Governance Institute of Australia

T +61 2 9223 5744 **F** +61 2 9232 7174
E info@governanceinstitute.com.au
Level 10, 5 Hunter Street, Sydney NSW 2000
GPO Box 1594, Sydney NSW 2001
W governanceinstitute.com.au

26 April 2019

Tony Christie
Senior Lawyer, Strategic Policy
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

By email: policy.submissions@asic.gov.au

Dear Mr Christie

Draft Cost Recovery Implementation Statement: ASIC industry funding model (2018-19)

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 advisers and risk managers are unrivalled.

Our members have primary responsibility for developing and implementing governance and risk frameworks in public listed, unlisted and private companies. They are frequently those with primary responsibility for dealing and communicating with ASIC and interacting with business registries. Our members have a thorough working knowledge of the Corporations Act 2001 (the Corporations Act). We have drawn on their experience in this submission.

Governance Institute welcomes the opportunity to comment on the draft Cost Recovery Implementation Statement on the industry funding model for 2018/19 (CRIS).

Governance Institute has long advocated for a model of joint industry and government funding for ASIC. We made a submission to Government on the proposed industry funding model on 16 December 2016: https://www.governanceinstitute.com.au/media/881545/final_submission_asic_industry_funding_model.pdf .

That submission highlighted our concerns about the impact of the proposed funding model on listed entities. We argued that the proposed model (subsequently adopted by Government) was not proportional and aligned to expected need for regulatory oversight and activity, but predicated on size and financial capacity. We anticipated that the model would result in well-run entities subsidising badly behaved entities and argued for an approach which incorporated a form of risk weighting attached to the market capitalisation metric. At the roundtable which we attended with a number of stakeholders at the time of the consultation on the model, Treasury advised that the concept of attaching a risk weighting was discarded as it would impose too great a workload on ASIC which would in itself increase compliance and regulatory costs.

We note that the draft CRIS now uses ASIC's actual historical costs of regulation broken down by activity and attributed to each sub-sector. We question whether the reasons for not using a risk weighting based on actual regulatory costs may no longer apply and that ASIC may indeed be able to attribute specific costs on a more granular level which would allow for a direct economic link between regulatory activity or effort and levies incurred.

Our members have expressed considerable concern over the rapidly rising costs of the industry levies. A quick summary of costs estimates and actuals for the entities in the listed corporations subsector highlights the trajectory of these increasing costs:

Listed corporations	**2017/18 CRIS**	**Dashboard – Dec 2018**	**2018/19 draft CRIS**
Actual cost recovery amount	$33.959 million	$50.415 million	$62.923 million
Levy metric	Minimum levy of $4,000 plus $0.19 per $10,000 of market capitalisation above $5 million.	Minimum levy of $4,000 plus $0.30 per $10,000 of market capitalisation above $5 million	Minimum levy of $4,000 plus $0.39 per $10,000 of market capitalisation above $5 million
Maximum levy	**$396,000**	**$605,317**	**$785,654**

We note that the costs in the draft CRIS are only a guide to the actual levies that will be charged for 2018-19. We expect that ASIC's more intensive regulatory activity and its new 'why not' litigate approach to enforcement will cause the costs of regulation to continue to increase. We consider that the current rate of cost increase is unsustainable for those required to pay the costs.

Governance Institute notes that the Government has increased funding to ASIC by over $400 million over the next four years. We would like to understand the impact of this funding on the industry funded levies. In particular, if this $400 million allocation is applied towards increased surveillance or enforcement activities, will this, in turn, further increase the amounts payable by industry under the funding model or will the $400 million be additional to the industry funded levies.

Government and other stakeholders have previously highlighted concerns about ASIC's accountability for its regulatory costs. These concerns have increased for our members based on their experiences of the 2017/18 industry levies which for many companies substantially exceeded budget estimations. Concerns over the continuing increases in the ASIC Funding Levy are compounded further by the late notice of the amount of the impost in most business planning and budgeting cycles. Businesses paying the levies do not have unlimited resources to fund ASIC's activities. Annual increases in the levy should not be "shocking" or "unpredictable" in size.

Our members continue to have concerns about ASIC's accountability for the efficient use of its resources taking into account that industry is now funding ASIC's regulatory activity. We consider that ASIC's long term planning and budgeting process must be sustainable for its stakeholders and ASIC must have accountability for operating within those limits.

Governance Institute considers that, bearing in mind the increased activity being undertaken by ASIC, it is timely to revisit the industry funding model to ensure that it is operating fairly and efficiently. We recommend that ASIC consider further the arguments which we made in favour of a risk weighted levy in our submission of 16 December 2016 to ensure that those entities which generate the need for regulatory oversight and activity bear the appropriate portion of the costs.

Yours sincerely

Megan Motto
CEO