FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

16 December 2016

Corporations and Schemes Unit (CSU)
Financial System Division
The Treasury
100 Market Street
Sydney NSW 2000

Email: asicfunding@treasury.gov.au

Dear Sir / Madam

Re. Industry funding model for ASIC

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback on the proposed industry funding model for ASIC.

The Regulator plays a fundamental role in ensuring the confidence and protection of consumers which is paramount to the effective and sustainable operation of the financial service sector in Australia.

However, we are very concerned about the cumulative impact of the Government's cost recovery approach to regulation, in particular on small business, market competition, and the flow on effects for consumers. We have highlighted areas for improving the proposed model to deliver a fair and equitable system for all stakeholders, and better outcomes for consumers

The FPA would welcome the opportunity to discuss with you the issues raised in our submission.

If you have any questions, please contact me on 02 9220 4500 or heather.mcevoy@fpa.com.au.

Yours sincerely

Heather McEvoy
Policy Manager
Financial Planning Association of Australia[1]

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[1] The Financial Planning Association (FPA) has more than 11,000 members and affiliates of whom 9,000 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. Since the 1st July 2013 all new members of the FPA must hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board

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Industry funding model for ASIC

FPA submission to:

The Treasury

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3. The FPA requests consideration of the cumulative impact of the Government's cost recovery efforts in finalising the transition timetable to the new Industry funding model for ASIC.

4. The Government request Treasury provide costings and proposed funding of the establishment and ongoing operations of the new Professional Standards setting body to relevant stakeholders.

5. The industry funding model should include a detailed four year plan of ASIC's regulatory activity to be funded under the Government's *Improve Outcomes in Financial Services* package and therefore excluded from the Industry funding levy.

6. The industry funding model should include a detailed plan of ASIC regulatory activity to be funded under the levy that is clearly separate to the activity covered under the Government's funding package.

7. The industry funding model should require ASIC to report on how it addressed its strategic priorities through its regulatory activity of the previous year, clearly allocating the funding of this activity to either the Government funding package or the industry levy.

8. The FPA suggests it would be clearer, less complicated and more appropriate if the model included a detailed explanation of the requirements for two separate model components, for example (see section C below):
   - ASIC accountability
   - The ASIC funding model

9. To improve transparency, the Government should clearly describe the influence (if any) between the setting of ASIC funding requirements (by Government) and ASIC's accountability measures.

10. The funding model should require ASIC to report on how they have addressed its stated strategic priorities in the previous year.

11. The funding model should state whether the Improve Outcomes in Financial Services funding package will cover the establishment of ASIC capabilities and resources to meet the new Industry funding model requirements, and

12. The funding model should state whether it is expected that ASIC's capabilities and resources to implement the industry funding model and meet the information collection and reporting requirements will increase the levies over time.

13. Expenditure for ASIC's education activity should include consumer focused activity only.

14. Expenditure for ASIC's presentations and articles for industry should be categorised under the Regulator's activity description of stakeholder engagement or guidance (not education).

15. The model must include clear demarcation of what activity is considered surveillance versus enforcement versus penalties.

16. Funding of enforcement activity should be two phased:
    a. Firstly – recoup the cost of enforcement activity from the individual entity(s) as much as possible
    b. Second – if funds are not able to be recovered from the individual entity, costs of the enforcement activity should be clearly identified and incorporated into the industry levy

17. The costs of ASIC's enforcement activity against specific individual entities should be transparent and clearly disclosed in its annual consultation process for the industry funding levy.

18. Penalties for breaches of laws administered by ASIC should be
    a. reviewed to increase deterrence measures.
    b. allocated specifically to ASIC (to contribute to ASIC funding) and not consolidated revenue.

19. Moving to a risk based model over time would assist in addressing the fairness of the inclusion of enforcement activity in the industry levy.

20. The costs of ESA funded projects, including ASIC's Wealth Management Project, should
    a. continue to be recovered via the public listed, disclosing company levy, for the entire life of the project.
    b. be included as part of the annual consultation process for the industry funding model for ASIC.

21. The amount of the financial advice levy be reduced to remove the cost of ASIC enforcement activity.

22. The financial advice levy should not include costs for ASIC activity covered under the Government's Improving Outcomes in Financial Services package.

23. The Government should consider the disparity between how the proposed Industry funding model impacts financial planners servicing regional based clients versus those servicing metropolitan based clients.

24. Consider the impact of reporting entity changing/cancelling licence authorisations on the accuracy of ASIC data and resulting levy forecasting.

25. Consider the impact to financial services participants and consumers, of services operating on a business to business basis incurring additional costs due to the pass through of market participant levies.

26. The levy for licensees that provide general advice only be commensurate with the levy for licensees that provide personal advice on tier 1 products.

27. The robo-advice levy should be same as the levy for securities dealers. That's is, a graduated levy based on annual turnover.

28. The ASIC funding model clearly state that the insurance distributor levy does not apply to the licensees providing personal or general financial advice on general insurance products or life risk insurance products. It applies to licensed insurance brokers.

29. Clearly state in the model ASIC's expectations of how the proposed MDA levy will apply to both the current and new MDA regulatory regimes. This should include appropriate transition requirements to minimise confusion.

30. Create a Limited MDA Provider licensing authorisation and apply a lower cost recovery levy commensurate to the lower risk of LMDAs.

31. The funding model include clearly identified levies specifically for the SCT and transferred to the SCT

32. The independence of the SCT to be assured.

33. Consideration should be given to whether the timeframe to have the required legislative framework in place by mid 2017 is too tight; and the impact this may have on the implementation of the proposed funding model and ASIC funding.

34. ASIC clearly identify the information required for its test run of its Industry funding model systems as soon as possible.

35. ASIC identify data that could be sourced from existing databases to overcome potential data gaps from AFSLs and duplicate reporting obligations.

Introduction

The proposed funding model for ASIC is a significant improvement on the 2015 proposal. Importantly, it improves transparency around ASIC's regulatory approach and expenditure.

It is this improved ASIC transparency that shows clear areas for improving the proposed model to deliver a fair and equitable system for all stakeholders, and better outcomes for consumers.

It is also important to remember that the funding model for ASIC is just one part of the Government's regulatory cost recovery program. The cumulative effect of this user pays approach significantly impacts market competition and ultimately the availability and cost of products and services for consumers.

Risk based cost recovery model

The FPA acknowledges that implementing a risk-based model would require a greater level of information collection from both industry and ASIC.

However, transitioning to a risk-based user-pays model, in whole or in part, would create a system where the cost of regulation is borne in an equitable, risk-based manner across the entire financial services sector as regulated entities would be required to pay according to their size and the complexity involved in regulating them.

The proposed model does not take into account that not all licensees with the same number financial advisers are the same or present the same risks. The number of financial advisers is not a measure for the risk posed to consumers or the financial system.

An industry funding model for ASIC should be based on the measurable risks the regulated businesses pose to consumers, and should encourage such businesses to adopt the right behaviours when providing services to consumers.

A risk-based industry funding model for ASIC is vital to deliver a fair and equitable cost recovery mechanism, encourage improvements in the quality of advice for consumers, and facilitate the removal of bad-apples from the financial advice sub sector.

Recommendation:

1. The FPA encourages the Government to regularly review and consider transitioning to a risk based user-pays funding model for ASIC.

Key concerns of proposed funding model for ASIC:

A. Cumulative impact of Government's cost recovery approach to regulation

The FPA is concerned about the cumulative impact on individual businesses, market competition, consumers, availability of advice products and services, and the Australian economy more broadly, of the Government's cost recovery approach to regulation

Proposed new costs that the financial advice sub sector will incur commencing July 2017 include:

- ASIC cost recovery
- Adviser Code monitoring scheme
- Privatising ASIC Register – loss of income for ASIC and increased costs for industry
- Funding new Standards Setting body
- Financial advice entry exam
- Cost of meeting new education requirements

Ongoing existing costs for the financial advice sub sector include:

- Tax Practitioners Board (TPB) – registration fees and education requirements apply for re-registration
- AUSTRAC (small business exemption applies)
- EDR Scheme
- Training
- Research
- Annual audit
- Compliance
- Software
- Professional association membership
- PI insurance

The cumulative impact of the introduction of multiple new cost recovery measures include:

- Unavoidable increase in cost of advice for consumers
- Restriction of trade and negative impact on the ability of small licensees to compete in the advice market.
- Reduction in license authorisations restricting client service offerings
- Restriction of business growth
- Reduction in the number of advisers as some businesses would not be able to employ new advisers / appoint new authorised representatives, or may need to reduce adviser numbers
- Small licensees become unviable and join conglomerate dealer groups

Further, many financial planning practices will be forced to spend one day away from servicing clients to complete their compliance requirements[2]. This reduction in the hours available to service clients will reduce their capacity to grow or even maintain client numbers and reduce income.

ASIC is currently funded by all tax payers. The Government's approach to cost recovery regulation shifts the current funding of ASIC to a user pays model. That is, regulated entities will pay for ASIC's regulatory activity and services.

However, the cumulative effect of all the new regulatory costs to be incurred by financial planners is a significant addition to the operating costs for many businesses.

In addition, anecdotal evidence suggests that other financial services operators in the financial advice supply chain, such as product providers, stockbrokers, market participants, and credit rating agencies, may also pass on their ASIC levy in fees they charge to financial planners and their clients.

44% of financial planner survey respondents[3] stated they would be unable to absorb these additional costs in their business and the levy would be costed directly into the fees charged to clients, driving up the cost of advice. So while consumers continue paying taxes, they will also have to pay more for financial advice to help financial planners cover the cumulative impact of the new regulatory costs.

The FPA strongly encourages the Government to help consumers manage the unavoidable financial advice fee increases that will occur due to the cumulative effect of its cost recovery approach to regulation. The Government should make all financial advice fees tax deductible for consumers.

The precedent of tax deductibility of professional fees is already set and allows consumers to deduct fees paid to registered tax agents, BAS agents and lawyers. Since July 2014, financial planners have been required to register with the Tax Practitioners Board as tax (financial) advisers, and adhere to the requirements of the Tax Agent Services Act along with their tax agent peers. The Government should support Australian consumers by amending the current anomaly in respect to the tax deductibility of financial advice fees.

Recommendations:

2. The Government make financial advice fees tax deductible to help Australian consumers pay for the increase in fees resulting from new regulatory costs Australian consumers.

3. The FPA requests consideration of the cumulative impact of the Government's cost recovery efforts in finalising the transition timetable to the new Industry funding model for ASIC.

4. The Government request Treasury provide costings and proposed funding of the establishment and ongoing operations of the new Professional Standards setting body to relevant stakeholders.

[2]FPA member roundtable on Industry funding model for ASIC December 2016
[3]FPA member survey on Industry funding model for ASIC 2016

B. Funding clarification

The Government proposal paper states that the industry funding model will exclude *"the additional $121.3 million over four years to Improve Outcomes in Financial Services, a funding package announced by the Government on 20 April 2016",* consisting of:

- $61.11 million to enhance ASIC's data analytics and surveillance capabilities as well as modernise ASIC's data management systems
- $57 million to enable increased surveillance and enforcement of financial advice, responsible lending, life insurance and breach reporting. This funding is also to cover additional 'Business as Usual'resourcing which would be ongoing, and
- $3.3 million to accelerate implementation of key Financial System Inquiry recommendations.

However, the papers are silent on exactly how this money will be spent by ASIC. This funding package is quarantined from the industry funding model. Therefore, it is vital that ASIC's planned activity to be funded under the Government's package is clearly and transparently laid out. ASIC's regulatory activity funded under this package must also be excluded from future industry levies.

ASIC's forecast effort to regulate the financial advice sector is expected to cost $24.0 million (pg 62). However, it is unclear what ASIC regulatory activity is to be funded under the Government's package and therefore excluded from the industry levy; and whether the regulatory activity outlined in Section G of the ASIC paper and earmarked to be funded through the industry levy, is in addition to the detailed regulatory activity to be funded under the Government package.

There must be clear demarcation of ASIC regulatory activity and funding sources to avoid 'double-dipping' and ensure a transparent and fair system is implemented. ASIC has also indicated some of this work will be required to continue beyond the 4 year funding window which should not be passed onto the general population of ASIC regulated entities.

Recommendation:

5. The industry funding model should include a detailed four year plan of ASIC's regulatory activity to be funded under the Government's *Improve Outcomes in Financial Services* package and therefore excluded from the Industry funding levy.

6. The industry funding model should include a detailed plan of ASIC regulatory activity to be funded under the levy that is clearly separate to the activity covered under the Government's funding package.

7. The industry funding model should require ASIC to report on how it addressed its strategic priorities through its regulatory activity of the previous year, clearly allocating the funding of this activity to either the Government funding package or the industry levy.

C. ASIC accountability versus industry funding levy

FPA understands the proposed model involves:

- Government setting the total funding requirements for ASIC for the coming year
- ASIC identifying its strategic risks and setting out its strategic priorities to address those risks for the coming year.
- Twelve months later the levy formula is applied to each sub sector based on the actual regulatory activity conducted by ASIC.

The Government and ASIC papers appear to overlay the consultation, processes and reporting requirements for ASIC funding with setting and reporting on ASIC accountability measures. This implies that the ASIC strategic planning for the coming year influences the Government's decisions over budgetary measures. As the Federal Budget process and Government decision on the amount required to fund ASIC is determined prior to ASIC undertaking and setting its strategic risks and priorities, the FPA believes this is not the case and it is therefore misleading.

This issue is exacerbated by the inclusion of the Dashboard Reporting requirement for ASIC funding under the ASIC accountability measures:

> *In October of each financial year, ASIC would publicly report on its performance relative to its stated objectives in its Annual Report and through sector-level Dashboard Reporting (page 14)*

The proposed model requires ASIC to publish a CRIS each October, the same time as its Annual Report. The CRIS should include information on:

- Policy and statutory authority
- Cost recovery model – outputs, costs, charges
- Risk assessment
- Stakeholder engagement
- Financial estimates – 4 years
- Financial performance – past 4 years
- Non-financial performance – for example, KPIs, etc.

The Government proposal paper states the Dashboard Report should include information so:

> *There would be transparency in how the funding has been spent, the regulatory activities that ASIC has undertaken and the outcomes delivered.*

However, the example Dashboard Report shows financial information only and does not relate to ASIC's regulatory performance or ASIC's strategic priorities. It appears that the purpose of the Dashboard Report is to present ASIC spending by sub sector to calculate the relevant sub sector levy. The purpose of the CRIS appears to be to report on ASIC performance.

It also puts into question the timing of when each consultation should occur (ie which consultation should occur first – ASIC strategic risks or Government's Budget planning), the efficiency of the process, and the appropriateness of reporting measures.

Recommendations:

8. The FPA suggests it would be clearer, less complicated and more appropriate if the model included a detailed explanation of the requirements for two separate model components, for example:

Component	Description	The planning phase	The reporting phase	The billing phase
1. ASIC accountability	ASIC to identify its strategic risks and set its strategic priorities for the coming year relevant to each subsector.	(Based on proposed information collection and reporting cycle) • October to December - ASIC undertakes an environmental scan to identify new and emerging strategic risks for next year consultation • March – ASIC consults on strategic risks of each industry and sub sector for coming financial year	Cost Recovery Implementation Statement (CRIS) • January - ASIC publishes activity results for sub-sectors for the previous financial year • August - ASIC publishes Corporate Plan which sets out how ASIC will address strategic risks and long term challenges over the coming 4 years • October **-** ASIC Annual Report released and CRIS updated	N/A
2. The ASIC funding model	A process to determine to determine how to equitably calculate how much industry participant should pay to fund ASIC based on its previous year's regulatory activity, including an annual review process	(Based on proposal paper) Government to consult in October each year to consider: • the methodology • how the model is working. (It is unclear whether this is as part of the Federal Budget process or in addition to that process.) The Federal Budget process will be used to determine ASIC's total funding requirements and will consider: • whether funding levels are appropriate • whether cost recovery charges are being minimised through the efficient implementation of regulatory activities • whether the proposed levy and fee mechanisms continue to be appropriate. • Usually call for pre-budget submissions by the end of January.	Sector level Dashboard Reporting • June - ASIC publishes forecast cost data and indicative levies for the coming year • October - Estimates for current year, incl indicative levies; Forecast for future years; Actuals for previous year	January **-** ASIC issues invoices for previous financial year

9. To improve transparency, the Government should clearly describe the influence (if any) between the setting of ASIC funding requirements (by Government) and ASIC's accountability measures.

D. ASIC transparency

The FPA supports the proposal that ASIC undertake an annual consultation process to identify and set its strategic risks and priorities for each year relevant to each sub sector. Financial services industry participants understand the issues and risks they face as a member of their sub sector, that their clients may be exposed to, and the industry more broadly. It is appropriate that regulated entities have the opportunity to provide input into ASIC's strategic planning process.

While the proposal paper states ASIC's strategic risks and priorities for each sub sector, and publish the required information in the CRIS (mentioned above), there is no requirements for ASIC to report on how they have addressed its stated strategic priorities in the previous year. This is a fundamental element of transparent accountability.

ASIC's proposal paper states that:

> *ASIC's Financial Management Information System (FMIS) time records for regulatory activities will be used to verify ASIC's actual expenditure for regulating each subsector.(pg 12)*

Further, the proportion of ASIC's capital expenditure and actual operating expenditure applied to each sub sector is reliant on the Regulator's FMIS.

Encouraging ASIC to publish activity from the FMIS time records it uses to verify its actual expenditure for regulating each sub sector would enhance transparency of the funding model and ASIC's regulatory oversight. More frequent availability of this information (rather than annually) would also provide more value to stakeholders and greater transparency. Monthly release of information of ASIC's regulatory activity (for example, through a widget) may encourage a positive response from regulated entities.

We also question whether ASIC is sufficiently resourced to implement the information collection and reporting cycle detailed in Figure 4. We note the cost recovery model is to exclude the additional funding package of $121.3 million over four years to Improve Outcomes in Financial Services, including $61.11 million to enhance ASIC's data analytics and surveillance capabilities as well as modernise ASIC's data management systems. However it is unclear whether this funding is to be used to fund the implementation of the new ASIC funding model.

Recommendation:

10. The funding model should require ASIC to report on how they have addressed its stated strategic priorities in the previous year.

11. The funding model state whether the Improve Outcomes in Financial Services funding package will cover the establishment of ASIC capabilities and resources to meet the new Industry funding model requirements, and

12. The funding model state whether it is expected that ASIC's capabilities and resources to implement the industry funding model and meet the information collection and reporting requirements will increase the levies over time.

E. ASIC's regulatory costs

The Government's Cost Recovery Guidelines state that *cost recovery levies are earmarked to fund activities provided to the group that pays the levy.*

A user pays model for ASIC must, where appropriate, recognise and include activity that is directed at an individual entity.

It is important to consider the descriptions and division of ASIC regulatory activities, as described in Table 1 of the ASIC supporting attachment.

The FPA supports the inclusion of the following ASIC activity in an industry funding model:

- Education – this should focus on consumer education and financial literacy
- Stakeholder engagement
- Regulatory Guidance
- Policy advice
- Surveillance
- Enforcement – should apply to an individual entity, and when necessary an industry level

a) Education

Table 1 describes ASIC's education activities to include:

- Developing tools and resources (for example, online calculators) for consumers
- Contributing to industry publications and material on ASIC's MoneySmart website
- Facilitating the teaching and learning of financial literacy in schools, further education and workplaces
- Giving speeches and presentations to industry and consumers

ASIC presentations and articles for industry are not education. Such activity always relates to regulatory requirements and is received by industry as guidance from the Regulator, not as education. It would therefore more appropriately fall under the Regulator's activity description of stakeholder engagement or guidance.

It would also provide clearer demarcation of expenditure if ASIC education activity was purely for the consumer audience.

The FPA notes the transition of the current funding arrangements for the MoneySmart programs and other financial literacy initiatives under the Financial Institutions Supervisory Levies applied to APRA regulated entities, to the new ASIC funding model in 2017-18.

The Regulator is better positioned than industry to provide an effective financial literacy program for consumers with the reach that is necessary to make a difference. As a profession, we have a moral obligation to ensure the financial literacy and education of Australian's continually improves. Therefore, the FPA supports the inclusion of ASIC's consumer education activity in the Industry funding model.

b) Surveillance

While the majority of ASIC's surveillance activity (as described in Table 1 of the ASIC paper) occurs at an individual entity level, the FPA believes that such regulatory activity must occur in order to protect and build the financial advice profession. Therefore, it is appropriate for the cost of ASIC surveillance activity to be included in an industry levy.

c) Enforcement

ASIC enforcement activity is a fundamental deterrent to breaching the legal requirements placed on financial services industry participants, and provides vital consumer protection value. However, there are complex issues associated with determining the appropriate and fair recovery of costs related to ASIC enforcement activity.

- Fairness – Enforcement activity is generally against an individual entity or, in some cases, a small group of entities; not an industry. Figure 13 of ASIC's paper shows that over 54% of ASIC regulatory expenditure for financial advice for 2016–17 was on its enforcement action of individual entities. This more than doubles the levy paid by the 95% of the financial advice profession who are doing the right thing yet paying from the minority who are doing the wrong thing.

- Impact on market competition - If for example, ASIC's enforcement activity related to misconduct by a large licensees, the cost would be borne by small businesses who are least able to afford it, forcing them to increase their client fees and reduce their ability to compete in the advice market against the large licensee that they are paying for.

- Reactionary regulation - the proportion of proactive versus reactionary ASIC regulatory activity. It is clear that ASIC expenditure and resources are predominantly reactionary due to a continued large number of breaches and misconduct across the financial services industry. ASIC's necessary reactionary approach reduces its capacity to allocate resources to proactive regulatory activity such as stakeholder engagement and guidance, which is detrimental for industry and consumers.

- ASIC accountability measures - ASIC's stated regulatory focus for financial advice (in the proposal paper) does not align with its actual activity which is predominately enforcement based. ASIC have understandably allocated substantial resources to enforcement activity over the last few years. It is also likely that this will continue for the foreseeable future.

- Duration of enforcement activity – Enforcement activities can span multiple levy collection periods (ie. continue for more than a 12 month period) creating complexities in cost recovery.

- Insolvency - The enforcement activity may impact the reporting entities' ability to continue operating, reducing ASIC's capacity to recover costs from the entity.

- Proven misconduct –ASIC enforcement activity can result in proven misconduct or a proven breach of the law by the related entity. However, if the individual entity is exonerated, it would be unfair to then charge an innocent provider for ASIC's enforcement activity.

- Clear identification of enforcement activity - There is confusion about what is considered surveillance activity, enforcement activity, and penalties - at what point in an investigation does surveillance activity become enforcement activity; and what enforcement activity is a penalty? For example, is an Enforceable Undertaking enforcement activity, surveillance activity or a penalty?

- Bad apples - the profession also has a vested interested in removing 'bad apples' from providing financial advice to consumers and therefore has a moral obligation to help pay for enforcement activity that helps stamp out unprofessional conduct and behaviour.

A two phased approached to recovering the cost of ASIC's enforcement activity from the individual entity, followed by industry, would offer a fair mechanism for addressing these issues.

Clear and transparent cost disclosure in ASIC's annual consultation process for the industry funding levy would provide all stakeholders, including industry, with the opportunity to consider the most appropriate, fair and equitable manner to recover the cost of its enforcement activity undertaken in the previous year.

d) Penalties

The FPA understands that penalties incurred by individual entities as a result of ASIC enforcement activity currently go to consolidated revenue. These penalties relate directly to the financial services regulatory activity undertaken by ASIC.

With the move to an Industry funding model for ASIC, it would be appropriate for penalties to be allocated specifically to ASIC and not consolidated revenue, to contribute to the funding of ASIC's regulatory activity.

e) Enforcement Special Accounts funding

The revised model proposes the inclusion of approximately $27 million annually credited to ASIC's Enforcement Special Account (ESA) to investigate and litigate matters of significant public interest.

We note that ASIC's Wealth Management Project which focuses on the standard of advice and remediation programs of the largest financial advice firms, is currently funded through appropriation of the ESA. In 2015–16 ASIC incurred significant expenditure on matters, including the Wealth Management project, which was the predominant driver of the 4.8% increase in the Regulators total operating expenditure (up from 2014–15) [4].

[4] ASIC Annual Report, 2015-2016, page 26

The ASIC consultation paper indicates that the annual costs of ESA projects of $27million will be recovered through the levy on publicly listed, disclosing companies (pg 22).

The FPA understands that ASIC activity related to the Wealth Management Project will continue following the transition to the industry funding model in mid-2017. Given this program investigates financial advice activity of the largest financial advice firms only, its costs should continue to be recovered through the publicly listed, disclosing companies levy, or directly from the entities involved. It should not apply to the financial advice levy as it specifically excludes all other financial advice licensees.

Recommendations:

13. Expenditure for ASIC's education activity should include consumer focused activity only.

14. Expenditure for ASIC's presentations and articles for industry should be categorised under the Regulator's activity description of stakeholder engagement or guidance (not education).

15. The model must include clear demarcation of what activity is considered surveillance versus enforcement versus penalties.

16. Funding of enforcement activity should be two phased:

    a. Firstly – recoup the cost of enforcement activity from the individual entity(s) as much as possible
    b. Second – if funds are not able to be recovered from the individual entity, costs of the enforcement activity should be clearly identified and incorporated into the industry levy

17. The costs of ASIC's enforcement activity against specific individual entities should be transparent and clearly disclosed in its annual consultation process for the industry funding levy.

18. Penalties for breaches of laws administered by ASIC should be

    a. reviewed to increase deterrence measures.
    b. allocated specifically to ASIC (to contribute to ASIC funding) and not consolidated revenue.

19. Moving to a risk based model over time would assist in addressing the fairness of the inclusion of enforcement activity in the industry levy.

20. The costs of ESA funded projects, including ASIC's Wealth Management Project, should

    a. continue to be recovered via the public listed, disclosing company levy, for the entire life of the project.
    b. be included as part of the annual consultation process for the industry funding model for ASIC.

F. Financial advice levy

The financial advice levy must not include any ASIC regulatory activity earmarked for funding under the Government's $121.3 million over four years to Improve Outcomes in Financial Services funding package. This includes any capital expenditure should may be covered by the $61.11 million to enhance ASIC's data analytics and surveillance capabilities as well as modernise ASIC's data management systems.

As discussed in Section 5 above, 54% of ASIC's forecast costings for 2016-17 are for enforcement activity that should be recovered from the individual entity subject to the action.

The financial advice levy of $960 per adviser on the Financial Advice Register should be adjusted accordingly.

Recommendations:

21. The amount of the financial advice levy be reduced to remove the cost of ASIC enforcement activity.

22. The financial advice levy should not include costs for ASIC activity covered under the Government's Improving Outcomes in Financial Services package.

G. Regional differences

There are many financial planning practices who are small businesses based in regional areas. Australian Bureau of Statistics data shows that the average income in most regional areas falls below the relevant state average and the relevant capital city average[5]. Financial planners in regional areas follow this trend, generating lower revenue than their peers whose operations service metropolitan based clients.

Due to the disparity in revenue between regional based and metropolitan based financial planners, the ASIC industry funding levy will have a greater impact on regional financial planning practices.

The Government has stated its clear policy position for supporting both small business and regional Australia:

- On 6 December 2016, the Minister for Small Business, Michael McCormack said: "The Coalition Government understands that a thriving small business sector, which contributes more than $380 billion to our national economy, is vital to build strong local economies and create local jobs."[6]

[5]Cited www.abs.gov.au statistical data by region, 6 December 2016
[6] Media release, Listening and Delivering for Small Business, Mr Michael McCormack, 6 December 2016

- Minister for Regional Development, Senator Fiona Nash stated: "Regional Australia is critical to the Coalition Government's national economic plan for jobs and growth …"[7]

The FPA acknowledges that the company levy component recognises the constraints of small business by imposing a nominal levy of $5. However, it does not recognise the differences between financial planners servicing regional versus metropolitan based clients.

Recommendation:

23. The Government consider the disparity between how the proposed Industry funding model impacts financial planners servicing regional based clients versus those servicing metropolitan based clients.

H. Impact of multiple levies

The FPA understands the complexity of creating a model that can apply in a fair and equitable way, to ensure that all entities regulated by ASIC are paying their share. The proposed model does this by the type of business activity the entity is being regulated for.

We support the need to drill down to sub sector business activity level to ensure reporting entities are paying for relevant regulatory activity. If the levy was calculated at an industry or sector level, many reporting entities would end up paying for the regulation of business activities their counter parts may be licensed for, but they themselves are not authorised to provide.

However, the proposed model will force some providers to reassess their business activity and whether they can afford to pay to be able to continue to provide those services to clients, or whether they need to change their operations and client service offerings.

The additional levy costs for financial planners of non-core business activities, such as securities dealer, MDA operator and credit intermediary, may result in many providers choosing to reduce the number of authorisation categories that incur a levy. This creates several risks for both consumers and ASIC:

For example, many financial planners hold a securities dealer authorisation as defined in Table 3 of the Government proposal paper (pg 26). Such planners would implement ASX listed recommendations through an internet stockbroking facility (like CommSec or DesktopBroker). Under the proposed model these planners would pay the financial advice levy plus the securities dealer levy.

The decision to implement advice by purchasing listed securities on the ASX (as opposed to only using managed funds) has many benefits such as:

- avoid the associated costs and conflicts of IDPS platforms

[7] Media release, Investing in our regions to boost growth and jobs, Senator Fiona Nash, 3 May 2016

- the low cost of implementation
- ease of reporting
- transparency of products

These benefits enable financial planners to clearly assess the suitability of the product for their client, and allow the client to more easily understand the actual product being recommended to make an informed decision.

The impact on financial planners and clients of multiple levies include:

- risk of changing authorisations due to inhibitive costs
- reduction in client product and service offering
- increase in client fees as planner would have to use managed funds or third party to implement product recommendation
- increase in client fees due to cost of multiple levies.

However, there is also a significant risk that changes in the number of licence authorisations will impact the accuracy of ASIC data and therefore forecasting for the levy. This would also result in substantial increases in the proposed levy as the cost recovery must be dispersed to those still holding the relevant authorisations.

It is therefore important that ASIC acknowledge the calculated assumptions in its proposal paper may be inaccurate as planners will reconsider the authorisations they hold in an effort to control costs.

There is also concern that financial planners will be further impacted by the proposed model due to potential ‘pass through’ of levies by other reporting entities in the financial advice value chain via business-to-business fees. For example, stockbrokers, credit rating agencies, etc in the form of increased subscription and brokerage fees.

Recommendations:

24. Consider the impact of reporting entity changing/cancelling licence authorisations on the accuracy of ASIC data and resulting levy forecasting.

25. Consider the impact to financial services participants and consumers, of services operating on a business to business basis incurring additional costs due to the pass through of market participant levies.

I. Incentivising general advice

The proposed levy for general advice (only) is $920 per license, opposed to $960 per planner for personal advice on tier 1 products. The disparity in the proposed charging model incentivises general advice which may be detrimental for consumers.

There is a high level of confusion in the market, within industry, media, Government and consumers about the definitions and roles of financial advisers and financial planners, and those that sell financial products.

Framing 'general advice' as advice plays into the behavioural aspects of financial decision-making by giving the impression that the advice has a reasonable basis or is appropriate for the client, and thereby exposes retail investors to decisions made under uncertainty about the regulatory framework for that advice. Anecdotal evidence shows that it is common for individuals to interpret general advice as personal advice because it is relevant to their circumstances at the time it is provided.

Incentivising the provision of general advice, over personal advice, through a more affordable levy will exacerbate this issue as general advice may be provided across all sub sectors and avoid the levies.

Recommendation:

26. The levy for licensees that provide general advice only be commensurate with the levy for licensees that provide personal advice on tier 1 products.

J. Robo advice

> *ASIC considers robo-advice (also known as digital advice) is the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser. (pg 64)*

This is correct. Robo advice is technology based and therefore groups consumers based on sample circumstances and provides all consumers in the group with the same advice. This significantly increases the risk of the consumer receiving financial advice that may not be appropriate for their needs and circumstances.

ASIC does not propose to charge a separate levy on robo-advice providers under the model at this time. Rather robo-adviser licensees will incur the following levies:

• personal robo-advice on Tier 1 products – cost of one adviser on the FAR	$960
• general advice (only)	$920
• wholesale advice (only)	$170

(We note there is no proposed levy for personal robo-advice on tier 2 products.)

The FPA does not support the proposed levies for robo-advice as they do not take into account the inherent increased risk of inappropriate advice for consumers. While we note there are few if any generating revenue, they require certainty around ongoing costs.

Recommendation:

27. The robo-advice levy should be same as the levy for securities dealers. That's is, a graduated levy based on annual turnover.

K. Insurance distributor definition

The government paper defines "insurance product distributor" as:

> *An Australian financial services licensee that has:*
>
> *a) a licence authorisation to deal in a financial product by arranging for another person to issue general insurance products or life risk insurance products; and*
>
> *b) does not have an authorisation to deal in a financial product by issuing general and/or life risk insurance products (pg 30)*

The ASIC paper refers to insurance product distributors as "insurance brokers".

The provision of quality personal advice considers a client's needs and circumstances. This includes consideration and identification of how to manage a client's risks appropriately for their circumstances. This may include personal advice or general advice on life risk products. Financial planners may also from time to time provide financial advice on general insurance products. This may be personal or general advice.

When providing financial advice on insurance products, financial planners act on behalf of the client. The provision of financial advice on insurance products does not include brokerage activity.

It is unclear in the proposal papers whether the levy for insurance distributors is intended to apply to the provision of personal and/or general advice on insurance products by financial planners.

The FPA does not support the application of the insurance distributor levy to the provision of personal or general advice on general or life risk insurance products. Regulatory activities for ASIC's oversight of such advice is already captured under the financial advice levies.

Recommendation:

28. The ASIC funding model clearly state that the insurance distributor levy does not apply to the licensees providing personal or general financial advice on general insurance products or life risk insurance products. It applies to licensed insurance brokers.

L. MDA levy

The proposed funding model does not reflect the new MDA Legislative Instrument (2016/968) and Regulatory Guide RG179, recently released by ASIC.

Under the existing requirements MDA operators providing an MDA on a regulated platform and holding a limited power of attorney, operating under the current ASIC no-action letter. The relief provided under the no-action letter will remain in place for many MDA operators until 1 October 2018, if they do not opt-in to the new regime earlier.

MDA providers have until 1 October 2017 to comply with the new MDA regime.

However, it is proposed that the new MDA levy in the cost recovery model will apply from 1 July 2017-2018. Therefore it will apply to both the existing and the new regulatory requirements for MDA services.

The FPA is also concerned about the proposed one-size-fits-all flat levy for MDA Operators. Under the new MDA regulatory regime, those currently operating a Limited MDA under the no-action letter will be required to change their license to a full MDA provider, regardless of whether they change their MDA service or not, and therefor incur the full MDA flat levy

However, ASIC regulatory activity focuses on complex, higher risk MDAs, for example with CFDs or offshore components, etc. Most financial planners who operate an MDA do so through a regulated platform.

The proposed MDA levy and license authorisations should take into account the existence of lower risk limited MDA services limited to regulated platforms.

Recommendation:

29. Clearly state in the model ASIC's expectations of how the proposed MDA levy will apply to both the current and new MDA regulatory regimes. This should include appropriate transition requirements to minimise confusion.

30. Create a Limited MDA Provider licensing authorisation and apply a lower cost recovery levy commensurate to the lower risk of LMDAs.

M. Superannuation Complaints Tribunal (SCT)

The Superannuation Complaints Tribunal is currently funded via the FISL levy collected by APRA and transferred to ASIC. As the funding for the SCT is part of a larger levy, the disbursement of the levy monies is conducted at ASIC's discretion.

As detailed in the proposal papers, following the transition period set out in Figure 6, the SCT funding will in the future be collected directly by ASIC.

There is a general view that with the changes in the funding arrangements it is important that the SCT be properly funded and autonomously run.

Recommendation:

31. The funding model include clearly identified levies specifically for the SCT and transferred to the SCT

32. The independence of the SCT to be assured.

N. Legislative framework and Industry funding model implementation timeframe

The FPA notes the significant changes required to create the legislative framework and ASIC powers to implement the new industry funding model. Consultation on this framework is to be completed by March 2017, with the new requirements in place by July 2017. The FPA questions whether this timeframe is too tight.

We also understand that ASIC has built in to its implementation process a test run of its updated data systems needed to support the proposed Industry funding model based on 2016-17 information. The FPA commends the Regulator for its implementation approach to ensure it can identify and resolve any potential system issues prior to full implementation of the model.

However, to conduct this test run the Regulator may require information from its reporting entities that AFSLs do not currently collect. Such information may be required to be collected from other sources.

Recommendations:

33. Consideration should be given to whether the timeframe to have the required legislative framework in place by mid 2017 is too tight; and the impact this may have on the implementation of the proposed funding model and ASIC funding.

34. ASIC clearly identify the information required for its test run of its Industry funding model systems as soon as possible.

35. ASIC identify data that could be sourced from existing databases to overcome potential data gaps from AFSLs and duplicate reporting obligations.

O. Fees for direct ASIC services

The FPA supports the need for further consultation in 2017 on the regulatory fees for user-initiated services.

However, the FPA is particularly concerned about the unjustified and significant increase in the licensing fees which will create an inequitable market entry barrier and drive financial planners to join large dealer groups.

There is a need to differentiate between complex and simple licensing applications which may warrant consideration of a graduated rather than a fixed fee. The suggested use of time recording data may assist in assessing the sizing of such fees.

The FPA will provide our detailed feedback on the revised fee-for-service model through the Governments 2017 consultation.