

7 February 2019

Mr Adam Bogiatzis
Consumer and Corporations Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ASICFunding@treasury.gov.au

Dear Mr Bogiatzis

Submission on ASIC Industry Funding Model and Registry Search Fees

Thank you for the opportunity to comment on the draft legislation for ASIC's Industry Funding Model and Registry Search Fees.

This submission is being made by the Australian Restructuring Insolvency and Turnaround Association (ARITA). Information about ARITA is at the end of this submission.

Supervisory cost recovery levy

ARITA's submission principally focuses on the proposed amendments in "Schedule 2 – Registry fees" as our review of the Schedule 1 changes to supervisory cost recovery levy indicates that they are not applicable to the insolvency profession.

We do however take this opportunity to reiterate our concerns in relation to the recovery of ASIC's costs from registered liquidators:

- there are significant negative market consequences of the industry funding proposal for registered liquidators which has diminished the proper, competitive operation of the market. We have already seen significant contraction in the number of registered liquidators and continue to estimate that some 200 of the 706¹ registered liquidators will cease their registration by the end of 2019. Already more than 50 have exited their registration. This places the proper operation of the economy at risk, especially in any future recession as these skills will be lost to the market.

¹ As at 1 July 2017

- the levy is considerably unjust given the very high cost per liquidator compared to other similar regulated populations and international comparatives; the disregard for the work done by liquidators in support of ASIC and the limited benefits from the current ASIC supervision.
- the ex-post nature of the levy has, and will continue, to result in creditors being disadvantaged due to the distinct and finite nature of insolvency appointments. Registered liquidators were only advised of their 2017-18 applicable metric cost (\$77 per metric) in December 2018, having already based approved costs in external administrations on ASIC's estimated metric (\$125 per metric).
- the ex-post nature of the levy also means that insolvency practitioners cannot budget for the significant costs they face. Despite being assured of the stability of this charge, practitioners saw a 30% variation in the fee this year from forecast. It is contrary to any good governance for practitioners to be incurring such a significant fee and not knowing the quantum of the fee for up to 18 months after it is incurred. Indeed, this year we are already seven months into ASIC's 2018/19 budget year and there remains absolutely no indication of what their Divisional budget is. This beggars belief as a practice.

Registry fees

ARITA has made a number of submissions to Government² advocating for the availability of business data within the Australian economy to be more open, transparent and efficient and for improved access to ASIC searches by a reduction in search costs. It is noted that, although very limited, the provision of free access to journalists is a positive step towards this.

We do, however, strongly advocate, that insolvency practitioners, in particular registered liquidators and registered trustees (who, as noted above, bear significant statutory investigatory responsibilities), should be provided free access to ASIC databases to support them in carrying out their statutory functions.

We believe that this could be easily achieved by extending the exemption for journalists in the exposure draft to read "journalists, registered liquidators and registered trustees".

As highlighted in our previous submissions and a letter to then Minister for Revenue and Financial Services, the Hon Ms O'Dwyer³, search costs form part of the fees and expenses which are generally unrecoverable and borne by insolvency practitioners each year for properly fulfilling their statutory duties under the *Corporations Act 2001* and *Bankruptcy Act 1966*. In addition, legislation does not allow for the recovery of any searches conducted prior to the appointment of the insolvency practitioners in preparation for their appointment.

² ARITA submissions - Modernising Business Registers & Director Identification Numbers exposure draft, 29 October 2018, Modernising Business Registers discussion paper, 20 August 2018, Productivity Commission on "Data Availability and Use", 29 July 2016

³ 14 December 2016

Surveys conducted of ARITA members suggest that up to \$100 million in fee revenue is written off by insolvency practitioners annually due to work done on files which is unrecoverable. Fees for statutorily required and other necessary searches of the business registers forms a significant part of this amount and are especially onerous on liquidators when undertaking assetless administrations in which they have no prospect of recovering any administrative costs, let alone being able to recover fees for the work they are statutorily required to undertake. Indeed, ensuring free access to searches for liquidators generally, and particularly in these assetless scenarios, is likely to encourage more active searching of databases, closing off an avenue often exploited by illegal phoenix facilitators.

It should be noted that liquidators and trustees are not the beneficiaries from having to undertake these searches. The beneficiaries are the creditors, wider community and, most ironically, ASIC for whom practitioners undertake investigations and make prosecution recommendations.

These fees and write offs are also in addition to the ASIC industry funding charges for insolvency practitioners for which registered liquidators have been charged an average fee of \$9,500 each to maintain their registration⁴.

Given the above, and ARITA's previous submissions, we will continue to advocate for registered liquidators and registered trustees to be afforded the same allowance which the proposed draft provided to journalists.

Should you have any queries concerning this submission please contact Natasha McHattan, Legal Director on 02 8004 4347 or nmchattan@arita.com.au.

Yours sincerely

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

John Winter
Chief Executive Officer

⁴ ASIC industry funding summary of 2017-18, December 2018



About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,400 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Around 84 percent of registered liquidators and 87 percent of registered trustees are ARITA members. We represent firms of all sizes, from small practice through to multi-national firms, with the majority of our membership being drawn from those in small-medium practice.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We deliver this through the provision of innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2017, ARITA delivered close to 300 professional development sessions to around 5,000 attendees.

The Association promotes best practice and provides a forum for debate on key issues facing the profession. We also engage in thought leadership and public policy advocacy underpinned by our members' needs, knowledge and experience. We represented the profession at 23 inquiries, hearings and public policy consultations during 2017.