportunity for more frequent consultation will assist in replacing the current ASIC culture of intermittent and largely superficial contact, mentioned above.

**17. Further suggestions for enhancements to be made to ASIC’s accountability structure or industry funding model?**

Answer: Yes.

As previously mentioned, the Delegation would hope that the proposed Cost Recovery Implementation Statement would be a considerable improvement on the provision of meaningful information, in comparison to the current ASIC Budget Statements.

However, particularly in regard to individual Federal Court prosecutions, it would be hoped that a breakdown of ASIC costs - as well as detail concerning ASIC’s success in recovering these costs - would be made available to the Stakeholder Panel. Also, in regard to individual large value Enforceable Undertakings, disclosure of the success of ASIC in collecting the administrative fines imposed on the relevant lender/s, would be very useful for industry sector analysis and Stakeholder Panel consideration of ASIC efficiency.

The timing of payment liability will also be another issue of significance, as discussed later in this submission.

**18. [Part One] How should the Cost Recovery Stakeholder Panel operate?**

(a) With plenary sessions not attended by ASIC or Treasury officers.

- (b) With analysis and review sessions attended by ASIC and Treasury officers.
- (c) With a modest budget to allow the employment of research/analyst officers, on a part time or project basis, to provide some balance to the resources available to the ASIC representatives and to avoid the research/analyst input from one or more of the larger companies, or their representative industry body involved, dominating stakeholder input.
- (d) Plenary sessions or meetings generally twice per year and/or otherwise before every analysis and review session involving ASIC officers.
- (e) Analysis and review sessions at least once per year, as discussed above.
- (f) A pre-determined quorum required to convene additional sessions or meetings.
- (g) One industry sector to be specifically represented by each Stakeholder Panel member.
- (h) Resolution determined by consensus or 70% majority.
- (i) Each member entitled to accept no more than 1 proxy from another member who represents the same industry sector.
- (j) Provision of information or documentation to the Stakeholder Panel to be by way of each member of the Stakeholder Panel being directly provided with a copy by the sender, to avoid secretariat-type gateways, or selection and editing of information.
- (k) Secretariat help, if ever provided, is not to come from ASIC, in order to avoid this "gateway" phenomena.
- (l) Agenda bids to be open to all Stakeholder Panel members, without the opportunity of anyone being able to reject any bid.
- (m) No meeting process adopted that allows items on the agenda to be overlooked or passed over, or with the order modified from first bid in being first to be discussed, unless there is clear similarity between topics that leads to near or actual consensus on merging the 2 or more items.
- (n) Discussion on an item included on the agenda to be restricted by a time allocation, equally applied to all items on the agenda.
- (o) None of the Stakeholder Panel members having the right to decide against discussion of any particular nominated agenda item.
- (p) The opportunity for a Stakeholder Panel member to present their industry sector case publicly, and by any legitimate communications process, only after Stakeholder Panel consideration, including reference made to comments and views presented during the Stakeholder Panel sessions, but without attribution.
- (q) Stakeholder Panel members to treat information and discussion concerning other industry sectors they do not represent as confidential, with absolutely no involvement in public debate on issues associated with those other industry sectors.
- (r) Opportunity outside the Stakeholder Panel sessions for Stakeholder Panel members, with relevant delegates from the industry sector they represent, to meet with relevant senior ASIC officers in industry sector/ASIC liaison meetings - reflecting what should be one major outcome from the ASIC Capability Review. This providing a significantly important opportunity for the knowledge and expertise of the Stakeholder Panel member to be



interfaced with general industry sector/ASIC consultation processes, and to allow for integration between budget/fee issues and general compliance and organisational interface issues. This providing compatibility with the hoped for outcomes from the ASIC Capability Review.

- (s) Rotating chairmanship selected by draw from amongst those Stakeholder Panel members who indicate an interest in chairing the meetings. The first draw to be at a social, 'meet the Stakeholder Panel' occasion, where ASIC and Treasury officials can co-ordinate and attend. Draws thereafter to be at the conclusion of each Stakeholder Panel meeting.
- (t) Prepared agenda bidding to conclude 3 weeks before Stakeholder Panel meetings, so that published agendas can be circulated to all Stakeholder Panel members in time for representative body (often final) discussion and information provision to the relevant Stakeholder Panel members.
- (u) Agenda bids to include a brief statement concerning the item/s submitted.

Note:

The strongly preferred concept is to have a multi-industry sector Stakeholder Panel, to enrich the discussion on any particular industry sector concern. The model for this is the successful Treasury Stakeholder Liaison Group meetings that were held in the consultation period in 2011 and 2012, prior to the implementation of the amendments to the National Consumer Credit Protection Act in 2013. It was well chaired, with prior agenda/brief discussion documents circulated and around 30 people attending, at times including or with the addition of up to 6 ASIC and Treasury officers, at least 4 of whom contributed to the discussion and asked questions. This occurred with the opportunity to listen to discussion on issues that did not directly affect all representatives all the time, which was an invaluable comparative learning exercise and contributed to better legislation content or expression and some success in the integration and comparative fairness of outcomes.

#### **18. [Part Two] How should the membership of the Stakeholder Panel be determined?**

- (a) Each industry sector to nominate 3 representatives. This encouraging some diversity of thought, capability and experience and also encouraging pre-Stakeholder Panel meeting preparatory think tanks and information assessment by those 3 people, which should enrich Stakeholder Panel discussion and reduce time wasting comments.
- (b) The process of selection to involve all relevant industry representative bodies, who must determine their own representative selection process. At least one representative must come from each relevant industry representative body. While industry body selected representation was the choice of 66% of Delegation survey respondents, 22% indicated a preference for lenders, regardless of affiliation. The Delegation includes their arguments in the consideration of the makeup of the industry sector working group below.
- (c) Where there are 2 representative bodies, rotation of nomination for the third person should be expected. Where there are 3 representative bodies, one person from each. This unless the representative bodies themselves determine otherwise.

- (d) The representatives will be the absolute choice of the industry representative bodies. ASIC preferences are not to be a determinant, as the last thing the process requires is “ASIC controlled” Stakeholder Panels.
- (e) “Working groups” to be determined by general industry sector invitation, allowing representation of views that may not be those of the leadership of the dominant industry representative organisation.

It is pleasing to note that 33% of respondents to the Delegation survey indicated that they would consider being available to attend working group meetings.

The Delegation is concerned that there has never been any invitation for representation by small amount/short term lenders on the current ASIC Cost Recovery Stakeholders Panel. These invitations to the working party meetings can be issued with considerable ease, as ASIC has email addresses for all Australian Credit Licensees.

It is important to note that the Delegation expects the Stakeholder Panels discussed in the Consultation Paper never to include any parties other than lenders' representatives for the plenary sessions/meetings, plus ASIC and Treasury officers at the liaison meetings. The meetings of the Stakeholder Panel must never be hijacked by attendance from consumer advocate or other non-lender entities.

Finally, the majority of respondents to the Delegation survey (77%) indicated an expectation that there would be an opportunity for the Stakeholder Panel to report to the Assistant Treasurer, at least annually.

**19. Are the proposed arrangements for phasing in cost recovery levies appropriate?**

Answer: No.

Not unless the following concerns are satisfactorily addressed:

- (a) The above discussed opportunity for the Stakeholder Panel process to commence, prior to the finalisation of fees for 2016-17.

This reflecting the Discussion Paper’s timeline presented on page 27 in Table 4, which has 1 July 2016 as the start for the collection of 100% of fees for ASIC service activities and 50% of ASIC set levies, with the latter increasing to 100% on 1 July 2017. As discussed above, as currently presented in the Consultation Paper, ASIC will have free reign for 1 July 2016 to 1 July 2017.

- (b) Clarification as to the actual forecast amounts ASIC is determining, to form the basis of their cost recovery calculations.

This may be particularly relevant when comparing the figures included in the “Note” in the middle of page 28 of their “*ASIC’s Corporate Plan 2015-16 to 2018-19*”, as discussed earlier in this submission. These show an apparent discrepancy of \$65.23 million for regulatory activities (net of funding for the capital budget) and a discrepancy of \$6.53 million for capital funding.

**20. Is it appropriate to set fees to recover ASIC’s costs from 1 July 2016?**

Answer: No.

Unless the issues outlined in response to question 19 and elsewhere in this submission are addressed.

**21. Are the proposed administration arrangements suitable (over collections to be deducted from the following year's fees and/or levies, under collection to be made up by increases in the next years fees and/or levies)?**

Answer: No.

Unless the following can be addressed:

- (a) While the reduction in next year's fees due to an over-collection relative to costs - and equivalent to that over-collection - may appear attractive, there may be carryover ASIC activities commenced in the over-collection year, but not completed until the following year.

The proposed adjustment approach reflects a cash accounting model, when an accrual model may be more appropriate, with the cost of the ASIC activity attributed in full to the year of its commencement, e.g. a Federal Court prosecution. Without an accrual approach, misallocations of funding and failing to recognise the true and full cost of an ASIC initiative, may be overlooked.

The proposed cash accounting approach could allow ASIC management to make unwise decisions and then avoid accountability, because they have moved on to other positions by the time the following year's expenditure has been analysed, with responsibility being shouldered by the succeeding ASIC officer/s who had nothing to do with the original decision.

- (b) While the increase in next year's fees to cover the preceding year's shortfall may appear attractive, there is a real issue for small amount/short term lenders who effectively operate under strict Government price control. They cannot pass on increases in ASIC fees without suffering substantial pressure on gross profit.

The current review into Small Amount Credit Contracts is the first and is taking place 5 years after the price controls were conceived, and 3 years after they were implemented. Such a review time cycle would not be compatible with annual and fluctuating adjustments to ASIC fees.

There is no review scheduled for the other dominant product category offered by small amount/short term lenders, the Medium Amount Credit Contract.

To interface effectively, the Government would have to agree to annual reviews of the price controls imposed on small amount/short term lenders, to allow consideration of fluctuating ASIC fee schedules.

The Delegation agrees with the statements concerning adjustments being made via invoicing or refunding differences. The administrative costs associated with such a procedure would be substantial and any decision could only be effectively made towards, or at the end of, the financial year anyway - close to the time of assessment finalisation for next year's fees.

If such a model was to be further considered it would be useful to consider the cost and administration challenges faced by workers' compensation scheme adjustment of payments' models.

The Delegation notes that this is the approach adopted in the UK. Comparison with what is envisaged for Australia would have to involve a careful comparison of the different lending models regulated in each

jurisdiction. This comparison would also need the specifics of the ASIC levy calculation, which are not disclosed in the Consultation Paper.

The Delegation notes that it might be unsafe to attempt under or over calculations until the expiration of the relevant year, due to not necessarily being able to predict exactly what the ASIC activities may be right up to the end of the current financial year. This may import a process of estimates for next year's fees and levies, until the ASIC accounts are finally audited.

As discussed below, this issue would encourage the adoption of periodic payment of the annual levy, rather than payment only at the beginning of the year.

**22. Is it appropriate not to levy fees for new entrants entering the market part way through the year?**

Answer: No.

The reasons include:

- (a) No fee collection from new entrants would encourage artificial decisions on timing.
- (b) New entrants create ASIC supervision costs that should not be borne by the continuing market participants. To allow this would create competitor cross-subsidisation.
- (c) The proposal reflects an automatic assumption that the levies should be paid annually.

This is poor cash flow management for both ASIC and industry participants, and fees should be paid on a quarterly basis.

A quarterly approach allows new entrants to effectively pay for the quarter, or part thereof, in which they are involved in the relevant industry sector. It also contributes to constancy in ASIC income over the year.

**23. Appropriateness of annual adjustments for under and over payments incurred in the previous year?**

Answer: No.

Please see the answer to Question 21 above.

**24. Are there additional arrangements necessary to ensure appropriate administration by ASIC of its funding model?**

Answer: Yes.

At least the following:

- (a) The timely provision of annual auditor reports on ASIC's financial circumstances, to Stakeholder Panel members.
- (b) Access to ASIC auditors following the audit by the Stakeholder Panels.
- (c) Access to ASIC in-house accountants by the Stakeholder Panels.
- (d) Opportunity to understand ASIC's current cost accounting system.

This may encourage recommending a more granular approach to determining fees payable, e.g. based on the complexity of the application and an accrual accounting approach, so that ASIC service cost development could be spread over a longer period than one year. This would ensure equity in the amounts paid for the services by lenders,

whether purchased shortly after the service is introduced or some year or two after.

Finally, at page 28 of the Consultation Paper, there is the statement that the one entity, with both credit provider and credit assistance provider status, would be required to pay both levies in full. The Delegation is concerned that this statement signals a lack of recognition of economies of scale of risk and other determinations. It would be most unfortunate if this lack of recognition was to infest the whole of the ASIC cost accounting system.

In addition, the Delegation is concerned about the legitimacy of statements included in Chapter 7, "*Consultation*", on page 31 of the Consultation Paper.

These concerns include:

- (a) "*No final decision will be made on the introduction of a new funding model until this consultation period and the ASIC Capability Review have concluded*".

This contradicts the timelines offered in the Consultation Paper and the fact that, without change introduced as a result of the Consultation Paper and any further discussion, the fee review process involving the Stakeholder Panel will not effectively commence until 9 months after the adoption of the industry funding model - and only in time for the second year of operation.

Without the substantial changes necessary to achieve this stated promise, the whole timetable will have to be moved back at least one year, with commencement on 1 July 2017.

- (b) "*The Government's decision will also be informed by feedback from stakeholders regarding the potential regulatory burden or savings associated with the introduction of an industry funding model for ASIC's regulatory activities*".

The "*regulatory burden*" will largely be determined by how transparent and clear the instructions are concerning the payments required. Until a draft of these is provided to stakeholders, no appropriate assessment can be made of this burden.

There are no savings in compliance costs except for the reduction in the cost of forms listed in Attachment 8 to the Consultation Paper, which do not appear to have any relevance to the small amount/short term lending industry sector. All increased fees for services already paid for in whole or part by industry participants, are an increase in cost according to the final fee amount and all new levies are a new cost to industry participants.

The Delegation would be delighted if ASIC or Treasury were able to identify any cost savings for small amount/short term lenders under the proposed ASIC industry funding model.

- (c) "*...a Regulation Impact Assessment in advance of a decision*" (on the industry funding model).

In the case of the small amount/short term lending sector, this could not be attempted until the finalisation of the current Small Amount Credit Contract Review and the decision by the Assistant Treasurer whether or not to implement whatever the Expert Panel recommends in regard to price controls. Realistically, the current likely timetable will see the Minister declare the Government's position sometime in February 2016.

Without knowing what lenders will be permitted to charge for a major component of many small amount/short term lenders' total product offering, a Regulation Impact Assessment would not have any validity for the issues under discussion in the Consultation Paper. In addition, if certain consumer advocate stakeholders have their way with the Expert Panel and successfully achieve a halving of current permitted small amount contract fees, there will not be any lenders left to consider in the preparation of a Regulation Impact Assessment.

- (d) In the absence of any opportunity to study any necessary new legislation or regulation, to introduce the new funding model, extra compliance costs can primarily be identified as the proposed ASIC levies, plus any expected continuation of the current ASIC policy to demand external audits or reviews of lender business models and activities.

These audits regardless of whether or not any legitimate complaint has been received from a consumer and with the audit being paid for by the lender - regardless of outcome.

In other words, supporters of the Delegation may face a continuation of this ASIC policy of subcontracting ASIC investigation duties, at the targeted lender's expense, plus the imposition of new levies which, in large part, are supposed to pay for ASIC's compliance supervision duties. In some substantial part, these supervision duties are the very activities for which the new levies are supposed to pay.

- (e) The listing of the 3 types of regulatory costs considered under a Regulation Impact Assessment - administration costs, substantive compliance costs and delay costs, fails to recognise any industry sector overview or supervisory costs.

This is a fundamental weakness in the current approach. A policing authority such as ASIC accrues substantial regulatory costs in the surveillance of the industry sectors for which it is responsible, investigating complaints, undertaking industry sector research and conducting spot checks or audits. These elements are not recognised in any of the three regulatory cost categories listed.

A failure to list and consider these elements is a fundamental flaw in the recognition of ASIC's actual activities and eliminates consideration of what should be a major cost.

If this elimination is intentional, then the implication must be that ASIC will seek to charge the individual lender for all these elements, in the same manner in which it is currently imposing audit costs on both the innocent and the "guilty" lender.

Such an elimination will lead to a cost impact on the industry sector far greater than anything suggested in the Consultation Paper. It will lead to an assessment of the industry sector's ability to pay for the new industry pays regime, which is fundamentally flawed.

Attachment B, at page 37 of the Consultation Paper, attempts to lump all ASIC's compliance supervision cost recovery into the fees for an Australian Credit Licence. As discussed below, this is not an appropriate model.

- (f) The Delegation is pleased to note that "*The government is also committed to consulting on any legislation and legislative instruments required to implement an industry funding model for ASIC' regulatory activities*".

However, the timetable presented by the Consultation Paper suggests assessment of the model, plus the costs and fees associated with it, will be completed before the legislation or legislative instruments have been drafted and made available for comment. Therefore there may well be cost impacts associated with these that will be unknown during this consultation process and before final cost and fee assessments are made for application, at least during the 2016-17 year.

The Delegation notes that, if a levy calculation involving a base amount and then a graduated levy based on volume of business to some maximum amount was introduced, as discussed on page 38 of the Consultation Paper, care would have to be exercised to recognise equitable treatment for small business.

The base amount would have to be appropriately justified according to the ASIC costs attracted by any sized lender. The maximum would have to be set so that the larger companies did not receive a disproportionate benefit, per loan issued, to the amount per loan sought from the smaller companies. This would require a greater level of sensitivity to comparative small, medium and large business within the small amount/short term lending industry sector, than appears to have been recognised on page 38.

**25. to 29.** Not Applicable.

**30. Do you support the proposed arrangements for Credit Licence levies being annual fees of \$1,600 for credit providers and \$890 for credit intermediaries with less than \$200 million and \$28,000 and \$26,000 respectively for \$200 million to \$1 billion (that may be relevant for small amount/short term credit market participants)?**

Answer: No.

This primarily for the following reasons:

- (a) These are stipulated as annual when, as discussed above, quarterly for cash flow and new entrant purposes could be more appropriate.

The issues associated with needing to complete the financial year and wait for audit reports on ASIC accounts, considered in Question 26, may also be an issue here. The opportunity to avoid less preferred months for payment, indicated by respondents to the Delegation survey, would also support a quarterly payment arrangement. As discussed earlier in this submission, a quarterly payment model would also assist in appropriate collection of levy apportionment for new entrants to the industry sector seeking Australian Credit Licences during the financial year.

- (b) Figures are presented without any clarity as to the continuation of the model of subcontracting ASIC's investigation duties, with the targeted lender victim expected to pay the external auditor regardless of outcome.

Given that even a small lender will face an audit fee of at least several thousand dollars, the listed fee of \$1,600 is not indicative of what actual ASIC compliance costs may turn out to be for the credit provider, or credit intermediary.

- (c) There is no clarification as to whether or not the fees suggested will apply in addition to an application fee in the first year a market participant commences, although this is expected.

- (d) While attachment H, page 69 of the Consultation Paper, indicates that the fee of \$484 for an Australian Credit Licence annual compliance certificate

for the sole trader and \$1,075 for most of the Delegation's supporters, will be removed, the Delegation is concerned that, if there is any unexpected diminution in licence application fee receipts (as is forecast by the Delegation) it will be almost impossible for ASIC to avoid returning to a substantial compliance certificate fee.

**31. Will the proposed levy arrangements for Credit Licensees be competitively neutral?**

Answer: No.

This because the \$200 million benchmark does not reflect the relatively small scale of the small amount/short term lending market segment. That means every lender, except possibly one of the two listed companies, will pay the same fee of \$1,600 because "*credit volumes*" vary from less than \$1 million and up to considerably less than \$100 million. We do not anticipate any relevant exception to the \$890 fee.

On that basis, with the proposed levy structure in Table B1 on page 38 of the Consultation Paper, the smaller industry participants may be subsidising the larger lenders.

**32. Will the proposed tiering arrangements support the growth of Credit Licensees?**

Answer: It may have a marginal impact for the new entrant with a small loan book being established, or to be established, because the National Consumer Credit Protection Act regime imposes relatively substantial licence application support and mandatory document preparation, costing far in excess of the proposed \$1,600.

It could be expected that, if the proposed levy of \$1,600 was imposed near the commencement of the involvement in the industry sector by a new entrant, such a cost would not exceed 15% of total regulatory commencement costs (net of any licence application fee).

**33. Will the proposed levy arrangements support innovation?**

Answer: No.

So draconian and comprehensive is the National Consumer Credit Protection Act regime and ASIC's apparent policy commitment to have all small amount/short term lenders adopt identical business models, there is no opportunity to introduce innovation in the small amount/short term lending industry sector and the impact of the levy arrangements will be irrelevant to this issue.

**34. Will the levy arrangements support small business?**

Answer: No.

As discussed above in response to Question 31, the proposed structure will see small businesses subsidising bigger lending businesses and, if collected near the commencement of entrance to the industry sector, the levy will simply provide an additional start up cost hurdle for small business Australian Credit License applicants.

**35. Would a graduated approach be better?**

Answer: Yes.

As discussed above, this would contribute to avoiding the currently proposed levy structure that would see small business lenders subsidising the bigger



players in the market and would contribute to a reduction in total start up costs, thereby making a contribution to reducing barriers of entry for small business and reducing start up cost for all new competition.

The opportunity to increase competition is becoming a growing concern in the small amount/short term lending sector, as foreign capital acquires increasing control of major lenders, or consolidates current overseas ownership. This in an environment where current price controls are seriously impacting on smaller lenders and encouraging a consolidation of the market to just the bigger companies - in direct contradiction to the Federal Government's major policies on small business.

**36. to 57.** Not Applicable.

**58. Are the proposed fees for service amounts... appropriate?**

Answer: No.

With reference to Table G2, page 62, Consultation Paper:

Concerning - P-CLO1AA -

While, to the knowledge of the Delegation, very few sole traders apply for a licence in their own name, the increase from \$484 to \$623 in 2013-14, to the proposed \$5,700, represents a new impost 11.77 and 9.15 times higher.

Concerning - P-CL01C -

The increase for all relevant companies in the small amount/short term lending sector, from \$1,075 to \$1,384 currently, to the proposed \$5,700, represents a new impost 5.3 and 4.12 times higher.

The Delegation is aware of a trend over the last 12 months, by ASIC licence application review officers, to make it more demanding to successfully apply for a licence. However, apart from generating up to 3 extra ASIC letters prescribing further information or statements being required, and an extra half hour to read the information sent in response, we are unable to identify the justification for such substantial increases.

This is a fee issue demanding Stakeholder Panel attention.

**59. Do you think that the proposed licence amount will act as a disincentive?**

Answer: Yes.

Small business applicants will be particularly impacted, both because of the dramatic increase in the fee amount, plus by the fact that it is payable at around the same time as the applicant is paying for - now essential - professional compliance advice, to secure appropriate documentation for the actual licence application and to respond to the statutory mandatory requirements as to compliant loan contract documentation. These requirements not only include having compliant credit contracts and associated documentation for presentation to consumers, but also the voluminous Credit, AML/CTF and Privacy Compliance Policy and Procedures Manuals.

**60. to 63.** Not Applicable.

**64. Do you agree with the proposed definitions for industry sectors and sub-sectors?**

Answer: Yes.

This answer being relevant (only) for the applicable definitions:

Table 11 - Australian Credit Licensee.

Table 12 - All companies.

## **CONCLUSION**

The Finance Industry Delegation would like to thank Treasury and the Assistant Treasurer for the opportunity to submit this submission and we indicate continuing interest in participating in the consultation process.

This is of particular importance, not only to the Australian Credit Licensees who choose to support the Delegation, but the total of approximately 680 relevant Australian Credit Licensees primarily, or only, offering small amount/short term loans. It is understood that the Delegation is the only industry representative body choosing to make a submission to the industry funding model consultation process and to the ASIC Capability Review.

As the Consultation Paper has recognised the importance of considering the outcomes of the ASIC Capability Review as part of the ASIC industry funding model considerations, we have attached a copy of the Finance Industry Delegation's submission to the ASIC Capability Review for reference purposes.