

14 May 2018

Manager, Corporations Policy Unit
Consumer and Corporations Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

via email to ASICFunding@treasury.gov.au

Dear Madam/Sir

ASIC Industry Funding Levies Regulation Enhancements

The Australian Institute of Company Directors (**AICD**) welcomes the opportunity to provide a submission to the Treasury's consultation on the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* (Cth) (**Regulations**).

The Australian Institute of Company Directors (**AICD**) is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 42,000 includes directors and senior leaders from business, government and the not-for-profit sectors. Approximately two thirds of the AICD's membership is involved in the NFP sector in some way, either as a director or an executive.

ASIC's Cost Recovery Implementation Statement (**CRIS**) sets out that the cost of regulatory supervision of unlisted public companies (\$7.4 million) will be distributed equally through a flat levy to all entities in that class (21,220).

In 2012, the Australian Government established a national independent regulator of charities: the Australian Charities and Not-for-profits Commission (**ACNC**). As a result, primary regulatory oversight of unlisted public companies that are registered charities (charities) shifted from ASIC to the ACNC. These entities have not been subject to significant regulatory oversight by ASIC since 2012.

The AICD appreciates that there are some aspects of ASIC's regulatory oversight of all unlisted public companies that still apply to charities, and that general overheads are distributed across all regulated entities. However, the majority of budgeted expenses for ASIC set out in the CRIS (such as education and stakeholder engagement) do not apply to charities in the same way as they do for other unlisted companies, given the specific responsibilities of the ACNC.

For charities, these regulatory functions are undertaken by the ACNC, which is separately funded by government for this purpose. The *Corporations Act 2001* (Cth) has been amended to reflect this and a table of provisions that no longer apply to charities (and which are therefore not required to be enforced by ASIC) is set out under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) in section 111L(1).

In the AICD's view, levying charities in the same way as other unlisted public companies may not be consistent with the policy intent of the industry funding model which seeks to distribute the costs of regulatory supervision across all regulated entities in a proportionate way. It is also not

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consistent with the policy intent behind the ACNC which is to provide charities with a dedicated and specialist regulator, relieving ASIC from many of its regulatory responsibilities for charities.

In the 2017-18 financial year, these entities will each be levied \$350 for regulatory supervision by ASIC. Applied across the approximately 3,900 affected entities, this represents an estimated regulatory cost of \$1.3 million to the sector. Distributed across the remainder of the unlisted public companies or all other companies more broadly, this is not a significant amount. However, the levy for each individual charity, especially smaller charities, may impact their operations and will ultimately diminish the capacity of these organisations to achieve their charitable purpose and provide the public benefit that flows from that.

Accordingly, the AICD recommends that the Regulations be amended to exempt charities from the industry funding levy. Failing this, it would be appropriate for charities to be levied a lower fee that is reflective of the reduced level of regulatory oversight and service they receive in light of the ACNC's role for charities, compared with other unlisted public entities.

We hope our comments will be of assistance to you. Should you wish to discuss any aspect of this submission, please contact our Senior Policy Adviser, Lucas Ryan via lryan@aicd.com.au or (02) 8248 6671.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Louise', with a long horizontal stroke extending to the right.

LOUISE PETSCHLER
General Manager, Advocacy