

14 May 2018

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

By email: ASICFunding@treasury.gov.au

Dear Sir/Madam,

**ASIC Supervisory Cost Recovery Levy Amendment (Enhancements)
Regulations 2018 (Regulations)**

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance professionals and risk managers are unrivalled.

Our members have a primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies. Our members, due to their involvement in governance and corporate administration, have a thorough working knowledge of the Corporations Act, and liaise with the Australian Securities and Investments Commission (ASIC) regularly in the course of their work. In listed companies, they have a primary responsibility to deal with the Australian Securities Exchange (ASX) and interpret and implement the Listing Rules. Our members have a thorough working knowledge of the operations of the markets and the needs of investors. We have drawn upon the experience of our members in providing our comments.

We understand that this consultation process is an appropriate mechanism to raise our concern about the application of the *ASIC Supervisory Cost Recovery Levy Act 2017 (Cth)* and associated regulations to companies limited by guarantee (CLGs) that are also registered charities with the Australian Charities and Not-for-profits Commission (ACNC).

We consider the Levy of \$321 (Levy) imposes an unfair burden upon a subset of unlisted public companies, being ACNC registered charities and that the Levy should not apply to them. We support the overall premise of the ASIC Industry Funding Model and consider that ASIC should be funded appropriately for regulatory activities it conducts. However we are concerned about the application of the Levy to CLGs.

We understand that there are approximately 7,800 CLGs on the ACNC Register and approximately 750 private companies. These entities will all be impacted by the Levy even though ASIC provides little or no regulatory oversight, apart from at registration or on winding up. While some of these entities are large, many are not. We are also concerned that many of these entities do not know about the impending Levy and are operating on the basis that the ACNC is the only regulator with which they need to interact. For example, the requirements under the Corporations Act to notify ASIC of certain matters, including change of address and the retirement and appointment of directors and company secretaries have been turned off for companies that are registered charities.

Very few charitable CLGs are large public companies – ACNC data shows most charities have

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an annual turnover of less than \$50,000 and operate with no paid staff. Many are small organisations which only incorporate under the Corporations Act because they also seek registration as a charity with the ACNC so that they benefit from streamlined single annual reporting and are able to operate nationally. Most of these organisations do not engage with ASIC after incorporation. They report annually to the ACNC and the ACNC is the appropriate regulator, if for, example, they breach the mandated core governance standards.

We consider that the Levy should not apply to these entities given that little, if any, administration is undertaken by ASIC.

We also note that when Parliament passed the ACNC legislation (the ACNC Act 2012) the intent was explained as:

8.6 The ACNC will take this role over from these other Commonwealth government agencies and will therefore centralise the assessment of the adequacy of NFP governance structures and financial position.

15.74 The consequential amendments also clarify the responsibilities of ASIC and the ACNC, as entities registered with the ACNC will be primarily regulated by the ACNC, rather than ASIC, in relation to the day to day activities of the registered entity.

15.75 Under the new regime, ASIC will continue to register companies, including companies limited by guarantee, but will have limited oversight of the financial reporting and governance arrangements of those companies that choose to register with the ACNC, as oversight of these arrangements will be performed by the ACNC.

15.76 Currently, ASIC conducts surveillance of financial reports prepared by companies, registered schemes and disclosing entities, and their compliance with Part 2M.3 of the Corporations Act. ASIC will not continue to be responsible for financial reporting surveillance in respect of entities registered with the ACNC from 1 July 2013, as this function will instead be performed by the ACNC.

The imposition of the Levy appears inconsistent with Parliament's stated intentions in passing the ACNC Act. If the approach has changed there needs to be more information about ASIC's supervisory functions to demonstrate what supervisory activities the Levy is intended to cover. The ACNC does not currently levy charities for the cost of regulating them. Again if this approach is to change there needs to be appropriate consultation and communication.

We recommend that the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* be amended to include an exemption from the supervisory levy for unlisted public companies that are registered with the ACNC.

Governance Institute would welcome further contact during the consultation process and the opportunity to be involved in further deliberations.

Yours sincerely



Steven Burrell
Chief Executive