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ASIC Industry Funding Model Review

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on Treasury's review of the Australian Securities and Investments Commission (**ASIC**) Industry Funding Model (**IFM**).

The ABA has consistently supported an industry funding model for ASIC and we recognise the importance of a well-resourced regulator that can effectively implement its regulatory mandate. Given five years have passed since the commencement of the ASIC funding model review, it is timely to consider whether it has met its objectives in promoting equity, encouraging regulatory compliance, improving ASIC's resource allocation and enhancing ASIC's transparency and accountability.

The ABA also encourages government to review levies more generally, to develop an understanding of the cumulative effect of levies when determining contributions payable under any funding model. We note that banks pay a range of levies, including to APRA, AUSTRAC and AFCA, with additional industry levies being considered for other purposes. We suggest that the government takes a holistic review of all levies to assess the potential economic impacts of these on businesses subject to these levies and to provide transparency on the true cost of levies on industries more broadly.

On the specific matters relating to the ASIC IFM, we make some recommendations below, noting the levy should not be seen in isolation of the broader suite of industry levies.

Key recommendations

1. Retain the current equitable model for industry funding

The ABA considers the IFM is broadly meeting its objectives. The funding model promotes equitable outcomes across the financial services industry and for the community, by ensuring that entities that create the need for regulation bear the costs rather than taxpayers.

The IFM also continues to promote the right incentives to comply with the law, as subsectors that maintain and uphold good conduct can have their levies reduced.

We do not support a model resulting in a significantly higher level of cross-subsidisation. Applying the levy in sectors that cannot control or improve the behaviour of another will dilute the incentives to drive better outcomes within a subsector, as they may face fee increases irrespective of good conduct. It may also not incentivise subsectors with the ability to influence conduct within the subsector to take steps to improve conduct.

2. Improve the transparency of the true cost to ASIC of funding regulatory activities.

The ABA considers that if the industry is funding the various activities of ASIC, there should be greater transparency on the "true" cost to ASIC of these activities. In this respect the ABA notes the annual Cost Recovery Implementation Statements (**CRIS**) provides detail on the value of cost recovery by regulatory activity but does not detail how those costs are independently "benchmarked".

We seek to confirm that the levies and fees for service imposed on the industry by ASIC for its activities, such as supervision and surveillance of cyber security, align to the costs reasonably expected by industry through independent validation.



Australian Banking
Association

Additional feedback on the questions raised in the consultation are provided in the following pages.

Thank you for the opportunity to provide feedback.

Yours sincerely,

Associate Policy Director,
Australian Banking
Association



| Key features of levies | | |
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| Allocation of costs and calculation of levies | | |
| # | Question | ABA / Member Comments: |
| 1. | <p>IFM has a catalogue of sub sector definitions, metrics, and formulas. If the status quo remains (that is, there are no substantial changes to the IFM framework), are any changes required to ensure the existing industry sub-sectors, levy formulas and entity metrics remain fit for purpose in the longer-term and/or can respond to changes within industry sub sectors?</p> <p>Note: Changes to sub-sector definitions, formulas and metrics would change the way levies are calculated and distributed amongst entities in a sub-sector and would impact the levy amounts for individual entities but would not change the total amount recovered from the relevant sub-sector.</p> | <p>The ABA welcomes greater transparency on ASIC's methodology for how the costs of activities are used to calculate and determine the estimated and final levy metric rates. We also suggest:</p> <ul style="list-style-type: none"> - Greater transparency on the drivers of movements between the final and estimated metric rates as well as the prior period metric rates for each sub-sector. - Transparency on changes to the metric definitions for each sub-sector from the prior period. Also publishing the metric definitions at the same time as the CRIS will create greater efficiencies in the levy return preparation process as well as providing entities with a timely view of the financial impacts of the levy on its P&L and cash flow. - Providing examples under the subsector metric definitions would provide greater clarity and guidance such as providing examples of revenue and expense types in connection with non-cash payment products under the Payment Product Providers sub-sector. <p>There are some subsector definitions that could benefit with extra clarity.</p> <ul style="list-style-type: none"> • For example, the definition for Over-the-counter (OTC) traders is very broad and did not specify whether this included overseas domiciled traders. |
| 2. | <p>Do stakeholders understand ASIC's methodology for allocating costs of activities that impact multiple sub sectors? Is the current level of transparency relating to this approach appropriate?</p> | <p>As noted above, there should be greater transparency on the 'true' cost to ASIC of those activities, including through independent validation of those costs.</p> |
| Principles for levies | | |
| Trade-offs between simplicity and equity | | |
| 3. | <p>Is it more important to have a simpler model that can be more readily understood by entities and administered by ASIC which may result in increased cross-subsidisation, or a more equitable model (similar to the status quo) that closely links the recovery of costs to the groups of entities causing the need for those costs?</p> | <p>The ABA supports an equitable approach to the charging of levies.</p> <p>The current level of complexity supports the variances in regulatory costs across industry and is appropriate considering the scope and scale of entities involved.</p> <p>We would not support a model that results in more cross-subsidisation across sectors.</p> |
| 4. | <p>Is cross-subsidising costs for entities within a sub sector or</p> | <p>Yes, as this meets the stated objective of the IFM in incentivising good conduct with lower fees. The principle here</p> |



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| | sector more appropriate than cross-subsidising costs across all of ASIC's regulated population? If so, why? | is that where a subsector cannot take steps to improve conduct in another subsector, they should not be liable for fee increases. |
| 5. | Are there other opportunities to simplify the design, structure and legislative framework for levies? If so, what opportunities and what benefits would they provide? | The current ability to establish new subsectors, simplify levy metrics and the ability to change the levy amounts indicates the powers and legislative framework is well designed. |
| Key issues related to levies | | |
| Enforcement | | |
| 7. | How can costs associated with enforcement activity be recovered most equitably? What changes could be made to the current approach, and what benefits would they provide? | |
| 8. | Are there opportunities to improve the transparency and reporting of enforcement costs? If so, what changes could be made and what benefits would they provide? | The ABA considers that if the industry is funding the various activities of ASIC, there should be greater transparency on the "true" cost to ASIC of these activities. In this respect the ABA notes the annual Cost Recovery Implementation Statements (CRIS) provides detail on the value of cost recovery by regulatory activity but does not detail how those costs are independently "benchmarked". |
| Unlicensed conduct | | |
| 9. | Is the approach of attributing costs of illegal unlicensed conduct to the most 'relevant' sub-sector the most appropriate recovery method? Alternatively, how should these costs be recovered, and why? | The ABA acknowledges that consumer protection from unlicensed conduct is a key priority of ASIC and industry. |
| Emerging industry sectors and providers | | |
| 10. | Are there alternative ways to recover the costs of ASIC's activity relating to emerging sectors and legal unlicensed conduct from current industry sub sectors, and why? | We note that sectors that are not licensed and not contributing to the IFM should either be brought into the IFM as a new subsector or should be regulated from funding sourced separately from the government. |
| Capital expenditure | | |
| 11. | How can costs associated with capital expenditure be recovered most equitably and transparently? What changes could be made to the current approach, and what benefits would they provide? | We support that capital expenses be recovered over the life of the asset rather than in year 1. This will allow for a more equitable method of cost recovery given the asset is used over a period of time. |
| The recovery of other regulatory activities and indirect costs | | |



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| 12. | How can costs associated with education and policy advice be recovered most equitably and transparently? What changes could be made to the current approach, and what benefits would they provide? | |
| 13. | What changes could be made to the reporting of indirect costs to improve stakeholder understanding of these costs? | |
| Variance between estimated and actual levies | | |
| 14. | <p>Do regulated entities find estimated levies useful, and how is this information used by entities?</p> <p>14.1. Noting the trade-off between timing and accuracy, when is it most beneficial for entities to receive estimated levy amounts?</p> <p>14.2. Would alternative information, such as a range for estimated levies, be more useful?</p> | <p>The ABA considers the estimates are useful, however we consider that a later, more accurate estimate is preferable to an earlier, inaccurate estimate.</p> <p>This is provided that entities are still allowed the current length of time allowed between receiving the estimated levies and metric requirements and the return lodgement due date.</p> |
| Increases and volatility in actual levy amounts across years | | |
| 15. | Is it more important to have less volatile/more stable levy amounts year-on-year, or more granular and equitable apportionment of costs each year? | |
| 16. | Are there other ways to manage or reduce volatility in levy amounts year-on-year, including other approaches to spreading costs? If so, why, and what benefits would it provide? | |

| Key features of the fees-for-service model | | |
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| 17. | <p>In relation to the design, structure and legislative framework for fees-for-service:</p> <p>17.1. Are any changes required to ensure it remains fit for purpose in the longer-term and/or can respond to changes in industry?</p> <p>17.2. Are there opportunities to simplify the design, structure, and legislative framework for fees-for-service?</p> | <p>We note that processes in place pre-Industry Funding have not substantially changed in the years since the implementation of 'user pays'. A key example of this would be the annual renewal of credit licences (CL50) which has not changed and asks for similar metrics for a different time period. This is somewhat duplicative to the Industry Funding data collection.</p> <p>There is also limited clarity on what continuing data collection in the CL50 is used for since the introduction of Industry Funding annual data submissions. Limited feedback is provided to licensees from the CL50 process.</p> |



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| 18. | Are there any costs currently recovered through fees-for-service that would be more appropriate to recover through industry levies? If so, why? | |
| Key issues related to fees | | |
| Full cost recovery through fees | | |
| 19. | If fee amounts are to be changed, should this be amended via a one-off increase or staged to spread the impact over multiple years? | Fee amounts should be changed each year to recover costs. A one-off increase appears the simplest way to get to this position. |
| Flexibility of the IFM to respond to changes | | |
| 20. | Is it appropriate for ASIC to have the power to determine which of its regulatory activities/services it can charge a fee for? | |
| 21. | Is it appropriate for ASIC to have the power to set fee amounts, or should this power remain with the Government? 21.1. If ASIC were provided the power to set fee amounts, should there be any limitations on what fees it can adjust, or by how much? For example, setting caps on specific fees in primary law or regulations, or setting principles to guide ASIC's setting of fee amounts? | We note the current method ensures legislative oversight of charges, and we are supportive of ASICs power to set fee amounts. |
| 22. | What transparency and accountability mechanisms would be appropriate if ASIC were setting fee amounts? | |
| Fees charged for licence and registration cancellations | | |
| 23. | Do fees for licence and registration cancellations provide a disincentive to cancel licenses and registrations? If so, would a lower fee or no fee remove this disincentive? | |
| 24. | Would it be more appropriate for the costs associated with licence and registration cancellations to be recovered through industry levies (noting that there are wider benefits to ensuring entities and individuals that are no longer undertaking a particular licensed activity do not | |



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| | continue to hold a licence for that activity)? | |
| Fees charged for relief applications | | |
| 25. | Is it appropriate for ASIC's work on individual relief applications to be recovered via fees, with the costs associated with ASIC's work on relief provided to a class of entities to be recovered through industry levies? | |

| Key issues related to reporting, transparency and consultation | | |
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| 26. | <p>How do regulated entities and other stakeholders engage with ASIC's transparency and consultation mechanisms relating to the IFM? What aspects are most useful?</p> <p>26.1. What do stakeholders seek from mechanisms to engage with the IFM? Is it more important for these mechanisms to provide transparency, or to allow for stakeholder consultation and feedback?</p> | <p>Receiving a rationale for changes in levies assists industry participants in understanding levies charged and associated subsectors.</p> |
| 27. | <p>Are the existing transparency and consultation mechanisms in relation to the IFM appropriate?</p> <p>27.1. Would changes to existing mechanisms or alternative mechanisms be beneficial? If so, what changes could be adopted and what benefits would they provide?</p> | <p>The ABA considers that if the industry is funding the various activities of ASIC, there should be greater transparency on the "true" cost to ASIC of these activities.</p> <p>In this respect the ABA notes the annual Cost Recovery Implementation Statements (CRIS) provides detail on the value of cost recovery by regulatory activity but does not detail how those costs are independently "benchmarked". That is, do the levies and fees for service imposed on the industry by ASIC for its activities, such as supervision and surveillance of cyber security, align to the costs reasonably expected by the industry through independent validation.</p> <p>The ABA notes that "Transparency of costs and performance details" has been raised previously, including in the 2020-21 CRIS (see paragraphs 443 to 446).</p> |
| 28. | <p>How is the CRIS used by regulated entities and other stakeholders, and do stakeholders find the information in the CRIS useful?</p> <p>28.1. Could improvements be made to the CRIS, including the form/format and nature of information provided? If so, what improvements and what benefits would they provide?</p> | <p>The CRIS is used by industry participants to estimate potential charges internally and for forecasting purposes. Some use the CRIS and previous year's invoices together to forecast for future periods.</p> <p>The ABA suggests making the CRIS clearer on what has changed year-on-year. It would be useful to highlight those changes more prominently. E.g. Insurance Claims Handling change hidden towards the back.</p> <p>We also suggest more explanation about what each sector or sub-sector is and less of the ASIC costs/figures, which while relevant, may be better placed in an appendix.</p> |



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| | 28.2. At what time is it most beneficial for the CRIS to be published? | <p>We would also welcome an inclusion of the sector numbers in the CRIS and in the ASIC portal for ease of reference and consistency.</p> <p>28.2 – see answer to Question 14.</p> |
| 29. | Noting that changes to the IFM are for the most part decisions for the Government, is annual consultation by ASIC via the CRIS useful? Would less frequent but more substantive consultation be preferable? | No comment |
| 30. | <p>Are changes required to the criteria determining material variance? If so, what should be changed – the percentage and/or dollar value amount, or be based on the number of entities impacted?</p> <p>30.1. When should information regarding material variations be published?</p> | <p>We note that a material variance of 10% or above in the metric rates should also be considered as it can vary significantly for different sub-sectors and have an impact on the final levy charged.</p> <p>We suggest that information regarding material variations between the final levies, estimated levies and prior period be published at the same time as when the final levy invoices are issued.</p> |
| 31. | <p>What other information would be useful to regulated entities or other stakeholders to understand how ASIC sets its regulatory priorities and/or to understand the relationship between ASIC's costs and the amounts recovered from industry? What benefits would additional information provide?</p> | <p>We note the portal contains additional questions that are not covered by the regulations (e.g., wholesale electricity).</p> <p>It would be helpful to get some form or pre-advisement of what those will be (e.g., via wireframes or similar) as otherwise it is not possible to see them until in the Portal and only after completing certain fields to advance.</p> |