

Alesha Bahn
ASIC IFM Review
Regulator Engagement and Powers Unit
Treasury
Langton Cres
Parkes ACT 2600

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By email: Alesha.bahn@treasury.gov.au
cc: ASICIFMReview@treasury.gov.au

Dear Alesha

ASIC INDUSTRY FUNDING MODEL REVIEW

The Mortgage and Finance Association of Australia (**MFAA**) is pleased to have the opportunity to provide a response to Treasury's ASIC Industry Funding Model (IFM) Review (**the Review**). For more information on the MFAA please see **Attachment A**.

We have engaged extensively with Treasury on its inaugural review of the ASIC IFM, including participating in Treasury's roundtable for the Deposit Taking and Credit Sector on 20 October 2022, a Treasury workshop earlier this year and our submission dated 17 May 2022, which assisted Treasury with developing its Terms of Reference for the Review.

We reiterate many of the recommendations we made in these engagements. Our responses to Treasury's consultation specific questions are at **Attachment B**.

CONSULTATION RESPONSE

We emphasise that the MFAA has a strong, constructive, and collaborative relationship with ASIC, meeting on a regular basis to raise and discuss issues that are important to the mortgage and finance broking industry, and to share data and insights that are pertinent to the work of both organisations in producing good consumer outcomes. We are particularly appreciative of our close engagement with ASIC in developing Regulatory Guide 273: Mortgage brokers Best Interest Duty.

Our feedback focuses on aspects of the IFM that apply to the mortgage and finance broking industry. Whilst we support ASIC's oversight role and acknowledge the need for an industry-funded regulatory model, we continue to hold concerns about the equity of the IFM for our small business members.

RECOMMENDATIONS

We have previously explained to Treasury that the mortgage and finance broking industry experienced a steep and unbudgeted threefold increase to ASIC's 2021/22 cost recovery levy. We understand the increase resulted from ASIC's increased activity in relation to the licensing and supervision of debt management firms.

The increase and the way in which these increases were communicated posed significant budgeting challenges for the broking industry, particularly for licensees with large numbers of credit representatives. Feedback from our members highlighted concerns around the transparency and accuracy of ASIC's budgeting processes and raised issues of cross-subsidisation of subsectors within the credit intermediary sector. Against this backdrop, we make the following recommendations.

1. REMOVE DEBT MANAGEMENT AND DEBT COLLECTION FROM THE CREDIT INTERMEDIARY SUBSECTOR DEFINITION

The credit intermediary subsector definitions need to be revised. Specifically, we recommend the debt management and debt collection sub-sectors be split out from the credit intermediary subsector definition given the fundamentally different roles these sub sectors play within the credit sector.

The leviable entities within the credit intermediary sub-sector include all entities holding an Australian Credit License that authorises that entity to engage in credit activities other than as a credit provider. Mortgage and finance brokers fall within the credit intermediary sub-sector, and as we understand from the 2021/22 CRIS, so do debt management and debt collection firms.

Compared to its relative size, the mortgage and finance broking sector accounts for less than 0.5% of all banking and finance complaints received by AFCA and pose low risk of consumer harm.¹ Debt management and debt collection industries have different risk profiles and are traditionally the subject of high levels of complaints and regulatory attention. This is demonstrated by the introduction of a licensing regime for debt management firms.²

We expect closer regulatory supervision of the debt management sector as new licensees. Under the current subsector definition, this could result in the broking industry cross-subsidising ASIC's regulatory activities in that sector.

2. REDESIGN THE IFM FRAMEWORK TO EMBED FLEXIBILITY AND RESPONSIVENESS

The design, structure, and legislative framework for IFM levies needs to be revised. The recovery of ASIC's regulatory costs through the industry funding model is split into two main components being an annual levy (cost recovery levy) and the charging of fees for services provided by ASIC (fee for service).

With respect to the cost recovery levy, our view is that the framework (and specifically the sub-sector type design) is not sufficiently flexible to consider evolving markets, new market segments, new types of products and entities and ASIC's expanding remit in regulating these new and emerging sectors. For example, since the Regulations were set in 2017, ASIC's role has expanded and evolved to respond to new and emerging markets segments including buy now pay later providers, crypto and digital currency providers, and other types of emerging payment systems that do not neatly fit within the sub-sectors listed in Schedule 1. The 'set' structure of the levy framework consequently results in ASIC having no alternative but to allocate the costs of its activities in new and emerging sectors to subsectors defined within the Regulations and which contributes to an unfair attribution of costs to established subsectors.

In our view, the design, structure, and legislative framework needs to be completely reviewed and re-designed to ensure the framework is flexible, transparent, and fair, and to properly reflect emerging markets and ASIC's expanding role in response.

¹ AFCA Datacube.

² The Government introduced new laws which classified debt management services as credit activities for the purposes of the National Consumer Credit Protection Act 2009 which required debt management firms to hold Australian Credit Licenses: [Debt management reforms: credit licensing | ASIC - Australian Securities and Investments Commission](#)

3. INTRODUCE A CAP ON LEVY INCREASES

The biggest single concern raised by our members in relation to the ASIC Levy relates to its volatility - both the sharp increases year on year as well as a difference between estimates (communicated in around July) and actuals (invoiced the following January).

This volatility and increases to the ASIC Levy on small businesses, in tandem with the unprecedented regulatory change and associated compliance costs, consequent higher professional indemnity insurance costs and a proposed Compensation Scheme of Last Resort (CSLR) levy is a significant cost burden on our small business members.

We recommend introducing a cap on increases to the cost recovery levy like the cap on the CSLR annual levy cap. Imposing a cap on the total amount that can be levied/collected within a levy period potentially avoids the significant escalation in fees experienced by the mortgage and finance broking industry earlier this year and provides more certainty to regulated entities in budgeting for ASIC levies.

Similarly, while we do not have any concerns with the fee for service component of the IFM, we suggest that any increase in fees should be done in a gradual way so as not to significantly increase the cost burden on small licensees.

CONCLUSION

We also extend our thanks to Treasury for the opportunity to provide this submission. If you wish to discuss this submission or require further information, please contact me at naveen.ahluwalia@mfaa.com.au or Anja Pannek at anja.pannek@mfaa.com.au or 02 8905 1300.

Yours sincerely

Naveen Ahluwalia

Naveen Ahluwalia

Head of Policy and Legal

Mortgage & Finance Association of Australia

Attachment A

The MFAA is Australia's leading professional association for the mortgage and finance broking industry, with over 14,500 members. Our members include mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage broking industry. Brokers play an important role in intermediated lending, providing access to credit and promoting choice in both consumer and business finance. Brokers now facilitate more than two thirds of all new residential home loans³ and at least four in ten small business loans⁴ in Australia.

The MFAA's role, as an industry association, is to provide leadership and to represent its members' views. We do this through engagement with governments, financial regulators and other key stakeholders on issues that are important to our members and their customers. This includes advocating for balanced legislation, policy and regulation and encouraging policies that drive competition and improve access to credit products and credit assistance for all Australians.

³ [MFAA Industry Intelligence Service Report 13th Edition](#) pg 4

⁴ Productivity Commission research paper [Small business access to finance: The evolving lending market](#) pg 44

No	Question	MFAA Response
1.	<p>Appendix D provides a catalogue of sub-sector definitions, metrics and formulas. If the status quo remains (that is, there are no substantial changes to the IFM framework), are any changes required to ensure the existing industry sub-sectors, levy formulas and entity metrics remain fit for purpose in the longer-term and/or can respond to changes within industry sub-sectors?</p> <p>Note: Changes to sub-sector definitions, formulas and metrics would change the way levies are calculated and distributed amongst entities in a sub-sector and would impact the levy amounts for individual entities, but would not change the total amount recovered from the relevant sub-sector</p>	<p>Yes. The subsector relevant to MFAA's broker members is the credit intermediary subsector. We note that many other types of businesses also fall within this sub-sector including some servicers, debt management (credit repair) businesses, debt collection businesses as well as other businesses which hold this authorisation to cover incidental credit activities.</p> <p>We believe debt management and debt collection services should be captured as a separate category. We note while debt management services are provided under a credit license, they are governed by different regulations with the service differing substantially from those of credit license holders such as mortgage and finance brokers. In addition, debt management services are emerging, with new participants entering the industry, and more likely to need closer regulatory supervision that should not be paid for by credit assistance providers (i.e. brokers).</p>
2.	<p>Do stakeholders understand ASIC's methodology for allocating costs of activities that impact multiple sub-sectors? Is the current level of transparency relating to this approach appropriate?</p>	<p>No. The methodology is unclear and there is opportunity to provide more clarity. We also believe there should be greater levels of transparency, particularly where regulator responses are required to investigate/monitor the impact of a new class of industry participants which may result in specific regulator focus, increased cost allocation, and a significant change to the levy weightings and allocations.</p>
3.	<p>Is it more important to have a simpler model that can be more readily understood by entities and administered by ASIC which may result in increased cross-subsidisation, or a more equitable model (similar to the status quo) that closely links the recovery of costs to the groups of entities causing the need for those costs?</p>	<p>It is important to have a balance between having a model that is readily understood and equitable between the participants and able to be appropriately administered. The model should be updated to reflect the resource allocation of ASIC where substantial imbalance is present.</p>

No	Question	MFAA Response
4.	Is cross-subsidising costs for entities within a sub-sector or sector more appropriate than cross-subsidising costs across all of ASIC's regulated population? If so, why?	We believe that it is more appropriate to cross-subsidise within sub-sectors. It is important, however, to correctly define those sub-sectors (refer to comments about debt management services and debt collection services in point 1 above). The model should aim to minimise cross-subsidisation to encourage good 'corporate behaviour' within each of the sectors and sub-sectors.
5.	Are there other opportunities to simplify the design, structure and legislative framework for levies? If so, what opportunities and what benefits would they provide?	Yes, there is an opportunity to simplify the framework, with a resulting benefit in enhancing both transparency and efficiency of the framework.
6.	Does the design, structure and legislative framework of the levy component of the IFM have sufficient flexibility to respond to changes in the markets, sectors and products ASIC has oversight of? If not, what aspects require more flexibility and what changes could be made?	We refer to our comments in point 1. In short, the existing design is not perfect and can produce unfair results. It does not appear that the required level of flexibility is currently present to enable emerging industries to be adequately reflected in the levy allocations.
7.	How can costs associated with enforcement activity be recovered most equitably? What changes could be made to the current approach, and what benefits would they provide?	While noting the issues mentioned in 1 and 6 the MFAA understands the challenges of adopting different measures. We are of the view that all penalties and fines recovered by ASIC resulting from its enforcement activities should go to off-setting costs for relevant subsectors. Under the current framework, it is anomalous that industry will be funding all of ASIC's surveillance, investigation and enforcement activities but is not able to benefit from any funds that are recovered through fines or other financial penalties. By ensuring fines and other penalties flowing from them contribute to the funding of ASIC and not into consolidated revenue will result in a more equitable approach and reduce the cost burden being placed on industry to fund ASIC's surveillance, investigation, and enforcement activities.
8.	Are there opportunities to improve the transparency and reporting of enforcement costs? If so, what changes could be made and what benefits would they provide?	Yes. It would be helpful for the CRIS to step out ASIC enforcement activity by subsector. Our members also suggest that it would also be helpful to have enhanced disclosure of enforcement costs as they relate to particular issues or themes. This would be helpful in providing industry with sources of information in relation to potential and emerging industry issues.
9.	Is the approach of attributing costs of illegal unlicensed conduct to the most 'relevant' sub-sector the most appropriate recovery method? Alternatively, how should these costs be recovered, and why?	The MFAA considers that costs relating unlicensed conduct should not be borne by licensees. This should be an expense of government. Where possible cost related to illegal unlicensed activity should be recovered from the organisations directly involved. The current methodology creates a

No	Question	MFAA Response
		moral hazard by penalising those who have appropriate licencing, compliance, and governance programs in place.
10.	Are there alternative ways to recover the costs of ASIC's activity relating to emerging sectors and legal unlicensed conduct from current industry sub-sectors, and why?	Cost recovery for emerging sectors or sub-sectors should either be from only participants in that sector or sub-sector or should be from all ASIC regulated entities. As noted in our point 1, it does not make sense to allocate a new sub-sector to a sector and recover costs from the whole sector if many participants in the sector do not or will not participate in the new sub-sector. ASIC should consider recovery of costs related to unlicensed conduct directly from the entities responsible for the unlicensed conduct.
11.	How can costs associated with capital expenditure be recovered most equitably and transparently? What changes could be made to the current approach, and what benefits would they provide?	We agree with current approach which appears to allow for the capitalisation of significant items, and application to the levy across the life of the asset.
12.	How can costs associated with education and policy advice be recovered most equitably and transparently? What changes could be made to the current approach, and what benefits would they provide?	We are supportive of the provision of education across the industry. The allocation of education costs should generally be based on relevant participants, for example in relation to credit intermediaries, based on the number of credit representatives.
13.	What changes could be made to the reporting of indirect costs to improve stakeholder understanding of these costs?	No comment.
14.	Do regulated entities find estimated levies useful, and how is this information used by entities?	Yes. Members utilise the estimate for budgeting and the calculation of financial accrual purposes. However, we have experienced significant upward variations on the estimated levies which completely negates the value of the estimates. We would prefer the estimates to be more conservative (higher than likely) rather than the other way around as we have experienced and that estimates, and actuals are more closely communicated (rather than the current 6 month gap).

No	Question	MFAA Response
14.1	Noting the trade-off between timing and accuracy, when is it most beneficial for entities to receive estimated levy amounts?	There is benefit in receiving estimated prior to the financial year end (e.g., early June) but notification of actuals (invoicing) needs to be communicated much earlier.
14.2	Would alternative information, such as a range for estimated levies, be more useful?	Provision of a timely notification of significant variances from prior year or current year estimates, or such expected significant variances would be of benefit.
15.	Is it more important to have less volatile/more stable levy amounts year-on-year, or more granular and equitable apportionment of costs each year?	It is important for our members for levies to be less volatile and more stable. This will be of increased importance when the ASIC levy is used to set the CSLR levy. The MFAA suggests a cap on increases in any year. The government can fund any shortfall in funds raised and industry can repay that funding over time.
16.	Are there other ways to manage or reduce volatility in levy amounts year-on-year, including other approaches to spreading costs? If so, why, and what benefits would it provide?	See our response to questions 1 and 2.
17.1`	In relation to the design, structure and legislative framework for fees-for-service are there any changes required to ensure it remains fit for purpose in the longer-term and/or can respond to changes in industry?	We have no comment other than to note that given the fees-for-service have not increased since the levy framework was introduced any proposed increases should be gradual and potentially capped. Fees should also reflect effort expended with the expectation that ASIC is efficient in the way in which it provides those services.
17.2	Are there opportunities to simplify the design, structure, and legislative framework for fees-for-service?	We have no comment other than the above.
18.	Are there any costs currently recovered through fees-for-service that would be more appropriate to recover through industry levies? If so, why?	We do not agree that costs currently recovered through fees for service should be recovered through industry levies.

No	Question	MFAA Response
19.	If fee amounts are to be changed, should this be amended via a one-off increase or staged to spread the impact over multiple years?	See our response to 17.1. One-off increase is appropriate where the change is not material/significant. If there were a material or significant change, spreading the impact, or allowing the option to do so, may be necessary.
20.	Is it appropriate for ASIC to have the power to determine which of its regulatory activities/services it can charge a fee for?	On the basis there is a review mechanism, ASIC should have the power to determine on which activities and services it can charge a fee.
21.	Is it appropriate for ASIC to have the power to set fee amounts, or should this power remain with the Government?	On the basis the fee is reflective of the service provided we believe it is appropriate for ASIC to have the power to set fee amounts.
21.1	If ASIC were provided the power to set fee amounts, should there be any limitations on what fees it can adjust, or by how much? For example, setting caps on specific fees in primary law or regulations, or setting principles to guide ASIC's setting of fee amounts?	Fees should reflect the value/cost of the service provided unless relevant increase would have the potential to have a negative impact on the industry or customer.
22.	What transparency and accountability mechanisms would be appropriate if ASIC were setting fee amounts?	We would expect full transparency with detailed disclosure and a process of review and consultation.
23.	Do fees for licence and registration cancellations provide a disincentive to cancel licenses and registrations? If so, would a lower fee or no fee remove this disincentive?	Yes. A cancellation fee is a disincentive (especially for smaller licensees) and may result in disused licences and registrations being present potentially adding to surveillance costs.
24.	Would it be more appropriate for the costs associated with licence and registration cancellations to be recovered through industry levies (noting that there are wider benefits to ensuring entities and individuals that are no longer undertaking a particular licensed activity do not continue to hold a licence for that activity)?	Provided these amounts are small/immaterial, it may make sense for these to be recovered through industry levies.

No	Question	MFAA Response
25.	Is it appropriate for ASIC's work on individual relief applications to be recovered via fees, with the costs associated with ASIC's work on relief provided to a class of entities to be recovered through industry levies?	The MFAA submits that relief applications are a type of regulatory clarification and should be funded by government. Licensee specific applications should be funded by the applicants as a cost of doing businesses.
26.	How do regulated entities and other stakeholders engage with ASIC's transparency and consultation mechanisms relating to the IFM? What aspects are most useful?	We engage with the IFM through the CRIS consultation noting that this is not a very helpful mechanism. We understand that ASIC does not generally make changes to the CRIS as a result of feedback it receives in relation to the CRIS (ie there is not much that it can do once the costs have been estimated so any feedback received is in essence redundant).
26.1	What do stakeholders seek from mechanisms to engage with the IFM? Is it more important for these mechanisms to provide transparency, or to allow for stakeholder consultation and feedback?	It would be helpful to ask questions when the CRIS is released ie to be able to step through a understand what of ASIC's activities industry is funding.
27	Are the existing transparency and consultation mechanisms in relation to the IFM appropriate?	See response to question 26.1
27.1	Would changes to existing mechanisms or alternative mechanisms be beneficial? If so, what changes could be adopted and what benefits would they provide?	See response to question 26.1
28.	How is the CRIS used by regulated entities and other stakeholders, and do stakeholders find the information in the CRIS useful?	The CRIS is used for budgeting purposes, particularly the 'Summary Table of estimated Industry Funding Levies'. ASIC's step through of activities for which industry is funding can sometimes be used for board reporting purposes (to explain significant levy increases).
28.1	Could improvements be made to the CRIS, including the form/format and nature of information provided? If so, what improvements and what benefits would they provide?	We suggest information in relation to the structure of CRIS, policies, and statutory authorities etc could be included in a separate document allowing focus to be on the costs incurred and the relevant allocations.
28.2	At what time is it most beneficial for the CRIS to be published?	See our response to question 14.1
29.	Noting that changes to the IFM are for the most part decisions for the Government, is annual consultation by	Industry consultation is appreciated and valued, and we suggest every three years makes sense.

No	Question	MFAA Response
	ASIC via the CRIS useful? Would less frequent but more substantive consultation be preferable?	
30.	Are changes required to the criteria determining material variance? If so, what should be changed – the percentage and/or dollar value amount, or be based on the number of entities impacted?	The nature (and challenge) of the estimate process is recognised and understood that variation will occur. Variances of greater than 10% of the estimated costs and greater than \$2 million in total is considered reasonable way of determining material variance.
30.1	When should information regarding material variations be published?	As soon as possible once the variance is known to allow for industry to budget appropriately.
31.	What other information would be useful to regulated entities or other stakeholders to understand how ASIC sets its regulatory priorities and/or to understand the relationship between ASIC's costs and the amounts recovered from industry? What benefits would additional information provide?	No comment.