

26 May 2017

The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

ASIC Supervisory Cost Recovery Regulations 2017

The Insurance Council of Australia appreciates the opportunity to comment on the draft *ASIC Supervisory Cost Recovery Regulations 2017* (the draft Regulations). The draft Regulations set out the type of levy/levies and the formula for calculating the amount payable by regulated entities captured by the *ASIC Supervisory Cost Recovery Levy Act 2017* (the Act).

While the draft Regulations are generally consistent with our understanding of the model proposed in Treasury's consultation in December 2016, several issues raised by members and documented in previous Insurance Council submissions remain outstanding. These issues must be addressed as a matter of priority to provide certainty to the industry.

1. Insurance sector levies

Under the insurance sector levy, entities that fall under the insurance product provider subsector will pay a minimum levy of \$20,000 and entities with more than \$5 million in insurance revenue will also pay a graduated levy. Section 70(3)(a) of the draft Regulations provide that the graduated levy will be calculated on the amount of the entity's insurance product revenue for the financial year. Section 70(5)(a) then defines product revenue for general insurance entities as:

The gross amount of premiums that are received by the entity while carrying on a general insurance business in Australia during the financial year less any reinsurance expenses incurred in the financial year that relate to the financial year of previous financial year.

At the insurance sector roundtable held in Sydney on 30 November 2016, it was clarified that the graduated levy is intended to capture premiums underwritten in Australia only. However, this definition also captures premiums underwritten offshore by branches of Australian licensed insurers. ASIC should not recover costs for policies underwritten offshore, as it does not expend any resources in regulating these policies. The definition of product revenue should be clarified to explicitly exclude premium underwritten outside of Australia.

2. Deposit taking and credit sector levies

Previous Insurance Council submissions had raised the uncertainty around how Lenders Mortgage Insurance (LMI) providers will be treated under the levy for credit providers. The draft Regulation has not provided any clarity as to the position of LMI providers under this levy.

Under the Act, LMI providers are captured under the credit sector levy as “credit services entities” as they are required to hold a licence to engage in limited credit activities as:

- i) an assignee in relation to providing LMI products; or
- ii) a credit provider under the doctrine of subrogation in relation to providing LMI products.

However, the LMI provider has no role and therefore no contact with the consumer in the establishment nor the ongoing management of the home loan credit contract. As noted in our previous submissions, the LMI provider moves into a direct role with the consumer (the borrower) only after:

- there has been a default on the home loan;
- the lender has taken possession;
- the property has been sold;
- the LMI provider has paid the shortfall to the lender; and
- the lender has assigned to the LMI provider (or the LMI provider is subrogated for the lender in relation to) any ongoing rights of the lender against the consumer for the personal debt still outstanding under the home loan contract.

At the time that the regulation of consumer credit was being developed, Treasury and ASIC recognised the limited role of LMI providers and special provision was made in the credit licences applying to them.

It seems that the activities of LMI providers are not intended to be captured under the credit sector levy, given the proposed levy metric for credit providers, “credit provided”, is not applicable to LMI providers as no credit is provided by the LMI provider to the borrower.

LMI providers will already be levied as general insurance product providers. Given the limited supervision by ASIC of LMI providers in a credit context, the Insurance Council submits that LMI providers should be exempt from the credit provider levy. At the very least, how the credit provider levy will apply to LMI providers requires clarification.

If an exemption is not provided, a metric more suitable than “credit provided” will be required to capture the activities of LMI providers. The Insurance Council suggests a flat fee to cover the costs of the limited ASIC supervision potentially required when, upon default, the LMI provider steps into the shoes of the original credit provider.

3. Corporate sector levies

As well as the insurance sector levies, a significant cost for publicly listed insurers is the corporate sector levy for listed companies. The market capitalisation methodology for calculating the listed company levy will penalise entities that are headquartered in Australia, but generate much (if not most) of their revenue from overseas businesses. From this perspective, market capitalisation is not an accurate measure of a company’s significance in the Australian market and the associated regulatory resources expended by ASIC.

Furthermore, the Insurance Council remains concerned by the underlying premise that larger entities pose a high risk. A levy calculated on this basis does not take into account a number of factors that shape a company's risk profile; including the composition of the investor base, the geographical location of the entity's business operations, the financial regulatory frameworks applying to the entity's operations and the entity's systems of risk management and control.

4. Other issues

Section 5 of the draft Regulations specify the ASIC costs which will not be recovered as part of the industry funding regime. For complete certainty and to avoid any future ambiguity that may arise, there should also be a specified list of ASIC costs that will be recovered as part of the levies.

It is also important that there are robust processes enabling a regulated entity to seek a review of any levy amount calculated. The Insurance Council submits that section 71 of the draft Regulations should specify that the legislative instrument made by ASIC each year will include a process for review.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



for
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Executive Director and CEO