



Law Council  
OF AUSTRALIA

*Business Law Section*

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

21 October 2015

Attention: Percy Bell

Dear Mr Bell,

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

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

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

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

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

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

Yours sincerely,

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

**John Keeves, Chairman**  
Business Law Section