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To whom it may concern

COST RECOVERY IMPLEMENTATION STATEMENT: ASIC INDUSTRY FUNDING MODEL (IFM) (2021/22)

The Mortgage and Finance Association of Australia (**MFAA**) welcomes the opportunity to provide feedback on ASIC's consultation version of the Cost Recovery Implementation Statement (**CRIS**) for the 2021-22 ASIC industry funding model (**IFM**).

The MFAA was invited to participate in a roundtable with Treasury in relation to Treasury's Review of the ASIC IFM (**the Review**) and subsequently, on Treasury's invitation, provided written feedback in relation to the Review and the IFM. We understand the Review is in its preliminary stages and look forward to continuing to work with Treasury on the Review as it progresses.

As context for this submission, the MFAA is Australia's leading professional association for the mortgage and finance broking industry, with over 14,000 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 facilitate more than two out of three new residential home loans[1] and four in ten small business loans[2] 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.

INTRODUCTION

The MFAA has a good and strong relationship with ASIC, meeting on a regular basis to raise and discuss issues that are important to industry, to share data and insights that are pertinent to the work

[1] MFAA Industry Intelligence Service Report 13th Edition pg 4

[2] Productivity Commission research paper Small business access to finance: The evolving lending market pg 44

of both organisations and to raise industry concerns with ASIC for the purpose of continuous improvement. This includes concerns in relation to the ASIC levy which we raised with ASIC earlier this year. The MFAA is supportive of ASIC's industry funding model however we suggest that there is scope for improvement in the way in which its cost recovery levies are set, funded, and communicated to regulated entities. We have no concerns with the cost recovery fees (i.e. fees for service).

While the MFAA acknowledges the need for an industry-funded regulatory model, since it was implemented, three issues have become apparent:

1. The levy amount has proved unpredictable, which has posed significant budgeting challenges for our members. As context, earlier this year the mortgage and finance broking industry experienced a steep and unbudgeted increase to ASIC's cost recovery levies. As ASIC would be aware, as it is required to do, ASIC released its' CRIS for the FY2020-21 levies in July 2021 for public comment, and subsequently published the final CRIS in November 2021. Both versions indicated a levy of $96.55 per credit representative (an increase from $61.76 the year before). This increase, in our view, justifiably reflected ASIC's heightened activity in relation to the credit intermediary sector resulting from, amongst other things, the implementation of the Financial Services Royal Commission recommendations. Levy invoices sent to licensees in February 2022 however reflected an actual levy amount of $184.31 per credit representative, double the indicative levy within the CRIS and triple last year's levy.

2. The levy has increased 300% over the last two years. This is significant for both large and small licensees when viewed in tandem with the unprecedented regulatory change and compliance costs of recent government-imposed regulation, consequent higher professional indemnity insurance costs and a proposed CSLR levy, all of which puts upward cost pressures on our members. It is particularly a concern if the levy continues to increase at that rate in future years. It is important to ensure that the compliance and regulatory cost burden is at levels that do not make it unviable for businesses, particularly small businesses to operate, and by extension stifle competition and innovation in the credit sector.

3. The sub-sector definitions raise concerns in relation to cross-subsidisation. The CRIS is not specific or clear in relation to the industries included within the credit intermediary subsector. From our reading of the CRIS, we can only assume that both the debt collection and debt management industries have been included within the credit intermediary subsector which raises concerns that our industry is effectively cross-subsidising industries that have significantly different (and higher) risk profiles.

This submission focuses on recommendations on how ASIC can enhance its final CRIS for this year and future CRISs.

OUR SUBMISSION

RECOMMENDATION 1: REMOVE CROSS-SUBSIDISATION BETWEEN SECTORS WITH DIFFERENT RISK PROFILES

We are concerned that the current framework means that the broking industry is effectively cross-subsidising ASIC's regulatory activities in relation to the debt management sector and debt collection subsectors.

The mechanisms that are used to calculate the cost recovery levy payable by each class of regulated entity are established through the *ASIC Supervisory Cost Recovery Regulations 2017 (***the Regulations***)*, Schedule 1 of which sets out the list of sub-sectors from which leviable entities are derived. The leviable entities within the credit intermediary sub-sector includes 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 are included in the credit intermediary sub-sector, and we assume from references within the CRIS that debt collection and debt management sectors are included in the credit intermediary subsector.

The Murray Inquiry said that "*costs of ASIC's regulatory activities [should be] attributed fairly across different firms and industry segments, and by extension, is implemented in a way that is tailored to different industry sectors*."[3]

The mortgage broking industry is characterised by high consumer sentiment and low complaint volumes, with complaints in relation to the industry accounting for just 0.39% of all banking and finance complaints progressed by AFCA. In contrast, the debt management services industry has a very different profile, traditionally the subject of high levels of complaints, generating significant regulatory attention which has resulted in the requirement for debt management firms to be licensed.[4] We understand ASIC will continue to focus activities on the debt management sector as it progresses its monitoring, surveillance, and potentially further enforcement activity of that sector and are concerned that as a result, its costs in this area will continue to increase.

We are also confused on why ASIC's activities in relation to poor debt collection practices would span the credit intermediary subsector as noted in Table 18 pg. 52 of the CRIS. The details indicate that ASIC's activity in this area relate to the purchase and collection of distressed debt, not traditionally the role of credit intermediaries. It will be helpful to get a better understanding of how ASIC's activities in this area relate to credit intermediaries.

RECOMMENDATION 2: ENHANCE TRANSPARENCY AND ACCOUNTABILITY OF CRIS FRAMEWORK

In making the recommendation to introduce an industry funding model for ASIC, the Murray Inquiry clearly articulated an expectation that such a model needed to be carefully implemented with an appropriate transparency and accountability framework.[5] Based on the way in which the framework has operated to date, it is clear there needs to be an improvement in making the framework more transparent and there needs to be a better consultation and reporting process. If industry is paying the costs of ASIC's activities, then industry needs to be clear on which of ASIC's activities it is funding.

The intent of the CRIS is to '*provide industry with [its] estimates of the regulatory costs to be recovered through industry funding. The aim is to help entities plan and budget for the levies and fees to be charged*'.[6] The current approach of estimating levies in the first half of the year and then invoicing actual levies in January is unhelpful, including to expect industry to absorb large fluctuations between estimates and actuals. Estimates and actuals should be more closely aligned and there should be clear reasons provided if these do not align.

The Murray Inquiry also noted that to maximise benefit, the funding model should be structured to create a close relationship between the incidence of fees and levies and the costs of regulating the relevant activity.[7] It would be helpful within the CRIS for ASIC to clearly and in more detail step out the activities that it has engaged in for each subsector and for which it has expended the costs that it is now seeking to recoup from the relevant subsector.

In addition to the above, we suggest that ASIC should engage in further consultation between the publication of the draft CRIS (published in around June for consultation) and final CRIS (which it publishes in November). If there is a difference between the indicative levies within the final CRIS and actual invoices that ASIC should provide an explanation for the difference and for industry to have an opportunity to respond to that difference.

[3] Financial System Inquiry Final Report Pg 253

[4] 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

[5] Financial System Inquiry Final Report (treasury.gov.au)

[6] Cost Recovery Implementation Statement: ASIC industry funding model (2021–22) pg 4

[7] Financial System Inquiry Final Report pg 253

RECOMMENDATION 3: OPPORTUNITY TO REDUCE LEVIES FOR SMALL BUSINESSES

We are pleased with the slight decrease in ASIC's estimated funding levy for the broking industry between 2021 and 2022, however as we noted above the levy has gone up approximately 300 per cent over the last two years and this is an unsustainable trajectory for brokers, the majority of which are small businesses.

The MFAA recognises that a broad-based industry funding model plays a role in supplementing Government budget funding of ASIC's regulatory activities, including to contribute to ensuring the regulator has sufficient resources to perform its monitoring, supervision, and enforcement activities. We understand industry funding is not unique to Australia and is a feature of financial markets in comparable jurisdictions such as the United Kingdom and the United States.

We understand that while this is more appropriately a matter for Government, it is important, as context for this submission that we consider there is an opportunity to mitigate somewhat the costs for industry through the collection of monies from ASIC's enforcement activities.

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. We recommend that a way in which a cost-sharing could take place is to reduce the cost burden being placed on industry to fund ASIC's surveillance, investigation, and enforcement activities by ensuring fines and other penalties flowing from them contribute to the funding of ASIC and not into consolidated revenue.

Closing remarks

We appreciate the opportunity to make this submission on the 2021/22 CRIS and also look forward to continuing to work with Treasury on its review of the ASIC IFM.

If you wish to discuss this submission or require further information, please contact me at [redacted] or [redacted] at [redacted] or on [redacted].

Yours sincerely

[redacted]

[redacted]
Chief Executive Officer
Mortgage and Finance Association of Australia