



9 September 2011

The Hon Julie Owens, MP
Chair of the House of Representatives
Standing Committee on Economics
Parliament House
CANBERRA ACT

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Dear Ms Owens

Inquiry into the Corporations (Fees) Amendment Bill 2011

The Australian Financial Markets Association (AFMA) welcomes the opportunity to comment on the *Corporations (Fees) Amendment Bill 2011* and to present our views before the Committee.

AFMA is the leading industry association in promoting efficiency, integrity and professionalism in Australia's financial markets and provides leadership in advancing the interests of all market participants. These markets are an integral feature of the economy and perform the vital function of facilitating the efficient use of capital and management of risk. Market participants perform a range of important roles within these markets, including financial intermediation and market making.

AFMA represents over 130 members, including Australian and international banks, leading brokers, securities companies, fund managers, participants in electricity and other specialised markets and industry service providers.

1. General Observations

AFMA members accept that cost recovery is a government policy and are willing to pay their fair share of the costs of ASIC market supervision, commensurate with the need to maintain a fair and efficient market. AFMA has previous experience in assisting industry to contribute to the design of the levy to fund APRA's regulation and more recently in the design of a cost recovery process for the Australian Transaction Reports and Analysis Centre (AUSTRAC). Thus, we are sensitive to the need for an effective process that is seen as being fair and efficient, and thus accepted by industry participants.

AFMA's principal concern with the Bill is in the overall ad hoc nature of the cost recovery process across the financial system and the cumulative effect that a multiplicity of new regulation is having on the efficiency of Australia's financial markets. New government regulation and charges that increase friction in conducting financial transactions affect how business views the competitive environment and the relative attractiveness of doing business in Australia compared to other jurisdictions. We believe that the government process for establishing and reviewing recoverable costs should fit within a coordinated economic policy framework that takes into account the economy-wide impact of multiple service charges. Cost recovery measures should be subject to effective governance and accountability arrangements to ensure that administrative costs are reasonable and contained over the long term.

2. Recognition of the Cumulative Burden of Regulation

New government costs and charges are an impost on business that will affect how the competitive environment and the relative attractiveness of doing business in Australia compared to other jurisdictions are viewed. Most charges associated with government activities, particularly those related to regulatory activities, are paid by firms rather than individuals. To the extent that they are then passed on to counterparties (including consumers), increased prices or a reduction in the range of products or services available will result.

Industry recognises that when viewed in isolation most regulation is reasonable; however the cumulative effect of all regulatory measures builds into a burden which exerts a drag on the economy. As a wide array of new rules are implemented – both here and internationally – it is critically important for the sake of our economic growth, investor returns, and the global competitiveness of the Australian financial services industry that the cumulative weight of new rules and measures, such as cost recovery is understood. The aggregate burden of such measures is not readily apparent, as government does not have a coherent mechanism for monitoring and reporting on the totality of measures from a regulatory burden perspective.

The current activity-by-activity approach makes the cumulative impact of regulation difficult for the public and policy makers to measure when working within the confines of their own portfolio responsibilities. For example, the recent development of the AUSTRAC levy and the personal property securities register fee arrangements will impose significant additional costs on the financial services industry. These measures have been developed in isolation and their Cost Recovery Impact Statements (CRIS) ignore existing non-taxation revenue fees and levies already paid by the industry. There is also considerable variability in the quality of analysis contained in such CRIS. For example, the APRA levy has a much sounder basis and rationale than does the AUSTRAC levy which is very uneven and uneconomic in its application.

Attention also needs to be paid to the general policy concern that without effective checks and balances in the design of the system, the ability to cost recover can make it easier for agencies to justify inefficient practices, because by virtue of making no net call on the budget they do not face the same level of official scrutiny. The ability to raise revenue that is deemed to be partly sheltered from budgetary and Parliamentary

scrutiny because of its dedicated sourcing and application reduces incentives to be cost effective.

3. Overall Statutory Framework

The Government needs a cohesive and consistent policy for cost recovery oversight and governance which goes beyond the current Guidelines in Finance Circular 2005/09. This would allow the overall micro-economic impact of charges across the economy and particular sectors to be assessed and taken into account. Instead of a piecemeal activity-by-activity approach to new cost recovery measures they should be developed by financial experts with appropriate modelling and quantitative skills to correctly measure inputs, outputs and costs and to provide an assessment of their impact on productivity.

The desire for consistency and general principles is in concert with the government's overall approach to handling income from non-tax revenue measures. It is important to bear in mind too that a levy collected by agencies operating under the Financial Management and Accountability Act 1997, such as ASIC, APRA and AUSTRAC, flows directly into consolidated revenue. Agency funding is dependent on a budget appropriation which is at the government's discretion and while it may be broadly correlated with the levy amount raised, the Government decides on the actual funding for each agency as part of the annual budget process.

Transparency and accountability are very important in ensuring that only the relevant supervision costs are funded through this process and also that any cross-subsidies are readily identifiable. The Productivity Commission (PC) in its 2001 report on cost recovery observed that:

Accountability and transparency are very important for government agencies, particularly where cost recovery may be creating incentives for undesirable practices such as regulatory creep, gold plating and cost padding or... However, in the absence of a standard institutional framework for cost recovery, accountability and transparency have suffered. This lack of transparency is particularly significant where the ability to raise cost recovery revenue reduces the level of budgetary and Parliamentary scrutiny of an agency.¹

It described these undesirable incentive effects of cost recovery in the following way. Cost recovery can create incentives for undesirable activities, including:

- regulatory creep — where additional regulation is imposed without adequate scrutiny. Regulation impact processes may be followed less stringently when cost recovery is possible, and the burden of additional regulation may be underestimated when it imposes no net cost to the government;
- gold plating — where unnecessarily high standards or facilities are adopted. The ability to cost recover may allow agencies to impose their preferred levels of

¹ Productivity Commission, Inquiry Report – Cost Recovery by Government Agencies, Report No. 15 August 2001, p 181

service, rather than the minimum necessary to satisfy clients or achieve government objectives; and

- cost padding — where costs are artificially inflated, motivated by the knowledge that all costs can be recovered.²

The Bill under consideration merely enables the collection of fees from market participants in addition to market operators. It does not provide for the type of ongoing accountability and stakeholder engagement that we believe to be a sound public policy governance initiative.

The processes around the collection of the APRA levies provide guidance to how transparency and accountability may be achieved. There is an annual consultation with representatives of the industry sectors for ADIs, general insurance, life insurance and superannuation at which the costs of APRA and the sources of funding including fees, levies and the interest earned on investments are explained. The levy arrangements and methodologies are also subject to regular reviews to ensure that they continue to provide funding for effective prudential supervision. Affected stakeholders are thus consulted and can better understand the basis of the costs that are expected to be incurred in carrying out the regulator's work and the proposed approach to recovering these costs. It also means that the regulator accounts in some detail for the supervision function it is performing.

AFMA emphasises that we are not criticising the current conduct and approach to consultation by the Government in relation to the proposed financial market supervision cost recovery model. The consultation paper provides a commendable level of analysis and explanation of the rationale for the calculation of costs and the proposed methodology for their allocation.

Our evaluation goes to the discretionary nature of such consultation over the longer term. AFMA believes that policy consideration should be given to developing a statutory framework that places ongoing consultation on a legislated basis for cost recovery measures across corporate and financial sector regulators. Such consultation should not only consider cost recovery on an activity or agency basis but also put combined measures into a holistic context that allows stakeholders to readily assess and comment on the impact of such costs on a sectoral and economy-wide basis.

Please contact me at dlove@afma.com.au or (02) 9776 7995 if further clarification or elaboration is required.

Yours sincerely



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² Op cit, p97 Box 5.1