

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

Submission by the  
**Mortgage & Finance Association of Australia (MFAA)**

To:

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## Introduction

Established in 1982, the Mortgage and Finance Association of Australia (MFAA) is the peak national body providing service and representation for more than 11, 400 professional credit advisers (mortgage and finance brokers and intermediaries, mortgage management businesses, non-bank lenders and aggregators) to assist them to develop, foster and promote the mortgage and finance industry in Australia. Its membership profile also includes ADI lending institutions that distribute their products via intermediaries, and businesses that provide support services to the mortgage and finance sector.

We thank Treasury and ASIC for the opportunity to contribute on the framework and model proposed to fund ASIC. Given the MFAA's remit, our comments are solely focussed on aspects relating to credit, and in particular, to proposed increases in costs and increased regulatory burden on credit intermediaries.

## Executive Summary

The MFAA holds significant concerns that the proposed model for funding of the Australian Securities and Investments Commission is unfair to industry participants and in particular, owners of small businesses. The MFAA's view is that proposed funding changes to credit licensing costs for small business holders is quite likely to create considerable distortion in market conditions by forcing potential licensees to seek alternate means to act compliantly under the law.

The proposal has the potential to lead to more consolidation within the credit sector. Businesses that can either amortise licensing and levy costs across their operations or, alternatively, engage more industry participants, i.e. appointed representative or employee loan writers, will do so for a fee which will not be collected by the regulator.

The MFAA is very concerned that the industry funding proposal is likely to have a number of unintended consequences including this shift in market dynamics which may quite possibly result in a substantially lower revenue than the current regime produces.

We believe that a funding model using ASIC's existing revenue streams which in 2013-14 were nearly double its operating expenses, is a much fairer model and allows the industry to demonstrate compliance through this program which punishes non-compliant businesses to the advantage of those that meet regulatory expectation.

We hope that the MFAA's responses to questions posed in the Consultation Paper will assist Treasury to reformulate a fairer approach to credit licensing fees and levies related to the credit sector. If the model for industry funding is implemented, we strongly recommend that a transitional process, particularly for sole traders and small credit businesses, over a period of at least four years is necessary to ensure that the credit sector is not substantially destabilised.

Our submission responds specifically to 3 concepts:

1. the proposed industry funding model;
2. the Proposed Annual Levies for credit licences; and
3. the Proposed Fee Schedule for Australian credit licence applications.

# 1. Response to Proposed industry funding model and type to be adopted

The MFAA is strongly concerned about the move to an ASIC funding model which is fully funded by industry and, in addition, the effect this will more than likely have upon its members and the probable resulting flow-on costs upon consumers.

Current compliance costs already create significant burden especially to those in small business. The proposed Treasury funding model will result in a detrimental effect on this segment of the industry.

The MFAA strongly opposes the high increase in costs to credit providers and, in particular, to credit intermediaries under both the proposed fee-for-service and suggested annual levies and fears that this will create a disincentive to entry for small businesses and will result in these higher costs being passed onto consumers.

The MFAA strongly believes that a jointly funded model similar to the New Zealand regulator which is funded by Government (40%) and industry (60%) should be adopted. Such a model would see ASIC funded by a combination of industry annual levies and fees-for services and the balance funded by the taxpayer, the ultimate beneficiaries of ASIC's operations. Where regulatory functions benefit the community as a whole, such functions should be funded by the taxpayer. In addition to this, the MFAA also supports a funding model where ASIC fees and charges and enforcement fines and penalties should contribute directly to its revenue. ASIC's Annual Report 2013-14 shows that its revenues from fees and charges raised for the Commonwealth were \$763m against operating expenses of \$405m<sup>1</sup> yet Treasury appears to believe that the cost burden should be shouldered totally by the industry ASIC is there to not only regulate but to serve. .

By ensuring that at the least a reasonable component of funding is contributed by the taxpayer, ASIC's operating expenses and costs will be kept in check, with the government accountable for the taxpayer spend. There is great concern that there will be no incentive to reduce these expenses and costs and to ensure that community interests and consumer protection are the priority concern, with instead revenue raising being the primary focus. Mr Funke Kupper recently quoted "sometimes it is said the most profitable party in the US markets is the SEC, so we need a better model".<sup>2</sup>

Other countries which have a joint publicly/privately funded equivalent regulatory body include: Argentina, Germany (BfJ), India (SEBI), Indonesia, Italy, Saudi Arabia (CMA) and Sweden.<sup>3</sup>

The MFAA's responses to questions from the Consultation Paper are:

Q.	ASIC	MFAA RESPONSE
1.	Do you agree that the exclusion of these activities from cost recovery is appropriate? If not, why not?	Yes. Costs recovered by ASIC under the ESA program by way of a cost order in ASIC's favour should continue to be returned to the ESA when received. Revenues resulting from poor industry behaviour or corporate misconduct should effectively reduce levies or fees expected from industry in general.

<sup>1</sup> ASIC, Annual Report 2013–2014, 10 October 2014, p. 24, retrieved 28 September 2015, <<http://download.asic.gov.au/media/2227467/asic-annual-report-2013-14.pdf>>.

<sup>2</sup> 'Big Business will have to pay for ASIC', *Australian Financial Review*, 27 August 2014, retrieved 28 September 2015, <<http://www.afr.com/news/policy/big-business-will-have-to-pay-for-asic-20150827-gj8xvf#ixzz3npQtjIEu>>.

<sup>3</sup> OECD Corporate Governance Factbook 2015, p32 retrieved 28 September 2015, <<http://www.oecd.org/daf/ca/Corporate-Governance-Factbook.pdf>>

2.	Are there any other specific regulatory activities undertaken by ASIC, such as those that support innovation that should not be cost recovered from industry? If so, please provide examples.	<p>Yes. Those activities which benefit the wider community should be funded by taxpayers rather than industry such as 'Policy Advice' and 'Guidance'<sup>4</sup>. These outcomes are provided with the goal of education and consumer protection in mind and as such should be funded by the taxpayer.</p> <p>Furthermore, the costs of capital expenditure and those activities that support innovation should also not be recovered by industry but instead funded by taxpayers.</p>
3.	Do you support cost recovery arrangements for ASIC's regulatory activities being consolidated within a single ASIC industry funding model? If not, why not?	<p>Yes. If this model is to be adopted it is more efficient for all costs to be recovered by ASIC.</p>
4.	Are there any activities cost recovered by other agencies on ASIC's behalf that should continue to be recovered by the current responsible agency? If so, please give reasons why.	<p>Revenues collected by other agencies, e.g. APRA, on ASIC's behalf should be collected directly by ASIC. The additional handling of revenues comes at an unnecessary cost.</p>
5.	The Government currently recovers most of the costs of operating the MoneySmart website through APRA's supervisory levies. Should these costs no longer be recovered from industry? Why or why not?	<p>Yes. The MFAA strongly believes that the MoneySmart website costs should not be recovered from industry. The Consultation Paper clearly states that financial literacy programmes to educate investors and consumers on financial matters are excluded from recovery (p6). As such the MoneySmart website clearly falls within this category and should be excluded.</p>
7.	If the government decided to introduce an industry funding model for ASIC, would you support not proceeding with the planned review of ASIC's market supervision and competition cost recovery arrangements? Why or why not?	<p>Yes. There appears to be too many current reviews of ASIC's operations. Given the current Capability Review and this Consultation Paper this should have already been addressed in detail.</p>
8.	Are there any approaches to industry funding adopted by other regulators that you believe should be applied to an industry funding model for ASIC? If so, please describe and provide reasons why.	<p>Yes. The MFAA supports a joint funded model first and foremost for reasons explained in the above introduction. In addition to this, at least 7 jurisdictions listed in the OECD Corporate Governance Factbook<sup>5</sup> successfully use fines and penalties from regulatory violation as a funding source (without going through the national budget): Argentina, Estonia, Hungary, Ireland, Mexico, Netherlands, and Slovenia.</p> <p>The MFAA supports this as an additional funding source as regulatory activities will be directed to those areas that require it most. Regulation exists to weed out those that are non-compliant therefore it is only fair that those offenders pay the costs associated with continuing regulatory oversight rather than placing this burden on compliant participants.</p>

<sup>4</sup> Proposed Industry Funding Model for the Australian Securities and Investments Commission, Consultation Paper, 28 August 2015, p5.

<sup>5</sup> OECD Corporate Governance Factbook 2015 p32 retrieved 28 September 2015, < <http://www.oecd.org/daf/ca/Corporate-Governance-Factbook.pdf>>.

		<p>Further to this, fines and penalties must be considerably increased to act as a bigger deterrent and pose a significant impact to those that are non-compliant.</p> <p>Even if an industry funded model or jointly funded model is adopted, such a model should incorporate fines and penalties as a funding source, rather than any such costs going to general revenue. Industry cannot be expected to fund the operating expenses of regulatory activities without taking the benefit of any revenue to be generated from such activity.</p>
9.	Is the proposed methodology for determining the levy mechanisms appropriate? If not, why not?	<p>No.</p> <p>Step 4 outlines how ASIC will finalise the levy calculation mechanism however this is extremely vague referring only to the fact that Government will consult with industry. Further to this there is "no discount for entities" and therefore "no efficiencies of scope for ASIC in regulating more complex entities". ASIC should be looking at creating efficiencies in its processes to reduce the cost to industry.</p>
11.	Is the proposed approach for calculating fees-for-service appropriate? If not, why not?	<p>No.</p> <p>A fixed flat fee approach for the application of a credit licence is not only grossly unfair to smaller participants, it does not reflect the complexity of applications. In essence it is a lazy approach to adopt such a calculation with the largest relative burden then being artificially placed on smaller participants.</p> <p>If an industry proposed funding model does proceed, the MFAA supports the current 9 tier approach to the fee charged for application based on volume.</p> <p>Similar approaches can be reflected in the models of other countries for example, the UK's FCA which takes into account the complexity of the application.<sup>6</sup> This model is graduated into 3 tiers and offers a fairer fee based on complexity:</p> <ul style="list-style-type: none"> <li>• straightforward;</li> <li>• moderately complex; and</li> <li>• Complex.</li> </ul> <p>Most financial advisers, mortgage brokers and general insurance intermediaries fall with the category of straightforward applications.<sup>7</sup></p> <p>It is unconscionable that large entities settling loans in excess of \$2,100 million p.a. to see a reduction of 75% for a credit licence application whilst a small business licence is expected to rise by 1078% (Refer Appendix 1). This creates a barrier to entry for small business and reduces competition. It is also likely to disrupt and possibly destabilise the credit intermediary landscape as mortgage and finance brokers seek to avoid such an unwarranted and excessive licence fee.</p>

<sup>6</sup> 'Fees and Levies', Financial Conduct Authority, 18 September 2015, retrieved 28 September 2015, <<https://small-firms.fca.org.uk/fees-and-levies>>.

<sup>7</sup> 'Authorisation Application Fee', Financial Conduct Authority, 29 August 2015, retrieved 28 September 2015, <[https://small-firms.fca.org.uk/authorisation/authorisation-application-fee?field\\_fcasf\\_sector=246&field\\_fcasf\\_page\\_category=unset](https://small-firms.fca.org.uk/authorisation/authorisation-application-fee?field_fcasf_sector=246&field_fcasf_page_category=unset)>.

12.	Do you have any suggestions for how the proposed methodology for calculating fees-for-service could be modified? If so, please provide details.	See above Q11.
13.	Do you support the proposed process for determining funding for ASIC's regulatory activities under an industry funding model for ASIC? If not, why not?	<p>No.</p> <p>This question is vague in its context as to Chapter 5 of the CP. There is much reference to 'Consultation' with little to no substance to exactly how this process will be efficient or transparent.</p> <p>Should the proposed funding model be implemented, a comprehensive 5 year review of the methodology underpinning the model may pose as too lengthy a period from inception of the model. A shorter comprehensive review should be conducted to assess the implementation and funding model impact and to address any issues that require adjustment or reassessment.</p>
14.	Do you think this process will provide industry with certainty as to the fees and levies to be charged? If not, why not?	<p>No.</p> <p>According to Chart 4, the levy is to be determined annually in June and payable in January. Although there is 6 months' notice, this does not equate to certainty as to what the levies and fees will actually be from this calculation year to year.</p> <p>If there is any inaccuracy in the initial calculations, there may be significant rises one year to the next as the additional cost rolls over in the calculation of levies which places an unnecessary burden on small business planning.</p> <p>Similarly, if the proposed \$5,700 credit licence fee acts as a barrier to market entrants (as expected), the fee is likely to rise if there is not a reduction in ASIC's overall costs of administration of that sector.</p>
15.	Are the proposed consultation arrangements on the levy mechanisms and funding appropriate?	Our concerns include that variations from year to year will make it impossible for small businesses to plan for varied operating expenses relating to levies if costs are not more-or-less fixed.
16.	Do you support ASIC's fees-for-service being revised every three years? Alternatively, would you prefer that ASIC's fees-for-service be revised more regularly?	<p>No and Yes.</p> <p>The advantage to more regular reviews would be that possible improvements and efficiencies made by ASIC would result in a reduction in fee administration resulting in a reduction in fees.</p> <p>However, the opposite is more likely to occur and industry may face annual rising costs and uncertainty as the fee mounts year to year.</p>

### Accountability and Transparency

17.	Do you have any further suggestions for enhancements to be made to ASIC's accountability structure or industry funding model? If so, please provide details.	No
18.	How should the Cost Recovery Stakeholder Panel operate? How	If the proposed Cost Recovery Stakeholder Panel is established, industry should be invited to participate.

	should the membership be determined?	Industry bodies should be offered direct involvement because they represent so many industry participants.
19.	Are the proposed arrangements for phasing in cost recovery levies appropriate? If not, what alternative approach would you suggest and why?	No. If the fee-for-service model is to be adopted, the proposed phasing in is unacceptable.  Transitory arrangements for the levies should occur over a longer period than Yr.1 50%, Yr.2 100%. Transition should occur over a longer period to prepare industry participants for this significant cost increase to their businesses. An example would be Yr.1: 25%, Yr.2: 50%, Yr.3: 75%, and Yr.4: 100%.
20.	Is it appropriate to set fees to recover ASIC's costs from 1 July 2016? Why or why not?	No. Given that the costs will start to be recovered from 1 July 2016, the MFAA does not feel this is sufficient time for further discussion and feedback prior to implementation. Treasury should expect that transition arrangements should occur over a period of at least 4 years. As such, the entire calendar should be postponed a minimum of one year at this stage.
21.	Are the proposed administration arrangements suitable? If not, why not?	Yes.
22.	Is it appropriate not to levy entities entering the market part way through the year? If not, how do you propose that these entities be treated?	If the proposed levies are implemented, a pro-rata arrangement should apply. It is likely that fewer new entrants are likely to consider entering the market when faced with these increased costs.
23.	Is it appropriate for the Government to handle the over or under collection of levies through a reduction or increase in the levies payable for the next year? If not, why not?	No. This creates uncertainty from year to year as to the amount payable on the levy, which again is a burden to those in small business.
24.	Are additional arrangements necessary to ensure appropriate administration by ASIC of its industry funding model? If so, please provide details.	

## 2. Proposed Annual levies for credit licences

The MFAA does not support the proposed levies as outlined in Table B1. This is a significant rise in costs and is also considered unfair to consolidate expected changes into only 3 Tiers.

30.	Do you support the proposed arrangements for Credit Licensees' levies? Why or why not?	No. Currently there are 9 Tiers for paper lodgement and 9 Tiers for electronic lodgement of the ACC. This has been reduced to a proposed total of 3 Tiers to calculate the Annual levy. The MFAA does not support this and supports either the current 9 Tier approach based on volume of credit provided (through settled loans) or an alternative sliding rate per dollar approach similar to that proposed for Public Companies in Table A1.  Whilst an administrative burden, the requirement for each
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		<p>licensee to report the exact amount of credit provided in the previous year on a single date, it is a welcome approach to achieve a fairer outcome for small business.</p> <p>As Treasury appears to have calculated the current levy by working backwards from total costs divided by the number of entities, the relevant data for the number of participants in each category would need to be provided to industry in order to calculate and submit an alternative scale or graduated approach.</p> <p>The reason the MFAA does not support these arrangements is that it burdens small business which will see a significant rise in costs. Members of the MFAA are already concerned about the continuing rise in compliance costs and the burden it places on small business. One member commented as much to say this increase would be enough for them to exit not only the industry but exit the country as they ask themselves, “when will the ‘rape and pillage of small business stop”.</p>
31.	Will the proposed levy arrangements for Credit Licensees be competitively neutral? If not, why not?	No. We expect that the proposed levy arrangements are artificially skewed against sole operators and small business owners. Excessive increases in licence costs and annual levies is likely to destabilise the credit industry and in particular, credit intermediary businesses. Small operators will seek ways to minimise licensing and levy costs. The industry is likely to consolidate considerably and this will in turn reduce competition significantly across the credit sector.
32.	Will the proposed tiering arrangements support the growth of Credit Licensees? Why or why not?	Perhaps. It may support growth however in a negative way, as participants may seek additional licences rather than crossing over into another Tier to avoid a higher annual levy. This reason also supports the above favoured approach of 9 tiers to calculating the levy. It may also mean that licensees may appoint or employ more credit representatives who will wish to avoid increased costs. This is likely to result in consolidation. This may see ‘growth’ of licensee businesses that already have significant businesses but smaller operators are likely to shrink or evaporate.
33.	Will the proposed levy arrangements for Credit Licensees support innovation? If not, why not?	The Regulator will need to ensure that it does not act as a brake on innovation by the increasing use of technology by both businesses and consumers to, for example, accept loan terms and conditions without reading contract conditions, a common occurrence for online transactions.
34.	Will the proposed levy arrangements for Credit Licensees support small business? If not, why not?	No. Small business will see a rise of 84% in their annual cost (based on the current low rate of ACC) Refer Appendix 1. This is a significant cost to small business on top of their already extensive compliance and regulatory requirements. In addition to this, is the uncertainty faced annually as to the likely levy amount and any increases year to year will also be detrimental to small business. One small business member has listed the current compliance and regulatory requirements highlighting the existing high cost of compliance: <ul style="list-style-type: none"> <li>• Credit licence fee or aggregator fees</li> <li>• File audit costs</li> <li>• Risk system and compliance management consulting</li> </ul>



		<p>costs</p> <ul style="list-style-type: none"> <li>• MFAA membership fee and other industry body fees</li> <li>• Ombudsman membership fees</li> <li>• Professional indemnity insurance</li> <li>• Continuing professional development costs (course, conference, training fees, and associated costs such as parking, travel etc. to attend)</li> <li>• Aggregator fees</li> <li>• CRM and IT systems to facilitate and prove compliance</li> <li>• Annual Police check fee</li> <li>• Annual credit check search fee</li> <li>• Time cost of compliance – consulting charge our rate x weeks spent not earning to meet these requirements (not included in calculation), but definitely a productivity cost to the country.</li> </ul> <p>This member calculates their current compliance costs at an alarming 17.7% of their gross income last year.</p>
35.	Do you believe that a graduated approach to determining the levy payable by Credit Licensees would be preferable to the proposed levy arrangements? Why or why not?	<p>Yes.</p> <p>Further to Q30, a graduated approach provides fairness to participants, in particular small business, and provides a mechanism that more fairly apportions the fees in line with the size of the business and risk.</p>

### 3. Proposed Fee Schedule for Australian credit licence applications

The MFAA is strongly against the proposed fixed licence fee of \$5,700 that is proposed to apply to all participants for an application for a credit licence.

58.	Are the proposed fee amounts for professional registration, licensing and document compliance review forms appropriate? If not, why not?	<p>No.</p> <p>The MFAA is strongly opposed to the Form Codes P-CL01AA – P-CL01A18 reverting to a flat fee regardless of the size of the entity/credit volume.</p> <p>Appendix 1 shows that for small business this creates a significant increase of 1078% to enter the market whereby volume over \$600 million receives a reduction in its entry to market up to 75%.</p>
59.	Do you think that the proposed fee amounts may act as a disincentive for some entities from submitting a professional registration or licence application, or a document for compliance review, with ASIC? If so, why?	<p>Yes.</p> <p>The proposed fee for an application for a credit licence is a significant disincentive and barrier to entry for small business and individuals.</p> <p>For example, an individual operating as a mortgage broker who does not have any representatives engaging in credit activities on their behalf and intends to apply for a credit licence in their own name and settles \$40 million in loan applications in the preceding financial year will currently have an applicable fee of \$505.</p> <p>Under the proposed industry funding model, this individual would face a fee of \$5700 to apply for a credit licence. It is clear that this is a disincentive and barrier to entry for this level of the market. The MFAA is concerned that this will reduce the</p>

<sup>8</sup> Consultation Paper, Table G2: Proposed Fees-for-Service for Licensing Forms, p62.

		<p>number of future participants thus causing likely consolidation and shrinking of the market as well as raising the fee higher following fee reviews due to the shrinking market.<sup>9</sup></p> <p>In addition to this, there is concern that industry participants will look at alternative ways around the fee, the main option being an increase in credit representatives as opposed to holders of credit licences. However businesses will also be careful to avoid going into Tier 2 of the levy to avoid the massive increase in annual levy payable.</p> <p>A fair approach will avoid industry participants from attempting to avoid fees and higher Tiers.</p>
60.	Do you support the fee payable for applications for relief being tiered based on the complexity of the application? If so, why?	<p>Yes.</p> <p>A tiered approach based on complexity should also apply to applications for a credit licence.</p>
61.	Are the proposed fee amounts for applications for relief appropriate? If not, why not?	<p>No.</p> <p>There are significant rises to Standard, Minor and Novel categories.</p>
62.	Do you think that the proposed fee amounts may act as a disincentive for some entities from submitting applications for relief with ASIC? If so why?	<p>Yes.</p> <p>It is a significant increase in particularly for novel cases and one application for relief may also have multiple fees attached. As such, the high increase acts as a disincentive.</p>

We hope that these responses will assist Treasury to reformulate a fairer approach to credit licensing fees and levies related to the credit sector. We encourage fairer transitional arrangements, particularly for sole traders and small credit businesses, if changes to these fees and levies are implemented.

I can be contacted for further comment if necessary directly at: [siobhan@mfaa.com.au](mailto:siobhan@mfaa.com.au).

Yours sincerely



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<sup>9</sup> 'Fees for credit licence and annual compliance certificate', ASIC Information Sheet 108, July 2013, retrieved 28 September 2015, <<http://asic.gov.au/for-finance-professionals/credit-licensees/applying-for-and-managing-your-credit-licence/fees-for-credit-licence-and-annual-compliance-certificate/>>.

APPENDIX 1.

CREDIT INTERMEDIARIES	CURRENT low	CURRENT high	PROPOSED LICENCE FEE	PROPOSED ANNUAL LEVY	% Change 1st Year	% Change Annually After
Less than \$100 million and the applicant is a 'sole trader'	\$ 484	\$ 623	\$ 5,700	\$ 890	1078%	84%
less than \$100 million and the applicant is not a 'sole trader'	\$ 1,075	\$ 1,383	\$ 5,700	\$ 890	430%	-17%
\$100 million or more but less than \$200 million	\$ 1,075	\$ 1,384	\$ 5,700	\$ 890	430%	-17%
\$200 million or more but less than \$600 million	\$ 4,303	\$ 5,537	\$ 5,700	\$ 26,000	32%	504%
\$600 million or more but less than \$1,000 million	\$ 8,860	\$ 11,075	\$ 5,700	\$ 26,000	-36%	193%
\$1,000 million or more but less than \$1,400 million	\$ 13,289	\$ 16,612	\$ 5,700	\$ 260,000	-57%	1857%
\$1,400 million or more but less than \$1,800 million	\$ 17,719	\$ 22,149	\$ 5,700	\$ 260,000	-68%	1367%
\$1,800 million or more but less than \$2,100 million	\$ 22,149	\$ 27,687	\$ 5,700	\$ 260,000	-74%	1074%
\$2,100 million or more	\$ 23,258	\$ 29,072	\$ 5,700	\$ 260,000	-75%	1018%