INSTITUTE OF PUBLIC ACCOUNTANTS®

Submission to ASIC: Cost Recovery Implementation Statement (2020-21)

13 August 2021

Senior Adviser, Strategic Policy
Australian Securities and Investments Commission
[redacted]

By Email: [redacted]

Dear Sir/Madam

ASIC Cost Recovery Implementation Statement 2020-21

The Institute of Public Accountants (IPA) welcomes the opportunity to provide our comments on the Cost Recovery Implementation Statement (CRIS) 2020-21.

The IPA is one of the three professional accounting bodies in Australia, with approximately three-quarters of our 42,000 members working in, or advising, the small business and SME sectors. Our members include Registered Company Auditors (RCAs), registered liquidators, financial services licensees, credit providers and advisers across the superannuation sector.

The IPA appreciates the consultation and outreach that ASIC has engaged in with respect to the CRIS, including advising on what matters are within its remit to change and which are matters for government and Treasury. We understand that some of our comments below may be outside ASIC's remit and we appreciate such comments being referred to Treasury for further consideration.

The accounting profession has been critical of the CRIS methodology and process and the IPA continues to advocate for a review of the CRIS legislation. Again, we appreciate that this is a matter for government and Treasury.

Summary

Overall, we believe that the CRIS does not make the case for the indicative amounts that have been costed, which in some cases are excessive, disproportionate, reduce competition, lack transparency and have not taken the economic and financial impact of the COVID-19 pandemic into account. However, we welcome the information related to the pandemic and the activities being undertaken by ASIC, which had not been included in the draft CRIS on which we commented 12 months ago.

Revenue raising in the age of COVID-19

We appreciate that ASIC's revenue goes to the Commonwealth as part of consolidated revenue, however, every year there is a considerable and increasing 'surplus'. We believe there is some capacity to either maintain or reduce fees, rather than invoicing for constant and significant increases. Many of our members, whether as financial advisers, liquidators or auditors are not able to either absorb fees or pass them on to clients, who themselves in many cases are under financial pressure. This continues to result in many members exiting these sectors, especially financial advice. In all sectors other costs are increasing, including professional indemnity insurance.

Other regulatory activities and Indirect costs

We were unable to find a reasonable explanation in the CRIS or in other ASIC documents for the 'other regulatory activities' and 'indirect costs'. However, given that these costs are relatively high, more transparency would be welcome. Most businesses are under pressure to reduce costs, from having to move to less expensive office locations, to driving efficiencies at all levels, and there is a community expectation that government will do likewise. Whilst we appreciate that ASIC has more functions and responsibilities and that more funding has been provided, we expect cost savings will be made where appropriate and these should be reported in the CRIS.

We also question why industry is being charged for 'policy advice' or 'central strategy' and we are unsure of what these are and what value they have for the regulated entities. Even being charged for 'education' or 'stakeholder engagement' seems excessive. Many regulated entities go to education institutions or their professional association for accredited/recognized education, training and information.

We appreciate that some entities may benefit from education or information from ASIC, however, for many, education is costly enough without having an additional charge for something they may not be accessing. We are unsure as to why industry is being charged for industry engagement. We would expect this to be a standard regulator activity that is part of the cost of 'doing (government) business' and accordingly should be met by government. ASIC is not a policy agency so again; we are uncertain of what 'policy advice' is being made and why regulated entities should be charged for this. If this refers to ASIC's input to policy development, then this should be considered as a cost of doing government business and is so indirect that it cannot be allocated to regulated entities. We refer to the Australian Government Cost Recovery Guidelines (RMG 304) state that "Government activities should meet quantity, quality and other targets, be undertaken at minimum cost…".

Transparency and accountability

We refer again to the Australian Government Cost Recovery Guidelines (RMG 304) which note under the heading of 'accountability' that meeting the principle of transparency and accountability involves reporting on performance for the activity on an ongoing basis. The Guidelines add that access to information about ASIC's fees-for-service activities can help stakeholders determine whether cost-recovered activities are being implemented efficiently and effectively. Further, a key consideration is "the impact of cost recovery on competition, innovation or the financial viability of those who may need to pay charges and the cumulative effect of other government activities".

IPA contends that these considerations noted in the Cost Recovery Guidelines have not been duly considered and given due weight. For instance, industry has been highly critical of the impact of the cost recovery levies on the financial viability of regulated entities; and on the reduction in competition as the number of regulated entities across all sectors (ie liquidators, auditors and financial services licensees) is diminishing year on year.

IPA agrees that transparency and accountability are critical for the successful implementation of the funding model. For this reason, more information is needed on the actual break down of the activities, by sub-sector, including the indirect costs and the linkages between the costs, performance metrics and outcomes.

In addition, it would be useful to have more information in one place rather than scattered across numerous documents. There is the related information listed in the CRIS and importantly, there is the ASIC annual report (which includes the annual performance statement), annual corporate plan, Australian Government Charging Framework and its Resource Management Guide 302, Cost Recovery Guidelines, Regulator Performance Guide and ASIC's self-assessment against the Guide.

A simplified document for users/stakeholders, perhaps on an industry/sector basis, with relevant information only, would be useful.

Risk assessment – timing and certainty

We note that the CRIS (p153) states that "the potential risks of the fees-for-service model include:
• the perception that the model lacks transparency about the basis of the fees;
• the fees for service may not match our actual regulatory costs;
• uncertainty about the classification of tiered fees; and
• the tiered fees could result in some entities being subject to a large increase in fees if they fall within the complex category".

The CRIS goes on to state that the "Risks can be appropriately mitigated and managed by increasing the level of consultation and communication with stakeholders to ensure maximum transparency and understanding. We have assessed the fees-for-service model as medium risk under the Australian Government Regulatory Charging Risk Assessment".

Given the above, IPA contends that it is unreasonable for ASIC to apply estimates and expect that regulated entities can absorb huge (or any) fluctuations when they are operating in the same uncertain environment as ASIC, have their own costs to meet and cannot always pass these on to clients and customers. We suggest actual costs should be used rather than estimates.

Many of our members charge monthly or fixed fees based on a contractual arrangement, as clients prefer the certainty that fixed fees provide. It is difficult for this business model to absorb the fluctuations which the ASIC fee model may impose. The need for certainty and timeliness, especially in the current pandemic environment, should not be under-estimated. Genuine 'consultation and communication' is needed to understand the pressures that industry is facing, especially the smaller practices and licensees, many of which are sole traders.

We suggest that the current approach of estimating levies in the first half of the year and then invoicing actual levies in January is unhelpful. This would be like receiving an estimate for a house renovation and then six months later being charged a potentially much higher price and having no option but to pay it. ASIC may not be operating a business but a practical approach to regulating businesses is essential to efficient markets.

Regulatory overlap

Some of the entities subject to ASIC fees and levies are also regulated by other agencies including the Australian Taxation Office, Tax Practitioners Board, Financial Reporting Council and in the case of professional accountants, by the professional accounting bodies enforcing the Accounting Professional and Ethical Standards Board (APESB) Code of Ethics. There is also the additional layer of reporting to the Professional Standards Councils. The cumulative regulatory impact should be considered when assessing the level of risk and applicable supervision, surveillance and even enforcement activity. This may lead to a reduction in the amount of the levy for the relevant entities or sectors.

For instance, RCAs are subject to a rigorous quality assurance audit every three years by the professional accounting bodies, which is reported annually to the Financial Reporting Council and the APESB. There is also mandatory Continuing Professional Development and a complaints, investigations and disciplinary process in place. Even though the professional accounting bodies do not have the same legislative enforcement powers as ASIC, the objectives of regulating, improving behaviour and culture, increasing professionalism (including integrity and competence) and serving the public interest are all the same. There is a high level of scrutiny of these regulated entities, and they also receive education, guidance and their interests are represented by their respective professional association. This is essentially a co-regulatory model and should be taken into consideration when assessing the required level of regulatory activity. This may lead to a reduction in the amount of the levy for the relevant entities or sectors.

Technology and efficiencies

ASIC has always been at the forefront of promoting regulatory technology (regtech) and its adoption. Therefore, we would expect to see ASIC leading the way in the use of regtech in its own regulatory activities, with a resulting decrease in costs, over time. We note that ASIC has also promoted 'suptech' (supervisory technology); including being involved with the Innovation Hub and the regulatory sandbox. All of this should translate to reduced costs and reduced fees and charges on regulated entities. We would be interested in how the use of regtech and suptech are driving efficiencies and cost reduction at ASIC.

Competitive pressures

We contend that qualified accountants leaving the financial advice sector is counter-productive at a time when more Australian consumers are seeking affordable and competent financial advice from their choice of trusted adviser. The current pandemic has heightened this need, especially as we see 2.8 million Australians withdraw $25.3 billion from their superannuation under the Government's early access to superannuation measure (APRA website, statistics current as at 12 July 2020).

As noted above, we are already seeing a gradual and continuing reduction in the numbers of RCAs, liquidators and financial advisers. This is evidenced in previous ASIC annual reports in the Summary of Stakeholders key data. Our own data on members in these sectors reflects a similar trend.

The cost of doing business, including ASIC fees and levies, has added to the pressure on these sectors, especially the smaller practices which cannot easily continue to absorb costs and find it increasingly difficult to pass costs on to clients who are equally embattled. Many IPA members hold multiple registrations which obviously increases the cost of being in business. We believe that the cumulative cost for these, often small, practitioners should be taken into consideration.

A proportionate levy system would be more equitable; ease anti-competitive pressure; and better serve the public interest. ASIC already collects information to facilitate this system.

Registered liquidators

Mandatory legislative requirements mean that liquidators must undertake certain tasks whether they are able to recover the fees or not. We note that between July 2018 and June 2019, for companies entering liquidation: 85% had assets of less than $100,000; 58% had less than $10,000; almost 37% were reported as asset-less; 8.5% had assets over $250,001; and 92% estimated the return to unsecured creditors would be $0. (ASIC Report 645 Insolvency Statistics June 2018-June 2019). We are advised by members who practice as liquidators that up to 80% of their fees are regularly 'written-off' and that they expect this to be offset by other engagements and work.

Two factors will drive an increase in levy – a decrease in subsector population and/or an increase in the extent to which regulatory costs are attributable to the subsector. Since introduction of the levy, the RCA subsector population has decreased by 14.28% and the extent to which actual regulatory costs are attributable to the subsector have increased by 233.22% with notable significant budgeted increases in: enforcement costs (226.73%), indirect costs (260.83%), and capital expenditure allowance (280.7%). The 2019-2020 levy was also impacted by actual regulatory costs exceeding budgeted regulatory costs for RCAs by 20.52% whereas in prior years actual regulatory costs were lower than budgeted costs. There does not appear to be a breakdown of components of actual regulatory costs. Our calculations are contained in Schedule 1.

Given that the number of liquidators is declining in an uncertain and cyclical profession, we contend that a different approach should be considered based on a lower, flat levy.

Member feedback

We have received numerous and ongoing complaints and comments from our members about the hardships they and their clients are facing during the current pandemic. For some, this started with the bushfires and other natural disasters in early 2020. Many accountants are under pressure to either waive or reduce their fees and are faced with small business clients who may not survive the pandemic.

In this environment we are at a loss to understand the justification for significant increases across relevant sectors, especially given the increases in previous years. Some members have even sent their invoices to us in a state of disbelief. The IPA has heard from many members over the last couple of years who have decided to surrender or think about surrendering their (limited) financial services licence due to a lack of profitability and other reasons. The current downturn has exacerbated their position. For many, the ASIC levy which is proportionally much higher than other costs of business, has become the 'last nail in the coffin' as they seek to exit the financial advice, insolvency or audit sectors.

If you have any queries with respect to our submission, please don't hesitate to contact Vicki Stylianou at [redacted] or on [redacted]

Yours faithfully

[redacted]

Vicki Stylianou
Group Executive Advocacy & Policy
Institute of Public Accountants

Schedule 1

Calculations relating to Registered Liquidators – refer to spreadsheet and notes attached.

Registered Company Auditors	2017-2018	2018-2019	2019-2020	% change 2017-2018 to 2018-2019	% change 2018-2019 to 2019-2020	% change 2017-2018 to 2019-2020
Subsector population	**4,453**	**4,089**	**3,817**	**-8.17%**	**-6.65%**	**-14.28%**
Expense						
Supervision and surveillance	**$409,000**	**$441,000**	**$486,000**	**7.82%**	**10.20%**	**18.83%**
Enforcement	**$101,000**	**$31,000**	**$330,000**	**-69.31%**	**964.52%**	**226.73%**
Other Regulatory Activities - Industry (stakeholder) engagement	$11,000	$5,000	$14,000	-54.55%	180.00%	27.27%
Other Regulatory Activities - Education	$0	$0	$0	0.00%	0.00%	0.00%
Other Regulatory Activities - Guidance	$5,000	$2,000	$8,000	-60.00%	300.00%	60.00%
Other Regulatory Activities - Policy advice	$28,000	$25,000	$15,000	-10.71%	-40.00%	-46.43%
	$44,000	**$32,000**	**$37,000**	**-27.27%**	**15.63%**	**-15.91%**
Indirect Cost - Governance, central strategy and policy, and central leg	$60,000	$67,000	$281,000	11.67%	319.40%	368.33%
Indirect Cost - IT support	$126,000	$122,000	$481,000	-3.17%	294.26%	281.75%
Indirect Cost - Operations support	$65,000	$63,000	$205,000	-3.08%	225.40%	215.38%
Indirect Cost - Property and corporate services	$160,000	$161,000	$516,000	0.63%	220.50%	222.50%
	$411,000	**$413,000**	**$1,483,000**	**0.49%**	**259.08%**	**260.83%**
Total operating costs	**$965,000**	**$917,000**	**$2,336,000**	**-4.97%**	**154.74%**	**142.07%**
Adjustment for capital expenditure allowance	$69,000	$55,000	$213,000	-20.29%	287.27%	208.70%
Adjustment for ASIC-sourced revenue	($32,000)	($15,000)	($18,000)	-53.13%	20.00%	-43.75%
Adjustment for market competition cost recovery	n/a	n/a	n/a	n/a	n/a	n/a
Adjustment for new policy measures	$11,000	$9,000	$0	-18.18%	-100.00%	-100.00%
Adjustment for prior year (under or over recovery)	n/a	n/a	$39,000	0.00%		
	$48,000	**$49,000**	**$234,000**	**2.08%**	**377.55%**	**387.50%**
Total budgeted costs to be recovered by levy	**$1,013,000**	**$966,000**	**$2,570,000**	**-4.64%**	**166.05%**	**153.70%**
[Source: ASIC (Supervisory Cost Recovery Levy - Annual Determination instruments)]						
Extent to which regulatory costs are attributable to subsector*	**$929,499**	**$850,437**	**$3,097,293**	**-8.51%**	**264.20%**	**233.22%**
% above (below) budgeted costs	**-8.24%**	**-11.96%**	**20.52%**			
ASIC's total regulatory costs	*$236,582,384*	*$276,711,435*	*$320,333,169*	**16.96%**	**15.76%**	**35.40%**
Levy Calculation - Flat Levy for RCA's	**$208.74**	**$207.98**	**$811.45**	**-0.36%**	**290.15%**	**288.74%**

Two factors will drive an increase in levy - a decrease in subsector population and/or an increase in the extent to which regulatory costs are attributable to the subsector. Since introduction of the levy, the RCA subsector population has decreased by 14.28% and the extent to which actual regulatory costs are attributable to the subsector have increased by 233.22% with notable significant budgeted increases in: enforcement costs (226.73%), indirect costs (260.83%), and capital expenditure allowance (280.7%). The 2019-2020 levy was also impacted by actual regulatory costs exceeding budgeted regulatory costs for RCA's by 20.52% whereas in prior years actual regulatory costs were lower than budgeted costs. There does not appear to be a breakdown of components of actual regulatory costs.

*** The extent to which regulatory costs are attributable to subsector appears to be actual (as distinct from budgeted) regulatory costs. For 2019-2020, the amounts are derived from *ASIC (Supervisory Cost Recovery Levy - Regulatory Costs Instrument 2020/1074* (24 November 2020).**

Notes

ASIC (Supervisory Cost Recovery Levy - Annual Determination) Instrument (1) formally determines the sub-sector population for the applicable financial year. The legislative instrument is made late in the calendar year (eg November/December). This instrument is accompanied with an Explanatory Statement. The instrument assists with the calculation of the basic levy component and the graduated levy component.

ASIC (Supervisory Cost Recovery Levy - Annual Determination) Instrument (2) formally determines ASIC's regulatory costs for the applicable financial year. The legislative instrument is made late in the calendar year (eg November/December). This instrument is accompanied with an Explanatory Statement. The instrument provides a breakdown of ASIC's regulatory costs by sub-sector which assists with the calculation of the basic levy component and the graduated levy component.