



Australian Automotive Dealer Association Ltd.

ACN: 167 598 085

The Sir Jack Brabham Automotive Centre of Excellence

8/2728 Logan Road, Eight Mile Plains, Brisbane Queensland 4113

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

Email: asicfunding@treasury.gov.au

Dear Sir

AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION LTD (AADA) - ASIC SUPERVISORY COST RECOVERY BILL 2017 (LEVY BILL) AND RELATED BILLS

AADA makes this short but vitally important submission to counter some **likely anomalies in the sharing of ASIC's regulatory costs by small business** that would arise from the current form (exposure draft) of the *ASIC Supervisory Cost Recovery Levy Bill 2017*.

The Levy Bill imposes a levy on persons regulated by the Australian Securities and Investments Commission (ASIC) which possibly excludes novated leasing companies. This in our view is something that needs to be addressed to ensure a level playing field.

AADA understands that the Levy Bill is designed to enact broad enabling legislation that allows flexibility. However, it is important that the Bill contains enough guiding principles so that it does not give rise to unintended consequences. Just a few small changes will go a long way to increasing business confidence of fair treatment between large and small businesses and between those that require regulation by ASIC and those that ordinarily do not.

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The cost recovery levy is a tax (the deductibility of which is uncertain and should be clarified) and should comply with the Australian Government Cost Recovery Guidelines (CRGs).

About AADA

AADA is the peak advocacy body representing franchised new car dealers in Australia. There are over 1500 new car dealers in Australia that operate about 2600 new vehicle outlets. Dealerships range from family owned small businesses (SMEs) to larger businesses including three public companies.

Many dealerships currently facilitate the sale of consumer credit and/or motor vehicle insurance, and accordingly operate under the relatively simple "point of sale" (POS) exemption from the need to hold an Australian Credit Licence (ACL) and/or are authorised representatives of insurers with an automatic exemption from the need to hold an Australian Financial Services Licence (AFSL).

Key concerns

AADA is concerned that under the Bill, as currently drafted, a person exempt from the need to hold a licence (ACL or AFSL) could be treated in the same manner as a large and highly regulated licence holder.

There needs to be an assurance of ***proportionality*** in the allocation of the costs of regulation.

Licence exemptions are generally available 'as of right' and reflect a policy decision that licensing and associated regulation is unnecessary. In these circumstances there is a strong argument that exempt persons should not pay any levy.

A nil or negligible levy for persons exempt from licensing is even more important because licence holders generally will have the market power to shift some of the burden of their levies to their representatives, and can be reasonably expected to do so. I am not sure you have given consideration to circumstances where products designed by financiers and insurers and sold through the dealership distribution channel are subject to investigation by ASIC. To impose a levy directly on dealers or passed on by the product designers to franchised car dealers would not seem reasonable.

AADA has a range of other concerns about the design of formulae for levies, but acknowledges that these will need to be addressed in the process of consultation on the regulations. Currently, we simply note the concerns that levies should have regard

to capacity to pay, should recognise corporate groups when thresholds and scales are involved, and should recognise the good standing of businesses that are free of regulatory transgression.

Simple solutions

Recognising that detail belongs to the regulations and principles belong in legislation, AADA proposes the following simple changes to the Levy Bill.

1. Exemption of exempt persons

For reasons stated above, persons exempt from holding a licence should ordinarily be exempt from the levy.

This can be simply achieved by deleting item (b) from the definition of "credit services entity" and deleting item (c) from the definition of "financial services entity".

2. Principle of proportionality

If the previous proposal is not accepted, exempt persons need to be recognised as being in a different class or sector than licensees. This, combined with clause 9(2)(b), would produce some degree of proportionality.

This can be simply achieved by amending the definition of "sector" in clause 7 to refer to the separate component items of the entity definition referred to in each paragraph of the definition of regulated entity (rather than just each paragraph of 'regulated entities'). This is a deeper disaggregation of groups.

Conclusion

We would be happy to meet with you to discuss our submission and matters raised in other submissions. Please do not hesitate to contact me on mobile 0413 007 833, email dblackhall@aada.asn.au or our Policy Director Michael Deed on mobile 0417 742 956, email mdeed@aada.asn.au.

Yours faithfully



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