27 July 2020

Australian Securities and Investments Commission

Email: policy.submissions@asic.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION ON COST RECOVERY IMPLEMENTATION STATEMENT: ASIC INDUSTRY FUNDING MODEL (2019–20)

The SMSF Association welcomes the opportunity to make a submission to the Australian Securities and Investments Commission (ASIC) on the 2019-20 Cost Recovery Implementation Statement (CRIS).

We preface the submission with the position on the CRIS that we submitted to Treasury in 2017. That is,

> *ASIC must strive to ensure that fees-for-service are being reduced over time through improved processes and increased efficiency, especially as the growing use of regulation technology reduces regulation and compliance costs in financial services. When ASIC improves its performance and efficiency in undertaking regulatory fee-for-service tasks, this will result in lower fees for the financial services industry. Without express reference to this principle, ASIC may find they have no incentive to lower fees.*

We do not believe the proposed CRIS details any improvement in performance and efficiency over the preceding years since the introduction of industry funding. The SMSF Association encourages ASIC to detail improvements in performance and efficiency.

Given ASIC state, "we [ASIC] cannot prevent change in our operating environment between the time the indicative levy is calculated and the end of the financial year", it is of even more importance that appropriate checks on spending are in place because of the uncertainty in estimates.

On a holistic level, the general methodologies for calculating fees-for service are appropriate. However, we believe ASIC should exercise discretion to reduce fees where applying the methodology results in an excessive increase in a fee.

We think this is most applicable to the financial advice sector which is undergoing a significant period of increased costs through FASEA implementation and significant changes to the advice framework due to Royal Commission related legislation. This is further heightened by uncertainty resulting from the COVID-19 pandemic.

We believe the following areas require amendment or discretion from ASIC:

AFS Licensees

The SMSF Association understands the fee methodology attributed to AFS licensees. However, we believe ASIC should be allowed more discretion to reduce fees, particularly in relation to the financial advice sector.

We encourage ASIC to either find further efficiencies, introduce a hard cap on the adviser levy or indicative percentage increase, or allow for a lower level of cost recovery for the 2019-20 year. We are concerned that if this doesn't occur, the funding levy could result in further adviser exodus, stifled competition and less access to advice for consumers.

There are a number of factors that lead us to this position:

- The 2018-19 actual financial advice ASIC fee was 20% higher than estimated. The majority of this miscalculation was borne directly by miscalculations directed to the AFS licensee sector. Have changes have been implemented by ASIC to ensure this does not occur again?
- The 2019-20 estimated financial advice ASIC fee is a 38% increase on the previous financial year. At a period of intense uncertainty, increasing costs, and regulatory burden this is another prohibitive advice cost. Is there a threshold where ASIC would take action to ensure the increase does not excessively impact the financial advice sector?
- The number of financial advisers continues to fall sharply. This means the accuracy of ASIC's estimates is doubtful. There is unlikely to be just over 3,000 AFS licensees with around 23,000 advisers on the register at the end of the next period. Therefore, it is important to recognise that the reduction in advisers does not result in a proportional reduction in ASIC's total cost, rather the total cost will be shared among fewer remaining advisers.

Limited Licensees

The SMSF Association also poses the question if limited licence advisers should pay an equivalent amount to advisers licensed to provide a full suite of services.

Given limited licence advisers are typically limited to superannuation advice, we believe the resources required to provide regulation should also be limited to this aspect. There are inherently more risks in providing a wide range of services with a wider range of risks.

A similar approach is taken to licensees that provide general advice only. These individuals have a significantly lower indicative levy despite the risk they might provide personal advice which could be detrimental.

Therefore, we believe limited licence advisers should have this reflected in a reduction of their fee in proportion to the actual regulation required for their services.

Understanding this may be a matter for government policy, we urge ASIC to continue to explore this position with urgency.

Review of life risk insurance commissions

ASIC has indicated that a review of life insurance commissions will collect six-monthly data from insurers to assist ASIC's 2021 review of the impact of the life insurance reforms on better aligning the interests of advisers and consumers. The cost of this review is currently allocated to the financial advice sector.

The SMSF Association believes the cost of this review should be borne by the 'Insurance sector'. The insurance sector consists of, AFS licensees, including life and general insurance product providers, insurance product distributors (such as insurance brokers and AFS licensees who distribute products on behalf of an insurer), and risk management product providers.

Advice compliance

ASIC notes that their focus for the financial advice sector is 'monitoring the review and remediation programs for customers of large financial institutions who received inappropriate advice'. ASIC is also focused on 'engaging with the institutions regarding changes to their advice audit and advice quality processes that have been made or are continuing to be implemented'.

The SMSF Association agrees with this focus area. However, we question if all or part of the cost of this work should be allocated to the 'large financial institutions sector'. This sector focuses on the ability of Australia's five largest financial institutions to detect and respond to reportable, or potentially reportable, breaches of financial services laws, and to rectify and remediate those breaches in a timely manner.

SMSF Audit cancellation fee

We continue to propose the cancellation fee for SMSF Auditors should also be amended to an inconsequential amount below $300. This is particularly important when there is the potential for no cost to be incurred by an auditor when their registration lapses.

We also question if efficiencies have improved and if there continues to be five hours of work involved in the voluntary cancellation of an SMSF auditor registration.

If you have any questions about our submission, please do not hesitate in contacting us.

Yours sincerely,

[redacted]

John Maroney

CEO

SMSF Association