



McGrathNicol

1 November 2017

Australian Securities and Investments Commission

Email: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

**McGrathNicol  
Partnership**

ABN 41 945 982 761

Level 7, 175 Eagle Street  
Brisbane QLD 4000, Australia

GPO Box 9986  
Brisbane QLD 4001, Australia

T +61 7 3333 9800

F +61 7 3333 9899

[mcgrathnicol.com](http://mcgrathnicol.com)

Dear Sir/Madam

**By Email**

### **ASIC Supervisory Cost Recovery Levy- Cost Implementation Statement (CRIS) feedback**

McGrathNicol is a national boutique advisory firm, with services that include restructuring and insolvency. Fifteen of our partners are registered liquidators. The majority of our registered liquidators are members of the Australian Restructuring, Insolvency and Turnaround Association (**ARITA**). Our insolvency practice is confined to corporate matters and we do not practise in bankruptcy.

McGrathNicol welcomes the opportunity to provide our feedback regarding the manner in which ASIC's indicative costs will be allocated under CRIS to the insolvency practitioners' subsector of entities regulated by ASIC.

We have engaged with ARITA and have reviewed its submission on this matter, which we endorse generally and most particularly in relation to ARITA's submissions regarding the disproportionate fee cost and the lack of transparency and accountability around ASIC's stated costs of regulating insolvency practitioners.<sup>1</sup> These issues appear inter-related; we suggest that the disproportionate fee level arises from a lack of transparency around both the identification of the specific costs incurred by the Insolvency Practitioners team and the method of allocation to arrive at the levies to be borne by this small industry subsector.

We also refer to our submission dated 14 October 2015 in relation to the (then proposed) Industry Funding Model for ASIC, in which we provided detailed substantive objections to the manner of costs allocation. One of our fundamental objections remains of significant concern - the challenges of formulating a fair basis of allocating regulation costs to registered liquidators given their specialised role.

The government's overall stated objective for industry funding is to ensure that the regulatory activities undertaken by ASIC are borne by those creating the need for regulation<sup>2</sup>. In the case of registered liquidators, we submit that identifying the parties who create the need for regulation is necessarily complicated. This is because of the distinctive role played by liquidators as 'gatekeepers' of corporate misconduct and efficient management of the mechanisms for corporate vehicles to exit the market; a role that ASIC acknowledges<sup>3</sup> and relies upon.

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<sup>1</sup> ARITA Submission on ASIC's Supervisory Cost Recovery Levy- Cost Implementation Statement, page 7 and 10.

<sup>2</sup> Cost Recovery Implementation Statement- Levies for ASIC industry funding (2017-18), page 5

<sup>3</sup> Cost Recovery Implementation Statement- Levies for ASIC industry funding (2017-18), 104, page 34

01112017-ASIC- CRIS submission

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Insolvency practice is not an "industry"; practitioners are members of a profession which requires the application of specialised skill, adherence to high standards of conduct and commitment to the interests of the broader community. Insolvency practitioners perform roles imposed by legislation which are critical to maintain a stable and efficient market, to the benefit of all companies and their shareholders operating under the corporate structure. While fulfilling these obligations involves many points of interaction with ASIC, we submit that most of these cannot be properly characterised as conduct of liquidators that creates a need for regulation.

We suggest that there is a need to re-evaluate the types of ASIC's costs that directly relate to the important activities designed to ensure that registered liquidators act "independently and competently... to ensure cost effective, timely and appropriate outcomes"<sup>4</sup> and distinguish these from ASIC's broader activities in the insolvency arena more properly characterised as addressing or averting corporate misconduct. In our view this re-evaluation would enable a more equitable cost allocation to the broad range of beneficiaries of the important work being undertaken by insolvency professionals.

Please contact me on telephone number (07) 3333 9806 if you have any questions or if we can provide any additional assistance.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Anthony Connelly'.

Anthony Connelly  
Partner

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<sup>4</sup> Cost Recovery Implementation Statement- Levies for ASIC industry funding (2017-18), 103, page 34